
Q & A BAR 2000-2015

• SUGGESTED ANSWERS TO BAR EXAMINATION QUESTIONS •

CIVIL LAW -Arranged by Topic-

Sources:

THE UP LAW COMPLEX (1997-2007, 2009, 2010)
THE UP BAR REVIEW INSTITUTE (2012, 2013, 2014, 2015)
PHILIPPINE ASSOCIATION OF LAW SCHOOLS (2007, 2008)

Edited and Arranged by:

“Piadina III”

(in collaboration with “Panacea”, “Probatio Viva” & βΣΔ-Iligan Chapter)
MINDANAO STATE UNIVERSITY- COLLEGE OF LAW

DISCLAIMER:

EXCEPT FOR SOME OF THE CLASSIFICATION OF THE TOPICS, NO PART OF THIS MATERIAL BELONGS TO (OR HAS BEEN SUPPLIED PERSONALLY BY) THE EDITOR AND/OR THE COMPILERS. ALL THE ANSWERS TO THE BAR QUESTIONS WERE STRICTLY DERIVED FROM THE SOURCES CITED.

AS THE RE-UPDATING OF THE ORIGINAL BAR Q & A (ARRANGED BY TOPIC) IS QUITE A TEDIOUS TASK, THE USER MAY FIND THIS MATERIAL FRAUGHT WITH MANY TYPOGRAPHICAL ERROR. ALSO, SOME QUESTIONS MAY BE IMPROPERLY CLASSIFIED. THE EDITOR, THEREFORE, SEEKS THE KIND INDULGENCE OF THE USER.

FURTHER, THE EDITOR IS LIKEWISE NOT RESPONSIBLE FOR THE MISAPPLICATION OR ABUSE OF THIS MATERIAL. NOR DOES THE EDITOR TAKE RESPONSIBILITY FOR ANY DAMAGE RESULTING FROM ITS USE OR MISUSE.

FINALLY, WHILE IT IS HOPED THAT THIS MATERIAL WILL BENEFIT LAW STUDENTS AND BAR REVIEWEES, USING IT WITHOUT AN EXTENSIVE STUDY AND MASTERY OF THE SUBJECT MATTER IS HIGHLY DISCOURAGED. INDEED, THERE CAN NEVER BE ANY SUBSTITUTE FOR READING THE TEXTBOOKS.

A PERSONAL NOTE FROM THE EDITOR

Dearest Fellow Bar Warriors,

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

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

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

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

- Atty. MSLD -

TABLE OF CONTENTS¹

GENERAL PRINCIPLES

Equity follows the Law (2003).....	10
Human Relations; Abuse of Right (2012).....	10
Human Relations; Waiver of Rights (2004).....	10
Human Relations; Waiver of Rights (2014).....	10

CONFLICTS OF LAWS

Applicable Laws; Arts 15, 16, 17 (2002).....	11
Applicable Laws; Laws Governing Marriages (2003).....	12
Applicable Laws; Succession; Intestate & Testamentary (2001).....	12
Domiciliary theory vs. Nationality Theory (2004).....	12
Nationality Theory (2004).....	13
Nationality Principle (2009).....	13
Nationality Principle; Change of Name not Covered (2009).....	13
Lex Rei Sitae (2007).....	14
Naturalization; Effect of Marriage of an Alien Woman to a Filipino (2003).....	14
Jurisdiction over Conflict of Laws cases (2010).....	14
Torts Involving Conflicts of Laws; Prescriptive Period (2004).....	15
Processual Presumption (2009).....	15

PERSONS

Capacity: Juridical Capacity (2008).....	15
Natural Persons; Validity of Donations to an Unborn Child (2012).....	15
Death; Effects; Simultaneous Death (2000).....	16
Civil Register; Change of Name; Under RA 9048 (2006).....	16
Civil Register; Correction of Entries; Clerical Error Act (2008).....	16
Presumptive Death (2016).....	17

FAMILY RELATIONS

Family Code; Retroactive Application; Vested Rights (2000).....	17
Marriage; Requisites; Marriage License (2002).....	17
Marriage; Requisites (2008).....	18
Marriage; Divorce Decree Obtained by Alien Spouse; Effect (2006).....	18
Marriage; Divorce Decrees Obtained by Alien Spouse [former Filipino] (2009).....	18
Marriage; Divorce Decree Obtained by Alien Spouse; Effect (2010).....	19
Marriage; Divorce Decree Obtained by Former-Filipino Spouse (2012).....	19
Marriage; Divorce Decree; Requirement for Re-marriage of a Former Filipino Spouse (2014).....	19
Marriage; Void Marriages (2004).....	20
Marriage; Void Marriages (2006).....	20
Marriage; Void Marriages; Status of Children (2009).....	21
Marriage; Void Marriages; Status of Children (2010).....	21

¹ "GIVE CREDIT WHEN IT'S DUE."

The arrangement and classification of concepts in this work was inspired by and heavily adopted from the Original Compilers: Atty. Janette Laggui-Icao and Atty. Alex Andrew P. Icao (2005 Edition Updated by Romualdo L. Señeris II, LLB. in April 19, 2007; Further re-updated by alias "*Dondee the Retaker 2007*"—all of SILIMAN UNIVERSITY COLLEGE OF LAW; recently re-updated by alias "Rollan, Faith Chareen —Pet2xll D. Salise, Hector Christopher —Jay-Arhll Jr. M."—all of University of San Jose-Recoletos School of Law.

Marriage; Void Marriages; By Reason of Public Policy (2008).....	21
Marriage; Void Marriages; By Reason of Public Policy (2007).....	21
Marriage; Subsequent Marriage (2008).....	21
Marriage; Annulment; Grounds (2007).....	22
Marriage; Annulment; Grounds (2009).....	22
Marriage; Declaration of Nullity; Right to Support <i>Pendente Lite</i> (2010).....	22
Marriage; Declaration of Nullity; Psychological Incapacity (2002).....	23
Marriage; Declaration of Nullity; Psychological Incapacity (2012).....	23
Marriage; Declaration of Nullity; Psychological Incapacity (2013).....	23
Marriage; Declaration of Nullity; Psychological Incapacity (2014).....	24
Marriage; Declaration of Nullity; Psychological Incapacity (2015).....	24
Marriage; Declaration of Nullity; Who May File (2012).....	25
Marriage; Declaration of Nullity; Issuance of Decree After Liquidation (2014).....	25
Marriage; Grounds; Declaration of Nullity: Annulment: Legal Separation: Separation of Property (2003).....	26
Marriage; Legal Separation; Declaration of Nullity (2002).....	26
Marriage; Legal Separation; Mutual guilt (2006).....	27
Marriage; Legal Separation; Condonation (2012).....	27
Property Relations; Absolute Community of Property (2016).....	27
Property Relations; Conjugal Partnership of Gains (2012).....	28
Property Relations; Conjugal Partnership of Gains (2005).....	28
Property Relations; Unions without Marriage (2012).....	28
Property Relations; Unions without Marriage (2015).....	29
Property Relations; Adulterous Relationship (2009).....	29
Property Relations; Marriages Declared Void Ab Initio (2010).....	29
Family Home; Beneficiary (2014).....	30
Property Relations; Marriages Declared Void Ab Initio (2012).....	30
Property Relations; Void Marriages (2009).....	31
Paternity & Filiation (2004).....	31
Paternity & Filiation (2005).....	31
Paternity & Filiation (2006).....	32
Paternity & Filiation (2008).....	32
Paternity & Filiation (2008).....	32
Paternity & Filiation (2008).....	33
Paternity & Filiation (2009).....	33
Paternity & Filiation (2009).....	33
Paternity & Filiation ((2009).....	34
Paternity & Filiation (2010).....	34
Paternity & Filiation (2016).....	34
Adoption; Qualification of Adopter (2005).....	34
Adoption; Qualification of Adopter; Applicable Law (2001).....	35
Adoption; Qualifications of Adopter (2000).....	35
Adoption; Qualifications of Adopter (2003).....	36
Adoption; Qualifications of Adopter (2014).....	36
Adoption; Inter-Country Adoption; Formalities (2005).....	36
Adoption; Joint Adoption (2010).....	36
Adoption; Joint Adoption (2012).....	36
Adoption of Illegitimate Child; Consent Needed (2010).....	37
Adoption of Illegitimate Child; Use of Father's Surname (2012).....	37
Adoption; Successional Rights of Adopted Child (2004).....	38
Adoption; Termination; Death of Adopter (2009).....	38
Parental Authority; Child under 7 years of age (2006).....	38
Parental Authority; Special Parental Authority; Liability of Teachers (2003).....	38
Parental Authority; Illegitimate Minor Child (2009).....	39
Parental Authority; Surrogate Mother; Remedy to Recover Custody of a Child (2010).....	39

SUCCESSION

Amount of Successional Rights (2004).....	40
Disposition; Mortis Causa vs. Inter vivos; Corpse (2009).....	40
Heirs; Intestate Heirs; Shares (2003).....	40
Heirs; Fideicommissary Substitution (2008).....	40

Reserva Troncal (2009).....	40
Reserva Troncal (2014).....	41
Legitimes; Compulsory Heirs; Effect of Subsequent Marriage (2010).....	41
Legitime; Compulsory Heirs vs. Secondary Compulsory Heirs (2005).....	41
Legitime; Compulsory Heirs (2008).....	42
Iron Bar Rule (2012).....	42
Wills; Notarial Wills; Blind Testator; Requisites (2008).....	42
Wills; Notarial Wills; Attesting Witnesses (2010).....	42
Wills; Notarial Wills; Attesting Witnesses; Other Formal Requisites (2007).....	42
Wills; Codicil; Institution of Heirs; Substitution of Heirs (2002).....	43
Wills; Joint Wills (2000).....	43
Wills; Joint Wills (2008).....	43
Wills; Joint Wills (2012).....	44
Wills; Joint Wills; 'Depecage' (2015).....	44
Wills; Revocation of Wills; Dependent Relative Revocation (2003).....	45
Wills; Holographic Wills; Probate (2009).....	45
Wills; Holographic Wills; Insertions and Cancellations (2012).....	46
Wills; Testamentary Disposition (2006).....	46
Wills; Testamentary Dispositions (2012).....	46
Wills; Prohibition to Partition (2008).....	46
Wills; Prohibition to Partition (2010).....	47
Wills; Prohibition to Partition (2014).....	47
Will; Provision Acknowledging a Child (2014).....	47
Preterition (2001).....	48
Preterition; Disinheritance (2000).....	48
Preterition; Disinheritance (2008).....	49
Intestate Succession (2000).....	49
Intestate Succession (2008).....	49
Intestate Succession (2008).....	50
Intestate Succession; Rights of Representation: Illegitimate, Adopted Child; Iron Curtain Rule (2007).....	50
Intestate Succession; Intestate Proceedings; Jurisdiction (2004).....	51
Succession; Rule on Survivorship (2008).....	51
Succession; Rule on Survivorship (2009).....	51

DONATION

Donation vs. Sale (2003).....	52
Donations; Formalities (2007).....	52
Donations; Illegal & Impossible Conditions (2007).....	52
Donations; Formalities (2010).....	52
Donations; Formalities (2014).....	52
Donations; Unregistered; Effects; Non-Compliance; Resolutive Condition (2006).....	53
Donations; with Resolutive Condition (2003).....	53
Donation; Formalities (2015).....	53
Donations Inter Vivos vs. Donations Mortis Causa (2013).....	54
Prescriptive Period; Writ of Possession over Foreclosed Real Property (2012).....	54

PROPERTY

Property; Movable or Immovable (2007).....	54
Immovable Property; When Treated as Movable; Chattel Mortgage (2003).....	55
Accretion; Alluvion (2001).....	56
Accretion; Avulsion (2003).....	56
Accretion; Alluvium (2008).....	57
Accretion; Rights of the Riparian Owner (2009).....	57
Builder; Good Faith vs. Bad Faith (2000).....	57
Builder; Good Faith vs. Bad Faith; Accession (2000).....	57
Builder; Good Faith vs. Bad Faith; Presumption (2001).....	58
Builder in Good Faith (2013).....	58
Builder in Good Faith (2013).....	59

Builder in Good Faith (2015).....	59
Sower; Good Faith/ Bad Faith (2000).....	60
Easement; Effects; Discontinuous Easements; Permissive Use (2005).....	60
Easement; Right of Lot Buyers; Effect of Non-User and/or Waiver of Right of Way (2010).....	60
Easement; Nuisance; Abatement (2002).....	61
Easements; Right of Way (2000).....	61
Easements; Right of Way; Inseparability (2001).....	62
Easement; Right of Way (2013).....	62
Easement; Voluntary Easement; Apparent Sign (2014).....	63
Easement; Prescription; Acquisitive Prescription (2009).....	63
Ejectment Suit (2006).....	63
Ejectment Suit (2014).....	63
Nuisance; Family House; Not Nuisance per se (2006).....	64
Nuisance; Public Nuisance vs. Private Nuisance (2005).....	64
Occupation vs. Possession (2007).....	64
Co-Ownership; Renunciation (2009).....	64
Co-Ownership; Alteration of Property; Remedy of Co-owners (2008).....	65
Co-Ownership; Prescription (2000).....	65
Co-Ownership; Prescription (2002).....	65
Co-Ownership; Redemption (2000).....	66
Co-Ownership; Redemption (2002).....	66
Co-ownership; Rights of a Co-owner (2014).....	66
Co-ownership; Prohibition to Divide (2015).....	66
Hidden Treasure (2008).....	67
Hidden Treasure (2010).....	67
Hidden Treasure (2014).....	67
Intellectual Creation (2004).....	68

LAND TITLES AND DEEDS

Acquisition of Lands; Citizenship Requirement (2003).....	69
Acquisition of Lands; Sale of Real Property to an Alien (2009).....	69
Foreshore Lands (2000).....	69
Foreshore Lands; Reclamation; Limitations (2000).....	69
Forgery; Innocent Purchaser; Holder in Bad Faith (2005).....	70
Fraud; Procurement of Patent; Effect (2000).....	70
Innocent Purchaser for Value (2001).....	70
Innocent Purchaser for Value (2008).....	71
Notice of Lis Pendens; When Proper (2001).....	71
Notice of Lis Pendens; Transferee Pendente Lite (2002).....	72
Laches; Elements of Laches (2000).....	72
Laches; Indefeasibility Rule of Torrens Title (2002).....	72
Acquisitive Prescription (2008).....	73
Acquisitive Prescription (2014).....	73
Remedies; Reconveyance vs. Reopening of a Decree; Prescriptive Period (2003).....	74
Remedies; Fraud; Rights of Innocent Purchaser (2009).....	74
Registration; Governing Law (2007).....	74
Registration; Non-Registrable Properties (2007).....	74
Registration; Alienable and Disposable Land; Requirements (2013).....	75
Registration; Requirements (2014).....	76
Registration; Collateral vs. Direct Attack (2015).....	77

OBLIGATIONS AND CONTRACTS

Obligations; Conditional Obligations (2000).....	77
Obligations; Conditional Obligations (2003).....	77
Obligations; Personal Obligation (2015).....	78
Obligations; Without Agreement (2007).....	78
Obligations; Natural Obligations (2015).....	78
Obligations; Extinguishment; Payment; Payment by Check; Legal Tender (2008).....	79

Obligations; Extinguishment; Payment; Payment by Check (2013).....	79
Obligations; Extinguishment; Assignment of Rights (2001).....	80
Obligations; Extinguishment; Compensation (2002).....	80
Obligations; Extinguishment; Compensation (2008).....	80
Obligations; Extinguishment; Compensation (2009).....	81
Obligations; Extinguishment; Condonation (2000).....	81
Obligations; Extinguishment; Consignation (2014).....	81
Obligations; Extinguishment; Novation (2008).....	82
Obligations; Extinguishment; Novation (2014).....	82
Obligations; Extinguishment; Remission (2015).....	82
Obligations; Extinguishment; Extraordinary Inflation or Deflation (2001).....	82
Obligations; Liability; Lease; Joint Liability (2001).....	83
Obligations; Liability; Solidary Obligation; Mutual Guaranty (2003).....	83
Obligations; Liability; Solidary Liability (2008).....	83
Obligations; Liability; Solidary Obligation (2015).....	83
Obligations; Loss of the thing due; Force Majeure (2000).....	84
Obligations; Non-Payment of Amortizations; Subdivision Buyer; When justified (2005).....	84
Contracts; Consideration; Validity (2000).....	84
Contracts; Stipulation; Arbitration Clause (2009).....	84
Contracts; Inexistent Contracts vs. Annullable Contracts (2004).....	84
Contracts; Void Contract for Illegal Consideration (2015).....	85
Contracts; Voidable Contracts (2015).....	85
Contracts; Nature of Contracts; Relativity of Contracts (2002).....	85
Contracts; Rescission of Contract; Fortuitous Event (2008).....	85
Contracts; Enforceable Contracts; Contract of Loan with Mortgage (2013).....	86
Contracts; Aleatory Contracts; Gambling (2004).....	86

SALES

Contract of Sale; Marital Community Property; Formalities (2006).....	87
Contract of Sale; When Perfected (2015).....	87
Contract to Sell (2001).....	88
Contract to Sell vs. Contract of Sale (2014).....	88
Double Sales (2001).....	88
Double Sales (2004).....	89
Double Sales (2010).....	89
Prohibition to Purchase Property Subject of Litigation (2013).....	89
Equitable Mortgage vs. Sale (2005).....	89
Equitable Mortgage vs. Sale (2012).....	90
Immovable Property; Rescission of Contract (2003).....	90
Maceda Law (2000).....	91
Maceda Law; When Inapplicable (2014).....	91
Condominium Act; Partition of a Condominium (2009).....	91
Right of First Refusal; Lessee; Effect (2008).....	92
Option Contract (2002).....	92
Option Contract; Earnest Money (1993).....	92
Option Contract (2013).....	92
Option Contract (2014).....	93
Option Contract; Elements (2005).....	93
Perfected Sale; Acceptance of Earnest Money (2002).....	94
Redemption; Legal; Formalities (2001).....	95
Redemption; Legal; Formalities (2002).....	95

OTHER SPECIAL CONTRACTS

Lease; Lease of Rural Lands (2000).....	95
Lease; Lease with Option to Buy (2001).....	95
Lease; Liability of the Lessor (2010).....	96
Lease; Caveat Emptor (2009).....	96
Lease; Sublease vs. Assignment of Lease; Rescission of Contract (2005).....	96

Lease; Sublease; Sublessee; Liability (2000).....	97
Lease; Contract for a Piece of Work (2016).....	97
Agency (2003).....	97
Agency vs. Sale (2000).....	97
Agency; Coupled with Interest (2001).....	98
Agency; Coupled with Interest (2016).....	98
Agency; Guarantee Commission (2004).....	98
Agency; Real Estate Mortgage (2004).....	99
Agency; Authority to Sell (2010).....	99
Agency; Revocation of Authority (2014).....	99
Partnership; Obligations of a Partner; Industrial Partner (2001).....	99
Partnership; Oral Partnership (2009).....	100
Partnership; Liability of Partners in Case of Dissolution (2010).....	100
Partnership; Right of a Partner to Demand Return of His Share (2012).....	100
Partnership ; Receipt of Share in Profits (2014).....	100
Partnership; Joint Venture (2015).....	101
Trust (2007).....	101
Trust (2015).....	101
Mutuum vs. Commodatum (2004).....	101
Mutuum; Interests (2001).....	101
Mutuum; Interests (2002).....	102
Mutuum; Interests (2004).....	102
Pledge; Pactum Commissorium (2009).....	102
Pledge; Pactum Commissorium (2015).....	102
Guaranty (2009).....	103
Guaranty vs. Surety (2010).....	103
Deposit; Liability of Depositary (2014).....	103
Extraordinary Diligence (2000).....	103
Solutio Indebiti (2004).....	103
Solutio Indebiti (2012).....	104

TORTS AND DAMAGES

Damages; Moral & Exemplary (2009).....	104
Damages arising from Death of Unborn Child (2003).....	104
Defense; Due Diligence in Selection (2003).....	104
Filing of Separate Civil Action; Need for Reservation (2003).....	104
Fortuitous Event; Mechanical Defects (2002).....	104
Liability; Airline Company; Non-Performance of an Obligation (2004).....	105
Liability; Airline Company; Non-Performance of an Obligation (2005).....	106
Liability; Owner who was in the vehicle (2002).....	107
Liability; School, School Administrators, Teachers (2010).....	107
Liability of Possessor of Animal (2010).....	107
Moral Damages & Atty Fees (2002).....	107
Moral Damages; Non-Recovery Thereof (2006).....	108
Death Indemnity (2009).....	108
Quasi-Delict (2005).....	108
Quasi-Delict; Mismanagement of Depositor's Account (2006).....	109
Quasi-delict; Action for Damages (2013).....	109
Vicarious Liability (2000).....	110
Vicarious Liability (2001).....	110
Vicarious Liability (2002).....	110
Vicarious Liability (2004).....	110
Vicarious Liability (2006).....	110
Vicarious Liability (2015).....	111
Doctrine of Discovered Peril (Last Clear Chance) (2007).....	111
Quasi-tort (2010).....	111

GENERAL PRINCIPLES

Equity follows the Law (2003)

It is said that —equity follows the law! What do you understand by this phrase, and what are its basic implications? 5%

SUGGESTED ANSWER:

Equity Follows the law! means that courts exercising equity jurisdiction are bound by rules of law and have no arbitrary discretion to disregard them. (**Arsenal v IAC, 143 SCRA 40 [1986]**). Equity is applied only in the absence of but never against statutory law. (**Toyota Motor Phil. V CA 1**. The civil action involves an issue similar or intimately **216 SCRA 236 [1992]**).

