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REMEDIAL LAW

BAR QUESTIONS & ANSWERS

(2007-2017)

*with Table of Frequently
Asked Topics in the Bar*

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I. GENERAL PRINCIPLES

A. Substantive Law vs. Remedial Law

B. Rule-making power of the Supreme Court

C. Principle of judicial hierarchy

1. What is the doctrine of hierarchy of courts? (2017 BAR QUESTION)

SUGGESTED ANSWER:

The doctrine of hierarchy of courts provides that where there is a concurrence of jurisdiction by courts over an action or proceeding, there is an ordained sequence of recourse to such courts beginning from the lowest to the highest. A direct invocation of the Supreme Court's original jurisdiction should be allowed only when there are special and important reasons therefor. [*Montes v. Court of Appeals*, G.R. No. 143797, 4 May 2006]

D. Doctrine of non-interference/judicial stability

2. A law was passed declaring Mt. Karbungko as a protected area since it as 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 levelled 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. (2015 BAR QUESTION)

A. Was the court correct in motu proprio dismissing the petition?

SUGGESTED ANSWER:

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, venue is not jurisdictional, and it can be waived in a special civil action for continuing mandamus (*Dolot v. Paje*, G.R. No. 199199, August 27, 2013). Besides, under Section 1, Rule 9 of the Rules of Court, defenses and objections not pleaded in the answer or in the motion to dismiss are deemed waived. Hence, the Court cannot motu proprio dismiss the case on the ground of improper venue.

- B. 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.**

Should the court dismiss the petition?

SUGGESTED ANSWER:

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*, G.R. No. 199199, August 27, 2013; *Paje v. Casiño*, G.R. No. 207257, February 3, 2015).

ALTERNATIVE ANSWER:

No, the Court should not dismiss the petition because the doctrine of exhaustion 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*, G.R. No. 196870, June 26, 2012; *Paje v. Casiño*, G.R. No. 207257, February 3, 2015).

II. JURISDICTION

A. Classification of jurisdiction

1. Original vs. appellate

3. Give at least three instances where the Court of Appeals may act as a trial court. (2008 BAR QUESTION)

SUGGESTED ANSWER:

Instances where the Court of Appeals may act as a trial court are:

- a) In annulment of judgment under Secs. 5 and 6, Rule 47. Should the Court of Appeals find prima facie merit in the petition, the same shall be given due course and summons shall be served on the respondent, after which trial will follow, where the procedure in ordinary civil cases shall be observed.
- b) When a motion for new trial is granted by the Court of Appeals, the procedure in the new trial shall be the same as that granted by a Regional Trial Court (Sec. 4, Rule 53).
- c) A petition for habeas corpus shall be set for hearing (Sec. 12, Rule 102).
- d) In a petition for the writs of amparo and habeas data, a hearing can be conducted.
- e) Under Section 12, Rule 124 of the Rules of Criminal Procedure, the Court of Appeals has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues cases which fall within its original and appellate jurisdiction.
- f) The Court of Appeals can grant a new trial based on the ground of newly discovered evidence. (Sec. 14, Rule 124).
- g) The Court of Appeals, under Section 6, Rule 46, whenever necessary to resolve factual issues, may conduct hearing thereon or delegate the reception of the evidence of such issues to any of its members or to an appropriate agency or office.

2. General vs. special

3. Exclusive vs. concurrent

B. Doctrines of hierarchy of courts and continuity of jurisdiction

C. Jurisdiction of various Philippine courts

4. 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. (2014 BAR QUESTION)

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

SUGGESTED ANSWER:

No, the MTC was not correct in dismissing the complaint for lack of jurisdiction. Under the Rules on Ejectment, the action for ejectment is within the exclusive and original jurisdiction of the MTC irrespective of total amount of the claims. Hence, it was erroneous for the MTC to dismiss the complaint for ejectment as it falls properly within its jurisdiction.

- 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 RTC ruling based on the assessed value is not correct. The Supreme Court in applying the Rules has held that what determines the jurisdiction of the court as conferred by law is the nature of the action pleaded as appearing from the allegations in the complaint. In this case, the jurisdiction over ejectment cases is conferred by law exclusively and originally upon the MTC. Necessarily, the nature of the action is alleged by the facts in the complaint herein. Hence, the RTC should have remanded the case to the MTC since it is the latter that has jurisdiction over the case.

5. 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. (2014 BAR QUESTION)

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.

6. **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. 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. (2010 BAR QUESTION)**

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 or in Metro Manila, P400,000, 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*).

7. **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 accion publiciana.**

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. (2010 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the Court of Appeals is correct in remanding the case to 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.

Rep. Act No.7691, however, vested jurisdiction over specified accion publiciana 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.

8. **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. (2009 BAR QUESTION)**

SUGGESTED ANSWER:

NO, the action may not prosper, because under Rep. Act 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 P20,000.00 in the rest of the Philippines, outside of the Manila with 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.

9. **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 P19,700.00. 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:**

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. (2009 BAR QUESTION)

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.

10. **TRUE or FALSE. In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of habeas corpus. (2009 BAR QUESTION)**

SUGGESTED ANSWER:

FALSE. The Sandiganbayan may grant petitions for Habeas corpus only in aid of its appellate jurisdiction (RA 7975, as amended by RA 8249), not in the exercise of "original" jurisdiction.

- 11. TRUE or FALSE. The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal. (2009 BAR QUESTION)**

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.

- 12. Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure. (2009 BAR QUESTION)**

SUGGESTED ANSWER:

Under the Constitution, the certiorari jurisdiction of the Supreme Court provides for its expanded jurisdiction or judicial power over all branches or instrumentalities of the government where there is a grave abuse of discretion amounting to lack or excess of jurisdiction, as [agencies and instrumentalities] provided in Section 1, second par., Art. VIII of the 1987 Constitution. The petition is filed under Rule 45 of the Rules of Court, and [The writ is directed not only to a tribunal, board or officer exercising judicial or quasi-judicial functions. And] the period fixed for availing of the remedy is within 30 days from receipt of the copy of the decision, order or ruling in question (*Sec. 7, Art. IX*).

But under Rule 65 of the Rules of Court, the certiorari jurisdiction of the Supreme Court is limited to acts done without or in excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, by a tribunal, board or officer exercising judicial or quasi-judicial functions only. And the period fixed for availing of the remedy is not later than 60 days from notice of judgment; order or resolution in question (*Secs. 1 and 4, Rule 65, Rules of Court*).

- 13. 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 P40,000; the second was a claim for damages of P500,000 for Marcelino's unlawful retention of the property Marcelino filed a motion to dismiss on the ground that the total amount involved, which is P540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct? (2008 BAR QUESTION)**

SUGGESTED ANSWER:

No, Marcelino is not correct. Under Rep. Act No. 7691, Metropolitan Trial Courts and other courts of the first level have been vested with exclusive original jurisdiction in all civil actions which involved title to, or possession of real property or any interest therein where the assessed value of the property or interest therein does not exceed P20,000.00, or in civil actions in Metro Manila, where such assessed value does not exceed P50,000.00 exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs. Pasay City where the action for recovery of physical possession was filed, is part of Metro Manila and therefore has exclusive jurisdiction over the parcel of land situated therein whose assessed value is P40,000.00. The claim for damages of P500,000.00 for the unlawful retention of the land involved is not determinative of the court's jurisdiction which is based on the nature of the action. The claim for damages of P500,000.00 is just a consequence of the unlawful detention of the property subject of the action, which should not be taken separately from the land. Filomeno has only one cause of action which is the action for recovery of possession of the land against Marcelino, with damages.

- 14. 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 P500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the**

P500,000.00 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 P500,000.00.

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 P300,000.00 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. Should the court dismiss the case? **(2015 BAR QUESTION)**

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 controlling (*Navida v. Hon. Teodoro A. Dizon, Jr.*, G.R. No. 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).

- 15. 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 VAWC 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? (2015 BAR QUESTION)**

SUGGESTED ANSWER: No, the Family Court Judge is not correct when it declined to resolve the constitutionality of R.A. No. 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 any 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."

- 16. State at least five (5) civil cases that fall under the exclusive original jurisdiction of the Regional Trial Courts (RTCs). (2016 BAR QUESTION)**

SUGGESTED ANSWER:

The Regional Trial Courts inter alia shall exercise exclusive original jurisdiction in the following civil cases:

- a) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
- b) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (P20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (P50,000.00)

- except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;
- c) In all actions in admiralty and maritime jurisdiction where the demand or claim exceeds Three hundred thousand pesos (P300,000.00) or, in Metro Manila, where such demand or claim exceeds Four hundred thousand pesos (P400,000.00);
 - d) In all matters of probate, both testate and intestate, where the gross value of the estate exceeds Three hundred thousand pesos (P300,000.00) or, in probate matters in Metro Manila, where such gross value exceeds Four Hundred thousand pesos (P400,000.00);
 - e) In all actions involving the contract of marriage and marital relations;
 - f) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;
 - g) In all civil actions and special proceedings falling within the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and of the Court of Agrarian Relations as now provided by law; and
 - h) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees litigation expenses, and costs or the value of the property in controversy exceeds Three hundred thousand pesos (P300,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the above-mentioned items exceeds Four Hundred thousand pesos (P400,000.00)" (Section 1, Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980).

17. What trial court outside Metro Manila has exclusive original jurisdiction over the following cases? Explain briefly your answers. (2017 BAR QUESTION)

A) An action filed on November 13, 2017 to recover the possession of an apartment unit being occupied by the defendant by mere tolerance of the plaintiff, after the former ignored the last demand to vacate that was duly served upon and received by him on July 6, 2016.

SUGGESTED ANSWER:

It would be either the MTC or the RTC depending upon the assessed value of the apartment unit.

Under B.P. Blg. 129, jurisdiction over real actions is vested in the MTC if the assessed value of the real property involved does not exceed P20,000 and in the RTC if such assessed value exceeds P20,000. The action to recover possession can no longer be one for unlawful detainer since it was brought beyond one year from the last demand to vacate.

B) A complaint in which the principal relief sought is the enforcement of a seller's contractual right to repurchase a lot with an assessed value of ₱15,000.00.

SUGGESTED ANSWER:

Exclusive original jurisdiction is vested in the MTC.

The Supreme Court has held that where the ultimate relief sought by an action is the assertion of title to real property, the action is a real one and not one incapable of pecuniary estimation. [*Brgy. Piapi v. Talip*, 7 Sep 2005]

Here the ultimate relief sought by the complaint is the assertion of title since the seller seeks to exercise his right to repurchase. Hence the action is a real one and jurisdiction is vested in the MTC since the assessed value does not exceed P20,000.

ALTERNATIVE ANSWER:

Exclusive original jurisdiction is vested in the Regional Trial Court. The Supreme Court has held that an action to enforce the right of redemption is one which is incapable of pecuniary estimation and thus within the exclusive original jurisdiction of the RTC pursuant to B.P. Blg. 129. [*Heirs of Bautista v. Lindo*, 10 March 2014]

18. Santa filed against Era in the RTC of Quezon City an action for specific performance praying for the delivery of a parcel of land subject of their contract of sale. Unknown to the parties, the case was inadvertently raffled to an RTC designated as a special commercial court. Later, the RTC rendered judgment adverse to Era, who, upon realizing that the trial court was not a regular RTC, approaches you and wants you to file a petition to have the judgment annulled for lack of jurisdiction.

What advice would you give to Era? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

The advice I would give to Era is that the petition for annulment of judgment on lack of jurisdiction will not prosper.

The Supreme Court has held that a special commercial court is still a court of general jurisdiction and can hear and try a non-commercial case. [*Concorde Condominium Inc. v. Baculio*, 17 Feb 2016, Peralta, J.].

Hence the special commercial court had jurisdiction to try and decide the action for specific performance and to render a judgment therein.

19. Abraham filed a complaint for damages in the amount of ₱750,000.00 against Salvador in the RTC in Quezon City for the latter's alleged breach of their contract of services. Salvador promptly filed his answer, and included a counterclaim for ₱250,000.00 arising from the allegedly baseless and malicious claims of Abraham that compelled him to litigate and to engage the services of counsel, and thus caused him to suffer mental anguish.

Noting that the amount of the counterclaim was below the exclusive original jurisdiction of the RTC, Abraham filed a motion to dismiss vis-a-vis the counterclaim on that ground.

Should the counterclaim of Salvador be dismissed? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

No, the counterclaim of Salvador should not be dismissed on the ground of lack of jurisdiction.

In an original action before the RTC, the RTC has jurisdiction over a compulsory counterclaim regardless of its amount. [*See S7 R6*]

Here Salvador's counterclaim for damages arising from the alleged malicious and baseless claims of Abraham is a compulsory counterclaim as it arises from Abraham's complaint. Hence the RTC has jurisdiction over Salvador's counterclaim even if it did not exceed the jurisdictional amount of P400,000.

20. Error of Jurisdiction v. Error of Judgment

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*, 76 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).

D. Aspects of jurisdiction

1. Jurisdiction over the parties

21. Lani filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, 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 kumare Anita scanned and e-mailed that page of Bulgar to me!"

Did the court acquire jurisdiction over Mary Rose? (2008 BAR QUESTION)

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).

22. 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 P19,700.00. 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:

The court cannot acquire jurisdiction over the person of Amorsolo because he is not a resident of the Philippines; (2009 BAR QUESTION)

SUGGESTED ANSWER:

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

23. Jose, Alberto and Romeo were charged with murder. Upon filing of the information, the RTC judge issued the warrants for their arrest. Learning of the issuance of the warrants, the three accused jointly filed a motion for reinvestigation and for the recall of the warrants of arrest. On the date set for hearing of their motion, none of the accused showed up in court for fear of being arrested. The RTC judge denied their motion because the RTC did not acquire jurisdiction over the persons of the movants. Did the RTC rule correctly? (2008 BAR QUESTION)

SUGGESTED ANSWER:

The RTC ruled correctly in denying the motion for reinvestigation and for the recall of the warrants of arrest, because the accused have not surrendered their persons to the court.

Jurisdiction over the person of the accused can only be obtained through arrest or voluntary surrender. (*Dimatulac v. Villon*, 297 SCRA 679 [1998])

ANOTHER SUGGESTED ANSWER:

No, the court acquired jurisdiction over the person of the accused when they filed the aforesaid motion and invoked the court's authority over the case, without raising the issue of jurisdiction over their person. Their filing the motion is tantamount to voluntary submission to the court's jurisdiction and constitutes voluntary appearance (486 SCRA 377[2006]).

2. Jurisdiction over the subject matter**24. A suit for injunction is an action in rem. (2009 BAR QUESTION)****SUGGESTED ANSWER:**

FALSE. A suit for injunction is an action in personam. In the early case of *Auyong Hian v. 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 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. v. Manay*, 535 SCRA 356 [2007]).

3. Jurisdiction over the issues**4. Jurisdiction over the *res* or the property in litigation****25. 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. (2009 BAR QUESTION)****SUGGESTED ANSWER:**

No, the action may not prosper, because under Rep. Act 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 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.

E. Jurisdiction vs. exercise of jurisdiction

F. Jurisdiction vs. venue

G. Jurisdiction over cases covered by Barangay Conciliation, Small Claims Cases, and cases covered by Summary Procedure

26. Landlord, a resident of Quezon City, entered into a lease contract with Tenant, a resident of Marikina City, over a residential house in Las Piñas 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.

A) What judicial remedy would you recommend to Maria? (2014 BAR QUESTION)

SUGGESTED ANSWER:

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 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?

SUGESTED ANSWER:

- 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 (*Sec. 2, Rule 4*). 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 (*Sec. 1, Rule 4*). 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?

SUGGESTED ANSWER:

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 (*Sec. 2, Rule 70*).

27. A Small Claims Court _____ (2013 BAR QUESTION)

- A) has jurisdiction over ejectment actions
- B) has limited jurisdiction over ejectment actions
- C) does not have any jurisdiction over ejectment actions
- D) does not have original, but has concurrent, jurisdiction over ejectment actions
- E) has only residual jurisdiction over ejectment actions

SUGGESTED ANSWER:

(C) does not have any jurisdiction over ejectment actions

28. As a new lawyer, Attorney Novato limited his practice to small claims cases, legal counselling 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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

Atty. Novato may only give counselling and assist claimants in accomplishing the Statement of Claims and the Affidavits necessary to initiate a small claims action. He can also notarize the aforementioned documents since the statement of Claims and Response are required to be verified (Sec. 7, Rules of Procedure for Small Claims, A.M. No. 8-8-7 SC).

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? (2013)

SUGGESTED ANSWER:

Atty. Novato may file a Petition for Certiorari before the RTC since a decision in small claims cases is final and unappealable (Sec. 23, A.M. No. 8-8-7 SC). The petition for certiorari should be filed before the RTC conformably to the Principle of Judicial Hierarchy.

29. 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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

Patty may undertake the following remedies:

- a) She may file a small claims case against CCC Company for damages arising from fault or negligence before the MTC where she or the defendant resides, at her option (A.M. No. 8-8-7-SC in relation to Section 2, Rule 4, Rules of Court).
 - b) She may also file an independent civil action against the company based on quasi-delict under Article 2176 of the Civil Code. The law states, 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.
 - 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 defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision.
30. 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. (2009 BAR QUESTION)

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.

31. Pedro and Juan are residents of Barangay Ifurug, Municipality of Dupac, Mountain Province. Pedro owes Juan the amount of P50,000.00. Due to nonpayment, Juan brought his complaint to the Council of Elders of said barangay which implements the bodong justice system. Both appeared before the council where they verbally agreed that Pedro will pay in instalments on specific due dates. Pedro reneged on his promise. Juan filed a complaint for sum of money before the Municipal Trial Court (MTC). Pedro filed a Motion to Dismiss on the ground that the case did not pass through the barangay conciliation under R.A. No. 7160 and that the RTC, not the MTC, has jurisdiction. In his opposition, Juan argued that the intervention of the Council of Elders is substantial compliance with the requirement of R.A. No. 7160 and the claim of P50,000.00 is clearly within the jurisdiction of the MTC. As MTC judge, rule on the motion and explain. (2016 BAR QUESTION)

SUGGESTED ANSWER:

The Motion to Dismiss should be denied. As a general rule, no complaint involving any matter within the authority of the Lupon shall be instituted or filed directly in court for adjudication unless there has been a confrontation between the parties in the barangay and no settlement was reached (*Section 412(a) of Republic Act No. 7160; April Martinez v. Rodolfo G. Martinez, G.R. No. 162084, June 28, 2005*). However, in barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils of datu or elders shall be recognized without prejudice to the applicable provisions of the Local Government Code (*Section 399, R.A. 7160*). As a consequence, customs and traditions of indigenous cultural communities shall be recognized in settling disputes between members of the cultural communities (*Section 412, R.A. 7160*), thus, the confrontation between Pedro and Juan before the Council of Elders of their barangay is sufficient compliance with the precondition for filing the case in court under Section 412 of R.A. No. 7160 (*Zamora v. Heirs of Izquierdo, G.R. No. 146195, November 18, 2004*).

Be that as it may, it is well-settled that the mode of enforcement of an amicable settlement under the Katarungang Pambarangay Law does not rule out the right of rescission under Art. 2041 of the Civil Code (*Crisanta Miguel v. Montanez, G.R. No. 191336, January 25, 2014*). Accordingly, when Juan filed a complaint for sum of money in the MTC, he is deemed to have rescinded the compromise agreement reached before the Council of Elders of the barangay. Henceforth, Pedro is incorrect in alleging that the RTC, not the MTC, has jurisdiction over Juan's claim. Considering that the claim is only for P50,000.00, the case is within the exclusive jurisdiction of the MTC under B.P. Blg. 129 and may proceed pursuant to A.M. No. 08-8-7-SC or the "Rules of Procedure for Small Claims Cases." Notably, a motion to dismiss is among the prohibited pleadings under Section 14(a) of said rules. Similarly, Juan's claim of P50,000.00 may be governed by the 1991 Rules on Summary Procedure which clearly falls within the jurisdiction of the MTC, ergo, the motion to dismiss based on lack of jurisdiction over the subject matter should be denied (*Section 19 (a), 1991 Rules on Summary Procedure*).