Human Relations; Abuse of Right (2012)

Roberto was in Nikko Hotel when he bumped into a friend who was then on her way to a wedding reception being held in said hotel. Roberto alleged that he was then invited by his friend to join her at the wedding reception and carried the basket full of fruits which she was bringing to the affair. At the reception, the wedding coordinator of the hotel noticed him and asked him, allegedly in a loud voice, to leave as he was not in the guest list. He retorted that he had been invited to the affair by his friend, who however denied doing so. Deeply embarrassed by the incident, Roberto then sued the hotel for damages under Articles 19 and 21 of the Civil Code. Will Roberto's action prosper? Explain. (5%)

SUGGESTED ANSWER:

a. No, Roberto's action will not prosper. From the facts given in the problem, the wedding coordinator did not abuse her right when she asked her to leave the wedding reception because he was not in the guest list. Hotel Nikko could not be held liable for damages as its liability springs from the liability of its employee (Nikko Hotel Manila Garden v. Reyes, G.R. No. 154259, February 28, 2005).

ALTERNATIVE ANSWER:

a. It depends, while the hotel has the right to exclude an uninvited guest from the wedding reception, that does not give the hotel the license to humiliate Roberto. If the wedding coordinator of the hotel acted wrongfully e.g. with the abuse of right, unfairly, or in a manner that exposed Roberto to unnecessary ridicule or shame, his action will prosper. Otherwise, Roberto's action will not prosper.

The Hotel is liable for the wrongful acts of its employees.

Comment:

The facts of the problem are almost similar to the facts of Nikko Hotel v. Roberto Reyes, G.R. No. 154259, February 28, 2005. In the said case, however, there is a categorical finding that the hotel employee did not expose the complainant to ridicule shame or embarrassment, hence, did not commit any abuse of right. The present problem makes no

statement of that finding, on the contrary, the problem states that is a mere allegation.

Human Relations; Waiver of Rights (2004)

B. DON, an American businessman, secured parental consent for the employment of five minors to play certain roles in two movies he was producing at home in Makati. They worked at odd hours of the day and night, but always accompanied by parents or other adults. The producer paid the children talent fees at rates better than adult wages. But a social worker, DEB, reported to OSWD that these children often missed going to school. They sometimes drank wine, aside from being exposed to drugs. In some scenes, they were filmed naked or in revealing costumes. In his defense, DON contended all these were part of artistic freedom and cultural creativity. None of the parents complained, said DON. He also said they signed a contract containing a waiver of their right to file any complaint in any office or tribunal concerning the working conditions of their children acting in the movies. Is the waiver valid and binding? Why or why not?

Explain. (5%)

SUGGESTED ANSWER:

The waiver is not valid. Although the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, they may not do so if such are contrary to law, morals, good customs, public order, or public policy (Article 1306, Civil Code). The parents' waiver to file a complaint concerning the working children acting in the movies is in violation of the Family Code and Labor laws. Thus, the waiver is invalid and not binding. The Child Labor Law is a mandatory and prohibitory law and the rights of the child cannot be waived as it is contrary to law and public policy.

Human Relations; Waiver of Rights (2014)

Mabuhay Elementary School organized a field trip for its Grade VI students in Fort Santiago, Manila Zoo, and Star City. To be able to join, the parents of the students had to sign a piece of paper that reads as follows:

"I allow my child (name of student), Grade – Section, to join the school's field trip on February 14, 2014. I will not file any claim against the school, administrator or teacher in case something happens to my child during the trip."

Joey, a 7-year-old student of Mabuhay Elementary School was bitten by a snake while the group was touring Manila Zoo. The parents of Joey sued the school for damages. The school, as a defense, presented the waiver signed by Joey's parents.

Was there a valid waiver of right to sue the school? Why? (4%)

SUGGESTED ANSWER:

No, there was no valid waiver of the right to sue the school. Article 6 of the Civil Code provides that "(r)ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a person with a right recognized by law." As a general rule, patrimonial rights may be waived as opposed to rights to personality and family rights which may not be made the subject of waiver (*Valenzuela Hardwood & Industrial Supply, Inc. v Court of Appeals*, (G.R. No. 102316, June 30, 1997)). The second paragraph of the waiver prohibiting the parent to file any claim against the school, administrator or teacher in case something happens to the child during the trip is against public policy because it removes liability from said school, administrator, or teacher, and thus, removing the responsibility imposed on them by Article 218 of the Family Code.

Human Relations; Liability of Public Officers to Render Aid or Protection (2012)

a.) Liwayway Vinzon-Chato was then the Commissioner of Internal Revenue while Fortune Tobacco Corporation is an entity engaged in the manufacture of different brands of cigarettes, among which are "Champion," "Hope," and "More" cigarettes.

Fortune filed a complaint against Vinzon-Chato to recover damages for the alleged violation of its constitutional rights arising from Vinzon-Chato's issuance of Revenue Memorandum Circular No. 37-934 (which re-classified Fortune cigarettes as locally manufactured with foreign brands and thereby imposed higher taxes), which the Supreme Court later declared invalid.

Vinzon-Chato filed a Motion to Dismiss arguing that she cannot be held liable for damages for acts she performed while in the discharge of her duties as BIR Commissioner. Is she correct? Explain. (5%)

SUGGESTED ANSWER:

a. Yes. As a general rule, a public officer is not liable for acts performed in the discharge of his duties. the exceptions are when he acted with malice, bad faith or gross negligence in the performance of his duty, or when his act is in violation of the Constitutionally guaranteed rights and liberties of a person under Article 32 of the NCC. The public officer is not automatically considered to have violated the rights or liberties of a person simply because the rule of the public officer issued was declared invalid by the Court. The complainant must still allege and prove the particular injury or prejudice he has suffered from the violation of is constitutional right by the issuance of the invalidated rule.

The problem does not state any fact from which any malice, bad faith or gross negligence on the part of Vinzon-Chato may be inferred, or the particular injury or prejudice the complainant may have suffered as a result of the violation of his constitutional rights. Hence, she cannot be held liable. The facts presented are

similar to the facts of the case of *Vinzonz-Chato v. Fortune*. G.R. No. 141309. December 23, 2008.

CONFLICT OF LAWS

Applicable Laws; Arts 15, 16, 17 (2002)

Felipe and Felisa, both Filipino citizens, were married in Malolos, Bulacan on June 1, 1950. In 1960 Felipe went to the United States, becoming a U.S. citizen in 1975. In 1980 they obtained a divorce from Felisa, who was duly notified of the proceedings. The divorce decree became final under California Law. Coming back to the Philippines in 1982, Felipe married Sagundina, a Filipino Citizen. In 2001, Felipe, then domiciled in Los Angeles, California, died, leaving one child by Felisa, and another one by Sagundina. He left a will which he left his estate to Sagundina and his two children and nothing to Felisa. Sagundina files a petition for the probate of Felipe's will. Felisa questions the intrinsic validity of the will, arguing that her marriage to Felipe subsisted despite the divorce obtained by Felipe because said divorce is not recognized in the Philippines. For this reason, she claims that the properties and that Sagundina has no successional rights.

A. Is the divorce secured by Felipe in California recognizable and valid in the Philippines? How does it affect Felipe's marriage to Felisa? Explain. (2%).

SUGGESTED ANSWER:

A.

(1.) The divorce secured by Felipe in California is recognizable and valid in the Philippines because he was no longer a Filipino at that time he secured it, Aliens may obtain divorces abroad which may be recognized in the Philippines provided that they are valid according to their national law (*Van Dorn V. Romillo, Jr.*, 139 SCRA 139 [1985]; *Quita v. Court of Appeals*, 300 SCRA 406 [1998]; *Llorente v. Court of Appeals*, 345 SCRA 595 [2000]).

(2). With respect to Felipe the divorce is valid, but with respect to Felisa it is not. The divorce will not capacitate Felisa to remarry because she and Felipe were both Filipinos at the time of their marriage. However, in DOJ Opinion No. 134 series of 1993, Felisa is allowed to remarry because the injustice sought to be corrected by Article 26 also obtains in her case. [*Obsolete ruling. See Orbecido case*]

B. What law governs the formalities of the will? Explain.(1%)

SUGGESTED ANSWER:

B. The foreigner who executes his will in the Philippines may observe the formalities described in:

1. The Law of the country of which he is a citizen under Article 817 of the New Civil Code, or
2. the law of the Philippines being the law of the place of execution under Article 17 of the New Civil Code.

C. Will Philippine law govern the intrinsic validity of the will? Explain. (2%)

SUGGESTED ANSWER:

C. Philippine law will not govern the intrinsic validity of the will. Article 16 of the New Civil Code provides that intrinsic validity of testamentary provisions shall be governed by the National Law of the person whose succession is under consideration. California law will govern the intrinsic validity of the will.

Applicable Laws; Laws Governing Marriages (2003)

Gene and Jane, Filipino, met and got married in England while both were taking up post-graduate courses there. A few years after their graduation, they decided to annul their marriage. Jane filed an action to annul her marriage to Gene in England on the ground of latter's sterility, a ground for annulment of marriage in England. The English court decreed the marriage annulled. Returning to the Philippines, Gene asked you whether or not he would be free to marry his former girlfriend. What would your legal advice be? 5%

SUGGESTED ANSWER:

No, Gene is not free to marry his former girlfriend. His marriage to Jane is valid according to the forms and solemnities of British law, is valid here (Article 17, 1st par. NCC). However, since Gene and Jane are still Filipinos although living in England, the dissolution of their marriage is still governed by Philippine law (Article 15, NCC). Since, sterility is not one of the grounds for the annulment of a marriage under Article 45 of the Family Code, the annulment of Gene's marriage to Jane on that ground is not valid in the Philippines (Article 17, NCC)

ALTERNATIVE ANSWER:

Yes, Gene is free to marry his girlfriend because his marriage was validly annulled in England. The issue of whether or not a marriage is voidable, including the grounds therefore, is governed by the law of the place where the marriage was solemnized (*lex loci celebrationis*). Hence, even if sterility is not a ground to annul the marriage under the Philippine law, the marriage is nevertheless voidable because sterility makes the marriage voidable under English law. Therefore, annulment of the marriage in England is valid in the Philippines.

Applicable Laws; Succession; Intestate & Testamentary (2001)

Alex was born a Filipino but was a naturalized Canadian citizen at the time of his death on December 25, 1998. He left behind a last will and testament in which he bequeathed all his properties, real and personal, in the Philippines to his acknowledged illegitimate Filipino daughter and nothing to his two legitimate Filipino sons. The sons sought the annulment of the last will and testament on the ground that it deprived them of their legitimes but the daughter was able to prove that there were no compulsory heirs or legitimes under Canadian law. Who should prevail? Why? (5%)

SUGGESTED ANSWER:

The daughter should prevail because Article 16 of the New Civil Code provides that intestate and

testamentary succession shall be governed by the national law of the person whose succession is under consideration.

Domiciliary theory vs. Nationality Theory (2004)

Distinguish briefly but clearly between: Domiciliary theory and nationality theory of personal law. (5%)

SUGGESTED ANSWER:

DOMICILIARY THEORY posits that the personal status and rights of a person are governed by the law of his domicile or the place of his habitual residence. The NATIONALITY THEORY, on the other hand, postulates that it is the law of the person's nationality that governs such status and rights

Forum Non Conveniens; Lex Loci Contractus (2002)

Felipe is a Filipino citizen. When he went to Sydney for vacation, he met a former business associate, who proposed to him a transaction which took him to Moscow. Felipe brokered a contract between Sydney Coals Corp. (Coals), an Australian firm, and Moscow Energy Corp. (Energy), a Russian firm, for Coals to supply coal to Energy on a monthly basis for three years. Both these firms were not doing, and still do not do, business in the Philippines. Felipe shuttled between Sydney and Moscow to close the contract. He also executed in Sydney a commission contract with Coals and in Moscow with Energy, under which contracts he was guaranteed commissions by both firms based on a percentage of deliveries for the three-year period, payable in Sydney and in Moscow, respectively, through deposits in accounts that he opened in the two cities. Both firms paid Felipe his commission for four months, after which they stopped paying him. Felipe learned from his contacts, who are residents of Sydney and Moscow, that the two firms talked to each other and decided to cut him off. He now files suit in Manila against both Coals and Energy for specific performance.

A. Define or explain the principle of —*lex loci contractus*. (2%)

SUGGESTED ANSWER:

A. LEX LOCI CONTRACTUS may be understood in two senses, as follows:

- (1) It is the law of the place where contracts, wills, and other public instruments are executed and governs their—forms and solemnities, pursuant to the first paragraph, Article 17 of the New Civil Code; or
- (2) It is the proper law of the contract; e.i., the system of law intended to govern the entire contract, including its essential requisites, indicating the law of the place with which the contract has its closest connection or where the main elements of the contract converge. As country of which they are citizens. Since their marriage is illustrated by **Zalamea v. Court of Appeals (228 SCRA 23 [1993])**, it is the law of the place where the airline ticket was issued, where the passengers are nationals and residents of, and where the defendant airline company maintained its office.

ALTERNATIVE ANSWER:

A. Under the doctrine of *lex loci contractus*, as a general rule, the law of the place where a contract is made or

entered into governs with respect to its nature and validity, obligation and interpretation. This has been said to be the rule even though the place where the contract was made is different from the place where it is to be performed, and particularly so, if the place of the making and the place of performance are the same (**United Airline v. CA, G.R. No. 124110, April 20, 2001**).

B. Define or explain the rule of —forum non conveniens. (3%)

SUGGESTED ANSWER:

B. FORUM NON CONVENIENS means that a court has discretionary authority to decline jurisdiction over a cause of action when it is of the view that the action may be justly and effectively adjudicated elsewhere.

C. Should the Philippine court assume jurisdiction over the case? Explain. (5%)

SUGGESTED ANSWER:

C. No, the Philippine courts cannot acquire jurisdiction over the case of Felipe. Firstly, under the rule of forum non conveniens, the Philippine court is not a convenient forum as all the incidents of the case occurred outside the Philippines. Neither are both Coals and Energy doing business inside the Philippines. Secondly, the contracts were not perfected in the Philippines. Under the principle of lex loci contractus, the law of the place where the contract is made shall apply. Lastly, the Philippine court has no power to determine the facts surrounding the execution of said contracts. And even if a proper decision could be reached, such would have no binding effect on Coals and Energy as the court was not able to acquire jurisdiction over the said corporations. (**Manila Hotel Corp. v. NLRC. 343 SCRA 1, 1314[2000]**)

Nationality Theory (2004)

PH and LV are HK Chinese. Their parents are now Filipino citizens who live in Manila. While still students in MNS State, they got married although they are first cousins. It appears that both in HK and in MNS State first cousins could marry legally. They plan to reside and set up business in the Philippines.

But they have been informed, however, that the marriage of first cousins here is considered void from the beginning by reason of public policy. They are in a dilemma. They don't want to break Philippine law, much less their marriage vow. They seek your advice on whether their civil status will be adversely affected by Philippine domestic law? What is your advice? (5%)

SUGGESTED ANSWER:

My advice is as follows: The civil status of PH and LV will not be adversely affected by Philippine law because they are nationals of Hong Kong and not Filipino citizens. Being foreigners, their status, conditions and legal capacity in the Philippines are governed by the law of Hong Kong, the valid under Hong Kong law, it shall be valid and respected in the Philippines.

Nationality Principle (2009)

Emmanuel and Margarita, American citizens and employees of the U.S. State Department, got married in the African state of Kenya where sterility is a ground for annulment of marriage. Thereafter, the spouses were assigned to the U.S. Embassy in Manila. On the first year of the spouses' tour of duty in the Philippines, Margarita filed an annulment case against Emmanuel before a Philippine court on the ground of her husband's sterility at the time of the celebration of the marriage.

(A). Will the suit prosper? Explain your answer. (3%)

SUGGESTED ANSWER:

No, the suits will not prosper. As applied to foreign nationals with the respect to family relations and status of persons, the nationality principle set forth in Article 15 of the Civil Code will govern the relations of Emmanuel and Margarita. Since they are American citizens, the governing law as to the ground for annulment is not Kenyan Law which Margarita invokes in support of sterility as such ground; but should be U.S. Law, which is the national Law of both Emmanuel and Margarita as recognized under Philippine Law. Hence, the Philippine court will not give due course to the case based on Kenyan Law. The nationality principle as expressed in the application of national law of foreign nationals by Philippine courts is established by precedents (*Pilapil v. Ibay-Somera*, 174 SCRA 653[1989], *Garcia v. Recio*, 366 SCRA 437 [2001], *Llorente v. Court of Appeals* 345 SCRA 92 [2000], and *Bayot v. Court of Appeals* 570 SCRA 472 [2008]).

ALTERNATIVE ANSWER:

The forum has jurisdiction over an action for the annulment of marriage solemnized elsewhere but only when the party bringing the actions is domiciled in the forum. In this case, none of the parties to the marriage is domiciled in the Philippines. They are here as officials of the US Embassy whose stay in the country is merely temporary, lasting only during their fixed tour of duty. Hence, the Philippine courts have no jurisdiction over the action.

Nationality Principle; Change of Name not Covered (2009)

(A). If Ligaya, a Filipino citizen residing in the United States, files a petition for change of name before the District Court of New York, what law shall apply? Explain. (2%)

SUGGESTED ANSWER:

New York law shall apply. The petition of change of name filed in New York does not concern the legal capacity or status of the petitioner. Moreover, it does not affect the registry of any other country including the country of birth of the petitioner. Whatever judgment is rendered in that petition will have effect only in New York. The New York court cannot, for instance, order the Civil Registrar in the Philippines to change its records. The judgment of the New York court allowing a change in the name of the petitioner will be limited to the records of the petitioner in New York and the use of her new name in all transactions in New York. Since the records and processes in New York are the only ones

affected, the New York court will apply New York law in resolving the petition.

ALTERNATIVE ANSWER:

Philippine law shall apply (Art 15, NCC). Status, conditions, family rights and duties are governed by Philippine laws as to Filipinos even though sojourning abroad.

ALTERNATIVE ANSWER:

If Ligaya, a Filipino, files a petition for change of name with the District Court of New York, the laws of New York will govern since change of name is not one of those covered by the principles of nationality.

(B). If Henry, an American citizen residing in the Philippines, files a petition for change of name before a Philippine court, what law shall apply? Explain. (2%)

SUGGESTED ANSWER:

Philippine law will apply. The petition for change of name in the Philippines will affect only the records of the petitioner and his transactions in the Philippines. The Philippine court can never acquire jurisdiction over the custodian in the US of the records of the petitioner. Moreover, change of name has nothing to do with the legal capacity or status of the alien. Since Philippine records and transactions are the only ones affected, the Philippine court may effect the change only in accordance with the laws governing those records and transactions that law cannot be but Philippine law.

ALTERNATIVE ANSWER:

U.S. law shall apply as it is his national law. This is pursuant to the application of *lex patriae* or the nationality principle, by which his legal status is governed by national law, the matter of change of name being included in the legal status. The Supreme Court has reiterated in several cases, that the *lex patriae* as provided in Article 15 of the Civil Code is applicable to foreign nationals in determining their legal status (*supra*).

Lex Rei Sitae (2007)

Write "TRUE" if the statement is true or "FALSE" if the statement is false. If the statement is FALSE, state the reason. (2% each).

(1). Roberta, a Filipino, 17 years of age, without the knowledge of his parents, can acquire a house in Australia because Australian Laws allow aliens to acquire property from the age of 16.

SUGGESTED ANSWER:

TRUE. Since Australian Law allows alien to acquire property from the age of 16, Roberta may validly own a house in Australia, following the principle of *lex rei sitae* enshrined in Art. 16, NCC, which states "Real property as well as personal property is subject to the law of the country where it is situated." Moreover, even assuming that legal capacity of Roberta in entering the contract in Australia is governed by Philippine Law, she will acquire ownership over the property bought until the contract is annulled.

ALTERNATIVE ANSWER:

FALSE. Laws relating to family rights and duties, or to the status, condition or legal capacity of persons are

binding upon the citizens of the Philippines, even though living abroad (Art. 15, NCC). The age of majority under Philippine law is 18 years (R.A. No. 6809); hence, Roberta, being only 17 years old, has no legal capacity to acquire and own land.

Naturalization; Effect of Marriage of an Alien Woman to a Filipino (2003)

Miss Universe, from Finland, came to the Philippines on a tourist visa. While in this country, she fell in love with and married a Filipino doctor. Her tourist visa having been expired and after the maximum extension allowed therefore, the Bureau of Immigration and Deportation (BID) is presently demanding that she immediately leave the country but she refuses to do so, claiming that she is already a Filipino Citizen by her marriage to a Filipino citizen. Can the BID still order the deportation of Miss Universe? Explain. 5%

SUGGESTED ANSWER:

Yes, the BID can order the deportation of Miss Universe. The marriage of an alien woman to a Filipino does not automatically make her a Filipino Citizen. She must first prove in an appropriate proceeding that she does not have any disqualification for Philippine citizenship. (*Yung Uan Chu v. Republic of the Philippines, 158 SCRA 593 [1988]*). Since Miss Universe is still a foreigner, despite her marriage to a Filipino doctor, she can be deported upon expiry of her allowable stay in the Philippines.

ANOTHER SUGGESTED ANSWER:

No, the Bureau of Immigration cannot order her deportation. An alien woman marrying a Filipino, native-born or naturalized, becomes ipso facto a Filipino if she is not disqualified to be a citizen of the Philippines (*Mo Ya Lim v Commission of Immigration, 41 SCRA 292 [1971]*), (Sec 4, Naturalization Law). All that she has to do is prove in the deportation proceeding the fact of her marriage and that she is not disqualified to become a Filipino Citizen.

ANOTHER SUGGESTED ANSWER:

It depends. If she is disqualified to be a Filipino citizen, she may be deported. If she is not disqualified to be a Filipino citizen, she may not be deported. An alien woman who marries a Filipino citizen becomes one. The marriage of Miss Universe to the Filipino doctor did not automatically make her a Filipino citizen. She still has to prove that she is not disqualified to become a citizen.

Jurisdiction over Conflict of Laws cases (2010)

c. Give at least two reasons why a court may assume jurisdiction over a conflict of laws case.

SUGGESTED ANSWER:

1. Statute Theory. There is a domestic law authorizing the local court to assume jurisdiction
2. Comity Theory. The local court assumes jurisdiction based on the principle of comity or courtesy

ALTERNATIVE ANSWER:

1. Public Order. To maintain peace and order, disputes that disturb the peace of the forum should be settled by the courts of the forum even though the application of a foreign law is necessary for the purpose.

2. Humanitarian Principle. AN aggrieved party should not be left without remedy in a forum even though the application of a foreign law by the courts of the forum is unavoidable in order to extend relief.

Torts Involving Conflicts of Laws; Prescriptive Period (2004)

In a class suit for damages, plaintiffs claimed they suffered injuries from torture during martial law. The suit was filed upon President EM's arrival on exile in HI, a U.S. state. The court in HI awarded plaintiffs the equivalent of P100 billion under the U.S. law on alien tort claims. On appeal, EM's Estate raised the issue of prescription. It argued that since said U.S. law is silent on the matter, the court should apply:

- (1) HI's law setting a two-year limitation on tort claims; or
- (2) the Philippine law which appears to require that claims for personal injury arising from martial law be brought within one year.

Plaintiffs countered that provisions of the most analogous federal statute, the Torture Victims Protection Act, should be applied. It sets ten years as the period for prescription.

Moreover, they argued that equity could toll the statute of limitations. For it appeared that EM had procured Constitutional amendments granting himself and those acting under his direction immunity from suit during his tenure. In this case, has prescription set in or not? Considering the differences in the cited laws, which prescriptive period should be applied: one year under Philippine law, two years under HI's law, ten years under U.S. federal law, or none of the above? Explain. (5%)

SUGGESTED ANSWER:

The US Court will apply US law, the law of the forum, in determining the applicable prescriptive period. While US law is silent on this matter, the US Court will not apply Philippine law in determining the prescriptive period. It is generally affirmed as a principle in private international law that procedural law is one of the exceptions to the application of foreign law by the forum. Since prescription is a matter of procedural law even in Philippine jurisprudence, (*Codaltn v. POEA/JVLR/Broum and Root International*, 238 SCRA 721 [1994]), the US Court will apply either HI or Federal law in determining the applicable prescriptive period and not Philippine law. The Restatement of American law affirms this principle.

Processual Presumption (2009)

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

(A). The doctrine of "processual presumption" allows the court of the forum to presume that the foreign law applicable to the case is the same as the local or domestic law. (1%)

SUGGESTED ANSWER:

TRUE. If the foreign law necessary to the resolve an

issue is not proven as a fact, the court of the forum may presume that the foreign law is the same as the law of the forum.

PERSONS

Capacity: Juridical Capacity (2008)

At age 18, Marian found out that she was pregnant. She insured her own life and named her unborn child as her sole beneficiary. When she was already due to give birth, she and her boyfriend Pietro, the father of her unborn child, were kidnapped in a resort in Bataan where they were vacationing. The military gave chase and after one week, they were found in an abandoned hut in Cavite. Marian and Pietro were hacked with bolos. Marian and the baby delivered were both found dead, with the baby's umbilical cord already cut. Pietro survived.

(A). Can Marian's baby be the beneficiary of the insurance taken on the life of the mother? (2%)

SUGGESTED ANSWER:

Yes, the baby can be the beneficiary of the life insurance of Marian. Art. 40 NCC provides that "birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided that it be born later with the conditions specified in Art. 41. Article 41 states that "for civil purposes, the fetus shall be considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the fetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four (24) hours after its complete delivery from the maternal womb. The act of naming the unborn child as sole beneficiary in the insurance is favorable to the conceived child and therefore the fetus acquires presumptive or provisional personality. However, said presumptive personality only becomes conclusive if the child is born alive. The child need not survive for twenty-four (24) hours as required under Art. 41 of the Code because "Marian was already due to give birth," indicating that the child was more than seven months old.

Natural Persons; Validity of Donations to an Unborn Child (2012)

Ricky donated P 1 Million to the unborn child of his pregnant girlfriend, which she accepted. After six (6) months of pregnancy, the fetus was born and baptized as Angela. However, Angela died 20 hours after birth. Ricky sought to recover the P 1 Million. Is Ricky entitled to recover? Explain. (5%)

SUGGESTED ANSWER:

Yes, Ricky is entitled to recover the P1 Million. The NCC considers a fetus a person for purposes favorable to it provided that it is born later in accordance with the provisions of the NCC. While the donation is favorable to the fetus, the donation did not take effect because the fetus was not born in accordance with the NCC.

To be considered born, the fetus that had an intra uterine life of less than seven (7) months should live for 24 hours from its complete delivery from the mother's womb. Since Angela had an intra-uterine life of less than 7 months but did not live for 24 hours, she was not considered born and, therefore, did not become a person. Not being a person, she had no juridical capacity to be a donee, hence, the donation to her did not take effect. The donation not being effective, the amount donated may be recovered. To retain it will be unjust enrichment.

Death; Effects; Simultaneous Death (2000)

b) Cristy and her late husband Luis had two children, Rose and Patrick. One summer, her mother-in-law, aged 70, took the two children, then aged 10 and 12, with her on a boat trip to Cebu. Unfortunately, the vessel sank en route, and the bodies of the three were never found. None of the survivors ever saw them on the water. On the settlement of her mother-in-law's estate, Cristy files a claim for a share of her estate on the ground that the same was inherited by her children from their grandmother in representation of their father, and she inherited the same from them. Will her action prosper? (2%)

SUGGESTED ANSWER:

No, her action will not prosper. Since there was no proof as to who died first, all the three are deemed to have died at the same time and there was no transmission of rights from one to another, applying Article 43 of the New Civil Code.

ALTERNATIVE ANSWER:

No, her action will not prosper. Under Article 43 of the New Civil Code, inasmuch as there is no proof as to who died first, all the three are presumed to have died at the same time and there could be no transmission of rights among them. Her children not having inherited from their grandmother. Cristy has no right to share in her mother-in-law's estate. She cannot share in her own right as she is not a legal heir of her mother-in-law. The survivorship provision of Rule 131 of the Rules of Court does not apply to the problem. It applies only to those cases where the issue involved is not succession.

Civil Register; Change of Name; Under RA 9048 (2006)

Zirxthoussous delos Santos filed a petition for change of name with the Office of the Civil Registrar of Mandaluyong City under the administrative proceeding provided in Republic Act No. 9048. He alleged that his first name sounds ridiculous and is extremely difficult to spell and pronounce. After complying with the requirements of the law, the Civil Registrar granted his petition and changed his first name Zirxthoussous to "Jesus." His full name now reads "Jesus delos Santos." Jesus delos Santos moved to General Santos City to work in a multi-national company. There, he fell in love and married Mary Grace delos Santos. She requested him to have his first name changed because his new name "Jesus delos Santos" is the same name as that of her father who abandoned her family and became a notorious drug lord. She wanted to forget him. Hence,

Jesus filed another petition with the Office of the Local Civil Registrar to change his first name to "Roberto." He claimed that the change is warranted because it will eradicate all vestiges of the infamy of Mary Grace's father.

Will the petition for change of name of Jesus delos Santos to Roberto delos Santos under Republic Act No. 9048 prosper? Explain. (10%)

SUGGESTED ANSWER:

No, under the law, Jesus may only change his name once. In addition, the petition for change of name may be denied on the following grounds:

- (1) Jesus is neither ridiculous, nor tainted with dishonor nor extremely difficult to write or pronounce.
- (2) There is no confusion to be avoided or created with the use of the registered first name or nickname of the petitioner.
- (3) The petition involves the same entry in the same document, which was previously corrected or changed under this Order [Rules and Regulations Implementing RA 9048].

What entries in the Civil Registry may be changed or corrected without a judicial order? (2.5%)

SUGGESTED ANSWER:

Only clerical or typographical errors and first or nick names may be changed or corrected without a judicial order under RA 9048. Clerical or typographical errors refer to mistakes committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register. The mistake is harmless and innocuous, such as errors in spelling, visible to the eyes or obvious to the understanding, absolute community amounting to 1 Million Pesos. His and can be corrected or changed only by reference to other existing records. Provided, however, that no correction must involve the change of nationality, age, status or sex of the petitioner.

Civil Register; Correction of Entries; Clerical Error Act (2008)

Gianna was born to Andy and Aimee, who at the time Gianna's birth were not married to each other. While Andy was single at the time, Aimee was still in the process of securing a judicial declaration of nullity on her marriage to her ex-husband. Gianna's birth certificate, which was signed by both Andy and Aimee, registered the status of Gianna as "legitimate", her surname carrying that of Andy's and that her parents were married to each other.

(A). Can a judicial action for correction of entries in Gianna's birth certificate be successfully maintained to:

- a). Change her status from "legitimate" to "illegitimate" (1%)
- b). Change her surname from that of Andy's to Aimee's maiden surname? (1%)

SUGGESTED ANSWER:

Yes, a judicial action for correction of entries in Gianna's birth certificate can be successfully maintained to

change (a) her status from "legitimate" to "illegitimate," and (b) her surname from that of Andy's to Aimee's maiden surname in accordance with Rule 108 of the Rules of Court because said changes are substantive corrections.

(B). Instead of a judicial action, can administrative proceedings be brought for the purpose of making the above corrections? (2%)

SUGGESTED ANSWER:

No. An administrative proceeding cannot be brought for the purpose of making the above corrections. R.A. 9048, otherwise known as the Clerical Error Act, which authorizes the city or municipal civil registrar or the consul general to correct a clerical or typographical error in an entry and/or change the first name or nickname in the civil register without need of a judicial order. Errors that involve the change of nationality, age, status, surname or sex of petitioner are not included from the coverage of the said Act (Silverio v. Republic, G.R. No. 174689, 22 Oct., 2007).

Presumptive Death (2016)

Mrs. L was married to a ship captain who worked for an international maritime vessel. For her and her family's support, she would claim monthly allotments from her husband's company. One day, while en route from Hong Kong to Manila, the vessel manned by Captain L encountered a severe typhoon at sea. The captain was able to send radio messages of distress to the head office until all communications were lost. In the weeks that followed, the search operations yielded debris of the lost ship but the bodies of the crew and the passengers were not recovered. The insurance company thereafter paid out the death benefits to all the heirs of the passengers and crew. Mrs. L filed a complaint demanding that her monthly allotments continue for the next four years until her husband may be legally presumed dead because of his absence. If you were the magistrate, how would you rule? (3%)

SUGGESTED ANSWER:

I would rule against Mrs. L. When a person disappears under circumstances involving danger of death as enumerated in Article 391 of the Civil Code, the death of the person is presumed to have taken place at the beginning of the four year period provided in said article. In this case, Captain L may not be legally considered as dead until the lapse of the period fixed by law on presumption of death. To allow the argument of Captain L's death should be considered on the very day of the occurrence of the event from which death is presumed would mean that no claim for death compensation benefits would ever prosper, since the heirs of a missing seaman have to wait for four years under Art. 391 before the seaman may be declared legally dead, and after four years, the prescriptive period for filing money claims would lapse. (Pantollano vs. Korphil, G.R. 169575, March 30, 2011).

FAMILY RELATIONS

Family Code; Retroactive Application; Vested Rights (2000)

On April 15, 1980, Rene and Angelina were married to each other without a marriage settlement. In 1985, they acquired a parcel of land in Quezon City. On June 1, 1990, when

Angelina was away in Baguio, Rene sold the said lot to Marcelo. Is the sale void or voidable? (2%)

SUGGESTED ANSWER:

The sale is void. Since the sale was executed in 1990, the Family Code is the law applicable. Under Article 124 of the FC, the sale of a conjugal property by a spouse without the consent of the other is void.

ALTERNATIVE ANSWER:

The sale is voidable. The provisions of the Family Code may apply retroactively but only if such application will not impair vested rights. When Rene and Angelina got married in 1980, the law that governed their property relations was the New Civil Code. Under the NCC, as interpreted by the Supreme Court in **Heirs of Felipe v. Aldon, 100 SCRA 628 and reiterated in Heirs of Ayuste v. Malabonga, G.R No. 118784, 2 September 1999**, the sale executed by the husband without the consent of the wife is voidable. The husband has already acquired a vested right on the voidable nature of dispositions made without the consent of the wife. Hence, Article 124 of the Family Code which makes the sale void does not apply.

Marriage; Requisites; Marriage License (2002)

On May 1, 1978 Facundo married Petra, by whom he had a son Sotero. Petra died on July 1, 1996, while Facundo died on January 1, 2002. Before his demise, Facundo had married, on July 1, 1990, Quercia. Having lived together as husband and wife since July 1, 1990, Facundo and Quercia did not secure a marriage license but executed the requisite affidavit for the purpose. To ensure that his inheritance rights are not adversely affected by his father second marriage, Sotero now brings a suit to seek a declaration of the nullity of the marriage of Facundo and Quercia, grounded on the absence of a valid marriage license. Quercia contends that there was no need for a marriage license in view for her having lived continuously with Facundo for five years before their marriage and that has Sotero has no legal personality to seek a declaration of nullity of the marriage since Facundo is now deceased.

A. Is the marriage of Facundo and Quercia valid, despite the absence of a marriage license? Explain. (2%)

SUGGESTED ANSWER:

A. The marriage with Quercia is void. The exemption from the requirement of a marriage license under Art. 34, Family Code, requires that the man and woman must have lived together as husband and wife for at least five years and without any legal impediment to marry each other during those five years. The cohabitation of Facundo and Quercia for six years from 1990 to July 1, 1996 when Petra died was one with a

legal impediment hence, not in compliance with the requirement of law. On other hand, the cohabitation thereafter until the marriage on July 1, 2000, although free from legal impediment, did not meet the 5-year cohabitation requirement.

ALTERNATIVE ANSWER:

The marriage of Facundo and Quercia is VALID. The second marriage was solemnized on July 1, 2000, when the Family Code was already affective. The family code took effect on August 3, 1988. Under the Family Code, no marriage license is required if the parties have been cohabiting for the period of five years and there is no legal impediment. There must no legal impediment **ONLY AT THE TIME OF THE SOLEMNIZATION OF THE MARRIAGE**, and not the whole five years period. This is clearly the intent of the code framers (see **Minutes of the 150th joint Civil Code of the Family Law Committees held on August 9, 1986**). Also, in **Manzano V. Sanchez, AM NO. MT -00-129, March 8, 2001**, the Supreme Court said that, as one of the requisites for the exception to apply, there must be no legal impediment at the time of the marriage. The Supreme Court did not say that the legal impediment must exist all throughout the five-year period. **SCRA 122 [2000]**. In the said case, the situation occurred during the Relations of the new Civil Code where Article 76 thereof clearly provides that during the five-year cohabitation, the parties must be unmarried. This is not so anymore in the Family Code. The Change in the Family Code is significant. If the second marriage occurred before the effectivity of the Family Code, the answer would that be that the marriage is void.

B. Does Sotero have the personality to seek the declaration of nullity of the marriage, especially now that Facundo is already deceased? Explain. (3%)

SUGGESTED ANSWER:

B. A void marriage may be questioned by any interested party in any proceeding where the resolution of the issue is material. Being a compulsory heir, Sotero has the personality to question the validity of the marriage of Facundo and Quercia. Otherwise, his participation in the estate on Facundo would be affected. (**Nināl V. Bayadog, 328 SCRA 122 [2000]**).

Marriage; Requisites (2008)

Roderick and Faye were high school sweethearts. When Roderick was 18 and Faye, 16 years old, they started to live together as husband and wife without the benefit of marriage. When Faye reached 18 years of age, her parents forcibly took her back and arranged for her marriage to Brad. Although Faye lived with Brad after the marriage, Roderick continued to regularly visit Faye while Brad was away at work. During their marriage, Faye gave birth to a baby girl, Laica. When Faye was 25 years old, Brad discovered her continued liason with Roderick and in one of their heated arguments, Faye shot Brad to death. She lost no time in marrying her true love Roderick, without a marriage license, claiming that they have been continuously cohabiting for more than 5 years.

(A). Was the marriage of Roderick and Faye valid? (2%)

SUGGESTED ANSWER:

No. The marriage of Roderick and Faye is not valid. Art. 4, FC provides that the absence of any of the essential or formal requisites renders the marriage void ab initio. However, no license shall benecessary for the marriage of a man and a woman who have lived together as husband and wife for at least 5 years and without any legal impediment to marry each other. In Republic v. Dayot, G.R. No. 175581, 28 March 2008, reiterating the doctrine in Niñal v. Bayadog, G.R. No. 133778, 14 March 2000, this five-year period is characterized by exclusivity and continuity. In the present case, the marriage of Roderick and Faye cannot be considered as a marriage of exceptional character, because there were 2 legal impediments during their cohabitation: minority on the part of Faye, during the first two years of cohabitation; and, lack of legal capacity, since Faye married Brad at the age of 18. The absence of a marriage license made the marriage of Faye and Roderick void ab initio.

Marriage; Divorce Decree Obtained by Alien Spouse; Effect (2006)

Marvin, a Filipino, and Shelley, an American, both residents of California, decided to get married in their local parish. Two years after their marriage, Shelley obtained a divorce in California. While in Boracay, Marvin met Manel, a Filipina, who was vacationing there. Marvin fell in love with her. After a brief courtship and complying with all the requirements, they got married in Hongkong to avoid publicity, it being Marvin's second marriage. Is his marriage to Manel valid? Explain. (5%)

SUGGESTED ANSWER:

Yes. The marriage will not fall under Art. 35(4) of the Family Code on bigamous marriages, provided that Shelley obtained an absolute divorce, capacitating her to remarry under her national law. Consequently, the marriage between Marvin and Manel may be valid as long as it was solemnized and valid in accordance with the laws of Hongkong [Art. 26, paragraphs 1 and 2, Family Code].

Marriage; Divorce Decrees Obtained by Alien Spouse [former Filipino] (2009)

Harry married Wilma, a very wealthy woman. Barely five (5) years into the marriage, Wilma fell in love with Joseph. Thus, Wilma went to a small country in Europe, became a naturalized citizen of that country, divorced Harry, and married Joseph. A year thereafter, Wilma and Joseph returned and established permanent residence in the Philippines.

(A). Is the divorce obtained by Wilma from Harry recognized in the Philippines? Explain your answer. (3%)

SUGGESTED ANSRWER :

As to Wilma, the divorced obtained by her is recognized as valid in the Philippines because she is now a foreigner. Philippine personal laws do not apply to a foreigner. However, recognition of the divorce as regards Harry will depend on the applicability to his

case of the second paragraph of Article 26 of the Family Code. If it is applicable, divorce is recognized as to him and, therefore, he can remarry. However, if it is not applicable, divorce is not recognized as to him and, consequently, he cannot remarry.

ALTERNATIVE ANSWER:

Yes, the divorce obtained by Wilma is recognized as valid in the Philippines. At the time she got the divorce, she was already a foreign national having been naturalized as a citizen of that "small country in Europe." Based on precedents established by the Supreme Court (Bayot v. CA, 570 SCRA 472 [2008]), divorce obtained by a foreigner is recognized in the Philippines if validly obtained in accordance with his or her national law.

(B). If Harry hires you as his lawyer, what legal recourse would you advise him to take? Why? (2%)

SUGGESTED ANSWER:

I will advise Harry to:

- (1) Dissolve and liquidate his property relations with Wilma; and
- (2) If he will remarry, file a petition for the recognition and enforcement of the foreign judgment of divorced (Rule 39, Rules of Court).

(C). Harry tells you that he has fallen in love with another woman, Elizabeth, and wants to marry her because, after all, Wilma is already married to Joseph. Can Harry legally marry Elizabeth? Explain. (2%)

SUGGESTED ANSWER:

Yes, he can validly marry Elizabeth, applying the doctrine laid down by the Supreme Court in Republic v. Obrecido (427 SCRA 114 [2005]). Under the second paragraph of Article 26 of the Family Code, for the Filipino spouse to have capacity to remarry, the law expressly requires the spouse who obtained the divorce to be a foreigner at the time of the marriage. Applying this requirement to the case of Harry it would seem that he is not given the capacity to remarry. This is because Wilma was a Filipino at the time of her marriage to Harry.

In Republic v. Obrecido, however, the Supreme Court ruled that a Filipino spouse is given the capacity to remarry even though the spouse who obtained the divorce was a Filipino at the time of the marriage, if the latter was already a foreigner when the divorce was already obtained abroad. According to the court, to rule otherwise will violate the equal protection clause of the Constitution.

Marriage; Divorce Decree Obtained by Alien Spouse; Effect (2010)

True or False.

a. Under Article 26 of the Family Code, when a foreign spouse divorces his/her Filipino spouse, the latter may re-marry by proving only that the foreign spouse has obtained a divorce against her or him abroad. (1%)

SUGGESTED ANSWER:

FALSE

In Garcia v. Recto, 366 SCRA 437 (2001), the SC held that for a Filipino spouse to have capacity to contract a subsequent marriage, it must also be proven that the foreign divorce obtained by the foreigner spouse gives such foreigner spouse capacity to remarry.

ALTERNATIVE ANSWER:

TRUE

Art 26 (2) (FC), clearly provides that the decree of divorce obtained abroad by the foreigner spouse is sufficient to capacitate the Filipino spouse to remarry.