III. CIVIL PROCEDURE

A. General provisions (Rule 1)

B. Cause of action (Rule 2)

1. 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 P500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the P500,000.00 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 P500,000.00. Did Lender correctly apply the totality rule and the rule on joinder of causes of action? (2015 BAR QUESTION)

SUGGESTED ANSWER:

Yes. The Lender correctly applied the totality rule and the rule on 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 Regional Trial Court (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 said mortgage.

2. Elise obtained a loan of P3 Million from Merchant Bank. Aside from executing a promissory note in favor of Merchant Bank, she executed a deed of real estate mortgage over her house and lot as security for her obligation. The loan fell due but remained unpaid; hence, Merchant Bank filed an action against Elise to foreclose the real estate mortgage. A month after, and while the foreclosure suit was pending, Merchant Bank also filed an action to recover the principal sum of P3 Million against Elise based on the same promissory note previously executed by the latter.

In opposing the motion of Elise to dismiss the second action on the ground of splitting of a single cause of action, Merchant Bank argued that the ground relied upon by Elise was devoid of any legal basis considering that the two actions were based on separate contracts, namely, the contract of loan evidenced by the promissory note, and the deed of real estate mortgage.

Is there a splitting of a single cause of action? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

Yes, there is a splitting of a single cause of action.

Under the Rules of Civil Procedure, there is a splitting of a single cause of action if two or more suits are instituted on the basis of the same cause of action. [S4 R2]. A cause of action is the act or omission by which a party violates a right of another. [S2 R2].

Here, both suits, the foreclosure and the collection suit, arose from the same cause of action, that is, the non-payment by Elise of her P3 million loan from Merchant Bank. The fact that the two actions were based on separate contracts is irrelevant, what matters is that both actions arose from the same cause of action.

3. 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. (2012 BAR QUESTION)

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 the 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 the latter.

C. Parties to civil actions (Rule 3)

4. 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 Hernando and Inocencio, the other co-owners of the property. As judge, will you grant the motion to dismiss? Explain. (2009 BAR QUESTION)

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

5. 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. (2015 BAR QUESTION)

A) Should the complaint be dismissed?

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 (*Section 11, Rule 3, Rules of Court; Republic v. Hon. Mangotara, G.R. No. 170375, July 7, 2010, 624 SCRA 360, 431*).

6. 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?

SUGGESTED ANSWER:

If the case should proceed to trial without Grieg being impleaded as a party, he may intervene in the action (Section 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* (G.R. No. 141970, September 10, 2001), 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 mortgagee 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 mortgage deprived the court of jurisdiction to pass upon the controversy.”

7. **Chika sued Gringo, a Venezuelan, for a sum of money. The Metropolitan Trial Court of Manila (MeTC) rendered a decision ordering Gringo to pay Chika P50,000.00 plus legal interest. During its pendency of the appeal before the RTC, Gringo died of acute hemorrhagic pancreatitis. Atty. Perfecto, counsel of Gringo, filed a manifestation attaching the death certificate of Gringo and informing the RTC that he cannot substitute the heirs since Gringo did not disclose any information on his family. As counsel for Chika, what remedy can you recommend to your client so the case can move forward and she can eventually recover her money? Explain. (2016 BAR QUESTION)**

SUGGESTED ANSWER:

As counsel for Chika, I would recommend that she immediately procure the appointment of an executor or administrator for the estate of Gringo. Section 16, Rule 3 of the 1997 Rules of Civil Procedure provides that if no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased, and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. After the appointment of an executor or administrator, the action shall be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person (*Section 20, Rule 3, Rules of Court*).

ANOTHER SUGGESTED ANSWER:

As counsel for Chika, I would recommend the filing of the money judgment as a claim against the estate of Gringo. Under Section 20, Rule 3 of the Rules of Court, when the action is on 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 therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person. Relative thereto, Section 5, Rule 86 of the Rules of Court provides that all claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever.

Accordingly, I would recommend the filing of the money judgment as a claim against the estate of Gringo.

8. **Hanna, a resident of Manila, filed a complaint for the partition of a large tract of land located in Oriental Mindoro. She impleaded her two brothers John and Adrian as defendants but did not implead Leica and Agatha, her two sisters who were permanent residents of Australia.**

Arguing that there could be no final determination of the case without impleading all indispensable parties, John and Adrian moved to dismiss the complaint.

Does the trial court have a reason to deny the motion? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the trial court has a reason to deny the motion to dismiss.

Under the Rules of Civil Procedure, non-joinder of parties, even indispensable ones, is not a ground of a motion to dismiss. [*S11 R3; Vesagas v. CA*, 371 SCRA 508 (2001)]

D. Venue (Rule 4)

9. 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? (2008 BAR QUESTION)

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.

10. Assuming that the action was for foreclosure on the mortgage of the same parcels of land, what is the proper venue for the action? (2008 BAR QUESTION)

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).

11. 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. (2012 BAR QUESTION)

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 vs. Gochan*, 423 Phil. 491, 501 [2001]; *Copioso vs. Copioso*, 391 SCRA 325 [2002])

12. 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 hydroelectric 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 P10 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? (2015 BAR QUESTION)

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 an arbitral award are: a) The arbitral award was procured through corruption, fraud or other undue means; b) There was evident partiality or corruption in the arbitral tribunal or any of its members; c) 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 willfully 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. Water 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 jurisdiction to review the decisions or award of the CIAC (*Plus Asia Development Corporation v. Utility Assurance Corporation*, G.R. No. 199650, June 26, 2013).

- 13. Eduardo, a resident of the City of Manila, filed before the Regional Trial Court (RTC) of Manila a complaint for the annulment of a Deed of Real Estate Mortgage he signed in favor of Galaxy Bank (Galaxy), and the consequent foreclosure and auction sale of his mortgaged Makati property. Galaxy filed a Motion to Dismiss on the ground of improper venue alleging that the complaint should be filed with the RTC of Makati since the complaint involves the ownership and possession of Eduardo's lot. Resolve the motion with reasons. (2016 BAR QUESTION)**

SUGGESTED ANSWER:

The Motion to dismiss should be granted. An action for nullification of the mortgage documents and foreclosure of the mortgaged property is a real action that affects the title to the property; thus, venue of the real action is before the court having jurisdiction over the territory in which the property lies (*Jimmy T. Go v. United Coconut Planters Bank*, G.R. No. 156187, November 11, 2004; *Chua v. Total Office Products & Services*, G.R. No. 152808, September 30, 2005).

In *Fortune Motors v. Court of Appeals* (G.R. No. 112191, February 7, 1997), the Supreme Court also held that an action to annul a foreclosure sale of a real estate mortgage is no different from an action to annul a private sale of real property. While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective.

The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to erase the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action (*Paglaum Management & Development Corporation v. Union Bank of the Philippines*, G.R. No. 179018, June 18, 2012).

Being a real action, it shall be commenced and tried in the proper court which has jurisdiction over the area where the real property involved, or a portion thereof, is situated (*Section 1, Rule 4, Rules of Court*). The complaint should be filed in the RTC of Makati where the mortgaged property is situated.

ALTERNATIVE ANSWER:

The motion to dismiss should be denied. An action for the annulment of a real estate mortgage is a personal action, which may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiff resides or may be found, at the election of plaintiff (*Sec. 2, Rule 4, Rules of Court; Chua v. Total Office Products & Services*, G.R. No. 152808, September 30, 2005; *Orbeta v. Orbeta*, G.R. No. 166837, November 27, 2006). Since the plaintiff resides in Manila, the complaint was properly filed in RTC of Manila.

- 14. After working for 25 years in the Middle East, Evan returned to the Philippines to retire in Manila, the place of his birth and childhood. Ten years before his retirement, he bought for cash in his name a house and lot in Malate, Manila. Six months after his return, he learned that his house and lot were the subject of foreclosure proceedings commenced by ABC Bank on the basis of a promissory note and a deed of real estate mortgage he had allegedly executed in favor of ABC Bank five years earlier.**

Knowing that he was not in the country at the time the promissory note and deed of mortgage were supposedly executed, Evan forthwith initiated a complaint in the RTC of Manila praying that the subject documents be declared null and void.

ABC Bank filed a motion to dismiss Evan's complaint on the ground of improper venue on the basis of a stipulation in both documents designating Quezon City as the exclusive venue in the event of litigation between the parties arising out of the loan and mortgage.

Should the motion to dismiss of ABC Bank be granted? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

No, the motion to dismiss of ABC Bank should not be granted.

In a case involving similar facts, the Supreme Court held that a party is not bound by a venue stipulation where he directly assails on the ground of forgery the validity of the contracts containing the venue stipulation. The reason is that such a party cannot be expected to comply with the venue stipulation since his compliance therewith would mean an implicit recognition of the validity of the contracts he assails. [*Briones v. Cash Asia Credit Corp.*, 14 January 2015, *Perlas-Bernabe, J.*]

E. Pleadings

1. Kinds (Rule 6)

15. True or False. A counterclaim is a pleading. (2007 BAR QUESTION)

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).

16. TRUE or FALSE. A counterclaim is a pleading. (2007 BAR QUESTION)

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).

17. TRUE or FALSE. A motion is a pleading. (2007 BAR QUESTION)

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*).

2. Parts of a pleading (Rule 7)

18. 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. (2014 BAR QUESTION)

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. Benedicto v. Manuel Lacson*, G.R. No. 141508, May 5, 2010).

19. The signature of counsel in the pleading constitutes a certification that _____. (2013 BAR QUESTION)
- A) both client and counsel have read the pleading, that to the best of their knowledge, information and belief there are good grounds to support it, and that it is not interposed for delay
 - B) the client has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay
 - C) the counsel has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay
 - D) the counsel has read the pleading, that based on his personal information, there are good grounds to support it, and that it is not interposed for delay
 - E) The above choices are not totally accurate.

SUGGESTED ANSWER:

(E) The above choices are not totally accurate.

20. In a complaint filed by the plaintiff, what is the effect of the defendant's failure to file an answer within the reglementary period? (2013 BAR QUESTION)
- A) The court is allowed to render judgment motu proprio in favor of the plaintiff.
 - B) The court motu proprio may declare the defendant in default, but only after due notice to the defendant.
 - C) The court may declare the defendant in default but only upon motion of the plaintiff and with notice to the defendant.
 - D) The court may declare the defendant in default but only upon motion of the plaintiff, with notice to the defendant, and upon presentation of proof of the defendant's failure to answer.
 - E) The above choices are all inaccurate.

SUGGESTED ANSWER:

(D) The court may declare the defendant in default but only upon motion of the plaintiff, with notice to the defendant, and upon presentation of proof of the defendant's failure to answer.

21. 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 P19,700.00. 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:
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.

Rule on the foregoing grounds with reasons. (2009 BAR QUESTION)

SUGGESTED ANSWER:

The 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 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.

22. What is forum shopping? (2007 BAR QUESTION)

SUGGESTED ANSWER:

Forum-shopping is the act of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment (*Executive Secretary v. Gordon*, 298 SCRA 735 (1998)).

23. 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. (2007 BAR QUESTION)

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. Surla*, 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 of 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.

24. 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. (2015 BAR QUESTION)

A) Should the court grant Neil's Motion to Dismiss?

SUGGESTED ANSWER:

No. The motion to dismiss should be denied because certification against forum shopping is only required in a complaint or other initiatory pleading (Section 5, Rule 7, Rules of Court; *Arquiza v. CA*, G.R. NO 160479, June 8, 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 respectfully 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) 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. What is Aldrin's remedy?

SUGGESTED ANSWER:

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 Section 10, Rule 39 of the Rules of Court, if a judgment directs a party to execute a conveyance of land or 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 of law.

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:

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.

3. Manner of making allegations (Rule 8)

25. 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.

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 P10,000.00. At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to P10,000.00 binds A. A countered that this was no longer in issue because B Lines had failed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (2010 BAR QUESTION)

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.

- 26. On the basis of an alleged promissory note executed by Harold in favor of Ramon, the latter filed a complaint for ₱950,000.00 against the former in the RTC of Davao City. In an unverified answer, Harold specifically denied the genuineness of the promissory note. During the trial, Harold sought to offer the testimonies of the following: (1) the testimony of an NBI handwriting expert to prove the forgery of his signature; and (2) the testimony of a credible witness to prove that if ever Harold had executed the note in favor of Ramon, the same was not supported by a consideration.**

May Ramon validly object to the proposed testimonies? Give a brief explanation of your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

- 1) Ramon may validly object to the proposed testimony of an NBI handwriting expert to prove forgery.

Under S8 R8, the genuineness and due execution of an actionable document is deemed admitted by the adverse party if he fails to specifically deny such genuineness and due execution.

Here the genuineness and due execution of the promissory note, which is an actionable document, was impliedly admitted by Harold when he failed to deny the same under oath, his answer being unverified. Hence Harold is precluded from setting up the defense of forgery and thus Ramon may object to the proposed testimony seeking to prove forgery.

- 2) Ramon may not validly object to the proposed testimony showing that the note was not supported by a consideration.

The Supreme Court has held that an implied admission under S8 R8 does not preclude the adverse party from introducing evidence that the actionable document was not supported by a consideration. The reason is that such evidence is not inconsistent with the implied admission of genuineness and due execution. [*Acabal v. Acabal*, 31 March 2005]

The fact that the defense of lack of consideration is inconsistent with Harold's defense of forgery is also not objectionable.

Under the Rules of Civil Procedure, a party may set forth two or more statements of defense alternatively or hypothetically. [*S2 R8*]

4. Effect of failure to plead (Rule 9)

- 27. Danny filed a complaint for damages against Peter. In the course of the trial, Peter introduced evidence on a matter not raised in the pleadings. Danny promptly objected on the ground that the evidence relates to a matter not in issue. How should the court rule on the objection? (2013 BAR QUESTION)**

A) The court must sustain the objection.

- B) The court must overrule the objection.
- C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.
- D) The court, in its discretion, may order that the allegation in the pleadings which do not conform to the evidence presented be stricken out.
- E) The matter is subject to the complete discretion of the court.

SUGGESTED ANSWER:

(C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.

5. Amended and supplemental pleadings (Rule 10)

28. 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. (2009 BAR QUESTION)

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. (2009 BAR QUESTION)

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

29. Arturo lent P1 Million to this 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. (2008 BAR QUESTION)

A) On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging that 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. Even though an amendment of the complaint before answer is a matter of right, lack of a cause of action at the commencement of a suit is not cured by the accrual of a cause of action subsequent thereto, such that an amendment setting up the after-accrued cause of action is not allowed (*Swagman Hotels And Travel, Inc. v. Court of Appeals*, 455 SCRA 175 [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:

No, because a complaint whose cause of action has not accrued yet when filed, does not gain any standing in court such that no amendment, whether by amended or supplemental pleading, can cure the deficiency. The subsequent cause of action that arose may only be subject of a different suit but cannot be pleaded as a supplement to the complaint where no cause of action exists. Simply put, no amended or supplemental complaint is allowed (*Swagman Hotels And Travel, Inc. v. Court of Appeals*, 455 SCRA 175 [2005]).

6. When to file responsive pleadings (Rule 11)

F. Filing and service of pleadings, judgments, final orders, and resolutions

1. Rules on payment of docket fees; effect of non-payment

30. 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 P30,000 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.

Does the RTC have jurisdiction over Ramon's counterclaims, and if so, does he have to pay docket fees therefor? (2008 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the RTC has jurisdiction over Ramon's counterclaims because they are all money claims in which the totality rule applies in determining jurisdiction (*Sec. 5[d], Rule 2, Rules of Court*).

Ramon has to pay docket fees for his counterclaims whether the counterclaim is compulsory or permissive in nature. Rule 141 of the Rules of Court has been amended to require payment of docket fees for counterclaims and cross-claims whether compulsory or permissive.

31. Spouses Marlon and Edith have three (3) children ages 15, 12 and 7, who are studying at public schools. They have a combined gross monthly income of P30,000.00 and they stay in an apartment in Manila with a monthly rent of P5,000.00. The monthly minimum wage per employee in Metro Manila does not exceed P13,000.00. They do not own any real property. The spouses want to collect

a loan of P25,000.00 from Jojo but do not have the money to pay the filing fees. (2016 BAR QUESTION)

A) Would the spouses qualify as indigent litigants under Section 19, Rule 141 on Legal Fees?

SUGGESTED ANSWER:

No. Spouses Marlon and Edith would not qualify as indigent litigants. Under Section 19 of Rule 141, indigent litigants include those (a) whose gross income and that of their immediate family do not exceed an amount double the monthly minimum wage of an employee; and (b) who do not own real property with a fair market value as stated in the current tax declaration of more than three hundred thousand (P300,000.00) pesos, shall be exempt from payment of legal fees (*Section 19 of Rule 141, Administrative Matter No. 04-2-04-SC, August 16, 2004; Algura v. Local Government Unit of the City of Naga, G.R. No. 150135, October 30, 2006*). Here, the spouses combined gross monthly income of P30,000.00 exceeds the limit provided by Section 19, Rule 141; accordingly, the spouses do not qualify as indigent litigants.

B) If the spouses do not qualify under Rule 141, what other remedy can they avail of under the rules to exempt them from paying the filing fees?

SUGGESTED ANSWER:

The spouses can avail the following remedies under the rules in order to be exempted from the payment of the filing fees:

- 1) If the applicant for exemption meets the salary and property requirements under Section 19 of Rule 141, then the grant of the application is mandatory. On the other hand, when the application does not satisfy one or both requirements, then the application should not be denied outright; instead, the court should apply the “indigency test” under Section 21 of Rule 3 and use its sound discretion in determining the merits of the prayer for exemption (*Algura v. Local Government Unit of the City of Naga, G.R. No. 150135, October 30, 2006*). Hence, the spouses may be authorized to litigate as indigents if the court, upon an ex parte application and hearing, is satisfied that they do not have money or property sufficient and available for food, shelter, and basic necessities for themselves and their family (*Rule 3, Sec. 21, Rules of Court; Re: Query of Mr. Roger Prioreschi, A.M. No. 09-6-9-SC, August 19, 2009*).
- 2) The Spouses can also file a motion to sue as indigent under the Rules of Procedure on Small Claims. The Motion shall be referred to the Executive Judge for immediate action in case of multi-sala courts. If the motion is granted by the Executive Judge, the case shall be raffled off or assigned to the court designated to hear small claims cases. If the motion is denied, the plaintiff shall be given five (5) days within which to pay the docket fees, otherwise, the case shall be dismissed without prejudice. In no case shall a party, even if declared an indigent, be exempt from the payment of the P1,000.00 fee for service of summons and processes (*Section 10, A.M. No. 08-8-7-SC, 2016 Rules of Procedure for Small Claims Cases*).
- 3) The spouses may also claim exemption from payment of legal fees by seeking the help of the Integrated Bar of the Philippines pursuant to A.M. No. 08-11-7-SC (IRR), Rule on the Exemption from the Payment of Legal Fees of the Clients of the National Committee on Legal Aid and of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines

2. Rule 13

G.Summons

1. Nature and purpose of summons in relation to actions *in personam*, *in rem*, and *quasi in rem*

32. Tristan filed a suit with the RTC of Pasay against Arthur King and/or Estate of Arthur King for reconveyance of a lot declared in the name of Arthur King under TCT No. 1234. The complaint alleged that "on account Arthur King's residence abroad up to the present and the uncertainty of whether he is still alive or dead, he or his estate may be served with summons by publication." Summons was published and nobody filed any responsive pleading within sixty (60) days therefrom. Upon motion, defendants were declared in default and judgment was rendered declaring Tristan as legal owner and ordering defendants to reconvey said lot to Tristan.