Marriage; Divorce Decree Obtained by Former-Filipino Spouse (2012)

b) Cipriano and Lady Miros married each other. Lady Miros then left for the US and there, she obtained American citizenship. Cipriano later learned all about this including the fact that Lady Miros has divorced him in America and that she had remarried there. He then filed a petition for authority to remarry, invoking Par. 2, Art. 26 of the Family Code. Is Cipriano capacitated to re-marry by virtue of the divorce decree obtained by his Filipino spouse who was later naturalized as an American citizen? Explain. (5%)

SUGGESTED ANSWER:

Yes, he is capacitated to remarry. While the second paragraph of Article 26 of the Family Code is applicable only to a Filipino who married a Foreigner at the time of the marriage, the Supreme Court ruled in the case of Republic of the Philippines v. Orbecido G.R. No. 154380, 5 October 2005, that the said provision equally applies to a Filipino who married another Filipino, at the time of the marriage, but who was already a foreigner when the divorce was obtained.

Marriage; Divorce Decree; Requirement for Re-marriage of a Former Filipino Spouse (2014)

Ted, married to Annie, went to Canada to work. Five (5) years later, Ted became a naturalized Canadian citizen. He returned to the Philippines to convince Annie to settle in Canada. Unfortunately, Ted discovered that Annie and his friend Louie were having an affair. Deeply hurt, Ted returned to Canada and filed a petition for divorce which was granted. In December 2013, Ted decided to marry his childhood friend Corazon in the Philippines. In preparation for the wedding, Ted went to the Local Civil Registry of Quezon City where his marriage contract with Annie was registered. He asked the Civil Register to annotate the decree of divorce on his marriage contract with Annie. However, he was advised by the National Statistics Office (NSO) to file a petition for judicial recognition of the decree of divorce in the Philippines.

Is it necessary for Ted to file a petition for judicial recognition of the decree of divorce he obtained in Canada before he can contract a second marriage in the Philippines? (4%)

SUGGESTED ANSWER:

No, it is not necessary for Ted to file a petition for judicial recognition of the decree of divorce he obtained in Canada before he can contract a second marriage in the Philippines. Ted, who is already a

foreigner being a naturalized Canadian citizen, will be required to submit a certificate of legal capacity to contract marriage issued by the proper diplomatic or consular officials to obtain a marriage license.

Marriage; Void Marriages (2004)

A. BONI and ANNE met while working overseas. They became sweethearts and got engaged to be married on New Year's Eve aboard a cruise ship in the Caribbean. They took the proper license to marry in New York City, where there is a Filipino consulate. But as planned the wedding ceremony was officiated by the captain of the Norwegian-registered vessel in a private suite among selected friends. Back in Manila, Anne discovered that Boni had been married in Bacolod City 5 years earlier but divorced in Oslo only last year. His first wife was also a Filipina but now based in Sweden. Boni himself is a resident of Norway where he and Anne plan to live permanently. Anne retains your services to advise her on whether her marriage to Boni is valid under Philippine law? Is there anything else she should do under the circumstances? (5%)

SUGGESTED ANSWER:

If Boni is still a Filipino citizen, his legal capacity is governed by Philippine Law (Art. 15 Civil Code). Under prior existing marriage which was not dissolved by the divorce decreed in Oslo. Divorce obtained abroad by a Filipino is not recognized.

If Boni was no longer a Filipino citizen, the divorce is valid. Hence, his marriage to Anne is valid if celebrated in accordance with the law of the place where it was celebrated.

Since the marriage was celebrated aboard a vessel of Norwegian registry, Norwegian law applies. If the Ship Captain has authority to solemnize the marriage aboard his ship, the marriage is valid and shall be recognized in the Philippines.

As to the second question, if Boni is still a Filipino, Anne can file an action for declaration of nullity of her marriage to him.

Marriage; Void Marriages (2006)

Gigi and Ric, Catholics, got married when they were 18 years old. Their marriage was solemnized on August 2, 1989 by Ric's uncle, a Baptist Minister, in Calamba, Laguna. He overlooked the fact that his license to solemnize marriage expired the month before and that the parties do not belong to his congregation. After 5 years of married life and blessed with 2 children, the spouses developed irreconcilable differences, so they parted ways. While separated, Ric fell in love with Juliet, a 16 year-old sophomore in a local college and a Seventh-Day Adventist. They decided to get married with the consent of Juliet's parents. She presented to him a birth certificate showing she is 18 years old. Ric never doubted her age much less the authenticity of her birth certificate. They got married in a Catholic church in Manila. A year after, Juliet gave birth to twins, Aissa and Aretha.

(1) What is the status of the marriage between Gigi and Ric — valid, voidable or void? Explain. (2.5%)

SUGGESTED ANSWER:

Even if the Minister's license expired, the marriage is valid if either or both Gigi and Ric believed in good faith that he had the legal authority to solemnize marriage. While the authority of the solemnizing officer is a formal requisite of marriage, and at least one of the parties must belong to the solemnizing officer's church, the law provides that the good faith of the parties cures the defect in the lack of authority of the solemnizing officer (Art. 35 par. 2, Family Code; Sempio-Diy, p. 34; Rabuya, The Law on Persons and Family Relations, p. 208). The absence of parental consent despite their having married

at the age of 18 is deemed cured by their continued cohabitation beyond the age of 21. At this point, their marriage is valid (See Art. 45, Family Code).

(2) What is the status of the marriage between Ric and Juliet — valid, voidable or void? (2.5%)

SUGGESTED ANSWER:

The marriage between Juliet and Ric is void. First of all, the marriage is a bigamous marriage not falling under Article 41 [Art. 35(4) Family Code]. A subsisting marriage constitutes a legal impediment to remarriage. Secondly, Juliet is below eighteen years of age. The marriage is void even if consented to by her parents [Art. 35(1), Family Code]. The fact that Ric was not aware Under Article 213 of the Family Code, no child under 7 of her real age is immaterial.

(3) Suppose Ric himself procured the falsified birth certificate to persuade Juliet to marry him despite her minority and assured her that everything is in order. He did not divulge to her his prior marriage with Gigi. What action, if any, can Juliet take against him? Explain. (2.5%)

SUGGESTED ANSWER:

Juliet can file an action for the declaration of nullity of the marriage on the ground that he willfully caused loss or injury to her in a manner that is contrary to morals, good customs and public policy [Art. 21, New Civil Code]. She may also bring criminal actions for seduction, falsification, illegal marriage and bigamy against Ric.

(4) If you were the counsel for Gigi, what action/s will you take to enforce and protect her interests? Explain. (2.5%)

SUGGESTED ANSWER:

I would file an action to declare the marriage between Juliet and Ric null and void ab initio and for Ric's share in the co-ownership of that marriage to be forfeited in favor and considered part of the absolute community in the marriage between Gigi and Ric [Arts. 148 & 147, Family Code]. I would also file an action for damages against Ric on the grounds that his acts constitute an abuse of right and they are contrary to law and morals, causing damages to Gigi (See Arts. 19, 20, 21, New Civil Code).

Marriage; Void Marriages; Status of Children (2009)

In December 2000, Michael and Anna, after obtaining a valid marriage license, went to the Office of the Mayor of Urbano, Bulacan, to get married. The Mayor was not there, but the Mayor's secretary asked Michael and Anna and their witnesses to fill up and sign the required marriage contract forms. The secretary then told them to wait, and went out to look for the Mayor who was attending a wedding in a neighboring municipality.

When the secretary caught up with the Mayor at the wedding reception, she showed him the marriage contract forms and told him that the couple and their witnesses were waiting in his office. The Mayor forthwith signed all the copies of the marriage contract, gave them to the secretary who returned to the Mayor's office. She then gave copies of the marriage contract to the parties, and told Michael and Anna that they were already married. Thereafter, the couple lived together as husband and wife, and had three sons.

(A). Is the marriage of Michael and Anna valid, voidable, or void? Explain your answer. (3%)

SUGGESTED ANSWER:

The marriage is void because the formal requisite of marriage ceremony was absent (Art.3, F.C. 209, Family Code).

ALTERNATIVE ANSWER:

The marriage is void because an essential requisite was absent: consent of the parties freely given in the presence of the solemnizing officer (Art .2, FC).

(B). What is the status of the three children of Michael and Anna? Explain your answer. (2%)

SUGGESTED ANSWER:

The children are illegitimate, having been born outside a valid marriage.

Marriage; Void Marriages; Status of Children (2010)

In 1997, B and G started living together without the benefit of marriage. The relationship produced one offspring, Venus. The couple acquired a residential lot in Parañaque. After four (4) years or in 2001, G having completed her 4-year college degree as a fulltime student, she and B contracted marriage without a license.

The marriage of B and G was, two years later, declared null and void due to the absence of a marriage license.

b. Is Venus legitimate, illegitimate, or legitimated? Explain briefly. (3%)

SUGGESTED ANSWER:

Venus is illegitimate. She was conceived and born outside a valid marriage. Thus, she is considered illegitimate (Article 165, Family Code). While Venus was legitimated by the subsequent marriage of her parents, such legitimation was rendered ineffective when the said marriage was later declared null and void due to absence of marriage license.

Under Article 178 of the Family Code, "legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation." The inclusion of the underscored portion in the Article necessarily implies that the Article's application is limited to voidable marriages. It follows that when the subsequent marriage is null and void, the legitimation must also be null and void. In the present problem, the marriage between B and G was not voidable but void. Hence, Venus has remained an illegitimate child.

Marriage; Void Marriages; By Reason of Public Policy (2008)

Despite several relationships with different women, Andrew remained unmarried. His first relationship with Brenda produced a daughter, Amy, now 30 years old. His second, with Carla, produced two sons: Jon and Ryan. His third, with Donna, bore him no children although Elena has a daughter Jane, from a previous relationship. His last, with Fe, produced no biological children but they informally adopted without court proceedings, Sandy's now 13 years old, whom they consider as their own. Sandy was orphaned as a baby and was entrusted to them by the midwife who attended to Sandy's birth. All the children, including Amy, now live with Andrew in his house.

(D). Can Jon and Jane legally marry? (1%)

SUGGESTED ANSWER:

Yes. Jon and Jane can marry each other; Jon is an illegitimate child of Andrew while Jane is a child of Elena from a previous relationship. Thus, their marriage is not one of the prohibited marriages enumerated under Art. 38 of the FC.

Marriage; Void Marriages; By Reason of Public Policy (2007)

Write "TRUE" if the statement is true or "FALSE" if the statement is false. If the statement is FALSE, state the reason. (2% each).

(5). Amor gave birth to Thelma when she was 15 years old. Thereafter, Amor met David and they got married when she was 20 years old. David had a son, Julian, with his ex-girlfriend Sandra. Julian and Thelma can get married.

SUGGESTED ANSWER:

TRUE. Julian and Thelma can get married. Marriage between stepbrothers and stepsisters are not among the marriages prohibited under the Family Code.

Marriage; Subsequent Marriage (2008)

Ana Rivera had a husband, a Filipino citizen like her, who was among the passengers on board a commercial jet plane which crashed in the Atlantic Ocean ten (10) years earlier and had never been heard of ever since. Believing that her husband had died, Ana married Adolf Cruz Staedtler, a divorced German national born of a German father and a Filipino mother residing in

Stuttgart. To avoid being required to submit the required certificate of capacity to marry from the German Embassy in Manila, Adolf stated in the application for marriage license that he was a Filipino citizen. With the marriage license stating that Adolf was a Filipino, the couple got married in a ceremony officiated by the Parish Priest of Calamba, Laguna in a beach in Nasugbu, Batangas, as the local parish priest refused to solemnize marriages except in his church. Is the marriage valid? Explain fully. (5%)

SUGGESTED ANSWER:

No. The marriage is not valid. Art. 41 FC allows the present spouse to contract a subsequent marriage during the subsistence of his previous marriage provided that: (a) his prior spouse in the first marriage had been absent for four consecutive years; (b) that the spouse present has a well-founded belief that the absent spouse was already dead, and

(C) present spouse instituted a summary proceeding for the declaration of the presumptive death of absent spouse. Otherwise, the second marriage shall be null and void. In the instant case, the husband of Ana was among the passengers on board a commercial jet plane which crashed in the Atlantic Ocean. The body of the deceased husband was not recovered to confirm his death. Thus, following Art. 41, Ana should have first secured a judicial declaration of his presumptive death before she married Adolf. The absence of the said judicial declaration incapacitated Ana from contracting her second marriage, making it void ab initio.

Marriage; Annulment; Grounds (2007)

Write "TRUE" if the statement is true or "FALSE" if the statement is false. If the statement is FALSE, state the reason. (2% each).

(4). The day after John and Marsha got married, John told her that he was impotent. Marsha continued to live with John for 2 years. Marsha is now estopped from filing an annulment case against John.

SUGGESTED ANSWER:

FALSE. Marsha is not estopped from filing an annulment case against John on the ground of his impotence, because she learned of his impotence after the celebration of the marriage and not before. Physical incapacity to consummate is a valid ground for the annulment of marriage if such incapacity was existing at the time of the marriage, continues and appears to be incurable. The marriage may be annulled on this ground within five years from its celebration.

Marriage; Annulment; Grounds (2009)

Emmanuel and Margarita, American citizens and employees of the U.S. State Department, got married in the African state of Kenya where sterility is a ground for annulment of marriage. Thereafter, the spouses were assigned to the U.S. Embassy in Manila. On the first year of the spouses' tour of duty in the Philippines, Margarita filed an annulment case against Emmanuel before a Philippine court on the ground of her husband's sterility at the time of the celebration of the

marriage.

(B). Assume Emmanuel and Margarita are both Filipinos. After their wedding in Kenya, they come back and take up residence in the Philippines. Can their marriage be annulled on the ground of Emmanuel's sterility? Explain. (3%)

SUGGESTED ANSWER:

No, the marriage cannot be annulled under the Philippine law. Sterility is not a ground for annulment of marriage under Article 45 of the Family Code.

ALTERNATIVE ANSWER:

No, the marriage cannot be annulled in the Philippines.

The Philippine court shall have jurisdiction over the action to annul the marriage not only because the parties are residents of the Philippines but because they are Filipino citizens. The Philippine court, however, shall apply the law of the place where the marriage was celebrated in determining its formal validity (Article 26, FC; Article 17, NCC).

Since the marriage was celebrated in Kenya in accordance with Kenyan law, the formal validity of such marriage is governed by Kenyan law and any issue as to the formal validity of that marriage shall be determined by applying Kenyan law and not Philippine law.

However, while Kenyan law governs the formal validity of the marriage, the legal capacity of the Filipino parties to the marriage is governed not by Kenyan law but by Philippine law (Article 15, NCC). Sterility of a party as a ground for the annulment of the marriage is not a matter of form but a matter of legal capacity. Hence, the Philippine court must apply Philippine law in determining the status of the marriage on the ground of absence or defect in the legal capacity of the Filipino parties. Since sterility does not constitute absence or defect in the legal capacity of the parties under Philippine law, there is no ground to avoid or annul the marriage. Hence, the Philippine court has to deny the petition.

Marriage; Declaration of Nullity; Right to Support *Pendente Lite* (2010)

G filed on July 8, 2000 a petition for declaration of nullity of her marriage to B. During the pendency of the case, the couple entered into a compromise agreement to dissolve their absolute community of property. B ceded his right to their house and lot and all his shares in two business firms to G and their two children, aged 18 and 19. B also opened a bank account in the amount of P3 million in the name of the two children to answer for their educational expenses until they finish their college degrees.

For her part, G undertook to shoulder the day-to-day living expenses and upkeep of the children. The Court approved the spouses' agreement on September 8, 2000.

a. Suppose the business firms suffered reverses, rendering G unable to support herself and the children. Can G still ask for support pendente lite from B? Explain. (3%)

SUGGESTED ANSWER:

Yes, G can still ask for support from B because during the pendency of the action, the marriage between them is considered still subsisting (Article 68, Family Code). Being considered still married to each other, B and G still have the obligation to support each other. The compromise agreement cannot operate to waive future support when needed. (Article 2035, Civil Code).

After the compromise agreement was approved by the court and the properties of the marriage were distributed, there remained no more common properties of B and G. While Article 198 of the Family Code appears to limit the source of support to the common properties of the said marriage in case of the pendency of an action to declare the nullity of marriage, Article 94 and Article 121 indicate otherwise. Under the said Articles, the spouses remain personally and solidarily liable with their separate properties for support even though, for whatever reason, there are no more community or partnership properties left.

The judgment based on the compromise dissolving the property relations of B and G does not bar G from asking support pendent lite. The dissolution of the property relations of the spouses did not terminate the obligation between them to support each other. The declaration of the nullity of their marriage is what terminated the right of G to be supported by B as his spouse.

b. Suppose in late 2004 the two children had squandered the P3 million fund for their education before they could obtain their college degrees, can they ask for more support from B? Explain. (3%)

SUGGESTED ANSWER:

Yes, the two children can still ask for support for schooling or training for some profession, trade or vocation, even beyond the age of majority until they shall have finished or completed their education (Article 194, Paragraph 2, Family Code, *Javier v. Lucero*, 94 Phil. 634 [1954]). Their having squandered the money given to them for their education will not deprive them of their right to complete an education, or to extinguish the obligation of the parents to ensure the future of their children.

Marriage; Declaration of Nullity; Psychological Incapacity (2002)

A. Give a brief definition or explanation of the term—psychological incapacity as a ground for the declaration of nullity of a marriage. (2%)

B. If existing at the inception of marriage, would the state of being of unsound mind or the concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism be considered indicia of psychological incapacity? Explain. (2%).

SUGGESTED ANSWER:

A. PSYCHOLOGICAL INCAPACITY is a mental disorder of the most serious type showing the incapability of one or both spouses to comply the essential marital obligations of love, respect, cohabitation, mutual help and support, trust and commitment. It must be characterized by Juridical antecedence, gravity and incurability and its root causes must be clinically identified or examined. (*Santos v. CA*, 240 SCRA 20 [1995]).

B. In the case of *Santos v. Court of Appeals*, 240 SCRA 20 (1995), the Supreme Court held that being of unsound mind, drug addiction, habitual alcoholism, lesbianism or homosexuality may be indicia of psychological incapacity, depending on the degree of severity of the disorder. However, the concealment of drug addiction, habitual alcoholism, lesbianism or homosexuality is a ground of annulment of marriage.

Marriage; Declaration of Nullity; Psychological Incapacity (2012)

b) The petitioner filed a petition for declaration of nullity of marriage based allegedly on the psychological incapacity of the respondent, but the psychologist was not able to personally examine the respondent and the psychological report was based only on the narration of petitioner. Should the annulment be granted? Explain. (5%)

SUGGESTED ANSWER:

The annulment cannot be granted solely on the basis of the psychological report. For the report to prove the psychological incapacity of the respondent. It is required that the psychologist should personally examine the respondent and the psychological report should be based on the psychologist's independent assessment of the facts as to whether or not the respondent is psychologically incapacitated.

Since the psychologist did not personally examine the respondent, and his report is based solely on the story of the petitioner who has an interest in the outcome of the petition, the marriage cannot be annulled on the ground of respondent's psychological incapacity if the said report is the only evidence of the respondent's psychological incapacity.

Marriage; Declaration of Nullity; Psychological Incapacity (2013)

You are a Family Court judge and before you is a Petition for the Declaration of Nullity of Marriage (under Article 36 of the Family Code) filed by Maria against Neil. Maria claims that Neil is psychologically incapacitated to comply with the essential obligations of marriage because Neil is a drunkard, a womanizer, a gambler, and a mama's boy- traits that she never knew or saw when Neil was courting her. Although summoned, Neil did not answer Maria's petition and never appeared in court.

To support her petition, Maria presented three witnesses- herself, Dr. Elsie Chan, and Ambrosia. Dr.

Chan testified on the psychological report on Neil that she prepared. Since Neil never acknowledged nor responded to her invitation for interviews, her report is solely based on her interviews with Maria and the spouses' minor children. Dr. Chan concluded that Neil is suffering from Narcissistic Personality Disorder, an ailment that she found to be already present since Neil's early adulthood and one that is grave and incurable. Maria testified on the specific instances when she found Neil drunk, with another woman, or squandering the family's resources in a casino. Ambrosia, the spouses' current household help, corroborated Maria's testimony. On the basis of the evidence presented, will you grant the petition? (8%)

SUGGESTED ANSWER:

No. The petition should be denied.

The psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness (*Republic v. CA and Molina*, G.R. No. 108763, February 13, 1997)

In this case, the pieces of evidence presented are not sufficient to conclude that indeed Neil is suffering from a psychological incapacity (Narcissistic Personality Disorder) existing already before the marriage, incurable and serious enough to prevent Neil from performing his essential marital obligations.

Dr. Chan Chan's report contains mere conclusions. Being a drunkard, womanizer, gambler and a mama's boy merely shows Neil's failure to perform his marital obligations. In a number of cases, the Supreme Court did not find the existence of psychological incapacity in cases where the respondents showed habitual drunkenness (*Republic v. Melgar*, G.R. No. 139676 [2006], blatant display of infidelity and irresponsibility (*Dedel v. CA*, [2004], or being hooked to gambling and drugs (*Republic v. Tanyag-San Jose*, G.R. No. 168328, [2007])).

ALTERNATIVE ANSWER:

Yes. The petition should be granted. The personal medical and psychological examination of the respondent is not a requirement for a declaration of psychological incapacity. It is the totality of the evidence presented which shall determine the existence of psychological incapacity (*Marcos v. Marcos*, G.R. No. 136490, October 19, 2000). Dr. Chan's report, corroborated by Maria's and Ambrosia's testimony, therefore, sufficiently proves Neil's psychological incapacity to assume his marital obligations.

Marriage; Declaration of Nullity; Psychological Incapacity (2014)

Ariz and Paz were offcimates at *PerlasngSilanganan Bank (PSB)*. They fell in love with each other and had a civil and church wedding. Meanwhile, Paz rapidly climbed the corporate ladder

of PSB and eventually became its Vice-President, while Ariz remained one of its bank supervisors, although he was short of 12 units to finish his Masters of Business Administration (MBA) degree.

Ariz became envious of the success of his wife. He started drinking alcohol until he became a drunkard. He preferred to join his "barkadas"; became a wife-beater; would hurt his children without any reason; and failed to contribute to the needs of the family. Despite rehabilitation and consultation with a psychiatrist, his ways did not change.