Jojo, the court-designated administrator of Arthur King's estate, filed a petition for annulment of judgment before the CA praying that the decision in favor of Tristan be declared null and void for lack of jurisdiction. He claims that the action filed by Tristan is an action in personam and that the court did not acquire jurisdiction over defendants Arthur King and/or his estate. On the other hand, Tristan claims that the suit is an action in rem or at least an action quasi in rem. Is the RTC judge correct in ordering service of summons by publication? Explain. (2016 BAR QUESTION)

SUGGESTED ANSWER:

Yes. The RTC Judge is correct in ordering the service of summons by publication. An action for declaration of nullity of title and recovery of ownership of real property, or re-conveyance, is not a real action but it is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded (*Heirs of Eugenio Lopez, Sr. v. Enriquez cited in Emerita Munoz v. Atty. Victoriano R. Yabut, Jr. and Samuel Go Chan*, G.R. No. 142676, June 6, 2011).

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a resident defendant who does not voluntarily appear in court can be acquired by personal service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be made in accordance with Section 8 of said Rule (*Spouses Domingo M. Beleri, et al. vi Hon. Pablo R. Chavez, et al.*, G.R. No. 175334, March 26, 2008).

Under Section 14, Rule 14, Rules of Court, in any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order. This rule applies to any action, whether in personam, in rem or quasi in rem (*Pedro T. Santos, Jr. v. PNOC Exploration Corporation*, G.R. No. 170943, September 23, 2008). Clearly, since the action for reconveyance is an action in personam, the RTC Judge is correct in ordering service of summons by publication.

ALTERNATIVE ANSWER:

No. The RTC Judge is not correct in ordering service of summons by publication. It is well-settled that in an action in personam wherein the defendant is a non-resident who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person. This method of service is possible if such defendant is physically present in the country. If he is not found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him (*Spouses Domingo M. Beleri, et al. v. Hon. Pablo R. Chavez, et al.*, G.R. No. 175334, March 26, 2008). Accordingly, the RTC Judge is not correct in ordering service of summons by publication.

33. 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? (2015 BAR QUESTION)

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.

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

On the premise that Charybdis was properly declared in default, what is the effect of Scylla's answer to the complaint?

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 (Section 3 (c), Rule 9, Rules of Court).

34. Juan sued Roberto for specific performance. Roberto knew that Juan was going to file the case so he went out of town and temporarily stayed in another city to avoid service of summons. Juan engaged the services of Sheriff Matinik to serve the summons but when the latter went to the residence of Roberto, he was told by the caretaker thereof that his employer no longer resides at the house. The caretaker is a high school graduate and is the godson of Roberto. Believing the caretaker's story to be true, Sheriff Matinik left a copy of the summons and complaint with the caretaker. Was there a valid substituted service of summons? Discuss the requirements for a valid service of summons. (2016 BAR QUESTION)

SUGGESTED ANSWER:

No. There was no valid substituted service of summons. In an action strictly in personam, 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. While substituted service of summons is permitted, it is extraordinary in character and in derogation of the usual method of service; hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Compliance with the rules regarding the service of summons is as important as the issue of due process for the Court to acquire jurisdiction. For the presumption of regularity in the performance of official duty to apply, the Sheriff's Return must show that serious efforts or attempts were exerted to personally serve the summons and that said efforts failed. These facts must be specifically narrated in the Return. It must clearly show that the substituted service must be made on a person of suitable age and discretion living in the dwelling or residence of defendant; otherwise, the Return is flawed and the presumption cannot be availed of. The Supreme Court laid down the requirements as follows:

- 1) Impossibility of prompt personal service, i.e., the party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service within a reasonable time, Reasonable time being "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any..] to the other party". Moreover, it must be indicated therein that the sheriff has made several attempts at personal service for at least three (3) times on at least two (2) different dates.
- 2) Specific details in the return, i.e., the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service.
- 3) Substituted service effected on a person of suitable age and discretion residing at defendant's house or residence; or on a competent person in charge of defendant's office or regular place of business (*Ma. Imelda M. Manotoc v. Court of Appeals, G.R. No. 130974 August 16, 2006*).

2. Rule 14

35. 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 answer, raising the defense of full payment with interest. (2013 BAR QUESTION)

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

SUGGESTED ANSWER:

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 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 summons within a reasonable period, then substituted service can be resorted to (*Manotoc v. Court of Appeals, G.R. No. 130974, August 16, 2006*).

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*, G.R. No. 167230, August 14, 2009).

Since there was no prior attempt to serve the summons in person, the substituted service to Charlie's secretary is invalid.

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

SUGGESTED ANSWER:

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 judgment 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 judgment 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).

36. TRUE or FALSE. Summons may be served by mail. (2009 BAR QUESTION)

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) any of the foregoing two ways is not possible, then with leave of court, by publication in accordance with same Rule.

37. Teddy filed against Buboy an action for rescission of a contract for the sale of a commercial lot. After having been told by the wife of Buboy that her husband was out of town and would not be back until after a couple of days, the sheriff requested the wife to just receive the summons in behalf of her husband. The wife acceded to the request, received the summons and a copy of the complaint, and signed for the same. (2017 BAR QUESTION)

A) Was there a valid service of summons upon Buboy? Explain your answer briefly.

SUGGESTED ANSWER:

No, there was no valid service of summons upon Buboy.

The Supreme Court has held that in order that there will be valid substituted service of summons, the sheriff must have exerted diligent efforts to effect personal service of summons within a reasonable time.

Here there were no such diligent efforts on the part of the sheriff since he effected substituted service on his very first try. Hence there was no valid service of summons upon Buboy.

B) If Buboy files a motion to dismiss the complaint based on the twin grounds of lack of jurisdiction over his person and prescription of the cause of action, may he be deemed to have voluntarily submitted himself to the jurisdiction of the court? Explain your answer briefly.

SUGGESTED ANSWER:

No, Buboy may not be deemed to have voluntarily submitted himself to the jurisdiction of the court.

Under the Rules of Civil Procedure, the inclusion in a motion to dismiss of other grounds aside from lack of personal jurisdiction shall not be deemed a voluntary appearance. [*S20 R14*]

H. Motions

1. In general (Rule 15)

38. TRUE OR FALSE. A motion is a pleading. (2007 BAR QUESTION)

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).

39. Charisse, alleging that she was a resident of Lapu-Lapu City, filed a complaint for damages against Atlanta Bank before RTC of Lapu-Lapu City, following the dishonor of a check she drew in favor of Shirley against her current account which she maintained in the bank's local branch.

The bank filed a Motion to Dismiss the complaint on the ground that it failed to state a cause of action, but it was denied. It thus filed an Answer. (2010 BAR QUESTION)

A) In the course of the trial, Charisse admitted that she was a US citizen residing in Los Angeles, California and that she was temporarily billeted at the Pescado Hotel in Lapu-Lapu City, drawing the bank to file another motion to dismiss, this time on the ground of improper venue, since Charisse is not a resident of Lapu-Lapu City.

Charisse opposed the motion citing the omnibus motion rule." Rule on the motion.

SUGGESTED ANSWER:

The bank's second motion to dismiss which is grounded on improper venue of an action is deemed waived by the bank's filing an earlier motion to dismiss without raising improper venue as an issue, and more so when the bank filed an Answer without raising improper venue as an issue after its first motion to dismiss was denied.

Under the "omnibus motion rule" (*Rule 15, Sec. 8, Rules of Court*) which governs the bank's motion to dismiss, such motion should include all objections then available; otherwise, all objections not so included shall be deemed waived.

Although the improper venue became known only in the course of the trial, the same should not be allowed to obstruct or disturb the proceedings since venue of civil actions is defined for the convenience of the parties, not jurisdictional.

ALTERNATIVE ANSWER:

The "omnibus motion rule" should not apply, because the improper venue became known and thus available only to the movant bank after the motions to dismiss were filed and resolved by the court, and in the course of The trial of the case. In fairness to the defendant bank, it should not be precluded by the "omnibus motion rule" From raising objection to the improper venue only when said ground for objection became known to it.

The court may not resolve the second motion to dismiss precisely because of the "omnibus motion rule" since the bank filed an earlier motion to dismiss but did not raise the ground of improper venue, and the subsequently filed an answer wherein the issue of improper venue has not again been raised. Hence, the question of improper venue has become moot and academic.

The only grounds not barred by the "omnibus motion rule" are (a) lack of jurisdiction over the subject matter; (b) *litis pendencia*; and (c) bar by prior judgment or by Statute of limitations.

B) Suppose Charisse did not raise the "omnibus motion rule, can the judge proceed to resolve the motion to dismiss? Explain.

SUGGESTED ANSWER:

Yes, the judge can proceed to resolve the motion to dismiss because the ground raised became known to the movant only during the trial, and such was only then that the objection became available to him.

C) Suppose the judge correctly denied the second motion to dismiss and rendered judgment in favor of Charisse, ordering the bank to pay her P100,000 in damages plus legal interest. The judgment became final and executory in 2008. To date, Charisse has not moved to execute the judgment. The bank is concerned that its liability will increase with the delay because of the interest on the judgment award. As counsel of the bank, what move should you take?

SUGGESTED ANSWER:

As counsel of the bank, I shall recommend as judgment obligor, to make a tender of payment to the judgment oblige and thereafter make a consignment of the amount due by filing an application therefor placing the same at the disposal of the court which rendered the judgment (*Arts. 1256 and 1258, Civil Code*).

2. Motion to dismiss (Rule 16)

40. Co Batong, a Taipan, filed a civil action for damages with the Regional trial Court (RTC) of Parañaque City against Jose Penduko, a news reporter of the Philippines Times, a newspaper of general circulation printed and published in Parañaque 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 Parañaque 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:

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 Parañaque City.

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? (2014 BAR QUESTION)

A) 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 Parañaque City.

SUGGESTED ANSWER:

NO. The ground invoked in the Motion to Dismiss is not proper. Under Article 360 of the RPC, 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.

B) The venue is improperly laid because what the complaint alleged is Co Batong's business address and not his residence address.

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. (Art. 360, RPC). Since the defamatory article was printed and first published in Parañaque 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).

- 41. 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. The 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.**

Will Jovito's motion to dismiss prosper? Explain. (2009 BAR QUESTION)

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.

- 42. 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 Pasay 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. (2007 BAR QUESTION)**

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 rule of procedure against multiplicity of suits. Hence, the latter suit may be abated by a motion to dismiss on the ground of *litis pendentia* (*Yu v. Yu*, 484 SCR 4485 [2006]).

- 43. Mr. Avenger filed with 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: (2014 BAR QUESTION)**

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 ANSWER:

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.
- 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).
- 4) Mr. Avenger may amend his Complaint, as a matter of right, since a Motion to Dismiss is not a responsive pleading. (*Irene R. 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 ANSWER:

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. 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; Marmo v. Anacay*, G.R. No. 182585, November 27, 2009).

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. (*Section 4 and 6, Rule 16*)

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 ANSWER:

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

- 1) A motion for reconsideration (Sec. 1, Rule 37);
- 2) A motion for new trial (Sec. 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); and
- 3) Petition for Certiorari (Rule 65).

44. 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 P30,000 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. (2008 BAR QUESTION)

A) 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 is without prejudice to the right of the defendant (Ramon) to prosecute his counterclaim in the same or in a separate action [*Sec. 6, Rule 16, last par.; Pinga v. Heirs of Santiago, 494 SCRA 393 [2006]*].

B) Under the same premise as paragraph (A) 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:

Since Ramon filed only a motion to dismiss, not an answer, the dismissal of the complaint would also bring about the dismissal of his counterclaims but he can file a separate action for his permissive counterclaims. The compulsory counterclaims are deemed waived when he filed a motion to dismiss the complaint instead of answering the same. (*Financial Building Corporation v. Forbes Park Association, Inc., 338 SCRA 346 2000*)).

45. Tomas was criminally charged with serious physical injuries allegedly committed against Darwin. During the pendency of the criminal case, Darwin filed a separate civil action for damages based on the injuries he had sustained.

Tomas filed a motion to dismiss the separate civil action on the ground of *litis pendentia*, pointing out that when the criminal action was filed against him, the civil action to recover the civil liability from the offense charged was also deemed instituted. He insisted that the basis of the separate civil action was the very same act that gave rise to the criminal action.

Rule on Tomas' motion to dismiss, with brief reasons. (2017 BAR QUESTION)

SUGGESTED ANSWER:

Tomas's motion to dismiss on the ground of *litis pendentia* should be denied.

In cases of physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal action (*Art. 33, Civil Code; S3 R111*) and hence may not be dismissed on the ground of *litis pendentia*.

3. Motion for bill of particulars (Rule 12)

46. 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.

Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion? (2008 BAR QUESTION)

SUGGESTED ANSWER:

No, the judge did not gravely abuse his discretion when he denied the motion for bill of particulars without waiting for the hearing set in the motion. Section 2, Rule 12 of the Rules of Court authorizes the court to either deny or grant said motion outright upon the clerk of court bringing such motion to the attention of the court. The motion may lack merit.

47. 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? (2008 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the trial judge can dismiss the case if the plaintiff failed to comply with the court's order to file and serve the needed bill of particulars. Section 4, Rule 12 of the Rules of Court authorizes the court to order the striking out of the pleading affected, hence the dismissal of the complaint. To the same end is the provision of Section 3, Rule 17 of the Rules when plaintiff fails to comply for no justifiable cause with any order of the court or with the Rules.

I. Dismissal

1. Kinds

- a. **With prejudice vs. without prejudice**
- b. **Dismissals which have an effect of an adjudication on the merits**

2. Rule 17

48. 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.

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. (2010 BAR QUESTION)

SUGGESTED ANSWER:

Mercedes' Motion for Reconsideration is impressed with merit: the trial court should not have dismissed her counter-claim 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 Complaint should not carry with it the dismissal of the counterclaim without the conformity of the defendant- counterclaimant. The Revised Rules of Court now provides in Rule 17, Sec. 2 there or that "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 x x."

- 49. Agatha filed a complaint against Yana in the RTC in Makati City to collect ₱350,000.00, an amount representing the unpaid balance on the price of the car Yana had bought from Agatha. Realizing a jurisdictional error in filing the complaint in the RTC, Agatha filed a notice of dismissal before she was served with the answer of Yana. The RTC issued an order confirming the dismissal.**

Three months later, Agatha filed another complaint against Yana based on the same cause of action this time in the MeTC of Makati City. However, for reasons personal to her, Agatha decided to have the complaint dismissed without prejudice by filing a notice of dismissal prior to the service of the answer of Yana. Hence, the case was dismissed by the MeTC.

A month later, Agatha refiled the complaint against Yana in the same MeTC.

May Yana successfully invoke the Two-Dismissal Rule to bar Agatha's third complaint? Explain your answer.

SUGGESTED ANSWER:

No, Yana may not successfully invoke the Two-Dismissal Rule to bar Agatha's third complaint.

Under the Two-Dismissal Rule, the notice of dismissal operates as an adjudication upon the merits provided it is filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. [S1 R17]

Here the first dismissal by the plaintiff was not in a competent court as the RTC in Makati City did not have subject-matter jurisdiction over an action seeking to recover P350,000. Hence, Agatha's third complaint is not barred by the Two-Dismissal Rule.

J. Pre-trial (Rule 18)

50. 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.

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. (2009 BAR QUESTION)

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.

K. Intervention (Rule 19)

51. 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 the 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. (2008 BAR QUESTION)

SUGGESTED ANSWER:

Yes, in case of transfer of interest pending litigation, the action may be continued by or against the original party unless the court, upon motion, directs a person to be substituted in the action or joined with the original party (*Sec. 19, Rule 3, Rules of Court*). The owners of property over which reconveyance is asserted are indispensable parties and must be joined in the action. Accordingly, the contention of Carlo who is such party to the action filed by Salvio, is tenable. He is not bound by the judgment because he became a co-owner of the land before the case was filed and yet he has not been included as a party thereto [*Matuguina Integrated Word Products, Inc. v. Court of Appeals*, 263 SCRA 490[1996]; *Ma. Valentina Santana-Cruz v. Court of Appeals, et. al*, 361 SCRA 520 [2001]].

Nina, however, is a successor-in-interest of Roscoe and privy to the case. Hence, she is bound by the judgment as against Roscoe although she is not party to the case (*Sec. 19, Rule 3; Cabresos v. Tero, 166 SCRA 400 [1988]*). A judgment is conclusive between the parties and their successors-in-interest by title subsequent to the case (*Sec. 47, Rule 39, Rules of Court*).

L. Subpoena (Rule 21)

52. TRUE or FALSE. The viatory right of a witness served with a subpoena ad testificandum refers to his right not to comply with the subpoena. (2009)

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 v. Montejo, 21 SCRA 722[1965]*).

M. Computation of time (Rule 22)

N. Modes of discovery

53. What is the "most important witness" rule pursuant to the 2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures? Explain. (2016 BAR QUESTION)

SUGGESTED ANSWER:

Under A.M. No. 03-1-09-SC or the "2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures," in civil cases where no amicable settlement was reached by the parties, the trial judge is directed to determine the most important witnesses and limit the number of such witnesses to be heard. The court shall also require the parties and/or counsels to submit the names, addresses and contact numbers of the witnesses to be summoned by subpoena. The facts to be proven by each witness and the approximate number of hours per witness shall also be fixed by the trial judge (*Section (1)(A) (5) (i) of A.M. No. 03-01-09-SC or the "2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures", July 13, 2004*).

54. What is the "one day examination of witness" rule pursuant to the said 2004 Guidelines? Explain. (2016 BAR QUESTION)

SUGGESTED ANSWER:

The rule requires that a witness has to be fully examined in one (1) day only. This rule shall be strictly adhered to subject to the courts' 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, but the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132 (*Section (1)(A)(5)(i) of A.M. No. 03-01-09-SC or the "2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures", July 13, 2004*).

1. Depositions (Rules 23 and 24)

2. Interrogatories to parties (Rule 25)

55. Briefly explain the procedure on "Interrogatories to Parties" under Rule 25 and state the effect of failure to serve written interrogatories. (2016 BAR QUESTION)

SUGGESTED ANSWER:

PROCEDURE

- 1) Any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf (*Section 1, Rule 25, Rules of Court*).
- 2) The interrogatories shall be answered fully in writing and shall be signed and sworn to by the person making them. The party upon whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service thereof, unless the court on motion and for good cause shown, extends or shortens the time (*Section 2, Rule 25, Rules of Court*).
- 3) Objections to any interrogatories may be presented to the court within ten (10) days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are resolved, which shall be at as early a time as is practicable (*Section 3, Rule 25, Rules of Court*).

Should a party fail to file and serve written interrogatories on adverse party, he cannot compel the latter to give testimony in one court or to give deposition pending appeal, unless allowed by the court for good cause shown and to prevent a failure of justice (*Section 6, Rule 25, Rules of Court; Spouses Vicente Afulugencia and Leticia Afulugencia v. Metropolitan Bank & Trust Co., et al., G.R. No. 185145 February 5, 2014*).

3. Admission by adverse party (Rule 26)

56. Briefly explain the procedure on "Admission by Adverse Party" under Rule 26 and the effect of failure to file and serve the request.

SUGGESTED ANSWER:

PROCEDURE:

- 1) At any time after issues have been joined, a party may file and serve upon any party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished (*Section 1, Rule 26, Rules of Court*).
- 2) Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.
- 3) Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable (*Section 2, Rule 26, Rules of Court*).
- 4) Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding (*Section 3, Rule 26*). Unless otherwise allowed by the court

for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts (emphasis supplied) (*Section 5, Rule 26, Rules of Court*).

4. Production or inspection of documents or things (Rule 27)

57. 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. (2009 BAR QUESTION)

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]).