After 19 years of marriage, Paz, a devout Catholic, decided to have their marriage annulled by the church. Through that testimony of Paz and a psychiatrist, it was found that Ariz was a spoiled brat in his youth and was sometimes involved in brawls. In his teens, he was once referred to a psychiatrist for treatment due to his violent tendencies. In due time, the National Appellate Matrimonial Tribunal (NAMT) annulled the union of Ariz and Paz due to the failure of Ariz to perform and fulfill his duties as a husband and as a father to their children. The NAMT concluded that it is for the best interest of Paz, Ariz and their children to have the marriage annulled.

In view of the NAMT decision, Paz decided to file a Petition for Declaration of Nullity of Marriage of their civil wedding before the Regional Trial Court (RTC) of Makati City using the NAMT decision and the same evidence adduced in the church annulment proceedings as basis.

If you are the judge, will you grant the petition? Explain. (5%)

SUGGESTED ANSWER:

No. I will not grant the petition for declaration of nullity of marriage. In *Republic v. Molina*, (G.R. No. 108763, February 13, 1997), the Supreme Court rules that while the interpretations given by the National Appellate Matrimonial Tribunal (NAMT) of the Catholic Church in the Philippines should be given great respect by our courts, they are not controlling or decisive. Its interpretation is not conclusive on the courts. The courts are still required to make their own determination as to the merits of the case, and not rely solely on the finding of the NAMT.

It has been held that psychological incapacity as a ground for nullifying a marriage is confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to marriage. The three essential requisites in order for psychological incapacity to be appreciated are: 1) gravity, 2) juridical antecedence, and 3) incurability. In the present case, there was no showing that the psychological incapacity was existing at the time of the celebration of the marriage.

Marriage; Declaration of Nullity; Psychological Incapacity (2015)

Kardo met Glenda as a young lieutenant and after a whirlwind courtship, they were married. In the early part of his military career, Kardo was assigned to different places all over the country but Glenda refused to

accompany him as she preferred to live in her hometown. They did not live together until the 12th year of their marriage when Kardo had risen up the ranks and was given his own command. They moved to living quarters in Fort Gregorio. One day, while Kardo was away on official business, one of his military aides caught Glenda having sex with the corporal assigned as Kardo's driver. The aide immediately reported the matter to Kardo who rushed home to confront his wife. Glenda readily admitted the affair and Kardo sent her away in anger. Kardo would later come to know the true extent of Glenda's unfaithfulness from his aides, his household staff, and former neighbors who informed him that Glenda has had intimate relations with various men throughout their marriage whenever Kardo was away on assignment.

Kardo filed a petition for declaration of nullity of marriage under Article 36. Based on interviews from Kardo, his aide, and the housekeeper, a psychologist testified that Glenda's habitual infidelity was due to her affliction with Histrionic Personality Disorder, an illness characterized by excessive emotionalism and uncontrollable attention-seeking behavior rooted in Glenda's abandonment as a child by her father. Kardo himself, his aide, and his housekeeper also testified in court. The RTC granted the petition, relying on the liberality espoused by *Te v. Te and Azcueta v. Republic*. However, the OSG filed an appeal, arguing that sexual infidelity was only a ground for legal separation and that the RTC failed to abide by the guidelines laid down in the Molina case. How would you decide the appeal? (5%)

SUGGESTED ANSWER:

I would dismiss the appeal if the incapacity is incurable and so grave as to prevent Glenda from performing her essential marital obligations. For the Historic Personality Disorder to be a ground for declaration of nullity of marriage under Article 36 of the Family Code, it must be characterized by (1) gravity; (2) juridical antecedence; and (3) incurability.

The sexual infidelity in this case was not the ground for the declaration of the nullity of marriage, but merely the manifestation of Glenda's incapacity to comply with her obligation to Kardo as a spouse, and her inability to accord respect to the sanctity of their marriage, satisfying the request of gravity. There was juridical antecedence since the psychologist testified that the incapacity already existed at the time of the marriage, as it was rooted in Glenda's abandonment as a child by her father. The fact that Glenda was not personally examined is immaterial. As held by the Supreme Court, "there is no requirement that the respondent spouse be personally examined by a physician or psychologist as a condition sine qua non for the declaration of nullity of marriage based on psychological incapacity. What matters is whether the totality of evidence presented is adequate to sustain a finding of psychological incapacity." (*Marcos v. Marcos*, G.R. 136490, Oct. 19, 2000). Moreover, it has been held by the Supreme Court that the Molina doctrine should not be rigidly or

strictly applied. Molina is not set in stone and the interpretation of Article 36 must rely on a case-to-case-basis (*Antonio vs. Reyes*, G.R. 155880, March 10, 2006).

ALTERNATIVE ANSWER:

I would grant the appeal. First, there was no showing that the incapacity is incurable or that it was so grave that she could not perform her essential marital obligations. Also, as held in the case of *Ochosa v. Olano*, there was insufficient evidence that Glenda's defects were already present at the inception of, or prior to, the marriage; her alleged psychological incapacity did not satisfy the jurisprudential requisite of juridical antecedence, as laid down in *Republic v. CA and Molina*, G.R. 108763, Feb 13, 1997. It was not shown how the psychologist arrived at the conclusion that Glenda's habitual infidelity was due to her affliction with Historic Personality Disorder. It is possible that the psychologist evaluated her condition only indirectly, from information gathered from Kardo and his witness, which evokes the probability that the information was biased in favor of Kardo's cause. Although the Supreme Court has held that personal examination of a party alleged to be psychologically incapacitated is not a mandatory requirement (*Marcos v. Marcos*, G.R. 136490, Oct. 19, 2000), it has also ruled that to make conclusions and generalizations on a spouse's psychological condition based on the information fed by only one side, similar to the case at bar, is not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence (*Padilla-Rimbaua v. Rimbaua*, 5596 SCRA 157 [2009]). Mere sexual infidelity is not itself a ground for dissolution of marriage under Article 36, even if habitual; at most, it can only be ground for legal separation.

Marriage; Declaration of Nullity; Who May File (2012)

b) A petition for declaration of nullity of a void marriage can only be filed by either the husband or the wife? Do you agree? Explain your answer. (5%)

SUGGESTED ANSWER:

b. Yes, I agree. Under the Rules promulgated by the Supreme Court, a direct action for declaration of nullity may only be filed by any of the spouses

ALTERNATIVE ANSWER:

b. No, I do not agree. There are others who may file a petition for declaration of nullity such as the other spouse in bigamous marriages.

Marriage; Declaration of Nullity; Issuance of Decree After Liquidation (2014)

Miko and Dinah started to live together as husband and wife without the benefit of marriage in 1984. Ten (10) years after, they separated. In 1996, they decided to live together again, and in 1998, they got married.

On February 17, 2001, Dinah filed a complaint for declaration of nullity of her marriage with Miko on the ground of psychological incapacity under Article 36 of the Family Code. The court rendered the following decision:

1. Declaring the marriage null and void;

2. Dissolving the regime of absolute community of property; and
3. Declaring that a decree of absolute nullity of marriage shall only be issued after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code."

Dinah filed a motion for partial reconsideration questioning the portion of the decision on the issuance of a decree of nullity of marriage only after the liquidation, partition and distribution of properties under Article 147 of the Code. If you are the judge, how will you decide petitioner's motion for partial reconsideration? Why? (4%)

SUGGESTED ANSWER:

I will grant the motion for partial reconsideration. Section 19 (1) of the Rule on Declaration of Absolute Nullity of Null Marriages and Annulment of Voidable Marriages, which require that the decree of nullity of marriage be issued only after the liquidation, partition and distribution of properties does not apply to declarations of nullity based on Art. 36 of the Family Code. The said rule only applies if there was a second marriage which is void because of non-compliance with the requirements of Article 40 of the Family Code. In the case of *Diño v. Diño*, (G.R. No. 178044, January 19, 2011), the court held that Sec. 19 (1) only applies to Family Code, Articles 50 and 51, which are, subsequently applicable only to marriages which are declared void *ab initio* or annulled by final judgment under Articles 40 and 45 of the Family Code. Since there is no previous marriage in this case and the marriage was nullified under Article 36 of the Family Code, Section 19 (1) of the said Rules does not apply.

Marriage; Grounds; Declaration of Nullity; Annulment; Legal Separation; Separation of Property (2003)

Which of the following remedies, i.e.,

- (a) declaration of nullity of marriage,
- (b) annulment of marriage,
- (c) legal separation, and/or
- (d) separation of property, can an aggrieved spouse avail himself/herself of-
 - (i) If the wife discovers after the marriage that her husband has —AIDS.
 - (ii) If the wife goes (to) abroad to work as a nurse and refuses to come home after the expiration of her three-year contract there.
 - (iii) If the husband discovers after the marriage that his wife has been a prostitute before they got married.
 - (iv) If the husband has a serious affair with his secretary and refuses to stop notwithstanding advice from relatives and friends.
 - (v) If the husband beats up his wife every time he comes home drunk. 5%

SUGGESTED ANSWER:

- (i) Since AIDS is a serious and incurable sexually-transmissible disease, the wife may file an **action for**

annulment of the marriage on this ground whether such fact was concealed or not from the wife, provided that the disease was present at the time of the marriage. The marriage is voidable even though the husband was not aware that he had the disease at the time of marriage.

(ii) If the wife refuses to come home for three (3) months from the expiration of her contract, she is presumed to have abandoned the husband and he may file an **action for judicial separation of property**. If the refusal continues for more than one year from the expiration of her contract, the husband may file the **action for legal separation** under Art. 55 (10) of the Family Code on the ground of abandonment of petitioner by respondent without justifiable cause for more than one year. The wife is deemed to have abandoned the husband when she leaves the conjugal dwelling without any intention of returning (Article 101, FC). The intention not to return cannot be presumed during the 30-year period of her contract.

(iii) If the husband discovers after the marriage that his wife was a prostitute before they got married, he has no remedy. No misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute fraud as legal ground for an action for the annulment of marriage (Article 46 FC).

(iv) The wife may file an **action for legal separation**. The husband's sexual infidelity is a ground for legal separation (Article 55, FC). She may also file an **action for judicial separation of property** for failure of her husband to comply with his marital duty of fidelity (Article 135 (4), 101, FC).

(v) The wife may file an **action for legal separation** on the ground of repeated physical violence on her person (Article 55 (1), FC). She may also file an **action for judicial separation of property** for failure of the husband to comply with his marital duty of mutual respect (Article 135 (4), Article 101, FC). She may also file an **action for declaration of nullity** of the marriage if the husband's behavior constitute psychological incapacity existing at the time of the celebration of marriage.

Marriage; Legal Separation; Declaration of Nullity (2002)

If drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, would this constitute grounds for a declaration of nullity or for legal separation, or would they render the marriage voidable? (1%).

SUGGESTED ANSWER:

In accordance with law, if drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, they: a) Will not constitute as ground for declaration of nullity (Art. 36, Family Code); b) Will constitute as grounds

for legal separation (Art. 56, FC) and c) will not constitute as grounds to render the marriage voidable (Art. 45 and 46, FC)

Marriage; Legal Separation; Mutual guilt (2006)

Saul, a married man, had an adulterous relation with Tessie. In one of the trysts, Saul's wife, Cecile, caught them in flagrante. Armed with a gun, Cecile shot Saul in a fit of extreme jealousy, nearly killing him. Four (4) years after the incident, Saul filed an action for legal separation against Cecile on the ground that she attempted to kill him.

(1) If you were Saul's counsel, how will you argue his case? (2.5%)

SUGGESTED ANSWER:

As the counsel of Saul, I will argue that an attempt by the wife against the life of the husband is one of the grounds enumerated by the Family Code for legal separation and there is no need for criminal conviction for the ground to be invoked (Art. 55, par. 9, Family Code).

(2) If you were the lawyer of Cecile, what will be your defense? (2.5%)

SUGGESTED ANSWER:

As the counsel of Cecile, I will invoke the adultery of Saul. Mutual guilt is a ground for the dismissal of an action for legal separation (Art. 56, par. 4, Family Code). The rule is anchored on a well-established principle that one must come to court with clean hands.

(3) If you were the judge, how will you decide the case? (5%)

SUGGESTED ANSWER:

If I were the judge, I will dismiss the action on the ground of mutual guilt of the parties. The Philippine Constitution protects marriage as an inviolable social institution (Art. XV, Sec. 2, 1987 Constitution). An action for legal separation involves public interest and no such decree should be issued if any legal obstacle thereto appears on record. This is in line with the policy that in case of doubt, the court shall uphold the validity and sanctity of marriage.

Marriage; Legal Separation; Condonation (2012)

a) After they got married, Nikki discovered that Christian was having an affair with another woman. But Nikki decided to give it a try and lived with him for two (2) years. After two (2) years, Nikki filed an action for legal separation on the ground of Christian's sexual infidelity. Will the action prosper? Explain. (5%)

SUGGESTED ANSWER:

a. Although the action for legal separation has not yet prescribed, the prescriptive period being five years, if Christian's affair with another woman was ended when Nikki decided to live with him again, Nikki's action will not prosper on account of condonation. However, if such affair is still continuing, Nikki's action would prosper because the action will surely be within five (5) years from the commission of the latest act of sexual

infidelity. Every act of sexual liaison is a ground for legal separation.

Property Relations; Absolute Community of Property (2007)

Write "TRUE" if the statement is true or "FALSE" if the statement is false. If the statement is FALSE, state the reason. (2% each).

(3). An individual, While single, purchases a house and lot in 1990 and borrows money in 1992 to repair it. In 1995, such individual gets married while the debt is still being paid. After the marriage, the debt is still the responsibility of such individual.

SUGGESTED ANSWER:

FALSE. The absolute Community of property is liable for the ante-nuptial debts of either spouse in so far as the same redounded to the benefit of the family (Art. 94 par. 7, FC).

ALTERNATIVE ANSWER:

FALSE. The debt is already the responsibility of the community property, because the property already constitutes absolute community property under Art. 91 of FC which took effect in 1988 while the house and lot here involved was purchased in 1990. There is no indication that the spouse who bought the property had legitimate descendants by a former marriage, which would exclude the house and lot from the community property, Art. 92 par 3, FC). If the spouses established a conjugal partnership, the property belongs to the individual spouse if full ownership was vested before marriage (Art. 118, FC).

Property Relations; Absolute Community of Property (2016)

Marco and Gina were married in 1989. Ten years later, or in 1999, Gina left Marco and lived with another man, leaving their two children of school age with Marco. When Marco needed money for their children's education he sold a parcel of land registered in his name, without Gina's consent, which he purchased before his marriage. Is the sale by Marco valid, void or voidable? Explain with legal basis. (4%)

SUGGESTED ANSWER:

The sale is void. The marriage was celebrated during the effectivity of the Family Code. In the absence of marriage settlement, the property relations between the spouses is governed by absolute community of property, whereby all the properties owned by the spouses at the time of the celebration of the marriage, as well as whatever they may acquire during the marriage, shall form part of the absolute community property, as a rule (Art. 91, Family Code). The parcel of land sold is part of the community property as Marcos owned it before the marriage. In an absolute community of property regime, the administration and enjoyment shall belong to both spouses jointly (Art. 96, Family Code). Neither spouse may dispose or encumber common properties without the authority of the court or the written consent of the other spouse, and in the absence of such authority or consent, the disposition or encumbrance shall be void (Art. 96, Family Code). Despite separation de facto for

more than 10 years, Gina remains Marco's spouse, and her consent is still required for the sale to be valid. Since Marco sold the lot without Gina's consent, the sale is void.

Property Relations; Conjugal Partnership of Gains (2012)

a) Maria, wife of Pedro, withdrew P 5 Million from their conjugal funds. With this money, she constructed a building on a lot which she inherited from her father. Is the building conjugal or paraphernal? Reasons. (5%)

SUGGESTED ANSWER:

a. It depends. If the value of the building is more than the value of the land, the building is conjugal and the land becomes conjugal property under Article 120 of the Family Code. This is a case of reverse accession, where the building is considered as the principal and the land, the accessory. If, on the other hand, the value of the land is more than the value of the building, then the ordinary rule of accession applies where the land is the principal and the building, the accessory. In such case, the land remains paraphernal property and the building becomes paraphernal property.

Note:

The rule on reverse accession is applicable only to the regime of Conjugal Partnership of Gains in both the Family Code and the New Civil Code. The foregoing answer assumes that the CPG is the regime of the property relations of the spouses.

Property Relations; Conjugal Partnership of Gains (2005)

Gabby and Mila got married at Lourdes Church in Quezon City on July 10, 1990. Prior thereto, they executed a marriage settlement whereby they agreed on the regime of conjugal partnership of gains. The marriage settlement was registered in the Register of Deeds of Manila, where Mila is a resident. In 1992, they jointly acquired a residential house and lot, as well as a condominium unit in Makati. In 1995, they decided to change their property relations to the regime of complete separation of property. Mila consented, as she was then engaged in a lucrative business. The spouses then signed a private document dissolving their conjugal partnership and agreeing on a complete separation of property.

Thereafter, Gabby acquired a mansion in Baguio City, and 5-hectare agricultural land in Oriental Mindoro, which he registered exclusively in his name. In the year 2000, Mila's business venture failed, and her creditors sued her for P10,000,000.00. After obtaining a favorable judgment, the creditors sought to execute on the spouses' house and lot and condominium unit, as well as Gabby's mansion and agricultural land.

a) Discuss the status of the first and the amended marriage settlements. (2%)

SUGGESTED ANSWER:

The marriage settlement between Gabby and Mila adopting the regime of conjugal partnership of gains still

subsists. It is not dissolved by the mere agreement of the spouses during the marriage. It is clear from Article 134 of the Family Code that in the absence of an express declaration in the marriage settlement, the separation of property between the spouses during the marriage shall not take place except by judicial order.

b) Discuss the effects of the said settlements on the properties acquired by the spouses. (2%)

SUGGESTED ANSWER:

The regime of conjugal partnership of gains governs the properties acquired by the spouses. All the properties acquired by the spouses after the marriage belong to the conjugal partnership. Under Article 116 of the Family Code, even if Gabby registered the mansion and 5-hectare agricultural land exclusively in his name, still they are presumed to be conjugal properties, unless the contrary is proved.

c) What properties may be held answerable for Mila's obligations? Explain. (2%)

ALTERNATIVE ANSWER:

Since all the properties are conjugal, they can be held answerable for Mila's obligation if the obligation redounded to the benefit of the family. (Art. 121 [3], Family Code) However, the burden of proof lies with the creditor claiming against the properties. (**Ayala Investment v. Court of Appeals, G.R. No. 118305, February 12, 1998, reiterated in Homeowners Savings & Loan Bank v. Dailo, G.R. No. 153802, March 11, 2005**)

ALTERNATIVE ANSWER:

Except for the residential house which is the family home, all other properties of Gabby and Mila may be held answerable for Mila's obligation. Since the said properties are conjugal in nature, they can be held liable for debts and obligations contracted during the marriage to the extent that the family was benefited or where the debts were contracted by both spouses, or by one of them, with the consent of the other. A family home is a dwelling place of a person and his family. It confers upon a family the right to enjoy such property, which must remain with the person constituting it as a family home and his heirs. It cannot be seized by creditors except in special cases.

Property Relations; Unions without Marriage (2012)

b) Jambrich, an Austrian, fell in-love and lived together with Descallar and bought their houses and lots at Agro-Macro Subdivision. In the Contracts to Sell, Jambrich and Descallar were referred to as the buyers. When the Deed of Absolute Sale was presented for registration before the Register of Deeds, it was refused because Jambrich was an alien and could not acquire alienable lands of the public domain. After Jambrich and Descallar separated, Jambrich purchased an engine and some accessories for his boat from Borromeo. To pay for his debt, he sold his rights and interests in the Agro-Macro properties to Borromeo.

Borromeo discovered that titles to the three (3) lots have been transferred in the name of Descallar. Who is the rightful owner of the properties? Explain. (5%)

SUGGESTED ANSWER:

b. It depends. On the assumption that the Family Code is the applicable law, the ownership of the properties depends on whether or not Jambrich and Descallar are capacitated to marry each other during their cohabitation, and whether or not both have contributed funds for the acquisition of the properties.

If both of them were capacitated to marry each other, Article 147-Coownership will apply to their property relations and the properties in question are owned by them in equal shares even though all the funds used in acquiring the properties came only from the salaries or wages, or the income of Jambrich from his business or profession. In such a case, while Jambrich is disqualified to own any part of the properties, his subsequent transfer of all his interest therein to Borromeo, a Filipino, was valid as it removed the disqualification. In such case, the properties are owned by Borromeo and Descallar in equal shares.

If, on the other hand, Jambrich and Descallar were not capacitated to marry each other, Article 148-Coownership governs their property relations. Under this regime, Jambrich and Descallar are co-owners of the properties but only if both of them contributed in their acquisition. If all funds used in acquiring the properties in question came from Jambrich, the entire property is his even though he is disqualified from owning it. His subsequent transfer to Borromeo, however, is valid as it is removed the disqualification. In such case, all of the properties are owned by Borromeo. If, on the other hand, Descallar contributed to their acquisition, the properties are co-owned by Descallar and Borromeo in proportion to the respective contributions of Descallar and Jambrich.

Note:

The facts of the problem are not exactly the same as in the case of Borromeo vs. Descallar, G.R. No. 159310, February 24, 2009, hence, the difference in the resulting answer.

Property Relations; Unions without Marriage (2015)

Bert and Joe, both male and single, lived together as common law spouses and agreed to raise a son of Bert's living brother as their child without legally adopting him. Bert worked while Joe took care of their home and the boy. In their 20 years of cohabitation they were able to acquire real estate assets registered in their names as co-owners. Unfortunately, Bert died of cardiac arrest, leaving no will. Bert was survived by his biological siblings, Joe, and the boy.

a) Can Article 147 on co-ownership apply to Bert and Joe, whereby all properties they acquired will be presumed to have been acquired by their joint industry and shall be owned by them in equal shares? (2%)

b) What are the successional rights of the boy Bert and Joe raised as their son? (2%)

c) If Bert and Joe had decided in the early years of their cohabitation to jointly adopt the boy, would they have been legally allowed to do so? Explain with legal basis. (3%)

SUGGESTED ANSWER:

a. No, Article 147 of the Family Code is not applicable to the case of Bert and Joe. Article 147 applies only when a "man and a woman, who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage under a void marriage". In this case, Bert and Joe are both men; they are also incapacitated from marrying each other since in this jurisdiction, marriage may only take place between a man and a woman (Arts. 1 and 2, Family Code).

b. The boy has no successional rights. Since Bert died without a will, intestate succession shall apply. While the boy is the son of Bert's living brother, and hence Bert's nephew, he cannot inherit from Bert as a legal heir since he is excluded by his father under the proximity rule. [Art. 962, Civil Code] Moreover, he cannot invoke the rights of an adopted child to inherit from Bert since the boy was not legally adopted.

c. No, Bert and Joe could not have jointly adopted the boy. Under the Domestic Adoption Act, joint adoption is permitted, and in certain cases, mandated, for spouses. In this case, Bert and Joe are not spouses.

**Property Relations; Adulterous Relationship (2009)
TRUE or FALSE.**

(B). If there is no marriage settlement, the salary of a "spouse" in an adulterous marriage belongs to the conjugal partnership of gains. (1%)

SUGGESTED ANSWER:

False. In adulterous relationship, the salary of a married partner belongs to the absolute community, or conjugal partnership, of such married partner with his or her lawful spouse. Under Articles 148 of the Family Code, the property relations between married partner and his/her paramour is governed by ordinary co-ownership where the partners become co-owners only when they contributed to the acquisition of the property. The paramour is deemed to have not contributed in the earning of the salary of the married partner.

Property Relations; Marriages Declared Void Ab Initio (2010)

In 1997, B and G started living together without the benefit of marriage. The relationship produced one offspring, Venus. The couple acquired a residential lot in Parañaque. After four (4) years or in 2001, G having completed her 4-year college degree as a fulltime student, she and B contracted marriage without a license.

The marriage of B and G was, two years later, declared null and void due to the absence of a marriage license.

a. If you were the judge who declared the nullity of the marriage, to whom would you award the lot? Explain briefly. (3%)

SUGGESTED ANSWER:

Since the marriage was null and void, no Absolute Community or Conjugal Partnership was established between B and G. Their properties are governed by the "special co-ownership" provision of Article 147 of the Family Code because both B and G were capacitated to marry each other. The said article provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage, or under a void marriage: (1) their wages and salaries shall be owned by them in equal shares; and (2) property acquired by both of them through their work or industry shall be governed by the rules on co-ownership. In co-ownership, the parties are co-owners if they contributed something of values in the acquisition of the property. Their share is in proportion to their respective contributions for the acquisition of a property. In the Article 147 "special co-ownership", however, care and maintenance is recognized as a valuable contribution which will entitle the contributor to half of the property acquired.

Having been acquired during their cohabitation, the residential lot is presumed acquired through their joint work and industry under Article 147, hence, B and G are co-owners of the said property in equal shares.

Article 147 also provides that when a party to the void marriage was in bad faith, he forfeits his share in the co-ownership in favor of the common children or descendants. In default of children or descendants, the forfeited share shall belong to the innocent party. In the foregoing problem, there is no showing that one party was in bad faith. Hence, both shall be presumed in good faith and no forfeiture shall take place.

Family Home; Beneficiary (2014)

On March 30, 2000, Mariano died intestate and was survived by his wife, Leonora, and children, Danilo and Carlito. One of the properties he left was a piece of land in Alabang where he built his residential house.

After his burial, Leonora and Mariano's children extrajudicially settled his estate. Thereafter, Leonora and Danilo advised Carlito of their intention to partition the property. Carlito opposed invoking Article 159 of the Family Code. Carlito alleged that since his minor child Lucas still resides in the premises, the family home continues until that minor beneficiary becomes of age.

Is the contention of Carlito tenable? (4%)

SUGGESTED ANSWER:

No, the contention of Carlito is not tenable. In the case of *Patricio v. Dario*, (G.R. No. 170829, November 20, 2006), it was provided that to be a beneficiary of a family home three requisites must concur: (1) they must be among the relationships enumerated in Article 154 of the Family Code; (2) they live in the family home, and (3) they are dependent for

legal support upon the head of the family. In the said case, the partition of a family home is allowed despite the objection on the ground that a minor grandchild still resides in the premises. Although the first two requisites are present in this case, the third is lacking because Lucas, the grandchild, is not dependent for legal support upon his grandparents which is the head of the family who constituted the family home in this case. Lucas still has parents who are legally obliged to support him. Thus, he cannot be deemed as dependent for legal support upon the head of the family, who is Mariano.

Property Relations; Marriages Declared Void Ab Initio (2012)

G and B were married on July 3, 1989. On March 4, 2001, the marriage, which bore no offspring, was declared void ab initio under Article 36 of the Family Code. At the time of the dissolution of the marriage, the couple possessed the following properties:

- a house and lot acquired by B on August 3, 1988, one third (1/3) of the purchase price (representing downpayment) of which he paid; one third (1/3) was paid by G on February 14, 1990 out of a cash gift given to her by her parents on her graduation on April 6, 1989; and the balance was paid out of the spouses' joint income; and
- an apartment unit donated to B by an uncle on June 19, 1987.

a. Who owns the foregoing properties? Explain. (5%)

SUGGESTED ANSWER:

Since the marriage was declared void ab initio in 2001, no Absolute Community or Conjugal Partnership was never established between B and G. Their property relation is governed by a "special co-ownership" under that Article 147, wages and salaries of the "former spouses" earned during their cohabitation shall be owned by them in equal shares while property acquired through their work or industry shall be owned by them in proportion to their respective contributions. Care and maintenance of the family is recognized as a valuable contribution. In the absence of proof as to the value of their respective contributions, they shall share equally.

If ownership over the house and lot was acquired by B on August 3, 1988 at the time he bought it on installment before he got married, he shall remain owner of the house and lot but he must reimburse G for all the amounts she advanced to pay the purchase price and for her one-half share in the last payment from their joint income. In such case, the house and lot were not acquired during their cohabitation, hence, are not co-owned by B and G.

But if the ownership of the house and lot was acquired during the cohabitation, the house and lot will be owned as follows:

1. 1/3 of the house and lot is owned by B, he is an undivided co-owner to that extent for his contribution in its acquisition in the form of the down payment he made before the celebration of the marriage. The money he used to pay the down payment was not earned during the cohabitation, hence, it is his exclusive property.

2. 1/3 of the house and lot is owned by G. She is an undivided co-owner to the extent for her contribution in its acquisition when she paid 1/3 of the purchase price using the gift from her parents. Although the gift was acquired by G during her cohabitation with B, it is her exclusive property. It did not consist of wage or salary or fruit of her work or industry.

3. 1/3 of the house is co-owned by B and G because the payment came from their co-owned funds, i.e., their joint income during their cohabitation which is shared by them equally in the absence of any proof to the contrary.

After summing up their respective shares, B and G are undivided co-owners of the house and lot in equal shares.

As to the apartment, it is owned exclusively by B because he acquired it before their cohabitation. Even if he acquired it during their cohabitation it will still be his exclusive property because it did not come from his wage or salary, or from his work or industry. It was acquired gratuitously from his uncle.

b. If G and B had married on July 3, 1987 and their marriage was dissolved in 2007, who owns the properties? Explain. (5%)

SUGGESTED ANSWER:

The answer is the same as in letter A. Since the parties to the marriage which was later declared void ab initio were capacitated to marry each other, the applicable law under the New Civil Code was Article 144 of the Family Code. Hence, the determination of ownership will remain the same as in question A. And even assuming that the two provisions are not the same, Articles 147 of the Family Code is still the law that will govern the property relations of B and G because under Article 256, the Family Code has retroactive effect insofar as it does not prejudice or impair vested or acquired rights under the New Civil Code or other laws. Applying Article 147 retroactively to the case of G and B will not impair vested right. Until the declaration of nullity of the marriage under the Family Code, B and G have not as yet acquired any vested right over the properties acquired during their cohabitation.

Property Relations; Void Marriages (2009)

In December 2000, Michael and Anna, after obtaining a valid marriage license, went to the Office of the Mayor of Urbano, Bulacan, to get married. The Mayor was not there, but the Mayor's secretary asked Michael and Anna and their witnesses to fill up and sign the required marriage contract forms. The secretary then told them to wait, and went out to look for the Mayor who was attending a wedding in a neighboring municipality.

When the secretary caught up with the Mayor at the wedding reception, she showed him the marriage contract forms and told him that the couple and their witnesses were waiting in his office. The Mayor forthwith signed all the copies of the marriage contract, gave them to the secretary who returned to the Mayor's office. She then gave copies of the marriage contract to the parties, and told Michael and Anna that they were already married. Thereafter, the couple lived together as husband and wife, and had three sons.

(C). What property regime governs the properties acquired by the couple? Explain. (2%)

SUGGESTED ANSWER:

The marriage being void, the property relationship that governed their union is special co-ownership under Article 147 of the Family Code. This is on the assumption that there was no impediment for them to validity marry each other.

Paternity & Filiation (2004)

A. RN and DM, without any impediment to marry each other, had been living together without benefit of church blessings. Their common-law union resulted in the birth of ZMN. Two years later, they got married in a civil ceremony. Could ZMN be legitimated? Reason. (5%)

SUGGESTED ANSWER:

ZMN was legitimated by the subsequent marriage of RN and DM because at the time he was conceived, RN and DM could have validly married each other. Under the Family Code children conceived and born outside of wedlock of parents who, at the time of the former's conception, were not disqualified by any impediment to marry each other are legitimated by the subsequent marriage of the parents.

Paternity & Filiation (2005)

Steve was married to Linda, with whom he had a daughter, Tintin. Steve fathered a son with Dina, his secretary of 20 years, whom Dina named Joey, born on September 20, 1981. Joey's birth certificate did not indicate the father's name. Steve died on August 13, 1993, while Linda died on December 3, 1993, leaving their legitimate daughter, Tintin, as sole heir. On May 16, 1994, Dina filed a case on behalf of Joey, praying that the latter be declared an acknowledged illegitimate son of Steve and that Joey be given his share in Steve's estate, which is now being solely held by Tintin. Tintin put up the defense that an action for recognition shall only be filed during the lifetime of the presumed parents and that the exceptions under Article 285 of the Civil Code do not apply to him since the said article has been repealed by the Family Code. In any case, according to Tintin, Joey's birth certificate does not show that Steve is his father.

a) Does Joey have a cause of action against Tintin for recognition and partition? Explain. (2%)

SUGGESTED ANSWER:

No, Joey does not have a cause of action against Tintin for recognition and partition. Under Article 175 of the

Family Code, as a general rule, an action for compulsory time during the lifetime of the child. However, if the action is based on "open and continuous possession of the status of an illegitimate child, the same can be filed during the lifetime of the putative father." In the present case, the action for compulsory recognition was filed by Joey's mother, Dina, on May 16, 1994, after the death of Steve, the putative father. The action will prosper if Joey can present his birth certificate that bears the signature of his putative father. However, the facts clearly state that the birth certificate of Joey did not indicate the father's name. A birth certificate not signed by the alleged father cannot be taken as a record of birth to prove recognition of the child, nor can said birth certificate be taken as a recognition in a public instrument. (**Reyes v. Court of Appeals, G.R. No. 39537, March 19, 1985**) Consequently, the action filed by Joey's mother has already prescribed.

b) Are the defenses set up by Tintin tenable? Explain. (2%)

SUGGESTED ANSWER:

Yes, the defenses of Tintin are tenable. In **Tayag v. Court of Appeals (G.R. No. 95229, June 9, 1992)**, a complaint to compel recognition of an illegitimate child was brought before effectivity of the Family Code by the mother of a minor child based on "open and continuous possession of the status of an illegitimate child." The Supreme Court held that the right of action of the minor child has been vested by the filing of the complaint in court under the regime of the Civil Code and prior to the effectivity of the Family Code. The ruling in **Tayag v. Court of Appeals** finds no application in the instant case. Although the child was born before the effectivity of the Family Code, the complaint was filed after its effectivity. Hence, Article 175 of the Family Code should apply and not Article 285 of the Civil Code.

c) Supposing that Joey died during the pendency of the action, should the action be dismissed? Explain. (2%)

SUGGESTED ANSWER:

If Joey died during the pendency of the action, the action should still be dismissed because the right of Joey or his heirs to file the action has already prescribed. (Art. 175, Family Code)

Paternity & Filiation (2006)

Ed and Beth have been married for 20 years without children. Desirous to have a baby, they consulted Dr. Jun Canlas, a prominent medical specialist on human fertility. He advised Beth to undergo artificial insemination. It was found that Ed's sperm count was inadequate to induce pregnancy. Hence, the couple looked for a willing donor. Andy, the brother of Ed, readily consented to donate his introduced into Beth's ovary. She became pregnant and 9 months later, gave birth to a baby boy, named Alvin.

(1) Who is the Father of Alvin? Explain. (2.5%)

SUGGESTED ANSWER:

Andy is the biological father of Alvin being the source of the sperm. Andy is the legal father of Alvin because there was neither consent nor ratification to the artificial insemination.

Under the law, children conceived by artificial insemination are legitimate children of the spouses, provided, that both of them authorized or ratified the insemination in a written instrument executed and signed by both of them before the birth of the child (Art. 164, Family Code).

(2) What are the requirements, if any, in order for Ed to establish his paternity over Alvin. (2.5%)

SUGGESTED ANSWER:

The following are the requirements for Ed to establish his paternity over Alvin:

- The artificial insemination has been authorized or ratified by the spouses in a written instrument executed and signed by them before the birth of the child; and
- The written instrument is recorded in the civil registry together with the birth certificate of the child (Art. 164, 2nd paragraph, Family Code).

Paternity & Filiation (2008)

Gianna was born to Andy and Aimee, who at the time Gianna's birth were not married to each other. While Andy was single at the time, Aimee was still in the process of securing a judicial declaration of nullity on her marriage to her ex-husband. Gianna's birth certificate, which was signed by both Andy and Aimee, registered the status of Gianna as "legitimate", her surname carrying that of Andy's and that her parents were married to each other.

(C). Assuming that Aimee is successful in declaring her former marriage void, and Andy and Aimee subsequently married each other, would Gianna be legitimated? (1%)

SUGGESTED ANSWER:

Gianna cannot be legitimated by the subsequent marriage of Andy and Aimee. Art. 177 of the FC provides that "only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated." In the present case, a legal impediment was existing at the time of the conception of Gianna. Her mother, Aimee, was still in the process of securing judicial declaration of nullity on her marriage to her ex-husband.

Paternity & Filiation (2008)

Despite several relationships with different women, Andrew remained unmarried. His first relationship with Brenda produced a daughter, Amy, now 30 years old. His second, with Carla, produced two sons: Jon and Ryan. His third, with Donna, bore him no children although Elena has a daughter Jane, from a previous relationship. His last, with Fe, produced no biological children but they informally adopted without court proceedings, Sandy's now 13 years old, whom they consider as their own. Sandy was orphaned as a baby

and was entrusted to them by the midwife who attended to Sandy's birth. All the children, including Amy, now live with Andrew in his house.

(B). In his old age, can Andrew be legally entitled to claim support from Amy, Jon, Ryan, Vina, Wilma, and Sandy assuming that all of them have the means to support him? (1%)

SUGGESTED ANSWER:

Andrew, in his old age, cannot be legally entitled to claim support because Art. 195, par 2 of the FC limits the giving of support to "legitimate ascendants and descendants."

(C). Can Amy, Jon, Ryan, Vina, Wilma, and Sandy legally claim support from each other? (2%)

SUGGESTED ANSWER:

Amy, Jon, Ryan, Vina, Wilma and Sandy cannot legally claim support from each other because Art. 195, par 5 limits the giving of support to "legitimate brothers and sisters, whether full or half blood."

Paternity & Filiation (2008)

Roderick and Faye were high school sweethearts. When Roderick was 18 and Faye, 16 years old, they started to live together as husband and wife without the benefit of marriage. When Faye reached 18 years of age, her parents forcibly took her back and arranged for her marriage to Brad. Although Faye lived with Brad after the marriage, Roderick continued to regularly visit Faye while Brad was away at work. During their marriage, Faye gave birth to a baby girl, Laica. When Faye was 25 years old, Brad discovered her continued liason with Roderick and in one of their heated arguments, Faye shot Brad to death. She lost no time in marrying her true love Roderick, without a marriage license, claiming that they have been continuously cohabiting for more than 5 years.

(B). What is the filiation status of Laica? (2%)

SUGGESTED ANSWER:

Laica is legitimate because children conceived or born during the marriage of the parents are presumed to be legitimate (Art. 164, FC).

(C). Can Laica bring an action to impugn her own status on the ground that based on DNA results, Roderick is her biological father? (2%)

SUGGESTED ANSWER:

No. Laica cannot bring an action to impugn her own status. In *Liyao Jr. v. Tanhoti-Liyao*, G.R. No. 138961, 07 March 2002, the Supreme Court ruled that impugning the legitimacy of the child is a strictly personal right of husband, except: (a) when the husband died before the expiration of the period fixed for bringing the action; (b) if he should die after the filing of the complaint, without having desisted therefrom, or (c) if the child was born after the death of the husband. Laica's case does not fall under any of the exceptions.

(D). Can Laica be legitimated by the marriage of her biological parents? (1%)

SUGGESTED ANSWER:

No. Laica cannot be legitimated by the marriage of her biological parents because only children conceived and born outside of wedlock of parents who at the time of the conception of the former were not disqualified by any impediment to marry each other may be legitimated (Art. 177, FC).

Paternity & Filiation (2009)

Four children, namely: Alberto, Baldomero, Caridad, and Dioscoro, were born to the spouses Conrado and Clarita de la Costa. The children's birth certificates were duly signed by Conrado, showing them to be the couple's legitimate children.

Later, one Edilberto de la Cruz executed a notarial document acknowledging Alberto and Baldomero as his illegitimate children >with Clarita. Edilberto died leaving substantial properties. In the settlement of his estate, Alberto and Baldomero intervened claiming shares as the deceased's illegitimate children. The legitimate family of Edilberto opposed the claim.

Are Alberto and Baldomero entitled to share in the estate of Edilberto? Explain. (4%)

SUGGESTED ANSWER:

No, Alberto and Baldomero are not entitled to share in Edilberto's estate.

They are not related at all to Edilberto. They were born during the marriage of Conrado and Clarita, hence, are considered legitimate children of the said spouses. This status is conferred on them at birth by law.

Under Philippine law, a person cannot have more than one natural filiation. The legitimate filiation of a person can be changed only if the legitimate father will successfully impugn such status.

In the problem, therefore, the filiation of Alberto and Baldomero as legitimate children of Conrado cannot be changed by their recognition by Edilberto as his illegitimate children. Before they can be conferred the status of Edilberto's illegitimate children, Conrado must first impugn their legitimacy. Since Conrado has not initiated any action to impugn their legitimacy, they continue to be the legitimate of Conrado. They cannot be the illegitimate children of Edilberto at the same time. Not being the illegitimate children of Edilberto, they have no right to inherit from him.

Paternity & Filiation (2009)

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

(B). Suppose Rodolfo later on acknowledges Rona and

gives her regular support, can he compel her to use his surname? Why or why not? (2%)

SUGGESTED ANSWER:

No, he has no right to compel Rona to use his surname. The law does not give him the right simply because he gave her support (RA 9255).

Under the Family Code, an illegitimate child was required to use only the surname of the mother. Under RA 9255, otherwise known as the Revilla law, however, the illegitimate child is given the option to use the surname of the illegitimate father when the latter has recognized the former in accordance with law. Since the choice belongs to the illegitimate child, Rodolfo cannot compel Rona, if already of age, to use the surname against her will. If Rona is still a minor, to use the surname of Rodolfo will require the consent of Rona's mother who has sole parental authority over her.

Paternity & Filiation ((2009)

TRUE or FALSE.

(E). A dead child can be legitimated. (1%)

SUGGESTED ANSWER:

TRUE To be legitimated, the law does not require a child to be alive at the same time of the marriage of his / her parents (Article 177, FC). Furthermore, Art. 181 of the Family Code which states that "[Th]e illegitimation of children who died before the celebration of marriage will benefit their descendants," does not preclude instances where such legitimation will benefit no one but the child's ascendants ,or other relatives .

Paternity & Filiation (2010)

Spouses B and G begot two offsprings. Albeit they had serious personality differences, the spouses continued to live under one roof. B begot a son by another woman. G also begot a daughter by another man.

a. If G gives the surname of B to her daughter by another man, what can B do to protect their legitimate children's interests? Explain. (5%)

SUGGESTED ANSWER:

B can impugn the status of G's daughter by another man as his legitimate daughter on the ground that for biological reason he could not have been the father of the child, a fact that may be proven by the DNA test. Having been born during the marriage between B and G, G's daughter by another man is presumed as the child of B under Article 164 of the Family Code. In the same action to impugn, B can only pray for the correction of the status of the said daughter in her record of birth.

ALTERNATIVE ANSWER:

B can impugn the legitimacy of G's daughters on the grounds that for biological reason which can be proven by the DNA test, that he is not the father of G's daughter.

b. If B acquiesces to the use of his surname by G's daughter by another man, what is/are the consequence/s? Explain. (5%)

SUGGESTED ANSWER:

If B acquiesces and does not file the action to impugn the legitimacy of the child within the prescriptive period

for doing so in Article 170 of the Family Code, G's daughter by another man shall be conclusively presumed as the legitimate daughter of B by G.