5. Physical and mental examination of persons (Rule 28)

6. Refusal to comply with modes of discovery (Rule 29)

58. 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? (2010 BAR QUESTION)

SUGGESTED ANSWER:

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

- 1) Find out why A failed to appear at the deposition taking, despite notice;
- 2) If failure was for valid reason, then set another date for taking the deposition;
- 3) If failure to appear at deposition taking was without valid reason, then I would me a motion/application in the court where the action is pending, for an, order to show cause for his refusal to submit to the discovery; and
- 4) 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.

59. 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. (2008 BAR QUESTION)

SUGGESTED ANSWER:

The administrator's contention that the modes of discovery apply only to ordinary civil actions and not to special proceedings is not correct. Section 2, Rule 72 of the Rules of Court provides that: "In the absence of special provisions, the rules provided for in ordinary civil actions shall be, as far as practicable, applicable in special proceedings." There is no provision to the contrary that would preclude the application of the modes of discovery, specifically Interrogatories to Parties under Rule 25 of the Rules, to probate proceedings.

O. Trial (Rule 30)

60. Ludong, Balatong, and Labong were 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 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.

A) Was the court correct in taking cognizance of the Joint Motion for Reconsideration? (2014 BAR QUESTION)

SUGGESTED ANSWER:

No. 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).

B) Can Balatong and Labong appeal their conviction in case Ludong accepts his conviction for homicide?

SUGGESTED ANSWER:

NO, Balatong and Labong cannot appeal their conviction because they lost their right to appeal 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).

61. What is reverse trial and when may it be resorted to? Explain briefly. (2007 BAR QUESTION)

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 is to adduce affirmative defense of a justifying or exempting circumstance 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.

P. Consolidation or severance (Rule 31)

Q. Demurrer to Evidence (Rule 33)

62. 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 the law and jurisprudence, will the motion prosper? Explain your answer. (2009 BAR QUESTION)

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.

63. 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. (2015 BAR QUESTION)

A) Was Ernie's counsel's objection proper?

SUGGESTED ANSWER:

No. The Rule on demurrer to evidence is applicable to Special proceedings (*Matute v. CA*, G.R. No. L-26751, January 31, 1969, 26 SCRA 768). Moreover, under Section 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 proceedings."

B) If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest?

SUGGESTED ANSWER:

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

R. Judgments and final orders

64. 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? (2012 BAR QUESTION)

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**).

65. An order of the court requiring a retroactive re-dating of an order, judgment or document filing be entered or recorded in a judgment is: (2014 BAR QUESTION)
- A) pro hac vice
 - B) non pro tunc
 - C) confession relictia verification
 - D) nolle prosequi

SUGGESTED ANSWER:

(B) non pro tunc. The object of a judgment nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply non-action by the court, however erroneous the judgment may have been (*Filipinas Faroil Processing v. Dejapa, G.R. No. 167332, February 7, 2011*).

1. Judgment on the pleadings (Rule 34)

66. Plaintiff filed a complaint denominated as *accion publiciana*, against defendant. In his answer, defendant alleged that he had no interest over the land in question, except as lessee of Z. Plaintiff subsequently filed an affidavit of Z, the lessor of defendant, stating that Z had sold to plaintiff all his rights and interests in the property as shown by a deed of transfer attached to the affidavit. Thus, plaintiff may ask the court to render: (2014 BAR QUESTION)
- A) summary judgment
 - B) judgment on the pleadings
 - C) partial judgment
 - D) judgment by default

SUGGESTED ANSWER:

(B) judgment on the pleadings. When the answer fails to tender an issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by

admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate (*Eugenio Basbas v. Beata Sayson*, G.R. No. 172660, August 24, 2011).

ALTERNATIVE ANSWER:

(A) summary judgment. A summary judgment is proper provided that the issue raised is not genuine. A "genuine issue" means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial (*Eugenio Basbas v. Beata Sayson*, G.R. No. 172660, August 24, 2011).

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

- 1) Defendant borrowed P1 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 P1 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 P1.0 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. (2015 BAR QUESTION)

A) Is judgment on the pleadings proper?

SUGGESTED ANSWER:

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 (Section 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 pleadings cannot be rendered (*Philippine National Bank v. Aznar, G.R. No. 171805, May 30, 2011*).

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

B) Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts. Should the court grant defendant's motion for summary judgment?

SUGGESTED ANSWER:

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, and (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 reasonably be drawn from the evidence (*Smart Communications v. Aldecoa, G.R. No. 166330, September 11, 2013*).

- 68. Royal Bank (Royal) filed a complaint for a sum of money against Ervin and Jude before the RTC of Manila. The initiatory pleading averred that on February 14, 2010, Ervin obtained a loan from Royal in the amount of P1 Million, as evidenced by Promissory Note No. 007 (PN) signed by Ervin. Jude signed a Surety Agreement binding herself as surety for the loan. Royal made a final demand on February 14, 2015 for Ervin and Jude (defendants) to pay, but the latter failed to pay. Royal prayed that defendants Ervin and Jude be ordered to pay the amount of P1 Million plus interests.**

In their answer, Ervin admitted that he obtained the loan from Royal and signed the PN. Jude also admitted that she signed the Surety Agreement. Defendants pointed out that the PN did not provide the due date for payment, and that the loan has not yet matured as the maturity date was left blank to be agreed upon by the parties at a later date. Defendants filed a Motion for a Judgment on the Pleadings on the ground that there is no genuine issue presented by the parties' submissions. Royal opposed the motion on the ground that the PN's maturity is an issue that must be threshed out during trial. (2016 BAR QUESTION)

A) Resolve the motion with reasons.

SUGGESTED ANSWER:

The Motion for judgment on the pleadings should be denied.

First, judgment on the pleadings is available to the plaintiff and not to the defendant.

Second, judgment on the pleadings is proper only when the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/ or omitting to deal with them at all. Here, while defendants' Answer to the Complaint practically admitted all the material allegations therein, it nevertheless asserts the affirmative defenses that the loan is not yet due. As issues obviously arise from these affirmative defenses, a judgment on the pleadings is clearly improper in this case. Besides, it should be emphasized that judgment on the pleadings is based exclusively upon the allegations appearing in the pleadings of the

parties and the annexes, if any, without consideration of any evidence aliunde. Henceforth, when it appears that not all the material allegations of the complaint were admitted in the answer for 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 pleadings cannot be rendered (*Philippine National Bank v. Mereto B. Aznar*, G.R. No. 171805, May 30, 2011).

B) Distinguish "Summary Judgment" and "Judgment on the Pleadings."

SUGGESTED ANSWER:

What distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint. When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate. On the other hand, when the – Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a summary judgment is proper provided that the issue raised is not genuine. A genuine issue means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial (*Eugenio Basbas v. Beata Sayson and Roberto Sayson, Jr.*, G.R. No. 172660, August 24, 2011).

2. Summary judgments (Rule 35)

69. Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1-million, 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 P1.5-million. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5-million. 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 P0.5-million, 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. (2009 BAR QUESTION)

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 the 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.

3. Rendition and entry of judgments and final orders (Rule 36)

S. Post-judgment remedies

1. Motion for new trial or reconsideration

70. When may a party file a second motion for reconsideration of a final judgment or final order? (2013 BAR QUESTION)

- A) At any time within 15 days from notice of denial of the first motion for reconsideration.
- B) Only in the presence of extraordinarily persuasive reasons and only after obtaining express leave from the ruling court.
- C) A party is not allowed to file a second motion for reconsideration of a final judgment or final order.
- D) A party is allowed as a matter of right to file a second motion for reconsideration of a judgment or final order.
- E) None of the above.

SUGGESTED ANSWER:

(B) Only in the presence of extraordinarily persuasive reasons and only after obtaining express leave from the ruling court.

a. Rule 37

b. Remedy against denial and fresh-period rule

71. Miguel filed a Complaint for damages against Jose, who denied liability and filed a Motion to Dismiss on the ground of failure to state a cause of action. In an Order received by Jose on January 5, 2015, the trial court denied the Motion to Dismiss. On February 4, 2015, Jose sought reconsideration of that Order through a Motion for Reconsideration. Miguel opposed the Motion for Reconsideration on the ground that it was filed out of time. Jose countered that the 15-day rule under Section 1 of Rule 52 does not apply where the Order sought to be reconsidered is an interlocutory order that does not attain finality. Is Jose correct? Explain. (2016 BAR QUESTION)

SUGGESTED ANSWER:

No. Jose is not correct. Rule 52 applies only to motions for reconsideration of judgments or final resolutions of the Court of Appeals in appealed cases. This case, however, involves proceedings before the trial court. Under Section 1, Rule 37 of the Rules of Court, the period to file a motion for reconsideration shall be within the period for taking an appeal, which under Section 3, Rule 41, should be made within fifteen (15) days from notice of the assailed order. Applying the foregoing, Jose should have filed his motion

for reconsideration within 15 days from January 5, 2015, or until January 20, 2015. Clearly, Jose's motion for reconsideration was filed out of time.

ANOTHER SUGGESTED ANSWER:

No. Jose is not correct. While Jose's reliance on Section 1 of Rule 52 is misplaced because the said Rule applies only to cases pending before the Court of Appeals, his argument that the fifteen day rule does not apply because the order sought to be reconsidered is an interlocutory order that has basis in jurisprudence. In *Denso Philippines, Inc. v. The Intermediate Appellate Court* (G.R. No. 75000. February 27, 1987), the Supreme Court held that a motion for reconsideration of an interlocutory order is not subject to the usual limiting fifteen-day period of appeal prescribed for final judgments and orders. Be that as it may, since the motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari which is the appropriate remedy, the same can be filed not later than sixty (60) days from notice of the denial of the motion to dismiss; otherwise, a legal aberration would ensue where a party who has merely 60 days from notice of an adverse interlocutory order to interpose a special civil action for certiorari would be allowed a longer period to move for reconsideration of such order.

Consequently, since Jose's motion for reconsideration was filed 31 days after he received the order denying his motion to dismiss, the same was still filed on time.

2. Appeals

72. 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: (2009 BAR QUESTION)

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 (MeTC'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 (CTA) 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).

73. Findings of fact are generally not disturbed by the appellate court except in cases (2013 BAR QUESTION)

- A) where the issue is the credibility of the witness
- B) where the judge who heard the case is not the same judge who penned the decision
- C) where the judge heard several witnesses who gave conflicting testimonies
- D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case
- E) None of the above.

SUGGESTED ANSWER:

(D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case

74. TRUE or FALSE. The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal. (2009 BAR QUESTION)

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.

75. Where and how will you appeal the following: (2012 BAR QUESTION)

- A) An order of execution issued by the RTC.
- B) Judgment of RTC denying a petition for Writ of Amparo.
- C) Judgment of MTC on a land registration case based on its delegated jurisdiction.
- D) A decision of the Court of Tax Appeal's First Division.

SUGGESTED ANSWER:

- 1) A petition for certiorari under Rule 65 before the Court of Appeals.
- 2) Any party may appeal from the final judgment or order to the Supreme Court by way of a petition for review on 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 Writ of Amparo, A.M. No. 07-9-12-SC, 25 September 2007*).

- 3) 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 Blg. 129, or the Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691, March 25, 1994*).
- 4) The appeal should have been filed with the Court of Tax Appeals *En Banc* through a petition for review under Rule 43 of the Rules of Court. (R.A. No. 9282; *See also, Duty Free Phils., v. BIR*, G.R. No. 197228, 8 October 2014)

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 vs. Majaducon cited in General Milling Corporation-Independent Labor Union vs. General Milling Corporation*, G.R. No. 183122, June 15, 2011, *Perez, J.*).

- 76. Which of the following decisions may be appealed directly to the Supreme Court (SC)? (Assume that the issues to be raised on appeal involve purely questions of law) (2014 BAR QUESTION)**
- A) Decision of the Regional Trial Court (RTC) rendered in the exercise of its appellate jurisdiction
 - B) Decision of the RTC rendered in the exercise of its original jurisdiction
 - C) Decision of the Civil Service Commission
 - D) Decision of the Office of the President

SUGGESTED ANSWER:

In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

- 77. Mr. Boaz filed an action for ejectment against Mr. Jachin before the Metropolitan Trial Court (MeTC). Mr. Jachin actively participated in every stage of the proceedings knowing fully well that the MeTC had no jurisdiction over the action. In his mind, Mr. Jachin was thinking that if the MeTC rendered judgment against him, he could always raise the issue on the jurisdiction of the MeTC. After trial, the MeTC rendered judgment against Mr. Jachin. What is the remedy of Mr. Jachin? (2014 BAR QUESTION)**
- A) File an appeal
 - B) File an action for nullification of judgment
 - C) File a motion for reconsideration
 - D) File a petition for certiorari under Rule 65

SUGGESTED ANSWER:

(A) file an appeal. An appeal from a judgment or final order of a Municipal Trial Court may be taken to the Regional Trial Court (Section 1, Rule 40, Rules of Court). Moreover, under Rule 41, of the Rules of Court, decisions of the Metropolitan Trial Court in the exercise of its original jurisdiction can be appealed to the Regional Trial Court. Besides, a Motion for Reconsideration is prohibited under the Rules on Summary Procedure.

- 78. When a Municipal Trial Court (MTC), pursuant to its delegated jurisdiction, renders an adverse judgment in an application for land registration, the aggrieved party's remedy is: (2014 BAR QUESTION)**
- A) ordinary appeal to the Regional Trial Court
 - B) petition for review on certiorari to the Supreme Court
 - C) ordinary appeal to the Court of Appeals
 - D) petition for review to the Court of Appeals

SUGGESTED ANSWER:

(C) Ordinary appeal to the Court of Appeals. Under Section 34, Batas Pambansa Blg. 129, the judgment of the MTC in the exercise of its delegated jurisdiction in land registration cases shall be appealable in the same manner as decisions of the RTC. Thus, an ordinary appeal to the Court of Appeals is the appropriate remedy.

79. Distinguish the two (2) modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals. (2009 BAR QUESTION)

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 maybe extended for 15 days and another 15 days for compelling reasons.

80. 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? (2008 BAR QUESTION)

SUGGESTED ANSWER:

Yes, it is necessary for Atty. Sikat to file a second notice of appeal to the amended decision because a substantial change was made to the original decision when the monetary awards were reduced in the amended decision and in effect the amended decision superseded the original decision. A new notice of appeal is required to comply with the required contents thereof in respect of the amended *decision* (*Pacific Life Assurance Corporation v. Sison*, 299 SCRA 16 [1998]; *Magdelana Estates, Inc. v. Caluag*, 11 SCRA 333 [1964]).

a. Modes of appeal from judgments or final orders of various courts

1. Period of appeal

2. Perfection of appeal

3. Issues to be raised

b. Review of judgments or final orders of the COA, COMELEC, CSC, and the Ombudsman

c. Review of judgments or final orders of quasi-judicial agencies

81. What is the mode of appeal applicable to the following cases, and what issues may be raised before the reviewing court/tribunal? (2017 BAR QUESTION)

A) The decision or final order of the National Labor Relations Commission.

SUGGESTED ANSWER:

There is no mode of appeal from a decision or final order of the NLRC, since such decision or final order is final and executory pursuant to the Labor Code. [*Art. 223*].

The remedy of the aggrieved party is to file a special civil action for certiorari with the Court of Appeals. [*St. Martin Funeral Home v. NLRC*, 295 SCRA 494]. Such special civil action may raise questions both of fact and law. [*Aggabao v. COMELEC*, 449 SCRA 400].

B) The judgment or final order of the RTC in the exercise of its appellate jurisdiction.

SUGGESTED ANSWER:

The mode of appeal applicable to judgments or final orders of the RTC in the exercise of its appellate jurisdiction is a petition for review under R42. The petition may raise questions both of fact and law. [*S2 R42*]

d. Dismissal, reinstatement, and withdrawal of appeal

3. Petition for relief from judgment (Rule 38)

82. 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.

How may Patricio prevent the sale of the property on execution? (2009 Bar Question)

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.

83. TRUE or FALSE. A defendant who has been declared in default can avail of a petition for relief from the judgment subsequently rendered in the case. (2007 BAR QUESTION)

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 executory, 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.

4. Annulments of judgment (Rule 47)

84. 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 resident 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. (2014 BAR QUESTION)

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 (*Aleban 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 (*Sec. 3, Rule 9*). 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.

5. Collateral attack on judgments

T. Execution, satisfaction, and effect of judgments (Rule 39)

85. 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.

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? (2010 BAR QUESTION)

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.

86. 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) If Orencio is the purchaser of the property at the execution sale, how much does he have to pay? Explain. (2009 BAR QUESTION)

SUGGESTED ANSWER:

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

B) If the property is sold to a third party at the execution sale, what can Patricio do to recover the property? Explain. (2009 BAR QUESTION)

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 interest of 1% monthly, plus assessment and taxes paid by the purchaser, with interest thereon, at the same rate.

87. 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 were

the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (2008 BAR QUESTION)

SUGGESTED ANSWER:

Since a writ of execution is valid for five years from its issuance, the sheriff should be informed and requested to garnish or levy on execution the bank deposits belonging to the judgment obligor (*Sec. 9[c], Rule 39, Rules of Court*). Then the judgment creditor can move for a court order directing the application of such bank deposit to the satisfaction of the judgment (*Sec. 40, Rule 39, Rules of Court*).

88. 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? (2008 BAR QUESTION)

SUGGESTED ANSWER:

To reach the bank deposit belonging to the judgment obligor but under an assumed name, a motion may be filed for a court order requiring the proper bank officer to appear in court for examination under oath as to such bank deposit, and subsequently move for a court order authorizing the filing of an action against such bank for the recovery of the judgment obligor's deposit/interest therein and to forbid a transfer or other disposition of such deposit/interest within 120 days from notice of the order (*Secs. 37 and 43, Rule 39, Rules of Court*).

89. 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. (2007 BAR QUESTION)

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 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.

90. What are the rules on the recognition and enforcement of foreign judgments in our courts? (2007 BAR QUESTION)

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 a Regional Trial Court. Thus, it is actually the judgment of the Philippine court enforcing the foreign judgment that shall be executed.

91. Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2007 BAR QUESTION)

SUGGESTED ANSWER:

No, a foreign arbitral award cannot be enforced in the Philippines under the rules on the 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.

92. 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.

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]).

93. 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. (2015 BAR QUESTION)

A) Hades' lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia?

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, *Cruz v. Sto. Tomas* (G.R. No. 186571, August 11, 2010), the High Court declared that "[t]he recognition of the foreign divorce decree 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 establish the status or right of a party or a particular fact" (*Fujiki v. Marinay*, G.R. No. 196049, June 26, 2013).

B) In what court should you file the petition?

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?

SUGGESTED ANSWER:

- 1) In a petition for recognition of foreign judgment, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Sections 24 and 25 of Rule 132 in relation to Section 48(b), Rule 39 of the Rules of Court (*Fujiki v. Marinay* G.R. No. 196049, June 26, 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 Register of Manila*, G.R. No. 138496, February 23, 2004, 423 SCRA 420; *Corpus v. Tirol*, G.R. No. 186571, August 11, 2010).

94. What is the *Harmless Error Rule* in relation to appeals? (2017 BAR QUESTION)**SUGGESTED ANSWER:**

The harmless error rule in relation to appeals provides that the appellate court should not reverse a judgment as a result of any error or defect which does not affect the substantial rights of the parties. [*See S6 R51; Bersamin, Appeal & Review in the Philippines* 362]

IV. PROVISIONAL REMEDIES

A. Nature, purpose, and jurisdiction over provisional remedies

95. Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (2012 BAR QUESTION)

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 of 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 choose 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 and 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 a 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.