Paternity & Filiation (2016)

Julie had a relationship with a married man who had legitimate children. A son was born out of that illicit relationship in 1981. Although the putative father did not recognize the child in his certificate of birth, he nevertheless provided the child with all the support he needed and spent time regularly with the child and his mother. When the man died in 2000, the child was already 18 years old so he filed a petition to be recognized as an illegitimate child of the putative father and sought to be given a share in his putative father's estate. The legitimate family opposed, saying that under the Family Code his action cannot prosper because he did not bring the action for recognition during the lifetime of his putative father.

a) If you were the judge in this case, how would you rule? (4%)

b) Wishing to keep the peace, the child during the pendency of the case decides to compromise with his putative father's family by abandoning his petition in exchange for 1/2 of what he would have received as inheritance if he were recognized as an illegitimate child. As the judge, would you approve such a compromise? (2%)

SUGGESTED ANSWER:

a. I would rule against the illegitimate child based. The action for recognition as an illegitimate child based on the open and continuous possession of the status of an illegitimate child may be brought during the lifetime of the alleged parent (Art. 175, Family Code). Since the putative father has already died, the action for recognition based on such ground, as indicated by the support and regular spending of time with the child and mother, cannot prosper.

b. I would approve the compromise. The subject matter of the compromise between the parties is abandonment of the petition or the end of the litigation between parties, not the child's civil status; there would be no ruling as to the civil status of the child. Hence, the prohibition against compromise of the civil status of persons in Art. 2035 of the Civil Code does not apply.

Adoption; Qualification of Adopter (2005)

In 1984, Eva, a Filipina, went to work as a nurse in the USA. There, she met and fell in love with Paul, an American citizen, and they got married in 1985. Eva acquired American citizenship in 1987. During their sojourn in the Philippines in 1990, they filed a joint petition for the adoption of Vicky, a 7-year old daughter of Eva's sister. The government, through the Office of the Solicitor General, opposed the petition on the ground that the petitioners, being both foreigners, are disqualified to adopt Vicky.

a) Is the government's opposition tenable? Explain. (2%)

SUGGESTED ANSWER:

The government's position is untenable. Under paragraph 3, Article 184 of the Family Code, an alien, as a general rule cannot adopt. However, an alien who is a former Filipino citizen and who seeks to adopt a relative by consanguinity is qualified to adopt, (par. 3[a], Art. 184, Family Code) In the given problem, Eva, a naturalized American citizen would like to adopt Vicky, a 7-year old daughter of her sister. Thus, under the above-cited provision, Eva is qualified to adopt Vicky.

b) Would your answer be the same if they sought to adopt Eva's illegitimate daughter? Explain. (2%)**SUGGESTED ANSWER:**

My answer will still be the same. Paragraph 3(a) of Article 184 of the Family Code does not make any distinction. The provision states that an alien who is a former Filipino citizen is qualified to adopt a relative by consanguinity.

c) Supposing that they filed the petition to adopt Vicky in the year 2000, will your answer be the same? Explain. (2%)**SUGGESTED ANSWER:**

Yes, my answer will still be the same. Under Sec. 7(b), Art. III of the New Domestic Adoption Act, an alien who possesses all the qualifications of a Filipino national who is qualified to adopt may already adopt provided that his country has diplomatic relations with the Philippines, that he has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he has been certified by his diplomatic or consular office or any appropriate government agency that he has the legal capacity to adopt in his country, and that his government allows the adoptee to enter his country as his adopted child.

Adoption; Qualification of Adopter; Applicable Law (2001)

A German couple filed a petition for adoption of a minor Filipino child with the Regional Trial Court of Makati under the provisions of the Child and Youth Welfare Code which allowed aliens to adopt. Before the petition could be heard, the Family Code, which repealed the Child and Youth Welfare Code, came into effect. Consequently, the Solicitor General filed a motion to dismiss the petition, on the ground that the Family Code prohibits aliens from adopting. If you were the judge, how will you rule on the motion? (5%)

SUGGESTED ANSWER:

The motion to dismiss the petition for adoption should be denied. The law that should govern the action is the law in force at the time of filing of the petition. At that time, it was the Child and Youth Welfare Code that was in effect, not the Family Code. Petitioners have already acquired a vested right on their qualification to adopt which cannot be taken away by the Family Code. (Republic v. Miller G.R. No. 125932, April 21, 1999, citing Republic v. Court of Appeals, 205 SCRA 356)

ALTERNATIVE ANSWER:

The motion has to be granted. The new law shall govern their qualification to adopt and under the new law, the German couple is disqualified from adopting. They cannot claim that they have already acquired a vested right because adoption is not a right but a mere privilege. No one acquires a vested right on a privilege.

[Note: If the examinee based his answer on the current law, RA 8552, his answer should be considered correct.

This question is based on the repealed provision of the Family Code on Adoption.]

Adoption; Qualifications of Adopter (2000)

Sometime in 1990, Sarah, born a Filipino but by then a naturalized American citizen, and her American husband Tom, filed a petition in the Regional Trial Court of Makati, for the adoption of the minor child of her sister, a Filipina. Can the petition be granted? (5%)

SUGGESTED ANSWER:

It depends. If Tom and Sarah have been residing in the Philippines for at least 3 years prior to the effectivity of RA 8552, the petition may be granted because the American husband is not qualified to adopt.

While the petition for adoption was filed in 1990, it was considered refilled upon the effectivity of RA 8552, the Domestic Adoption Act of 1998. This is the law applicable, the petition being still pending with the lower court.

Under the Act, Sarah and Tom must adopt jointly because they do not fall in any of the exceptions where one of them may adopt alone. When husband and wife must adopt jointly, the Supreme Court has held in a line of cases that both of them must be qualified to adopt. While Sarah, an alien, is qualified to adopt under Sec.7(b)(1) of the Act for being a former Filipino citizen who seeks to adopt a relative within the 4th degree of consanguinity or affinity, Tom, an alien is not qualified because he is neither a former Filipino citizen nor married to a Filipino. One of them not being qualified to adopt, their petition has to be denied. However, if they have been residents of the Philippines 3 years prior to the effectivity of the Act and continues to reside here until the decree of adoption is entered, they are qualified to adopt the nephew of Sarah under Sec.7(b) thereof, and the petition may be granted.

ALTERNATIVE ANSWER:

Since the petition was filed before the effectivity of the Domestic Adoption Act of 1998, the Family Code is the law applicable. Under the Family Code, Sarah and Tom must adopt jointly because they do not fall in any of the exceptions where one of them may adopt alone. Under a long line of cases decided by the Supreme Court, when husband and wife must adopt jointly, both of them must be qualified to adopt. While Sarah is qualified to adopt under Art.184(3)(a) for being a former Filipino citizen who seeks to adopt a relative by consanguinity, Tom is not. He is not a former Filipino citizen and neither is he married to a Filipino. One of them not being qualified to adopt, the petition must be denied.

Adoption; Qualifications of Adopter (2003)

Lina, a former Filipina who became an American citizen shortly after her marriage to an American husband, would like to adopt in the Philippines, jointly with her husband, one

of her minor brothers. Assuming that all the required consents have been obtained, could the contemplated joint adoption in the Philippines prosper? Explain.

SUGGESTED ANSWER:

Yes, Lina and her American husband can jointly adopt a minor brother of Lina because she and her husband are both qualified to adopt. Lina, as a former Filipino citizen, can adopt her minor brother under Sec. 7(b)(i) of RA 8552 (Domestic Adoption Act of 1998), or under Art. 184 (3)(1) of the Family Code. The alien husband can now adopt under Sec. 7(b) of RA8552. The Supreme Court has held in several cases that when husband and wife are required to adopt jointly, each one of them must be qualified to adopt in his or her own right (**Republic v. Toledano, 233 SCRA 9 (1994)**). However, the American husband must comply with the requirements of the law including the residency requirement of three (3) years. Otherwise, the adoption will not be allowed.

Adoption; Qualifications of Adopter (2014)

Spouses Esteban and Maria decided to raise their two (2) nieces, Faith and Hope, both minors, as their own children after the parents of the minors died in a vehicular accident. Ten (10) years after, Esteban died. Maria later on married her boss Daniel, a British national who had been living in the Philippines for two (2) years. With the permission of Daniel, Maria filed a petition for the adoption of Faith and Hope. She did not include Daniel as her co-petitioner because for Maria, it was her former husband Esteban who raised the kids. If you are the judge, how will you resolve the petition? (4%)

SUGGESTED ANSWER:

I will deny the petition for adoption. According to RA 8552 or the Domestic Adoption Act of 1998, a husband and wife must jointly adopt except in the following cases: 1) if one spouse seeks to adopt the legitimate child of the other; 2) if one spouse seeks to adopt his/her own illegitimate child, provided that the other spouse signified their consent thereto; or 3) if the spouses are legally separated from each other.

In this case, since Daniel and Maria do not fall under any of the exceptions enumerated above, they must jointly adopt as required by law.

Adoption; Inter-Country Adoption; Formalities (2005)

Hans Berber, a German national, and his Filipino wife, Rhoda, are permanent residents of Canada. They desire so much to adopt Magno, an 8-year old orphaned boy and a baptismal godson of Rhoda. Since the accidental death of Magno's parents in 2004, he has been staying with his aunt who, however, could hardly afford to feed her own family. Unfortunately, Hans and Rhoda cannot come to the Philippines to adopt Magno although they possess all the qualifications as adoptive parents.

Is there a possibility for them to adopt Magno? How should they go about it? (5%)**SUGGESTED ANSWER:**

Yes, it is possible for Hans and Rhoda to adopt Magno. Republic Act No. 8043 or the Inter-Country Adoption Act, allows aliens or Filipinos permanently residing abroad to apply for inter-country adoption of a Filipino child. The law however requires that only legally free child, or one who has been voluntarily or involuntarily committed to the DSWD or any of its accredited agencies, may be subject of intercountry adoption. The law further requires that aside from possessing all the qualifications, the adoptive parents must come from a country where the Philippines has diplomatic relations and that the government maintains a similarly accredited agency and that adoption is allowed under the national law of the alien. Moreover, it must be further shown that all possibilities for a domestic adoption have been exhausted and the inter-country adoption is best for the interest of the child. Hans and Rhoda have to file an application to adopt Magno, either with the Regional Trial Court having jurisdiction over Magno or with the Inter-Country Adoption Board in Canada. Hans and Rhoda will then undergo a trial custody for six (6) months from the time of placement. It is only after the lapse of the trial custody that the decree of adoption can be issued.

Adoption; Joint Adoption (2010)

Eighteen-year old Filipina Patrice had a daughter out of wedlock whom she named Laurie. At 26, Patrice married American citizen John who brought her to live with him in the United States of America. John at once signified his willingness to adopt Laurie. Can John file the petition for adoption? If yes, what are the requirements? If no, why? (5%)

SUGGESTED ANSWER:

No. John cannot file the petition to adopt alone. Philippine law requires husband and wife to adopt jointly except in certain situations enumerated in the law. The case of John does not fall in any of the exceptions. (R.A. 8552).

Adoption; Joint Adoption (2012)

a) Spouses Primo and Monina Lim, childless, were entrusted with the custody of two (2) minor children, the parents of whom were unknown. Eager of having children of their own, the spouses made it appear that they were the children's parents by naming them Michelle P. Lim and Michael Jude Lim. Subsequently, Monina married Angel Olario after Primo's death. She decided to adopt the children by availing the amnesty given under R.A. 8552 to those individuals who simulated the birth of a child. She filed separate petitions for the adoption of Michelle, then 25 years old and Michael, 18. Both Michelle and Michael gave consent to the adoption.

The trial court dismissed the petition and ruled that Monina should have filed the petition jointly with her

new husband. Monina, in a Motion for Reconsideration argues that mere consent of her husband would suffice and that joint adoption is not needed, for the adoptees are already emancipated.

Is the trial court correct in dismissing the petitions for adoption? Explain. (5%)

SUGGESTED ANSWER:

a. Yes the trial court was correct. At the time the petition for adoptions were filed, petitioner had already remarried. Under the law, the husband and wife shall adopt jointly, except in the cases enumerated in the law, the adoption cases of Michelle and James do not fall in any of the exceptions provided in the law where a spouse is permitted to adopt alone. Hence, Monina should adopt jointly with her husband Angel. (Adoption of Michelle P. Lim, G.R. Nos. 168992-93, May 21, 2009).

Adoption; Consent of the Adopter's Heirs (2008)

Despite several relationships with different women, Andrew remained unmarried. His first relationship with Brenda produced a daughter, Amy, now 30 years old. His second, with Carla, produced two sons: Jon and Ryan. His third, with Donna, bore him no children although Elena has a daughter Jane, from a previous relationship. His last, with Fe, produced no biological children but they informally adopted without court proceedings, Sandy's now 13 years old, whom they consider as their own. Sandy was orphaned as a baby and was entrusted to them by the midwife who attended to Sandy's birth. All the children, including Amy, now live with Andrew in his house.

(A). Is there any legal obstacle to the legal adoption of Amy by Andrew? To the legal adoption of Sandy by Andrew and Elena? (2%)

SUGGESTED ANSWER:

Yes, there is a legal obstacle to the legal adoption of Amy by Andrew. Under Sec. 9(d) of RA 8552, the New Domestic Adoption Act of 1998, the written consent of the illegitimate sons/daughters, ten (10) years of age or over, of the adopter, if living with said adopter and the latter's spouse, if any, is necessary to the adoption. All the children of Andrew are living with him. Andrew needs to get the written consent of Jon, Ryan, Vina and Wilma, who are all ten (10) years old or more. Sandy's consent to Amy's adoption is not necessary because she was not legally adopted by Andrew. Jane's consent is likewise not necessary because she is not a child of Andrew. Sandy, an orphan since birth, is eligible for adoption under Sec. 8(f) of RA 8552, provided that Andrew obtains the written consent of the other children mentioned above, including Amy and Elena obtains the written consent of Jane, if she is over ten years old (Sec. 9(d), RA 8552).

Adoption of Illegitimate Child; Consent Needed (2010)

Spouses Rex and Lea bore two children now aged 14 and 8. During the subsistence of their marriage, Rex begot a child by another woman. He is now 10 years of age. On Lea's discovery of Rex's fathering a child by

another woman, she filed a petition for legal separation which was granted. Rex now wants to adopt his illegitimate child.

a. Whose consent is needed for Rex's adoption of his illegitimate child? (2.5%)

SUGGESTED ANSWER:

The consent of the 14 year-old legitimate child, of the 10 year-old illegitimate child, and the biological mother of the illegitimate child are needed for the adoption. (Section 7 and 9, R.A. 8552). The consent of Lea is no longer required because there was already a final decree of legal separation.

b. If there was no legal separation, can Rex still adopt his illegitimate child? Explain. (2.5%)

SUGGESTED ANSWER:

Yes, he can still adopt his illegitimate child but with the consent of his spouse, of his 14 year-old legitimate child, of the illegitimate child, and of the biological mother of the illegitimate child (Section 7 and 9, R.A. 8552).

Adoption of Illegitimate Child; Use of Father's Surname

May an illegitimate child, upon adoption by her natural father, use the surname of her natural mother as the middle name?

(2.5%)

SUGGESTED ANSWER:

Yes, an illegitimate child, upon adoption by her natural father, can use the surname of her that there is no law prohibiting an illegitimate child adopted by her natural father to use, as middle name, her mother's surname. What is not prohibited is allowed. After all, the use of the maternal name as the middle name is in accord with Filipino culture and customs and adoption is intended for the benefit of the adopted [In re: Adoption of Stephanie Nathy Astorga Garcia, G.R. No. 148311, March 31, 2005; Rabuya, The Law on Persons and Family Relations, p. 613].

Adoption of Illegitimate Child; Use of Father's Surname (2012)

b) Honorato filed a petition to adopt his minor illegitimate child Stephanie, alleging that Stephanie's mother is Gemma Astorga Garcia; that Stephanie has been using her mother's middle name and surname; and that he is now a widower and qualified to be her adopting parent. He prayed that Stephanie's middle name be changed from "Astorga" to "Garcia," which is her mother's surname and that her surname "Garcia" be changed to "Catindig," which is his surname. This the trial court denied. Was the trial court correct in denying Honorato's request for Stephanie's use of her mother's surname as her middle name? Explain. (5%)

SUGGESTED ANSWER:

b. No, the trial court was not correct. There is no law prohibiting an illegitimate child adopted by his natural father to use as middle name his mother's surname. The law is silent as to what middle name an adoptee may use. In the case of In re: Adoption of Stephanie Nathy Astorga Garcia, G.R. No. 148311, March 31, 2005. The Supreme Court ruled that the adopted child may use the

surname of the natural born mother as his middle name because there is no prohibition in the law against it. Moreover, it will also be for the benefit of the adopted child who shall preserve his lineage on his mother's side and reinforce his right to inherit from his mother and her family. Lastly, it will make the adopted child conform to the time-honored Filipino tradition of carrying the mother's surname as the person's middle name.

Adoption; Successional Rights of Adopted Child (2004)

A Filipino couple, Mr. and Mrs. BM, Jr., decided to adopt YV, an orphan from St. Claire's orphanage in New York City. They loved and treated her like a legitimate child for they have none of their very own. However, BM, Jr., died in an accident at sea, followed to the grave a year later by his sick father, BM, Sr. Each left a sizable estate consisting of bank deposits, lands and buildings in Manila. May the adopted child, YV, inherit from BM, Jr.? May she also inherit from BM, Sr.? Is there a difference? Why? Explain. (5%)

SUGGESTED ANSWER:

YV can inherit from BM, Jr. The succession to the estate of BM, Jr. is governed by Philippine law because he was a Filipino when he died (Article 16, Civil Code). Under Article 1039 of the Civil Code, the capacity of the heir to succeed is governed by the national law of the decedent and not by the national law of the heir. Hence, whether or not YV can inherit from BM, Jr. is determined by Philippine law. Under Philippine law, the adopted inherits from the adopter as a legitimate child of the adopter. YV, however, cannot inherit, in his own right, from the father of the adopter, BM, Sr., because he is not a legal heir of BM, Sr. The legal fiction of adoption exists only between the adopted and the adopter. (**Teotico v. Del Val 13 SCRA 406 [1965]**). Neither may he inherit from BM, Sr. by representing BM, Jr. because in representation, the representative must be a legal heir not only of the person he is representing but also of the decedent from whom the represented was supposed to inherit (Article 973, Civil Code).
FAMILY CODE

Adoption; Termination; Death of Adopter (2009)

Rafael, a wealthy bachelor, filed a petition for the adoption of Dolly, a one-year old foundling who had a severe heart ailment. During the pendency of the adoption proceedings, Rafael died of natural causes. The Office of the Solicitor General files a motion to dismiss the petition on the ground that the case can no longer proceed because of the petitioner's death.

(A). Should the case be dismissed? Explain. (2%)

SUGGESTED ANSWER:

It depends on the stage of the proceedings when Rafael died. If he died after all the requirements under the law have been complied with and the case is already submitted for resolution, the court may grant the petition and issue a decree of adoption despite the death of the adopter (Section 13, RA 8552). Otherwise, the death of the petitioner shall have the effect terminating the proceedings.

(B). Will your answer be the same if it was Dolly who died during the pendency of the adoption proceedings? Explain. (2%)

SUGGESTED ANSWER:

No, if it was Dolly who died, the case should be dismissed. Her death terminates the proceedings (Art. 13, Domestic Adoption Law).

ALTERNATIVE ANSWER:

It depends. If all the requirements under the law have already been complied with and the case is already submitted for resolution, the death of the adoptee should not abate the proceedings. The court should issue the decree of adoption if it will be for the best interest of the adoptee. While RA8552 provides only for the case where it is the petitioner who dies before the decree is issued, it is with more compelling reason that the decree should be allowed in case it is the adoptee who dies because adoption is primarily for his benefit.

Parental Authority; Child under 7 years of age (2006)
years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

(1) Explain the rationale of this provision. (2.5%)

SUGGESTED ANSWER:

The rationale of the 2nd paragraph of Article 213 of the Family Code is to avoid the tragedy of a mother who sees her baby torn away from her. It is said that the maternal affection and care during the early years of the child are generally needed by the child more than paternal care (**Hontiveros v. IAC, G.R. No. 64982, October 23, 1984; Tolentino, Commentaries and Jurisprudence on the Civil Code, Volume One, pp. 718-719**). The general rule is that a child below 7 years old shall not be separated from his mother due to his basic need for her loving care (**Espiritu v. C.A., G.R. No. 115640, March 15, 1995**).

(2) Give at least 3 examples of "compelling reasons" which justify the taking away from the mother's custody of her child under 7 years of age. (2.5%)

SUGGESTED ANSWER:

a. The mother is insane (**Sempio-Diy, Handbook on the Family Code of the Philippines, pp. 296-297**);

- The mother is sick with a disease that is communicable and might endanger the health and life of the child;
- The mother has been maltreating the child;
- The mother is engaged in prostitution;
- The mother is engaged in adulterous relationship;
- The mother is a drug addict;
- The mother is a habitual drunk or an alcoholic;

Parental Authority; Special Parental Authority; Liability of Teachers (2003)

If during class hours, while the teacher was chatting with other teachers in the school corridor, a 7 year old male pupil stabs the eye of another boy with a ball pen during a fight, causing permanent blindness to the victim, who could be liable for damages for the boy's

injury: the teacher, the school authorities, or the guilty boy's parents? Explain.