96. As a rule, courts may not grant an application for provisional remedy without complying with the requirements of notice and hearing. These requirements, however, may be dispensed with in an application for: (2014 BAR QUESTION)
- A) writ of preliminary injunction
 - B) writ for preliminary attachment
 - C) an order granting support pendente lite
 - D) a writ of replevin

SUGGESTED ANSWER:

(B) writ for preliminary attachment. Under Section 2, Rule 57 of the Rules of Court, preliminary attachment may be issued ex parte or upon motion with notice and hearing.

(D) writ of replevin. Under Section 3, Rule 60, the Court shall issue an order and the corresponding writ of replevin, upon the filing of such affidavit and approval of the bond. There are no requirements of prior notice and hearing.

B. Preliminary attachment (Rule 57)

97. 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. B moves to lift the attachment. Rule on this.

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*)

98. 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 Agente levied on the latter's house and lot. On November 20, 2013, the Sheriff served upon 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. (2014 BAR QUESTION)

- 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 v. Nicanor Satsatin*, 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 Agnete.

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*, G.R. No. 93262 December 29, 1991). Thus, the writ of preliminary attachment must only be served simultaneous or at least after the service of summons to the defendant (*Sofia Torres v. Nicanor Satsatin*, G.R. No. 166759, November 25, 2009).

99. 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. (2008 BAR QUESTION)

SUGGESTED ANSWER:

Porfirio's motion to charge plaintiff's attachment bond is proper and can be granted. It is not correct to contend that Porfirio's filing of a counterbond constitutes a waiver of his right to proceed against the attachment bond for the damages he suffered from the unwarranted attachment. It is a condition inter alia of the applicant's attachment bond that he will pay all the costs which may be adjudged to the adverse party and all damages which the latter may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto (*Sec. 4, Rule 57, Rules of Court; D.M. Wenceslao and Associates, Inc. v. Ready con Trading and Construction Corp.*, 433 SCRA 251 [2004]).

C. Preliminary injunction (Rule 58)

D. Receivership (Rule 59)

E. Replevin (Rule 60)

V. SPECIAL CIVIL ACTIONS

A. Jurisdiction and venue

B. Interpleader (Rule 62)

C. Declaratory relief and similar remedies (Rule 63)

D. Review of judgments and final orders or resolutions of the COMELEC and COA (Rule 64 in relation to Rule 65)

E. *Certiorari*, prohibition, and mandamus

100. 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. (2012 BAR QUESTION)

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 and Information (on the ground of lack of probable cause to hold the accused for trial based on 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.

101. 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? (2012 BAR QUESTION)

SUGGESTED ANSWER:

If I were X's Lawyer, I would file a petition for certiorari under Rule 65 of the Rules of Court. 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 command 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 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*, L25923, July 15, 1980; *Pascua vs. Heirs of Segundo Simeon*, 161 SCRA ; *Patagan et. al. Vs. Panis*, G.R. No. 55630, April 8, 1988)

102.A files a Complaint against 8 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", 8 files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (2012 BAR QUESTION)

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. 157783, September 23, 2005).

103.What is the effect of the pendency of a special civil action under Rule 65 of the Rules of Court on the principal case before the lower court? (2013 BAR QUESTION)

- A) It always interrupts the course of the principal case.
- B) It interrupts the course of the principal case only if the higher court issues a temporary restraining order or a writ of preliminary injunction against the lower court.
- C) The lower court judge is given the discretion to continue with the principal case.
- D) The lower court judge will continue with the principal case if he believes that the special civil action was meant to delay proceedings.
- E) Due respect to the higher court demands that the lower court judge temporarily suspend the principal case.

SUGGESTED ANSWER:

(B) It interrupts the course of the principal case only if the higher court issues a temporary restraining order or a writ of preliminary injunction against the lower court.

1. Definitions and distinctions

104.Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure. (2008 BAR QUESTION)

SUGGESTED ANSWER:

Under the Constitution, the certiorari jurisdiction of the Supreme Court provides for its expanded jurisdiction power of judicial power over [governs] all branches or instrumentalities of the government where is a grave abuse of discretion amounting to lack or excess of jurisdiction, as [agencies and instrumentalities] provided in Section 1, second par., Art. VIII of the 1987 Constitution. The petition is filed under Rule 45 of the Rules of Court, and the writ is directed not only to tribunal, board or officer exercising judicial or quasi-judicial functions. And the period fixed for availing of the remedy is within 30 days from receipt of the copy of the decision, order or ruling in question (*Sec. 7, Art. IX*).

But under Rule 65 of the Rules of Court, the certiorari jurisdiction of the Supreme Court is limited to acts done without or in excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, by a tribunal, board or officer exercising judicial or quasi-judicial functions only. And the period fixed for availing of the remedy is not later than 60 days from notice of judgment; order or resolution in question (*Secs. 1 and 4, Rule 65, Rules of Court*).

105. 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 a speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus? Reason briefly. (2007 BAR Question)

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 he 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.

106. Hannibal, Donna, Florence and Joel, concerned residents of Laguna de Bay, filed a complaint for mandamus against the Laguna Lake Development Authority, the Department of Environment and Natural Resources, the Department of Public Work and Highways, Department of Interior and Local Government, Department of Agriculture, Department of Budget, and Philippine National Police before the RTC of Laguna alleging that the continued neglect of defendants in performing their duties has resulted in serious deterioration of the water quality of the lake and the degradation of the marine life in the lake. The plaintiffs prayed that said government agencies be ordered to clean up Laguna de Bay and restore its water quality to Class C waters as prescribed by Presidential Decree No. 1152, otherwise known as the Philippine Environment Code.

Defendants raise the defense that the cleanup of the lake is not a ministerial function and they cannot be compelled by mandamus to perform the same. The RTC of Laguna rendered a decision declaring that it is the duty of the agencies to clean up Laguna de Bay and issued a permanent writ of mandamus ordering said agencies to perform their duties prescribed by law relating to the cleanup of Laguna de Bay.

A) Is the RTC correct in issuing the writ of mandamus? Explain.

SUGGESTED ANSWER:

Yes, the RTC is correct in issuing the writ of mandamus. Generally, the writ of mandamus lies to require the execution; of a ministerial duty. While the implementation of the Government agencies mandated tasks may entail a decision-making process, the enforcement of the law or the very act of doing what the law exacts to be done is ministerial in nature and may be compelled by mandamus.

Here, the duty to clean up Laguna lake and restore its water quality to Class C is required not only by Presidential Decree No. 1152, otherwise known as the Philippine Environment Code, but also in its charter. It is, thus, ministerial in nature and can be compelled by mandamus.

Accordingly, the RTC may issue a writ of continuing mandamus directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until the judgment is fully satisfied (*Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008).

107.What is the writ of continuing mandamus?

SUGGESTED ANSWER:

A writ of continuing mandamus is a writ issued when any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping (*A.M. No. 09-6-8-SC also known as Rules of Procedure for Environmental Cases*).

A Writ of Continuing mandamus is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied (*Section 7, Rule 8, A.M. No. 09-6-8-SC also known as Rules of Procedure for Environmental Cases*).

2. Requisites; when and where to file (Rule 65)

3. Exceptions to filing of motion for reconsideration before filing petition

F. Quo warranto (Rule 66)

G. Expropriation

1. Rule 67

2. Guidelines for expropriation proceedings of National Government Infrastructure Projects (Sec. 4, RA 8974)

108. 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.

As judge, will you grant the writ of possession prayed for by DPWH? Explain. (2009 BAR QUESTION)

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 possession of the property under expropriation.

H. Foreclosure of real estate mortgage

1. Judicial foreclosure (Rule 68)

109. When the court renders judgment in a judicial foreclosure proceeding, when is the mortgaged property sold at public auction to satisfy the judgment? (2013 BAR QUESTION)

- A) After the decision has become final and executory.
- B) At any time after the failure of the defendant to pay the judgment amount.
- C) After the failure of the defendant to pay the judgment amount within the period fixed in the decision, which shall not be less than ninety (90) nor more than one hundred twenty (120) days from entry of judgment.
- D) The mortgaged property is never sold at public auction.
- E) The mortgaged property may be sold but not in any of the situations outlined above.

SUGGESTED ANSWER:

(C) After the failure of the defendant to pay the judgment amount within the period fixed in the decision, which shall not be less than ninety (90) nor more than one hundred twenty (120) days from entry of judgment.

2. Extrajudicial foreclosure (Act 3135, as amended)

110. Is the buyer in the auction sale arising from an extra-judicial foreclosure entitled to a writ of possession even before the expiration of the redemption period? If so, what is the action to be taken? (2016 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the buyer in the auction sale is entitled to a writ of possession even before the expiration of the redemption period upon the filing of the ex parte petition for issuance of a writ of possession and posting of the appropriate bond. Under Section 7 of Act No. 3135, as amended, the writ of possession may be issued to the purchaser in a foreclosure sale either within the one-year redemption period upon the filing of a bond, or after the lapse of the redemption period, without need of a bond (*LZK Holdings and Development Corporation v. Planters Development Bank*, G.R. No. 167998, April 27, 2007). Stated otherwise, Section 7 of Act No. 3135, as amended, also refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Hence, upon the purchaser's filing of the ex parte petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in favor of the purchaser (*Spouses Nicasio Marquez and Anita J. Marquez v. Spouses Carlito Alindog and Carmen Alindog*, G.R. No. 184045, January 22, 2014; *Spouses Jose Gatuslao and Ermila Gatuslao v. Leo Ray Yanson*, G.R. No. 191540, January 21, 2015).

111. After the period of redemption has lapsed and the title to the lot is consolidated in the name of the auction buyer, is he entitled to the writ of possession as a matter of right? If so, what is the action to be taken?

SUGGESTED ANSWER:

Yes, the auction buyer is entitled to a writ of possession as a matter of right. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within a period of one year after the registration of the certificate of sale. He is, therefore, entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court (*LZK Holdings and Development Corporation v. Planters Development Bank*, G.R. No. 167998, April 27, 2007; *Spouses Nicasio C. Marquez and Anita J. Marquez v. Spouses Carlito Alindog and Carmen Alindog*, G.R. No. 184045, January 22, 2014; *Spouses Jose Gatuslao and Ermila Gatuslao v. Leo Ray Yanson*, G.R. No. 191540, January 21, 2015).

112. Suppose that after the title to the lot has been consolidated in the name of the auction buyer, said buyer sold the lot to a third party without first getting a writ of possession. Can the transferee exercise the right of the auction buyer and claim that it is a ministerial duty of the court to issue a writ of possession in his favor? Briefly explain.

SUGGESTED ANSWER:

Yes. The transferee can exercise the right of the auction buyer. A transferee or successor-in-interest of the auction buyer by virtue of the contract of sale between them, is considered to have stepped into the shoes of the auction buyer. As such, the transferee is necessarily entitled to avail of the provisions of Section 7 of Act 3135, as amended, as if he is the auction buyer (*Spouses Jose Gatuslao and Ermila Gatuslao v. Leo Ray Yanson*, G.R. No. 191540, January 21, 2015). When the lot purchased at a foreclosure sale is in turn sold or transferred, the right to the possession thereof, along with all other rights of ownership, transfers to its new

owner (*Spouses Gallent v. Velasquez*, G.R. No. 203949, April 6, 2016), ergo, it is a ministerial duty of the court to issue a writ of possession in favor of the transferee of the auction buyer.

3. The General Banking Law of 2000 (Sec. 47, RA 8791)

I. Partition (Rule 69)

J. Forcible entry and unlawful detainer

1. Differentiated from accion publiciana and accion reivindicatoria

2. Rule 70

113. 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. (2013 BAR QUESTION)

SUGGESTED ANSWER:

As counsel of spouses Juan, I will file a special civil action for Forcible Entry. The Rules of Court provides that a person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth may at any time within (one) 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 (*Sec. 1, Rule 70*).

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).

In *Abad v. Farrales*, G.R. 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 Sec. 1, Rule 4*).

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.

- 114. 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 judgment in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ. (2009 Bar Question)**

A) How can Mike stay the execution of the MTC judgment? Explain.

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 (RTC), which affirmed the MTC decision.

Mike then filed a petition for review with the Court of Appeals (CA). 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? 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 v. Santiago, 336 SCRA 680 [2000]*].

- 115. 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? (2008 BAR QUESTION)**

SUGGESTED ANSWER:

No, Ben is not correct. In an action for unlawful detainer, it is not required that the plaintiff be in prior physical possession of the land subject of the action. In this action by the vendee a retro against a vendor a retro who refused to vacate the property even after title has been consolidated in the vendee, the latter, in contemplation of law, steps into the shoes of the vendor and succeeds to his rights and interest (*PharmaIndustries, Inc. v. Hon. Pajarillaga, 100 SCRA 339[1980]*; *Maninang v. Court of Appeals, 14 SCRA 525 [1999]*).

- 116. 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. (2007 BAR QUESTION)**

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.

117. Laura was the lessee of an apartment unit owned by Louie. When the lease expired, Laura refused to vacate the property. Her refusal prompted Louie to file an action for unlawful detainer against Laura who failed to answer the complaint within the reglementary period.

Louie then filed a motion to declare Laura in default. Should the motion be granted? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

No, a Motion to declare the defendant in default is a prohibited motion in ejectment cases pursuant to S13.8 R70.

118. Judgment was rendered against defendant Jaypee in an action for unlawful detainer. The judgment ordered Jaypee to vacate and to pay attorney's fees in favor of Bart, the plaintiff.

To prevent the immediate execution of the judgment, would you advise the posting of a supersedeas bond as counsel for Jaypee? Explain your answer briefly. (2017 BAR QUESTION)

SUGGESTED ANSWER:

No, as counsel for Jaypee I would not advise the posting of a supersedeas bond.

Under the R70, a supersedeas bond is necessary to prevent immediate execution only if the judgment awarded rents, damages, and costs.

Here the judgment only ordered Jaypee to vacate and to pay attorney's fees. A supersedeas bond is not required to cover attorney's fees. [*Once v. Gonzalez*, 31 March 1977]. Hence the posting of a supersedeas bond is not required.

K. Contempt (Rule 71)

119. Contempt charges made before persons, entities, bodies and agencies exercising quasi-judicial functions against the parties charged, shall be filed with the Regional Trial Court of the place where the _____ (2013 BAR QUESTION)

- A) person, entity or agency exercising quasi-judicial function is located
- B) person who committed the contemptuous act resides
- C) act of contempt was committed
- D) party initiating the contempt proceeding resides
- E) charging entity or agency elects to initiate the action

SUGGESTED ANSWER:

(C) act of contempt was committed

120. A temporary restraining order (TRO) was issued on September 20, 2017 by the RTC against defendant Jeff enjoining him from entering the land of Regan, the plaintiff.

On October 9, 2017, upon application of Regan, the trial court, allegedly in the interest of justice, extended the TRO for another 20 days based on the same ground for which the TRO was issued.

On October 15, 2017, Jeff entered the land subject of the TRO.

May Jeff be liable for contempt of court? Why? (2017 BAR QUESTION)

SUGGESTED ANSWER:

No, Jeff may not be liable for contempt.

Under the Rule on Preliminary Injunction, a TRO is effective only for a period of 20 days from service on the person sought to be enjoined. It is deemed automatically vacated if the application for preliminary injunction is denied or not resolved within the said period and no court shall have the authority to extend or renew the TRO on the same ground for which it was issued. [S5 R58]

Here the extension of the TRO by the RTC was invalid since it was for the same ground for which the TRO was issued. Hence the TRO was deemed automatically vacated and thus Jeff may not be liable for contempt for ignoring it.

VI. SPECIAL PROCEEDINGS

1. 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. (2008 BAR QUESTION)

SUGGESTED ANSWER:

The administrator's contention that the modes of discovery apply only to ordinary civil actions and not to special proceedings is not correct. Section 2, Rule 72 of the Rules of Court provides that: "In the absence of special provisions, the rules provided for in ordinary civil actions shall be, as far as practicable, applicable in special proceedings." There is no provision to the contrary that would preclude the application of the modes of discovery, specifically Interrogatories to Parties under Rule 25 of the Rules, to probate proceedings.

A. Settlement of estate of deceased persons

2. Domenico and Gen lived without benefit of marriage for twenty years, during which time they purchased properties together. After Domenico died without a will, Gen filed a petition for letters of administration. Domenico's siblings opposed the same on the ground that Gen has no legal personality. Decide. (2008 BAR QUESTION)

SUGGESTED ANSWER:

Gen has the legal personality to file the petition for letters of administration because she is an "interested person" in contemplation of Section 2, Rule 79 of the Rules of Court, being a co-owner of the properties acquired through joint efforts with Domencio during their cohabitation for 20 years. She, therefore, has direct interest as co-owner to such properties forming part of the estate of Domencio (*Arts. 147-148, Family Code; San Luis v. San Luis, 514 SCRA 294 [2007]*).

1. Venue and process (Rule 73)

3. 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? (2012 BAR QUESTION)

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.

2. Summary settlement of estates (Rule 74)

4. 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. (2009 BAR QUESTION)

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.

- 5. 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. (2007 BAR Question)**

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*).

3. Allowance or disallowance of wills (Rule 76)

- 6. 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 rental condominium units in Makati City. Johnny's entire estate which he inherited from his parents is valued at P200 million. Johnny appointed Anastacia's executrix of his will. (2014 BAR QUESTION)**

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 (Sec. 1, Rule 78). While she 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.

7. **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. (2010 BAR QUESTION)

SUGGESTED ANSWER:

The petition for probate of Czarina's will, as filed by Duquesa 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 *Seangio v. 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.

8. **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. (2010 BAR QUESTION)

SUGGESTED ANSWER:

The motion should be denied. Makati RTC has no jurisdiction over XYZ of Hong Kong. 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 Hong Kong.

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.

4. Claims against the estate (Rule 86)

9. 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. (2009 BAR QUESTION)

SUGGESTED ANSWER:

No, the issuance of a writ of execution by the court was improper because the claim must be made against the estate of deceased Dioscoro.

Section 5 of Rule 86 of the Rules of Court provides that all judgment for money against the decedent must be filed within the time limited in the notice, otherwise they are barred forever. Cresencio should enforce that judgment in his favor against the estate of Dioscoro as a money claim in accordance with Rule 86.

10. 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. (2014 BAR QUESTION)

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. Court of Appeals*, G.R. No. 165777, July 25, 2011).

11. 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 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 (*Sec. 20, Rule 3*). 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*).

5. **Payment of the debts of the estate (Rule 88)**
6. **Sales, mortgages, and other encumbrances of property of decedent (Rule 89)**
7. **Distribution and partition (Rule 90)**

B. Escheat (Rule 91)

C. Guardianship

1. **Venue (Rule 92)**
2. **Appointment of guardians (Rule 93)**
3. **General powers and duties of guardians (Rule 96)**
4. **Termination of guardianship (Rule 97)**

D. Writ of habeas corpus

12. **What is the writ of habeas data? (2009 BAR QUESTION)**

SUGGESTED ANSWER:

The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an 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.

a. Rule 102

13. **After Alma had started serving her sentence for violation of Batas Pambansa Big. 22 (BP 22), she filed a petition of writ of habeas corpus, citing Vaca vs. 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? (2008 BAR QUESTION)**

A) Under Rule 102?**SUGGESTED ANSWER:**

No. Section 4, Rule 102 of the Rules of Court (Habeas Corpus) does not authorize a court to discharge by writ of habeas corpus a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

B) Under the Rules of Criminal Procedure?**SUGGESTED ANSWER:**

No. The trial court's order releasing Alma on bail even after judgment against her has become final and in fact she has started serving sentence, is a brazen disregard of the mandate in Section 24, Revised Rules of Criminal Procedure that: "In no case shall bail be allowed after the accused has commenced to serve sentence." (*People v. Fitzgerald*, 505 SCRA 573 [2006]).

b. Writ of *habeas corpus* in relation to custody of minors (A.M. No. 03-0404-SC)**E. Change of name (Rule 103)**

14. A was adopted by B and C when A was only a toddler. Later on in life, A filed with 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. (2014 BAR QUESTION)

SUGGESTED ANSWER:

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:

- 1) When the name is ridiculous, dishonourable or extremely difficult to write or pronounce;
- 2) When the change results as a legal consequence, as in legitimation;
- 3) When the change will avoid confusion;
- 4) When one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage;
- 5) A sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and
- 6) 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 Garvia*, 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.

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).

F. Cancellation or Correction of entries in the Civil Registry (Rule 108)

15. Mary Jane met Sheila 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 Sheila 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 Sheila May is the best friend of John Starr. As a lawyer, Mary Jane seeks your advice on her predicament. What legal remedy would you avail to enable Mary Jane to contract marriage with Sultan Ahmed? (2014 BAR QUESTION)

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).

16. B files a petition for cancellation of the birth certificate of her daughter R on the round 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 once a week for three consecutive weeks in a newspaper of general circulation. Summons was served 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. (2007 BAR QUESTION)

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 a interest affected by the cancellation. (*Secs. 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 (*Ceruila 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 serve 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]*).

1. Clerical error law (RA 9048)

VII. CRIMINAL PROCEDURE

A. General matters

1. Criminal jurisdiction; concept and requisites for exercise
2. When injunction may be issued

B. Prosecution of offenses (Rule 110)

1. X was arrested, in 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? (2012 BAR QUESTION)

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 112 of the Revised Rules of Criminal Procedure).

2. 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 passenger 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 on homicide was also set for arraignment. Instead of pleading, McJolly interposed the defense of double jeopardy. Resolve. (2014 BAR QUESTION)

SUGGESTED ANSWER:

McJolly correctly interposed the defense of double jeopardy. Reckless imprudence under Article 365 is a 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 (*Iyler v. Hon, Modesto-San Pedro, G.R. No. 172716, November 17, 2010*).

3. 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.irate 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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

NO. Section 5 of Rule 110 provides that the crimes of adultery and concubinage shall not be prosecuted except upon complaint by the offended spouse. Since the offended party is already dead, then the criminal action for adultery as contemplated by offended party's relatives is no longer viable.

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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

YES, under Article 171 of the Family Code, the heirs of the husband may impugn the filiation of the child in the following cases:

- 1) If the husband should die before the expiration of the period fixed for bringing his action;
- 2) If he should die after the filing of the complaint, without having desisted therefrom; or
- 3) 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.*, G.R. No. L-7516, May 12, 1955; *Jimenez v. Intermediate Appellate Court*, G.R. No. 75773, April 17, 1990).

Incidentally, the heirs can also submit the baby boy for DNA testing (*Rules on DNA Evidence*, A.M. No. 6-11-5-SC) or even blood-test in order to determine paternity and filiation.

In *Jao v. Court of Appeals*, G.R. 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.

4. 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. (2013 BAR QUESTION)

SUGGESTED ANSWER:

As counsel for Gary, I will first make him medically examined in order to ascertain the gravity and extent of the injuries he sustained from the accident. Second, I will secure a police report relative to the mishap. 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 and later on to the

appropriate MTC of Mandaluyong City for the crime of Reckless Imprudence resulting to physical injuries and damage to property (*Sec. 1 and 15, Rule 110*).

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. (2013 BAR QUESTION)

SUGGESTED ANSWER:

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:

- 1) File the independent civil action and prosecute the criminal case separately.
- 2) File the independent civil action without filing the criminal case.
- 3) 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 pay slip 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.

5. **Leave of court is required to amend a complaint or information before arraignment if the amendment _____. (2013 BAR QUESTION)**
 - A) upgrades the nature of the offense from a lower to a higher offense and excludes any of the accused
 - B) upgrades the nature of the offense from a lower to a higher offense and adds another accused
 - C) downgrades the nature of the offense from a higher to a lower offense or excludes any accused
 - D) downgrades the nature of the offense from a higher to a lower offense and adds another accused
 - E) All the above choices are inaccurate.

SUGGESTED ANSWER:

(C) downgrades the nature of the offense from a higher to a lower offense or excludes any accused

6. **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), Republic Act 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 the same had no authority to do so. Resolve the motion to quash with reasons. (2009 Bar Question)

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 v. 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 the authority of the Ombudsman (*Perez v. Sandiganbayan*, 503 SCRA 252[2006]).

- 7. 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. (2015 BAR QUESTION)**

A) Was the remedy taken by the governor correct?

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.

B) Will the writ of mandamus lie to compel the Ombudsman to include the treasurer in the Information?

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, G.R. No. 197291, April 3, 2013*).

Evidently, the Ombudsman's act of granting the treasurer immunity from prosecution under such terms and conditions as it may deter mine (*Section 17, R.A. 6770*) is a discretionary duty that may not be compelled by the extraordinary writ of mandamus.

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?

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 Section 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 of the Philippines, G.R. No. 209195, September 17, 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, G.R. No 105965 70, March 20, 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 (*Section 11 (3), R.A. 6770*).

C. Prosecution of civil action (Rule 111)

8. 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? (2014 BAR QUESTION)

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 indicated 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 indicated 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).

9. **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. (2014 BAR QUESTION)**

SUGGESTED ANSWER:

The motion filed by Solomon should be denied. The elements of prejudicial question are: (1) the previous instituted civil action involves an issue similar or intimately related to the issue determines 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.

10. **Name two instances where the trial court can hold the accused civilly liable even if he is acquitted. (2010 BAR QUESTION)**

SUGGESTED ANSWER:

The Instances where the civil liability is not extinguished despite 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 v. Court of Appeals*, September 14, 1999).
11. **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. (2010 BAR QUESTION)

A) Is V guilty of forum shopping?

SUGGESTED ANSWER:

No, V is not 'guilty of forum shopping because the case In Sta. Maria, Bulacan, Is a criminal action rued in the name of the People of the Philippines, where civil liability arising from the crime is deemed also instituted therewith; whereas the case rued 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 adjudicata* or *litis pendencia*, do not obtain here.

Moreover, substantive law (Art. 33 Civil Code) and Sec. 3, Rule III, Revised Rules of Criminal Procedure, expressly authorize the filing. Such, action for damages is 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 *litis pendencia*. Is the motion meritorious? Explain.

SUGGESTED ANSWER:

No, the motion' to dismiss base on alleged *litis pendencia* 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 III, 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?

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 a necessary party. Besides, non-joinder 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.

SUGGESTED ANSWER:

Neither of them is correct. Both substantive law (*Art.33 of the Civil Code*) and procedural law (*Rule III, Sec. 3, and Rules of Criminal Procedure*) provide for the two actions to proceed independently of each other, therefore, no suspension of action is authorized.

12. Tailors Toto, Nelson and Yenyen filed a special civil action for certiorari under Rule 65 from an adverse decision of the National Labor Relations Commission (NLRC) on the complaint for illegal dismissal against Empire Textile Corporation. They were terminated on the ground that they failed to meet the prescribed production quota at least four (4) times. The NLRC decision was assailed in a special civil action under Rule 65 before the Court of Appeals (CA). In the verification and certification against forum shopping, only Toto signed the verification and certification, while Atty. Arman signed for Nelson. Empire filed a motion to dismiss on the ground of defective verification and certification. Decide with reasons. (2016 BAR QUESTION)

SUGGESTED ANSWER:

The motion to dismiss should be denied, because there is substantial compliance of the requirements of the rules. Verification is not a jurisdictional but merely a formal requirement which the court may motu proprio direct a party to comply with or correct, as the case may be. On the other hand, regarding the certificate of non-forum shopping, the general rule is that all the petitioners or plaintiffs in a case should sign it. However, the Supreme Court has time and again stressed that the rules on forum shopping, which were designed to promote the orderly administration of justice, do not interdict substantial compliance with its provisions under justifiable circumstances. As ruled by the Court, the signature of any of the principal petitioners or principal parties, would constitute a substantial compliance with the rule on verification and certification of non-forum shopping. And should there exist a commonality of interest among the parties, or where the parties filed the case as a collective, raising only one common cause of action or presenting a common defense, then the signature of one of the petitioners or complainants, acting as representative, is sufficient compliance (*Irene Marcos-Araneta v. Court of Appeals*, G.R. No. 154096, August 22, 2008). Evidently, since there is a commonality of interest among Tailors Toto, Nelson and Yenyen, there is substantial compliance with the rules on verification and certification against forum shopping, when Toto signed the verification and certification, and Atty. Arman signed the same for Nelson.

ANOTHER SUGGESTED ANSWER:

The motion to dismiss should be granted. The verification and certification of non-forum shopping were not signed by all the petitioners. There was no showing that Toto nor Atty. Arman were duly authorized by the other petitioners through a special power of attorney to sign on their behalf; hence, the motion to dismiss should be granted.

D. Preliminary Investigation

1. Executive vs. judicial determination of probable cause

2. Rule 112

13. 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.

What is the proper procedure to prevent Dina from leaving the Philippines? (2010 BAR QUESTION)

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.

- 14. A criminal information is filed in court charging Anselmo with homicide. Anselmo files a motion to quash the information on the ground that no preliminary investigation was conducted. Will the motion be granted? Why or why not? (2009 BAR QUESTION)**

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).

- 15. 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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

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.

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 (*Sec. 15[b], Rule 110*). 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.

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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

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 7, Rule 112, when a person is lawfully arrested without a warrant involving an offense which requires preliminary investigation, the complaint or information may be filed by a prosecutor without the need of such investigation provided an inquest has been conducted in accordance with existing rules. 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.

- 16. 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? (2013 BAR Question)

SUGGESTED ANSWER:

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, 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 as but not later than the start of the trial of the case.

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? (2013 BAR Question)

SUGGESTED ANSWER:

I will file first a motion for leave to file a demurrer within five (5) days from the time the prosecution rested its case. If the same is granted, then I will now file a demurrer to evidence within ten (10) days (*Sec. 23, Rule 119*). This remedy would allow the 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 (*Sec. 23, Rule 119*).

17. 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 and 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 as evidence, of guilt? (2008 BAR QUESTION)

SUGGESTED ANSWER:

No, the oral confession is not admissible as evidence of guilt of Carlito because he was already under arrest and in police custody when he made the extrajudicial confession and the mandates of Rep. Act No. 7438, particularly Sections 2, par. (d), have not been complied with. Non-compliance with said par. (d) of the law expressly renders the extrajudicial confession inadmissible as evidence in any proceeding.

He was not informed of his right to be warned and he was not informed of the Miranda right particularly the right to remain silent. Additionally, it does not appear that counsel present was his counsel of choice.

18. When does a public prosecutor conduct an inquest instead of a preliminary investigation? (2017 BAR QUESTION)

SUGGESTED ANSWER:

Under the Rules of Criminal Procedure, the public prosecutor conducts an inquest instead of a preliminary investigation when a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation. [S6 R112]

19. Engr. Magna Nakaw, the District Engineer of the DPWH in the Province of Walang Progreso, and Mr. Pork Chop, a private contractor, were both charged in the Office of the Ombudsman for violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) under a conspiracy theory.

While the charges were undergoing investigation in the Office of the Ombudsman, Engr. Magna Nakaw passed away. Mr. Pork Chop immediately filed a motion to terminate the investigation and to dismiss the charges against him, arguing that because he was charged in conspiracy with the deceased, there was no longer a conspiracy to speak of and, consequently, any legal ground to hold him for trial had been extinguished.

Rule on the motion to terminate filed by Mr. Pork Chop, with brief reasons. (2017 BAR QUESTION)

SUGGESTED ANSWER:

Mr. Pork Chop's motion to terminate the investigation before the Office of the Ombudsman is denied.

In a case involving similar facts, the Supreme Court held that the death of a co-conspirator, even if he was the lone public officer, did not mean that the allegation of conspiracy to violate the Anti-Graft Law could no longer be proved or that the alleged conspiracy was already expunged. The only thing extinguished by the death of a co-conspirator was his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. [*People v. Go*, 25 March 2014, *Peralta, J.*]

E.Arrest (Rule 113)

20. 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? (2010 BAR QUESTION)

SUGGESTED ANSWER:

The arrest and body-search was legal. Cicero appears to be alone "walking down a 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 (Rep. Act 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.

21. X was arrested for the alleged murder of a 6-year Old lad. He was read his Miranda rights 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. (2010 BAR QUESTION)

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 uncounseled extrajudicial confession of X being without a valid waiver of his Miranda rights, is inadmissible, as well as any information derived therefrom.

- 22. On his way home, a member of the Caloocan City police force witnessed a bus robber 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. (2007 BAR QUESTION)**

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.

- 23. 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. (2015 BAR QUESTION)

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*, (G.R. No. 82585, November 14, 1988, 167 SCRA 393, 406), 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 witnesses is, thus, not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest (*People v. Joseph "Jojo" Grey*, G.R. No. 10109, July 26, 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.

- 24. 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. (2015 BAR QUESTION)**

A) What is the remedy available to Hercules to secure his immediate release from detention?

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 (Section 1, Rule 102, Rules of Court).

ALTERNATIVE ANSWER:

Hercules may also apply for bail. Under Section 17 (c), 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?

SUGGESTED ANSWER:

As counsel of the policemen, 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 office and surrounding conditions, to warrant the belief that detained has weapons concealed about him. (*Valdez v. People*, G.R. No. 170180, November 23, 2007).

The “stop and frisk” search should be used when dealing 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) 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, Section 2 of the Constitution (*People of the Philippines v. Victor Cogaed*, G.R. No. 200334, July 30, 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 the Ombudsman has disciplinary authority over officials and members of the PNP concurrently with NAPOLCOM and PNP, the Memorandum of Agreement executed by and among the Ombudsman, PNP and NAPOLCOM on September 12, 2012 specifies the administrative cases that are within the primary jurisdiction of the Ombudsman. Since the complaint filed against my 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?

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*, G.R. No. 162808, April 22, 2008).

- 25. Under Section 5, Rule 113 a warrantless arrest is allowed when an offense has just been committed and the peace officer has probable cause to believe, based on his personal knowledge of facts or circumstances, that the person to be arrested has committed it. A policeman approaches you for advice and asks you how he will execute a warrantless arrest against a murderer who escaped after killing a person. The policeman arrived two (2) hours after the killing and a certain Max was allegedly the killer per information given by a witness. He asks you to clarify the following: (2016 BAR QUESTION)**

A) How long after the commission of the crime can he still execute the warrantless arrest?**SUGGESTED ANSWER:**

In executing a warrantless arrest under Section 5, Rule 113, the Supreme Court held that the requirement that an offense has just been committed means that there must be a large measure of immediacy between the time the offense was committed and the time of the arrest (*Joey M. Pestilos v. Moreno Generoso*, G.R. No. 182601, November 10, 2014). If there was an appreciable lapse of time between the arrest and the commission of the crime, a warrant of arrest must be secured. In any case, personal knowledge by the arresting officer is an indispensable requirement to the validity of a valid warrantless arrest. The exact period varies on a case to case basis. In *People v. Gerente* (G.R. Nos. 95847-48, March 10, 1993), the Supreme Court ruled that a warrantless arrest was validly executed upon therein accused three (3) hours after the commission of the crime. In *People v. Tonog, Jr.* (G.R. No. 94533, February 4, 1992), the Supreme Court likewise upheld the valid warrantless arrest which was executed on the same day as the commission of the crime. However, in *People v. Del Rosario* (G.R. No. 127755, April 14, 1999, 365 Phil. 292), the Supreme Court held that the warrantless arrest effected a day after the commission of the crime is invalid. In *Go v. Court of Appeals* (G.R. No. 101837, February 11, 1992), Supreme Court also declared invalid a warrantless arrest effected 6 days after the commission of the crime.

B) What does "personal knowledge of the facts and circumstances that the person to be arrested committed it" mean?**SUGGESTED ANSWER:**

The phrase “personal knowledge of the facts and circumstances that the person to be arrested committed it” means that matters in relation to the supposed commission of the crime were within the actual perception, personal evaluation or observation of the police officer at the scene of the crime. Thus, even though the police officer has not seen someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime; however, the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of immediacy.

The arresting officer’s determination of probable cause under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure is based on his personal knowledge of facts or circumstances that the person sought to be arrested has committed the crime. These facts or circumstances pertain to actual facts or raw evidence, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest. The probable cause to justify warrantless arrest ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged, or an actual belief or reasonable ground of suspicion, based on actual facts (*Joey M. Pestilos v. Moreno Generoso*, G.R. No. 182601, November 10, 2014).

26. Give at least two instances when a peace officer or a private person may make a valid warrantless arrest. (2017 Bar Question)**SUGGESTED ANSWER:**

Under Section 5, Rule 113 of the Rules of Court, a peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

F. Bail (Rule 114)

- 27. 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? (2012 BAR QUESTION)**

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 the hospital. (*Paderanga vs. Court of Appeals*, G.R. No. No. 115407, August 28, 1995).

- 28. 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. (2014 BAR QUESTION)**

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 circumstance 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 no strong (*Sec. 13, Art. III, 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, 2015*).

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, March 17, 2010*).

- 29. 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 information 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 acquire 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. (2014 BAR QUESTION)**

A) If you are the Sandiganbayan, how will you rule on the motion?

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 (Sec. 1, Rule 114). 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 if he is not in 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.

B) If the Sandiganbayan denies the motion, what judicial remedy should the accused undertake?

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.

- 30. 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. (2013 BAR QUESTION)

SUGGESTED ANSWER:

YES. An application for bail is an appropriate remedy to secure provisional remedy of the 14-year old boy. Under the Rules, bail is a matter of right before or even after conviction before the MTC which has jurisdiction over the crime of malicious mischief (Sec. 4, Rule 114). Consequently, bail can be posted as a matter of right.

- 31. 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 P02 Romulus proceeded to the condo unit identified by Paz. PO 1 Remus knocked at the door and when a man opened the door, POI 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 P02 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. PO1 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. P02 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 (Anti-VAWC 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. (2015 BAR QUESTION)**

A) Did the court properly impose that bail condition?

SUGGESTED ANSWER:

No. The court did not properly impose the bail condition. The Rules of Criminal Procedure do not require the arraignment of the accused as a prerequisite to the conduct of the bail hearing. 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 petition for bail (*Serapio v. Sandiganbayan*, G.R. No. 149116, January 28, 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 released 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*, G.R. No. 129670, February 1, 2000).

B) 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. Should the motion to quash be granted?

SUGGESTED ANSWER:

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 VAWC Law*) and R.A. No. 7610 (*The Child Abuse Law*), considering that each criminal act is based on a different criminal impulse and intent.

In *Santiago v. Garchitorena* (G.R. No. 109266 December 2, 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*, G.R. No. 109266, December 2, 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) After his release from detention on bail, can Oasis Jung still question the validity of his arrest?

SUGGESTED ANSWER:

Yes. Oasis Jung can still question the validity of his arrest even after his release from detention on bail. Under Section 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.

32. When is bail a matter of judicial discretion? (2017 BAR QUESTION)

SUGGESTED ANSWER:

Bail is a matter of judicial discretion:

- 1) Before conviction by the RTC of an offense punishable by death, reclusion perpetua, or life imprisonment.
- 2) After conviction by the RTC of an offense not punishable by death, reclusion perpetua, or life imprisonment.

G. Arraignment and plea (Rule 116)

33. Juancho entered a plea of guilty when he was arraigned under an information for homicide. To determine the penalty to be imposed, the trial court allowed Juancho to present evidence proving any mitigating circumstance in his favor. Juancho was able to establish complete self-defense.

Convinced by the evidence adduced by Juancho, the trial court rendered a verdict of acquittal.

May the Prosecution assail the acquittal without infringing the constitutional guarantee against double jeopardy in favor of Juancho? Explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the Prosecution may assail the acquittal without infringing upon the constitutional guarantee against double jeopardy.

Under the Rules of Criminal Procedure, a requirement for a first jeopardy to attach is that there must have been a valid plea by the accused. Said rules also provide that when the accused pleads guilty but presents exculpatory evidence, his plea shall be deemed withdrawn and a plea of guilty shall be entered for him.

Here Juancho's plea of guilty was deemed withdrawn when he presented exculpatory evidence to the effect that he acted in self-defense. Hence his plea of guilty was deemed withdrawn and a plea of guilty should have been entered for him by the court, which however was not done.

Since there was no standing plea, a first jeopardy did not attach and thus the Prosecution may assail the acquittal without infringing upon Juancho's right against double jeopardy. (*People v. Balisacan*, 31 August 1966)

H. Motion to quash (Rule 117)

34. 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).

35. Which of the following distinguishes a motion to quash from a demurrer to evidence? (2013 BAR QUESTION)

- A) A motion to quash a complaint or information is filed before the prosecution rests its case.
- B) A motion to quash may be filed with or without leave of court, at the discretion of the accused.
- C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.
- D) The grounds for a motion to quash are also grounds for a demurrer to evidence.
- E) The above choices are all wrong.

SUGGESTED ANSWER:

(C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.

36. The information against Roger Alindogan for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code avers:

"That on or about 10:30 o'clock in the evening of February 1, 2010 at Barangay Matalaba, Imus, Cavite and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, wilfully, unlawfully and feloniously commit sexual abuse on his daughter, Rose Domingo, a minor of 11 years old, either by raping her or committing acts of lasciviousness on her, against her will and consent to her damage and prejudice.

ACTS CONTRARY TO LAW."

The accused wants to have the case dismissed because he believes that the charge is confusing and the information is defective. What ground or grounds can he raise in moving for the quashal of the information? Explain. (2016 Bar Question)

SUGGESTED ANSWER:

The accused may move to quash the information based on any of the following grounds: (a) That the facts charged do not constitute an offense; (b) That it does not conform substantially to the prescribed form; and (c) That more than one offense is charged except when a single punishment for various offenses is prescribed by law (Section 3 Rule 117, Rules of Criminal Procedure).

In *People v. dela Cruz* (G.R. Nos. 135554-56, June 21, 2002, 383 SCRA 410); the Supreme Court ruled that the phrase “either by raping her or committing acts of lasciviousness” does not constitute an offense since it does not cite which among the numerous sections or subsections of R.A. No. 7610 has been violated by accused-appellant. Moreover, it does not state the acts and omissions constituting the offense, or any special or aggravating circumstances attending the same, as required under the rules of criminal procedure. These are conclusions of law, and not facts. Thus, the information violated accused’s constitutional right to be informed of the nature and cause of the accusation against him and therefore should be quashed on the ground that the information charges acts that do not constitute an offense.

- 37. Boy Maton, a neighborhood tough guy, was arrested by a police officer on suspicion that he was keeping prohibited drugs in his clutch bag. When Boy Maton was searched immediately after the arrest, the officer found and recovered 10 sachets of shabu neatly tucked in the inner linings of the clutch bag. At the time of his arrest, Boy Maton was watching a basketball game being played in the town plaza, and he was cheering for his favorite team. He was subsequently charged with illegal possession of dangerous drugs, and he entered a plea of not guilty when he was arraigned.**

During the trial, Boy Maton moved for the dismissal of the information on the ground that the facts revealed that he had been illegally arrested. He further moved for the suppression of the evidence confiscated from him as being the consequence of the illegal arrest, hence, the fruit of the poisonous tree.

The trial court, in denying the motions of Boy Maton, explained that at the time the motions were filed Boy Maton had already waived the right to raise the issue of the legality of the arrest. The trial court observed that, pursuant to the Rules of Court, Boy Maton, as the accused, should have assailed the validity of the arrest before entering his plea to the information. Hence, the trial court opined that any adverse consequence of the alleged illegal arrest had also been equally waived.

Comment on the ruling of the trial court. (2017 BAR QUESTION)

SUGGESTED ANSWER:

The ruling of the court denying the motion for dismissal of the information on the ground of illegal arrest is proper.

Under the Rules of Criminal Procedure, the accused’s failure to file a motion to quash before plea is a waiver of the objection to lack of personal jurisdiction or of the objection to an illegal arrest. [S9 R117]

Here Boy Maton entered a plea without filing a motion to quash on the ground of lack of personal jurisdiction. Hence he is deemed to have waived the ground of illegal arrest which is subsumed under lack of personal jurisdiction.

However, the ruling denying the motion to suppress evidence is not correct.

The Supreme Court has held that a waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest. [*People v. Racho*, 3 Aug 2010]. A waiver of an illegal arrest is not a waiver of an illegal search. [*Villanueva v. People*, 17 Nov 2014, Sereno, C.J.] The Constitution provides that evidence seized in violation of the right against illegal search is inadmissible in evidence.

Hence the evidence seized was by virtue of an illegal search since the arrest was illegal. Hence such evidence may be suppressed.

I. Pre-trial (Rule 118)

38. **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.**

During the pre-trial, 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? (2008 BAR QUESTION)

SUGGESTED ANSWER:

No. The offer is not a judicial admission of guilt because it has not been reduced in writing or signed by the accused. The Rule on pre-trial in criminal cases (Rule 118, Sec. 2, Rules of Court) requires that all agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused.

A) During trial, the prosecution presented Artemon to testify on Ramil's offer and thereby establish an implied admission of guilt. Is Ramil's offer to settle admissible in evidence? (2008 BAR QUESTION)

SUGGESTED ANSWER:

No. The offer to settle not being made by the accused or with his participation is not admissible against him under the rule of *res inter alios acta*. No implied admission of guilt can be drawn from efforts to settle a criminal case out of court, where the accused had no participation in such negotiation (*People v. Godoy*, 250 SCRA 676 [1995]).

ALTERNATIVE ANSWER:

It has been held, however, that the offer to settle made by relatives of the accused is admissible as an implied admission of guilt. (*People v. Salvador*, 396 SCRA 298 [2003])

J. Trial (Rule 119)

39. **TRUE or FALSE. The accused in a criminal case has the right to avail of the various modes of discovery. (2009 BAR QUESTION)**

SUGGESTED 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 Manguerrans Risos*, 563 SCRA 499).

- 40. Maria was accused of libel. While Maria was on the witness stand, the prosecution asked her to write her name and to sign on a piece of paper, apparently to prove that she authored the libelous material. Maria objected as writing and signing her name would violate her right against self-incrimination. Was Maria's objection proper? (2013 BAR Question)**
- A) No, she can be cross examined just like any other witness and her sample signature may be taken to verify her alleged authorship of the libelous statements.**
 - B) No, her right against self-incrimination is waived as soon as she became a witness.**
 - C) No, this privilege may be invoked only by an ordinary witness and not by the accused when she opts to take the witness stand.**
 - D) The objection was improper under all of A, B, and C.**
 - E) The objection was proper as the right to self-incrimination is a fundamental right that affects liberty and is not waived simply because the accused is on the witness stand.**

SUGGESTED ANSWER:

(E) The objection was proper as the right to self-incrimination is a fundamental right that affects liberty and is not waived simply because the accused is on the witness stand.

- 41. 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? (2013 BAR QUESTION)**

SUGGESTED ANSWER:

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 bailable crime but has no means to post bail, or is charged with a non-bailable crime, or, is serving a term of imprisonment in any penal institution, it shall be his duty to do the following:

- 1) 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.
- 2) 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 any time thereafter the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to send 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 (Sec. 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 (*Sec. 9, Rule 119*) or to a speedy disposition of cases (*Sec. 16, Art. III, 1987 Constitution*).

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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

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's right to speedy trial (*Sec. 9, Rule 119; Tan v. People, G.R. No. 173637, April 21, 2009*).

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.

42. Should you now proceed posthaste to the presentation of defense evidence or consider some other remedy? Explain the remedial steps you propose to undertake. (2013 BAR QUESTION)

SUGGESTED ANSWER:

I will first file a motion for leave to file demurrer to evidence within five (5) days from the time the prosecution rested its case. If the same is granted, then I will file a demurrer to evidence within ten (10) days from notice on the ground of insufficiency of evidence of the prosecution (*Sec. 23, Rule 119*).

In *People v. De Guzman, G.R. No. 186498, March 26, 2010*, the Supreme Court held that in 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. The identity of the prohibited drug must be established with moral certainty. Apart from the showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. The corpus delicti should be identified with unwavering exactitude.

Similarly, in *People v. Sitco, G.R. No. 178202, May 14, 2010*, the High Court held that in prosecutions involving narcotics and other illegal substances, the substance itself constitute 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. Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification must be established with moral certainty and is a function of the rule of chain of custody. 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.

43. Enumerate the requisites of a "trial in absentia" and a "promulgation of judgment in absentia" (2010 BAR QUESTION)

SUGGESTED ANSWER:

The requisites of a valid trial in absentia are: (1) accused's arraignment; (2) his due notification of the trial; and (3) his unjustifiable failure to appear during trial (*Bernardo v. People*, G.R. No. 166980, April 4, 2007).

The requisites for a valid promulgation of judgment are:

- 1) A valid notice of promulgation of judgment,
- 2) Said notice was duly furnished to the accused, personally or thru counsel;
- 3) Accused failed to appear on the scheduled date of promulgation of judgment despite due notice;
- 4) Such judgment be recorded in the criminal docket; and
- 5) Copy of said judgment had been duly served upon the accused or his counsel

44. Distinguish the effects of the filing of a demurrer to the evidence in a criminal case and its filing in a civil case. (2007 BAR QUESTION)

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 prior 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 decided only on the basis of plaintiff's evidence on record.
- 45. Pedro, the principal witness in a criminal case, testified and completed his testimony on direct examination in 2015. Due to several postponements by the accused, grounded on his recurring illness, which were all granted by the judge, the cross-examination of Pedro was finally set on October 15, 2016. Before the said date, Pedro died. The accused moved to expunge Pedro's testimony on the ground that it violates his right of confrontation and the right to cross-examine the witness. The prosecution opposed the motion and asked that Pedro's testimony on direct examination be admitted as evidence. Is the motion meritorious? Explain. (2016 BAR QUESTION)**

SUGGESTED ANSWER:

The Motion is meritorious. The cross-examination of a witness is an absolute right, not a mere privilege, of the party against whom he is called. With regard to the accused, it is a right guaranteed by the fundamental law as part of due process. Article III, Sec. 14, par. (2), of the 1987 Constitution specifically mandates that "the accused shall enjoy the right to meet the witnesses face to face," and Rule 115, Sec. 1, par. (f), of the 2000 Rules of Criminal Procedure enjoins that in all criminal prosecutions the accused shall be entitled to confront and cross-examine the witnesses against him at the trial. Accordingly, the testimony of a witness given on direct examination should be stricken off the record where there was no adequate opportunity for cross-examination (*People v. Fernando Monje Rosario*, G.R. No. 146689, September 27, 2002).

In *People v. Manchetti* (G.R. No. L-48883, August 6, 1980), the Supreme Court also held that if a party is deprived of the opportunity of cross examination without fault on his part, as in the case of the illness and death of a witness after direct examination, he is entitled to have the direct testimony stricken from the records. Since the accused was deprived of an opportunity to cross examine the witness without fault on his part, the motion to expunge is meritorious.

ANOTHER SUGGESTED ANSWER:

The Motion is not meritorious. The right of a party to confront and cross-examine opposing witnesses in a judicial litigation is a personal one which may be waived, expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record. The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. The common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone (*People of the Philippines v. Adones Abatayao*, G.R. No. 139456, July 7, 2004). Under the Doctrine of incomplete testimony, the direct testimony of a witness who dies before conclusion of the cross-examination can be stricken only insofar as not covered by the cross-examination (*Curtice v. West*, 2 NYS 507, 50 Hun 47, affirmed 24 N.E. 1099, 121 N.Y. 696), and that a referee has no power to strike the examination of a witness on his failure to appear for cross-examination where a good excuse is given (*People v. Hon. Alberto V. Seneris*, G.R. No. L-48883 August 6, 1980). At any rate, the accused may be deemed to have waived his right to confront and cross-examine the witness when he asked the postponements of the hearing for several times; therefore, the direct testimony of a witness who died before the conclusion of the cross-examination should not be expunged from the records.

K. Judgment (Rule 120)

L. New trial or reconsideration (Rule 121)

46. 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. (2015 BAR QUESTION)

A) What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial?

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 a subject of an appeal under Section 1, Rule 41 of the Rules of Court.

B) In what court and within what period should a remedy be availed of?

SUGGESTED ANSWER:

Following the principle of judicial hierarchy, the petition for certiorari should be filed before the Court of Appeals within sixty (60) days from receipt of the copy of the order of denial of the public prosecutor's motion for reconsideration, or on October 20, 2015.

C) Who should pursue the remedy?

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 Presidential Decree 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 doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases (*Cariño v. de Castro*, G.R. No. 176084, April 30, 2008).

M. Appeal (Rules 122, 123, 124 and 125)

N. Search and seizure (Rule 126)

47. 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. (2012 BAR QUESTION)

- A) Where can he file an application for search warrant?
- B) What documents should he prepare in his application for search warrant?
- C) Describe the procedure that should be taken by the judge on the application.
- D) Suppose the judge issues the search warrant worded in this way:

"PEOPLE OF THE PHILIPPINES Plaintiff

-versus-

Ho Pia and Sio Pao, Accused.

Criminal Case No. 007 for Violation of R.A. 9165

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."

Cite/enumerate the defects, if any, of the search warrant.

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?

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.

SUGGESTED ANSWERS:

A) 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:

A) 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. 99-1009-SC, January 25, 2000).

B) He should prepare a petition for issuance of a search warrant and attach therein sworn statements and affidavits.

C) 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 or 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) (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* (*Alhaves vs. CFI of Tayabas*, 64 Phil. 33). There is no showing that the exception applies.

E) 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 for ten (10) days from its date. Thereafter, it shall be void. (Rule 126, Sec.10, Revised Rules of Court).

F) 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 custodial legis.

48. **A search warrant was issued for the purpose of looking for unlicensed firearms in the house of Assasin, 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 nipa hut thirty (30) meters away from the house of Assasin, 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 Assasin with illegal possession of marijuana. Assasin objected to the introduction of such evidence claiming that it was illegally seized. Is the objection of Assasin valid? (2014 BAR QUESTION)**

SUGGESTED ANSWER:

The objection is valid. The search warrant specifically designates or describes the house as the place to be searched. Incidentally, the marijuana was seized by the 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 Miclat v. People of the Philippines*, G.R. No. 176077, *August 31, 2011*).

49. **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 was swallowed by Lorenzo. Suppose the PGH agreed to, and did perform the surgery, is the package of shabu admissible in evidence? Explain. (2010 BAR QUESTION)**

SUGGESTED ANSWER:

Yes, it is admissible in evidence because the constitutional right against self-incrimination is addressed only to extracting admission of guilt from the lips of the suspect where otherwise no incriminating evidence exists. In the past, the 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 (*See Agustin v. Court of Appeals*, G.R. No. 162571, *June 15, 2005*).

50. **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? (2008 BAR QUESTION)**

SUGGESTED ANSWER:

The motion to suppress filed by the accused should be granted. The search warrant violates the constitutional and statutory requirement that it should particularly describe the person or things to be seized (Sec. 2, Art. III, Constitution; Sec. 2, Rule 126, Revised Rules of Criminal Procedure). The “plain view” doctrine cannot be invoked because the marijuana leaves were wrapped in newsprint. Besides the marijuana leaves are not the subject of the search warrant. 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 they could not have been seized in plain view (*Cf. People vs. Musa*, GR No. 96177, January 27, 1997). The confiscation of the marijuana leaves must be upheld, (*People v. Salunguit Roberto y Ko*, 356 SCRA 683 [2001]), hence rendering the same inadmissible in evidence against the accused.

51. In the course of serving a search warrant, the police finds 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. (2007 BAR QUESTION)

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.” This is 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 is 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.

O. Provisional remedies in criminal cases (Rule 127)**P. Revised Guidelines on Continuous Trial (A.M. No. 15-06-10-SC)****Q. The Rule on Cybercrime Warrants (A.M. No. 17-11-03-SC)****R.R.A. 3019; Pre-Suspension Hearing (2012 BAR QUESTION)**

52. 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. (2012 BAR QUESTION)

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 against whom any criminal prosecution under a valid information 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 Anti-Graft Law (Deloso vs. Sandiganbayan, G.R. No. 86899, May 15, 1989); (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, 1994). 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 RA 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 13(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.

VIII. EVIDENCE

A. General concepts

1. Proof vs. evidence
2. Burden of proof vs. burden of evidence
3. Equipoise rule

B. Admissibility

1. Requisites (Rule 128)
2. Exclusionary rules

1. 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 P3,000.00, 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 objected to the admissibility of the documents for being the “fruit of the poisoned tree.” Resolve the objection with reasons. (2009 BAR QUESTION)

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.

2. 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. (2010 BAR QUESTION)

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 is a fruit of the poisonous tree because the same is used in Domingo's favor.

- 3. 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? (2010 BAR QUESTION)**

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.

3. Judicial notice and judicial admissions (Rule 129)

C. Object (Real) Evidence (Rule 130, A)

- 4. TRUE or FALSE. Vallejo standard refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence. (2009 BAR QUESTION)**

SUGGESTED ANSWER:

TRUE. In *People v. Vallejo*, 382 SCRA192 (2002), it was held that in assessing the probative value of DNA evidence, courts should consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.

D. Documentary Evidence (Rule 130, B)

- 5. 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 (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 their 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. (2014 BAR QUESTION)

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). Under Section 36, Rules 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 surround 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 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 v. Quick*, 323 S.W. 2d 386 [Mo. 1959]; *Buck v. State*, 138 P. 2d 115 [Okla. 1943]; *Herrera*, 1999).

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 the 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.

1. Definition

2. Best Evidence rule

6. **QUESTION:** Police officers arrested Mr. Druggie in a buy-bust operation and confiscated from him 10 sachets of shabu and several marked genuine peso bills worth ₱5,000.00 used as the buy-bust money during the buy-bust operation.

At the trial of Mr. Druggie for violation of R.A. No. 9165 (Comprehensive Dangerous Drug Act of 2002), the Prosecution offered in evidence, among others, photocopies of the confiscated marked genuine peso bills. The photocopies were offered to prove that Mr. Druggie had engaged at the time of his arrest in the illegal selling of dangerous drugs.

Invoking the Best Evidence Rule, Atty. Maya Bang, the defense counsel, objected to the admissibility of the photocopies of the confiscated marked genuine peso bills.

Should the trial judge sustain the objection of the defense counsel? Briefly explain your answer. (2017 BAR QUESTION)

SUGGESTED ANSWER:

No, the trial judge should not sustain the objection that invokes the best evidence rule.

The Supreme Court has held that the best evidence rule applies only to documentary evidence, not to object or testimonial evidence.

Here the marked money is object not documentary evidence since it is being offered to prove not its contents but its existence and use in the buy-bust operation. [People v. Tandoy, 192 SCRA 28 (1990)]

3. Secondary evidence

4. Parol Evidence rule

7. Parole evidence is an: (2014 BAR QUESTION)
- A) agreement not included in the document
 - B) oral agreement not included in the document
 - C) agreement included in the document
 - D) oral agreement included in the document

SUGGESTED ANSWER:

(B) oral agreement not included in the document. Under Section 9 of Rule 130 of the Rules of Court, when the terms of an agreement are reduced in writing, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents of the said written agreement (*Financial Building Corporation v. Rudlin International Corporation*, G.R. No. 164186, October 4, 2010)

5. Interpretation of documents

E. Testimonial Evidence (Rule 130)

1. Qualification of witnesses

8. 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? (2013 BAR QUESTION)

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 (Sec. 22, Rule 130). 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 descendants. Clearly, Nenita is not the offended party and her sister is not her direct ascendant or descendant for her to fall within the exception.

B) May the testimony of Dr. Carlos, Walter's psychiatrist, be allowed over Walter's objection? (2013 BAR QUESTION)

SUGGESTED ANSWER:

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, surgery or obstetrics. It does not include a Psychiatrist. Moreover, 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? (2013 BAR QUESTION)

SUGGESTED ANSWER:

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) Rule 130).

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.

9. 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, papatayin u ni Mabini. Mtgaln nyang plano i2. Mg ingat u bka ma tsugi k." (2010 BAR QUESTION)

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.

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?

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 circumstance of whether or not premeditation exists.

D) Suppose that shortly before he expired, Emilio was able to send a text message to his wife Graciana reading "Nasaksak ako. Dna me makahinga. Si Mabini ang may gawa ni2." Is this text message admissible as a dying declaration? Explain.

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 v. 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.

ALTERNATIVE ANSWER:

No, the text message is not admissible as a dying declaration because it lacks indication that the victim was under consciousness of an impending death. The statement "D na me makahinga" is still equivocal in the text message sent that does not imply consciousness of forth-coming death.

10. TRUE or FALSE. 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. (2007 BAR QUESTION)

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.

11. **QUESTION:** 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. (2015 BAR QUESTIONS)

A) Is BB's counsel correct?

SUGGESTED ANSWER:

No. BB's counsel is not correct. Every child is presumed qualified to be a witness (Sec. 6, Rule on Examination of Child Witness [RECW]). 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 the RECW and the Revised Rules on Criminal Procedure (*People v. Santos*, G.R. No. 171452, October 17, 2008).

B) 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. Was the action taken by the judge proper?

SUGGESTED ANSWER:

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. No. 005-07-SC or the Rules on Examination of Child Witness).

C) 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. Should the court grant the demurrer?

SUGGESTED ANSWER:

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 impossible penalty but may not absolve him from criminal liability.

- 12. John filed a petition for declaration of nullity of his marriage to Anne on the ground of psychological incapacity under Article 36 of the Family Code. He obtained a copy of the confidential psychiatric evaluation report on his wife from the secretary of the psychiatrist. Can he testify on the said report without offending the rule on privileged communication? Explain. (2016 BAR QUESTION)**

SUGGESTED ANSWER:

Yes. John can testify. Under the rule on privileged communication, the husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage 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 (Rule 130, Sec. 24 (a), Rules of Court). In this case, Anne cannot prevent John from testifying against her since the petition for declaration of nullity is a civil case filed by one spouse against the other; hence, the rule on privileged communication between the spouses does not apply, John could testify on the confidential psychiatric evaluation report of his wife that he obtained from the secretary of the psychiatrist, without offending the rule on privileged communication.

ALTERNATIVE ANSWER:

No. John cannot testify. A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient (Section 24 (c), Rule 130, Rules on Evidence). Relative thereto, the Rule pertains only to the Physician authorized to practice medicine, surgery or obstetrics in a civil case who will testify without the consent of the patient. The husband can testify, therefore, on the copy of the psychiatric evaluation report on his wife that he obtained from the secretary of the psychiatrist. After all, the husband can testify because the marital disqualification rule does not apply in a civil case filed by one against the other (Section 22, Rule 130, Rules on Evidence).

- 13. Immediately before he died of gunshot wounds to his chest, Venancio told the attending physician, in a very feeble voice, that it was Arnulfo, his co-worker, who had shot him. Venancio added that it was also Arnulfo who had shot Vicente, the man whose cadaver was lying on the bed beside him.**
- 14. In the prosecution of Arnulfo for the criminal killing of Venancio and Vicente, are all the statements of Venancio admissible as dying declarations? Explain your answer. (2017 BAR QUESTION)**

SUGGESTED ANSWER:

No, not all the statements of Venancio are admissible as dying declarations.

Under the Rules on Evidence, a dying declaration is admissible as an exception to the hearsay rule provided that such declaration relates to the cause of the declarant's death.

Venancio's statement that it was Arnulfo who shot him is admissible as a dying declaration. The same related to Venancio's own demise. It may be inferred that Venancio had consciousness of his impending death since he suffered gunshot wounds to his chest which would necessarily be mortal wounds.

However, Venancio's statement that it was Arnulfo who shot Vicente is not admissible as a dying declaration since it did not relate to the cause of the declarant's death but to the death of another person.

2. Testimonial privilege

15. 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.

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. (2010 BAR QUESTION)

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.

16. 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. (2008 BAR QUESTION)

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.

17. **A tugboat owned by Speedy Port Service, Inc. (SPS) sank in Manila Bay while helping tow another vessel, drowning five (5) of the crew 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 the 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.**

Plaintiff's counsel sent written interrogatories to Ely, asking whether statements of witnesses were obtained; if written, copies were to be furnished; if oral, the exact provisions 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. (2008 BAR QUESTION)

SUGGESTED ANSWER:

Yes, the contention of counsel for SPS is tenable considering that he was acting in his professional capacity in bringing about the statement he obtained from witnesses and the memoranda he made. The notes, memoranda, and writings made by counsel in pursuance of his professional duty, form part of his private and confidential files in the cases handled by him; hence privileged (*Air Philippines Corp. v. Pennswell, Inc.*, 540 SCRA 215 [2007]).

ALTERNATIVE ANSWER:

The oral statements secured by the lawyer from the witnesses may not be the subject of discovery procedure not because they are privileged communication but because of the danger of untruthfulness and inaccuracy. The account of the lawyer is likewise hearsay evidence. Besides, plaintiff's counsel may obtain transcripts of the testimonies of the four survivors before the maritime board inquiry.

On the other hand, under Rule 23, the lawyer may be examined regarding the existence of the written statements of the survivors, including the description, nature, and custody thereof, not being privileged communication. (*Hickman v. Taylor*, 329 US 495[1947]).

3. Admissions and confessions

18. **QUESTION: A vicarious admission is considered an exception to the hearsay rule. It, however, does not cover: (2014 BAR QUESTION)**
- A) admission by a conspirator
 - B) admission by a privy
 - C) judicial admission
 - D) adoptive admission

SUGGESTED ANSWER:

(C) Judicial admission. Judicial admission is not covered by the Rule on vicarious admissions considered as exceptions to the Res Inter Alios Acta Rule. Under the Res Inter Alios Acta Rule, the rights of a party cannot be prejudiced by the act, declaration or omission of another (Section 38, Rule 130, Rules of Court). It is not only rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers, and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him (5 Moran, p. 237 1980 ed.). The exceptions are admission by a co-partner or agent (Section 29); admission by conspirator (Section 30); admission by

privies; (Section 31); which are collectively classified by Senator Salonga as “vicarious admissions”. (*Vide Gilbert, Sec. 332; Remedial Law V, Herrera, page 398*).

- 19. QUESTION: Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it. (2009 BAR QUESTION)**

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 v. 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.

4. Previous conduct as evidence

5. Testimonial knowledge

6. Hearsay and exceptions to the hearsay rule

- 20. 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 B ask for a reconsideration of the ruling? Why? (2012 BAR QUESTION)**

SUGGESTED ANSWER:

Yes, Counsel B may ask the Judge to specify the grounds relied upon for sustaining the objection and thereafter move for its reconsideration thereof. (Rule 132, Sec.38, Rules of Court).

- 21. While passing by a dark uninhabited part of their barangay, PO2 Asintado observed shadows and heard screams from a distance. PO2 Asintado hid himself behind the bushes and saw a man beating a woman whom he recognized as his neighbour, Kulasa. When Kulasa was already in agony the man stabbed her and she fell on the ground. The man hurriedly left thereafter. PO2 Asintado immediately went to Kulasa's rescue. Kulasa who was then in a state of hysteria, kept mentioning to PO2 Asintado "Si Rene, gusto akong patayin! Sinaksak niya ako!" When PO2 Asintado was about to carry her, Kulasa refused and said "Kaya ko. Mababaw lang 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 in the right way. God bless us all.

(Sgd.) Rene"

The trial court convicted Rene of homicide on the basis of PO2 Asintado's testimony, Kulasa's statements, and Rene's statement to the press. On appeal, Rene raises the following errors:

- A) The trial court erred in giving weight to PO2 Asintado's testimony, as the latter did not have 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. (2014 BAR QUESTION)

SUGGESTED ANSWER:

The trial court did not err in giving weight to PO2 Asintado's testimony.

While a witness can only testify as to those facts which he has personal knowledge of, 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*. In the case, the statements made by PO2 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 PO2 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*, 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.

B) The trial court erred in holding that Rene's statement to the press was a confession which, standing alone, would be sufficient to warrant a conviction. Resolve. (2014 BAR QUESTION)

SUGGESTED ANSWER:

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).

22. **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. (2009 BAR QUESTION)**

SUGGESTED ANSWER:

Objection overruled. The disclosure received by Domingo from 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. 306[1996]; *People v. Malibiran, et al.*, G.R. No. 178301, April 24, 2009)

23. **What is the hearsay rule? (2007 BAR QUESTION)**

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).

24. In relation to the hearsay rule, what do the following rules of evidence have in common? (2007 BAR QUESTION)
- The rule on statements that are part of the res gestae;
 - The rule on dying declarations;
 - The rule on admissions against interest.

SUGGESTED ANSWER:

The rules on the evidence specified in the question asked, have in common the following:

- The evidence although hearsay, are allowed by the Rules as exceptions to the hearsay rule;
- The facts involved are admissible in evidence for reasons of necessity and trustworthiness; and
- The witness is testifying on facts which are not of his own knowledge or derived from his own perception.

7. Opinion rule

8. Character evidence

25. Character evidence is admissible _____. (2013 BAR QUESTION)
- in criminal cases – the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged
 - in criminal cases – the prosecution may prove the bad moral character of the accused to prove his criminal predisposition
 - in criminal cases under certain situations, but not to prove the bad moral character of the offended party
 - when it is evidence of the good character of a witness even prior to his impeachment as witness
 - In none of the given situations above.

SUGGESTED ANSWER:

(A) in criminal cases – the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged

26. 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. (2010 BAR QUESTION)

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, and Rules of Court).

F. Burden of proof and presumptions (Rule 131)

G.Presentation of evidence (Rule 132)

- 1. Examination of witnesses**
- 2. Authentication and proof of documents**
- 3. Offer and objection**

27. TRUE or FALSE. The One-Day Examination of Witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial. (2009 BAR QUESTION)

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.

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.

28. G files a complaint for recovery of possession and damage 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.

29. What is a tender of excluded evidence? (2017 BAR QUESTION)

SUGGESTED ANSWER:

Tender of excluded evidence is the remedy of a party when the evidence he has offered is excluded by the court.

If documentary or object evidence is excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. (S40 R132).

30. In an attempt to discredit and impeach a Prosecution witness in a homicide case, the defense counsel called to the stand a person who had been the boyhood friend and next-door neighbor of the Prosecution witness for 30 years. One question that the defense counsel asked of the impeaching witness was: "Can you tell this Honorable Court about the general reputation of the prosecution witness in your community for aggressiveness and violent tendencies?"

Would you, as the trial prosecutor, interpose your objection to the question of the defense counsel? Explain your answer.

SUGGESTED ANSWER:

Yes, I as the trial prosecutor, would interpose my objection to defense counsel's question on the ground of improper impeachment.

Under the Law on Evidence, an adverse party's witness may be properly impeached by reputation evidence provided that it is to the effect that the witness's general reputation for honesty, truth, or integrity was bad. [S11 R132] The reputation must only be on character for truthfulness or untruthfulness. [Cordial v. People, 166 SCRA 17]

Here the evidence is not on the Prosecution witness's general reputation for honesty, truth, or integrity but on his aggressive and violent tendencies. The evidence had nothing to do with the witness's character for truthfulness or untruthfulness. Hence the impeachment was improper.

H. Judicial Affidavit Rule (A.M. No. 12-8-8-SC)

31. 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 imposable penalty on the offense with which his client was charged. (2015 BAR QUESTION)

A) Is Pedro's lawyer correct in objecting to the judicial affidavit of Mario?

SUGGESTED ANSWER:

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 imposable penalty does not exceed six years (Section 9 (a) (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 cell phone 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 imposable penalties for crimes or offenses charged are not included in the 2015 BAR Examination Syllabus in Remedial Law.]

B) Is Pedro's lawyer correct in objecting to the judicial affidavit of Juan?**SUGGESTED ANSWER:**

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 (Section 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) 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. Is the motion for reconsideration meritorious?

SUGGESTED ANSWER:

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 (Sections 6 and 8, A.M. No. 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.

32. What are the contents of a judicial affidavit? (2016 BAR QUESTION)**SUGGESTED ANSWER:**

A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following: (a) The name, age, residence or business address, and occupation of the witness; (b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held; (c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury; (d) Questions asked of the witness and his corresponding answers, consecutively numbered, that: (1) Show the circumstances under which the witness acquired the facts upon which he testifies; (2) Elicit from him those facts which are relevant to the issues that the case presents; and (3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court; (e) The signature of the witness over his printed name; and (f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same (Section 3, A.M. No. 12-8-8 SC, Judicial Affidavit Rule).

I. Weight and sufficiency of evidence (Rule 133)

33. What elements should concur for circumstantial evidence to be sufficient for conviction? (2017 BAR QUESTION)

SUGGESTED ANSWER:

The following elements should concur for circumstantial evidence to be sufficient for conviction:

- a) There is more than one circumstance.
- b) The facts from which the inferences are derived are proven.
- c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (Section 4, Rule 133)

J. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)

34. 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.

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? (2010 BAR QUESTION)

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.

35. TRUE or FALSE. An electronic document is 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. (2009 BAR QUESTION)

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.

K. Chain of Custody

36. Discuss the "chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (2012 BAR QUESTION)

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 vs. 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 noncompliance may be said to fall within the scope of the proviso. (People vs. 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 R.A. 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). (N.B.: The case of *People v. Romy Lim*, G.R. No. 231989, 4 September 2018 be considered)

IX. WRIT OF *AMPARO* (A.M. No. 07-9-12-SC)

37. 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 expose, 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. (2010 BAR Examination)

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. v. Tagitis, G.R. No. 182498, Dec. 3, 2009).

38. What is the writ of amparo? How is it distinguished from the writ of habeas corpus? (2009 BAR QUESTION)

SUGGESTED ANSWER:

The petition for 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.

The writ of amparo differs from a writ of habeas corpus in that the latter writ is availed of as a remedy against cases of unlawful confinement or detention by which any person is deprived of his liberty, or cases by which rightful custody of any person is withheld from another who is lawfully entitled thereto (Sec 1, Rule 102, Rules of Court).

39. 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. (2015 BAR QUESTION)

A) Is their defense tenable?

SUGGESTED ANSWER:

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 (Section 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*, G.R. No. 180906, October 7, 2008).

B) 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. Are respondents correct in raising their defense?

SUGGESTED ANSWER:

Yes. The respondents are correct in raising the defense. Under Section 2(c) 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) Mayumi later filed separate criminal and civil actions against Mapusok. How will the cases affect the amparo petition she earlier filed?

SUGGESTED ANSWER:

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).

X. WRIT OF HABEAS DATA (A.M. No. 08-1-16-SC)

40. 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. (2010 BAR QUESTION)

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).

XI. RULES OF PROCEDURE ON ENVIRONMENTAL CASES (A.M. No. 09-6-8-SC)

A. Temporary Environmental Protection Order (TEPO)

B. Writ of continuing mandamus

C. Writ of Kalikasan

41. The officers of "Ang Kapaligiran ay Alagaan, Inc." engaged your services to file an action against ABC Mining Corporation which is engaged in mining operations in Sta. Cruz, Marinduque. ABC used highly toxic chemicals in extracting gold. ABC's toxic mine tailings were accidentally released from its storage dams and were discharged into the rivers of said town. The mine tailings found their way to Calancan Bay and allegedly to the waters of nearby Romblon and Quezon. The damage to the crops and loss of earnings were estimated at P1 Billion. Damage to the environment is estimated at P1 Billion. As lawyer for the organization, you are requested to explain the advantages derived from a petition for writ of kalikasan before the Supreme Court over a complaint for damages before the RTC of Marinduque or vice-versa. What action will you recommend? Explain. (2016 BAR QUESTION)

SUGGESTED ANSWER:

The following reliefs may be included under the writ of kalikasan: (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage; (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment; (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court; (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioner (Sec. 15, Rule 7. Ibid).

The rules also provide interim reliefs in favor of the petitioner upon filing a verified motion, namely: (i) Ocular inspection; or (ii) Production or inspection of documents or things (Sec. 12, Rule 7, A.M. No. 09-6-8-SC also known as Rules of Procedure for Environmental Cases).

Additionally, the petition for Writ of Kalikasan is more advantageous compared to a complaint for damages before the RTC because it may be filed directly with the Supreme Court or with any of the stations of the Court of Appeals. Unlike a complaint for damages before the RTC which can only be filed by a real-party-in-interest as defined in Rule 3(2) of the Rules of Court, the rule on locus standi is relaxed in petitions for Writ of Kalikasan which allows the petition to be filed by parties as a citizen suit. In addition, any of the following may file a petition for Writ of Kalikasan: (a) natural or juridical person; (b) entity authorized by law; or (c) POs, NGOs or any public interest group accredited by or registered with any government agency on behalf of persons whose constitutional right to a balanced and healthful ecology is violated (Sec. 1, Rule 7, A.M. No. 09-6-8-SC). Besides, the petition for Writ of Kalikasan is exempted from the payment of docket fees.

From the foregoing, it is clear that filing a petition for Writ of Kalikasan would be the best remedy to address all the environmental problems caused by the release of the toxic waste to the waters of Romblon and Quezon without the burden of paying docket fees. After all, the filing of a petition for the issuance of the Writ of Kalikasan shall not preclude the filing of separate civil, criminal or administrative actions; thus, the organization can later file a complaint for damages with the Regional Trial Court, should they desire to do so. At any rate, the rules provide that judgment must be rendered within sixty (60) days from the time the petition is submitted for decision which expedites the proceedings significantly considering the urgency of the situation in the instant case. As lawyer for the organization I would recommend, therefore, the filing of a petition for a Writ of Kalikasan with the Supreme Court.

D. Others

1. Alternative Dispute Resolution

42. Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (2012 BAR QUESTION)

SUGGESTED ANSWER:

The three stages of diversion are Court Annexed Mediation (CAM), Judicial Dispute Resolution, 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-conciliator-early neutral evaluator. The third case is during appeal, where covered cases are referred to ACM.

2. A.M. No. 09-6-8-SC; Precautionary Principle (2012)

43. What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (2012 BAR QUESTION)

SUGGESTED ANSWER:

Precautionary principles 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 Environment Cases).

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FREQUENTLY ASKED TOPICS (2007-2017)

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SPECIAL PROCEEDINGS	Settlement of estate of deceased persons	Allowance of disallowance of wills (Rule 76)			3

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CIVIL PROCEDURE	Modes of discovery	Production or inspection of documents or things (Rule 27)			2
CIVIL PROCEDURE	Modes of discovery	Refusal to comply with modes of discovery (Rule 29)			2
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CIVIL PROCEDURE	Post-judgment remedies	Appeals	Modes of appeal from judgments or final orders of various courts (Rules 40, 41, 42, 43, and 45)		2
CIVIL PROCEDURE	Post-judgment remedies	Appeals	Modes of appeal from judgments or final orders of various courts (Rules 40, 41, 42, 43, and 45)	Period of appeal	2
CIVIL PROCEDURE	Post-judgment remedies	Annulments of judgment (Rule 47)			2
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EVIDENCE	Terstimonial Evidence (Rule 130, C)	Admissions and confessions			2
EVIDENCE	Terstimonial Evidence (Rule 130, C)	Character evidence			2
EVIDENCE	Presentation of evidence (Rule 132)	Examination of witnesses			2
EVIDENCE	Judicial Affidavit Rule (A.M. No. 12-8-8-SC)				2