SUGGESTED ANSWER:

The school, its administrators, and teachers have special parental authority and responsibility over the minor child while under their supervision, instruction or custody (Article 218, FC). They are principally and solidarily liable for the damages caused by the acts or omissions of the unemancipated minor unless they exercised the proper diligence required under the circumstances (Article 219, FC). In the problem, the TEACHER and the SCHOOL AUTHORITIES are liable for the blindness of the victim, because the student who cause it was under their special parental authority and they were negligent. They were negligent because they were chatting in the corridor during the class period when the stabbing incident occurred. The incident could have been prevented had the teacher been inside the classroom at that time. The guilty boy's PARENTS are subsidiarily liable under Article 219 of the Family Code.

Distinguish briefly but clearly between: Substitute parental authority and Special parental authority.

SUGGESTED ANSWER:

In substitute parental authority, the parents lose their parental authority in favor of the substitute who acquires it to the exclusion of the parents. In special parental authority, the parents or anyone exercising parental authority does not lose parental authority. Those who are charged with special parental authority exercise such authority only during the time that the child is in their custody or supervision. Substitute parental authority displaces parental authority while special parental authority concurs with parental authority.

Parental Authority; Illegitimate Minor Child (2009)

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

(C). When Rona reaches seven (7) years old, she tells Rodolfo that she prefers to live with him, because he is better off financially than Nanette. If Rodolfo files an action for the custody of Rona, alleging that he is Rona's choice as custodial parent, will the court grant Rodolfo's petition? Why or why not? (2%)

SUGGESTED ANSWER:

No, because Rodolfo has no parental authority over Rona. He who has the parental authority has the right to custody. Under the Family Code, the mother alone has parental authority over the illegitimate child. This is true even if illegitimate father recognized the child and even though he is giving support for the child. To acquire custody over Rona, Rodolfo should first deprive Nanette of parental authority if there is ground under the law, and in a proper court proceedings. In the same action, the court may award custody of Rona to Rodolfo if it is

for her best interest.

Parental Authority; Surrogate Mother; Remedy to Recover Custody of a Child (2010)

Gigolo entered into an agreement with Majorette for her to carry in her womb his baby via in vitro fertilization. Gigolo undertook to underwrite Majorette's pre-natal expenses as well as those attendant to her delivery. Gigolo would thereafter pay Majorette P2 million and, in return, she would give custody of the baby to him. After Majorette gives birth and delivers the baby to Gigolo following her receipt of P2 million, she engages your services as her lawyer to regain custody of the baby.

a. What legal action can you file on behalf of Majorette? Explain. (2.5%)

FIRST SUGGESTED ANSWER:

As her lawyer, I can file a petition for habeas corpus on behalf of Majorette to recover custody of her child. Since she is the mother of the child that was born out of wedlock, she has exclusive parental authority and custody over the child. Gigolo, therefore, has no right to have custody of the child and his refusal to give up custody will constitute illegal detention for which habeas corpus is the proper remedy.

SECOND SUGGESTED ANSWER:

The action to regain custody will not prosper. In the first place Majorette cannot regain custody of the baby. As a surrogate mother she merely carries the child in her womb for its development. The child is the child of the natural parents-Gigolo and his partner. The agreement between Gigolo and Majorette is a valid agreement.

b. Can Gigolo demand from Majorette the return of the P2 million if he returns the baby? Explain. (2.5%)

FIRST SUGGESTED ANSWER:

No, he cannot. Both he and Majorette are guilty of violating the provision of the Anti Child Abuse Law (RA 7610) on child trafficking. Being in pari delicto, the parties shall be left where they are and Gigolo cannot demand the return of what he paid.

SECOND SUGGESTED ANSWER:

Yes. The agreement between Gigolo and Majorette is a valid agreement.

c. Who of the two can exercise parental authority over the child? Explain. (2.5%)

FIRST SUGGESTED ANSWER:

Majorette, the mother, can exercise parental authority. Since the child was born out of wedlock, the child is an illegitimate and the mother has the exclusive parental authority and custody over the child.

SECOND SUGGESTED ANSWER:

Gigolo can exercise parental authority over the child. Majorette has no blood relation to the child. She is just a "carrier" of the child.

d. Is the child entitled to support and inheritance from Gigolo? Explain. (2.5%)

FIRST SUGGESTED ANSWER:

If Gigolo voluntarily recognized the child as his illegitimate child in accordance with the Article 175 in

relation to Article 172 of the Family Code, the child is entitled to support and inheritance from Gigolo.

SECOND SUGGESTED ANSWER:

Yes, because Gigolo is the natural and biological parent of the baby.

SUCCESSION

Amount of Successional Rights (2004)

Mr. XT and Mrs. YT have been married for 20 years. Suppose the wife, YT, died childless, survived only by her husband, XT. What would be the share of XT from her estate as inheritance? Why? Explain. (5%)

SUGGESTED ANSWER:

Under the Civil Code, the widow or widower is a legal and compulsory heir of the deceased spouse. If the widow is the only surviving heir, there being no legitimate ascendants, descendants, brothers, and sisters, nephews and nieces, she gets the entire estate.

Disposition; Mortis Causa vs. Inter vivos; Corpse (2009)

TRUE or FALSE.

(E). A person can dispose of his corpse through an act *intervivos*. (1%)

SUGGESTED ANSWER:

False. A person cannot dispose of his corpse through an act *inter vivos*, i.e., an act to take effect during his lifetime. Before his death there is no corpse to dispose. But he is allowed to do so through an act *mortis causa*, i.e., an act to take effect upon his death.

Heirs; Intestate Heirs; Shares (2003)

Luis was survived by two legitimate children, two illegitimate children, his parents, and two brothers. He left an estate of P1 million. Luis died intestate. Who are his intestate heirs, and how much is the share of each in his estate?

SUGGESTED ANSWER:

The intestate heirs are the two (2) legitimate children and the two (2) illegitimate children. In intestacy the estate of the decedent is divided among the legitimate and illegitimate

children such that the share of each illegitimate child is one-half the share of each legitimate child.

Their share are : For each legitimate child –

P333,333.33 For each illegitimate child –

P166,666.66

Heirs; Fideicommissary Substitution (2008)

Raymond, single, named his sister Ruffa in his will as a devisee of a parcel of land which he owned. The will imposed upon Ruffa the obligation of preserving the land and transferring it, upon her death, to her illegitimate daughter Scarlet who was then only one year old. Raymond later died, leaving behind his widowed mother, Ruffa and Scarlet.

(A). Is the condition imposed upon Ruffa, to preserve the property and to transmit it upon her death to Scarlet, valid? (1%)

SUGGESTED ANSWER:

Yes, the condition imposed upon Ruffa to preserve the property and to transmit it upon her death to Scarlet is valid because it is tantamount to fideicommissary substitution under Art. 863 of the Civil Code.

(B). If Scarlet predeceases Ruffa, who inherits the property? (2%)

SUGGESTED ANSWER:

Ruffa will inherit the property as Scarlet's heir. Scarlet acquires a right to the succession from the time of Raymond's death, even though she should predecease Ruffa (Art. 866, Civil Code).

(C). If Ruffa predeceases Raymond, can Scarlet inherit the property directly from Raymond? (2%)

SUGGESTED ANSWER:

If Ruffa predeceases Raymond, Raymond's widowed mother will be entitled to the inheritance. Scarlet, an illegitimate child, cannot inherit the property by intestate succession from Raymond who is a legitimate relative of Ruffa (Art. 992, Civil Code). Moreover, Scarlet is not a compulsory heir of Raymond, hence she can inherit only by testamentary succession. Since Raymond executed a will in the case at bar, Scarlet

Reserva Troncal (2009)

TRUE or FALSE.

(B). In *reserva troncal*, all *reservatarios* (reservators) inherit as a class and in equal shares regardless of their proximity in degree to the *prepositus*. (1%)

SUGGESTED ANSWER:

FALSE. Not all the relatives within the third degree will inherit as *reservatario*, and not all those who are entitled to inherit will inherit in the equal shares. The applicable laws of intestate succession will determine who among the relatives will inherit as *reservatarios* and what shares they will take, i.e., the direct line excludes the collateral, the descending direct line excludes the ascending, the nearer excludes the more remote, the nephews and nieces exclude the uncles and the aunts, and half blood relatives inherit half the share of full-blooded relatives.

Reserva Troncal (2014)

Esteban and Martha had four (4) children: Rolando, Jun, Mark, and Hector. Rolando had a daughter, Edith, while Mark had a son, Philip. After the death of Esteban and Martha, their three (3) parcels of land were adjudicated to Jun. After the death of Jun, the properties passed to his surviving spouse Anita, and son Cesar. When Anita died, her share went to her son Cesar. Ten (10) years after, Cesar died intestate without any issue. Peachy, Anita's sister, adjudicated to herself the properties as the only surviving heir of Anita and Cesar. Edith and Philip would like to recover the properties claiming that they should have been reserved by Peachy in their behalf and must now revert back to them.

Is the contention of Edith and Philip Valid? (4%)

SUGGESTED ANSWER:

No, their contention is not valid as the property is not subject to *reserve troncal*. Under Article 891 of the Civil Code, the ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came. There is no *reserve troncal* here because Anita is not an ascendant or a brother or sister of Jun. Jun cannot qualify as a *prepositus*, because the property which he inherited from his ascendant was not inherited by another ascendant by operation of law.

In *Mendoza v. Policarpio*, (G.R. No. 176422, March 20, 2013), the Court ruled that the lineal character of the reservable property is reckoned from the ascendant from whom the *prepositus* received the property by gratuitous title. In this case, the ownership should be reckoned only from Jun, as he is the ascendant from whom Cesar inherited the properties, moreover, Article 891 of the Civil Code provides that the person obliged to reserve the property should be an ascendant. Peachy is not Cesar's ascendant but a mere collateral relative.

Legitimes; Compulsory Heirs; Effect of Subsequent Marriage (2010)

The spouses Peter and Paula had three (3) children. Paula later obtained a judgment of nullity of marriage. Their absolute community of property having been dissolved, they delivered P1 million to each of their 3 children as their presumptive legitimes.

Peter later re-married and had two (2) children by his second wife Marie. Peter and Marie, having successfully engaged in business, acquired real properties. Peter later died intestate.

a. Who are Peter's legal heirs and how will his estate be divided among them? (5%)

SUGGESTED ANSWER:

The legal heirs of Peter are his children by the first and second marriages and his surviving second wife.

Their shares in the estate of Peter will depend, however, on the cause of the nullity of the first marriage. If the nullity of the first marriage was psychological incapacity of one or both spouses, the three children of the void marriage are legitimate and all of the legal heirs shall share the estate of Peter in equal shares. If the judgment of nullity was for other causes, the three children are illegitimate and the estate shall be distributed such that an illegitimate child of the first marriage shall receive half the share of a legitimate child of the second marriage, and the second wife will inherit a share equal to that of a legitimate child. In no case may the two legitimate children of the second marriage receive a share less than one-half of the estate which is their legitime. When the estate is not sufficient to pay all the legitimes of the compulsory heirs,

the legitime of the spouse is preferred and the illegitimate children will suffer the reduction.

Computation:

A. If the ground of nullity is psychological incapacity:

3 children by first marriage ----- 1/6th of the estate for each

2 children by second marriage ----- 1/6th of the estate for each

surviving second spouse ----- 1/6th of the estate

B. If the ground of nullity is not psychological incapacity:

2 legitimate children ----- 1/4 of the estate for each of second marriage

surviving second spouse ----- 1/4 of the estate

3 illegitimate children ----- 1/12 of the estate for each of first marriage

Note: The legitime of an illegitimate child is supposed to be 1/2 the legitime of a legitimate child or 1/8 of the estate. But the estate will not be sufficient to pay the said legitimes of the 3 illegitimate children, because only 1/4 of the estate is left after paying the legitime of the surviving spouse which is preferred. Hence, the remaining 1/4 of the estate shall be divided among the 3 illegitimate children.

b. What is the effect of the receipt by Peter's 3 children by his first marriage of their presumptive legitimes on their right to inherit following Peter's death? (5%)

SUGGESTED ANSWER:

In the distribution of Peter's estate, one half of the presumptive legitime received by the three children of the first marriage shall be collated to Peter's estate and shall be imputed as an advance on their respective inheritance from Peter. Only half of the presumptive legitime is collated to the estate of Peter because the other half shall be collated to the estate of his first wife.

Legitime; Compulsory Heirs vs. Secondary Compulsory Heirs (2005)

Emil, the testator, has three legitimate children, Tom, Henry and Warlito; a wife named Adette; parents named Pepe and Pilar; an illegitimate child, Ramon; brother, Mark; and a sister, Nanette. Since his wife Adette is well-off, he wants to leave to his illegitimate child as much of his estate as he can legally do. His estate has an aggregate net amount of P1,200,000.00, and all the above-named relatives are still living. Emil now comes to you for advice in making a will. How will you distribute his estate according to his wishes without violating the law on testamentary succession? (5%)

SUGGESTED ANSWER:

P600,000.00 — legitime to be divided equally between Tom, Henry and Warlito as the legitimate children. Each will be entitled to P200,000.00. (Art. 888, Civil Code) P100,000.00 -- share of Ramon the illegitimate child. Equivalent to 1/2 of the share of each legitimate child.

(Art. 176, Family Code) P200,000.00 — Adette the wife. Her share is equivalent to the share of one legitimate child. (Art. 892, par. 2, Civil Code) Pepe and Pilar, the parents are only secondary compulsory heirs and they cannot inherit if the primary compulsory heirs (legitimate children) are alive. (Art. 887, par. 2, Civil Code) Brother Mark and sister Nanette are not compulsory heirs since they are not included in the enumeration under Article 887 of the Civil Code. The remaining balance of P300,000.00 is the free portion which can be given to the illegitimate child Ramon as an instituted heir. (Art. 914, Civil Code) If so given by the decedent, Ramon would receive a total of P400,000.00.

Legitime; Compulsory Heirs (2008)

Ernesto, an overseas Filipino worker, was coming home to the Philippines after working for so many years in the Middle East. He had saved P100,000 in his saving account in Manila which intended to use to start a business in his home country. On his flight home, Ernesto had a fatal heart attack. He left behind his widowed mother, his common-law wife and their twin sons. He left no will, no debts, no other relatives and no other properties except the money in his saving account. Who are the heirs entitled to inherit from him and how much should each receive?(3%)

SUGGESTED ANSWER:

The mother and twin sons are entitled to inherit from Ernesto. Art. 991 of the Civil Code, provides that if legitimate ascendants are left, the twin sons shall divide the inheritance with them taking one-half of the estate. Thus, the widowed mother gets P50,000.00 while the twin sons shall receive P25,000.00 each. The common-law wife cannot inherit from him because when the law speaks "widow or widower" as a compulsory heir, the law refers to a legitimate spouse (Art. 887, par 3, Civil Code).

Iron Bar Rule (2012)

a) Ricky and Arlene are married. They begot Franco during their marriage. Franco had an illicit relationship with Audrey and out of which, they begot Arnel. Franco predeceased Ricky, Arlene and Arnel. Before Ricky died, he executed a will which when submitted to probate was opposed by Arnel on the ground that he should be given the share of his father, Franco. Is the opposition of Arnel correct? Why? (5%)

SUGGESTED ANSWER:

a. No, his opposition is not correct. Arnel cannot inherit from Ricky in representation of his father Franco. In representation, the representative must not only be a legal heir of the person he is representing, he must also be a legal heir of the decedent he seeks to inherit from.

While Arnel is a legal heir of Franco, he is not a legal heir of Ricky because under Article 992 of the NCC, an illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother. Arnel is disqualified to inherit from Ricky because Arnel is an illegitimate child of Franco and Ricky is a legitimate relative of Franco.

Wills; Notarial Wills; Blind Testator; Requisites (2008)

Stevie was born blind. He went to school for the blind, and learned to read in Baille Language. He Speaks English fluently. Can he:

(A). Make a will? (1%)

SUGGESTED ANSWER:

Assuming that he is of legal age (Art. 797, Civil Code) and of sound mind at the time of execution of the will (Art. 798, Civil Code), Stevie, a blind person, can make a notarial will, subject to compliance with the "two-reading rule" (Art. 808, Civil Code) and the provisions of Arts. 804, 805 and 806 of the Civil Code.

(B). Act as a witness to a will? (1%)

SUGGESTED ANSWER:

Stevie cannot be a witness to a will. Art. 820 of the Civil Code provides that "any person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will.

(C). In either of the above instances, must the will be read to him? (1%)

SUGGESTED ANSWER:

If Stevie makes a will, the will must be read to him twice, once by one of the subscribing witnesses, and again, by the notary public before whom the will is acknowledged (Art. 808, Civil Code).

Wills; Notarial Wills; Attesting Witnesses (2010)

d. A executed a 5-page notarial will before a notary public and three witnesses. All of them signed each and every page of the will.

One of the witnesses was B, the father of one of the legatees to the will. What is the effect of B being a witness to the will? (1%)

1. The will is invalidated

2. The will is valid and effective

3. The legacy given to B's child is not valid

SUGGESTED ANSWER:

No. 3. The legacy given to B's child is not valid.

The validity of the will is not affected by the legacy in favor of the son of an attesting witness to the will. However, the said legacy is void under Article 823 NCC.

ALTERNATIVE ANSWER:

No. 2. The will is valid and effective.

Under Article 823 (NCC), the legacy given in favor of the son of an instrumental witness to a will has no effect on the validity of the will, the will is valid and effective.

Wills; Notarial Wills; Attesting Witnesses; Other Formal Requisites (2007)

Clara, thinking of her mortality, drafted a will and asked Roberta, Hannah, Luisa and Benjamin to be witnesses. During the day of signing of her will, Clara fell down the stairs and broke her arms. Coming from the hospital, Clara insisted on signing her will by thumb mark and said that she can sign her full name later. While the will

was being signed, Roberta experienced a stomach ache and kept going to the restroom for long periods of time. Hannah, while waiting for her turn to sign the will, was reading the 7th Harry Potter book on the couch, beside the table on which everyone was signing. Benjamin, aside from witnessing the will, also offered to notarize it. A week after, Clara was run over by a drunk driver while crossing the street in Greenbelt.

May the will of Clara be admitted to probate? Give your reasons briefly. (10%)

SUGGESTED ANSWER:

Probate should be denied. The requirement that the testator and at least three (3) witnesses must sign all in the "presence" of one another was not complied with. Benjamin who notarized the will is disqualified as a witness, hence he cannot be counted as one of the three witnesses (*Cruz v. Villasor*, 54 SCRA 31, 1973). The testatrix and the other witnesses signed the will not in the presence of Roberta because she was in the restroom for extended periods of time. Inside the restroom, Roberta could not have possibly seen the testatrix and the other witnesses sign the will by merely casting her eyes in the proper direction (*Jaboneta v. Gustilo*, 5 Phil 541, 1906; *Nera v. Rimando*, 18 Phil 451, 1914). Therefore, the testatrix signed the will in the presence of only two witnesses, and only two witnesses signed the will in the presence of the testatrix and of one another.

It is to be noted, however, that the thumb mark intended by the testator to be his signature in executing his last will and testament is valid (*Payad v. Tolentino*, 62 Phil 848, 1936; *Matias v. Salud*, L-104 Phil 1046, 23 June, 1958). The problem, however, states that Clara "said that she can sign her full name later;" Hence, she did not consider her thumb mark as her "complete" signature, and intended further action on her part. The testatrix and the other witness signed the will in the presence of Hannah, because she was aware of her function and role as witness and was in a position to see the testatrix and the other witnesses sign by merely casting her eyes in the proper direction.

Wills; Codicil; Institution of Heirs; Substitution of Heirs (2002)

By virtue of a Codicil appended to his will, Theodore devised to Divino a tract of sugar land, with the obligation on the part of Divino or his heirs to deliver to Betina a specified volume of sugar per harvest during Betina's lifetime. It is also stated in the Codicil that in the event the obligation is not fulfilled, Betina should immediately seize the property from Divino or latter's heirs and turn it over to Theodore's compulsory heirs. Divino failed to fulfill the obligation under the Codicil. Betina brings suit against Divino for the reversion of the tract of land. a) Distinguish between modal institution and substitution of heirs. (3%)

b) Distinguish between simple and fidei commissary substitution of heirs. (2%) c) Does Betina have a cause of action against Divino? Explain (5%)

SUGGESTED ANSWER:

A. A MODAL INSTITUTION is the institution of an heir made for a certain purpose or cause (Arts. 871 and 882, NCC). SUBSTITUTION is the appointment of another heir so that he may enter into the inheritance in default of the heir originality instituted. (Art. 857, NCC).

B. In a SIMPLE SUBSTITUTION of heirs, the testator designates one or more persons to substitute the heirs instituted in case such heir or heirs should die before him, or should not wish or should be incapacitated to accept the inheritance. In a FIDEICOMMISSARY SUBSTITUTION, the testator institutes a first heir and charges him to preserve and transmit the whole or part of the inheritance to a second heir. In a simple substitution, only one heir inherits. In a fideicommissary substitution, both the first and second heirs inherit. (Art. 859 and 869, NCC)

C. Betina has a cause of action against Divino. This is a case of a testamentary disposition subject to a mode and the will itself provides for the consequence if the mode is not complied with. To enforce the mode, the will itself gives Betina the right to compel the return of the property to the heirs of Theodore

Wills; Joint Wills (2000)

Manuel, a Filipino, and his American wife Eleanor, executed a Joint Will in Boston, Massachusetts when they were residing in said city. The law of Massachusetts allows the execution of joint wills. Shortly thereafter, Eleanor died. Can the said Will be probated in the Philippines for the settlement of her estate? (3%)

SUGGESTED ANSWER:

Yes, the will may be probated in the Philippines insofar as the estate of Eleanor is concerned. While the Civil Code prohibits the execution of Joint wills here and abroad, such prohibition applies only to Filipinos. Hence, the joint will which is valid where executed is valid in the Philippines but only with respect to Eleanor. Under Article 819, it is void with respect to Manuel whose joint will remains void in the Philippines despite being valid where executed.

ALTERNATIVE ANSWER:

The will cannot be probated in the Philippines, even though valid where executed, because it is prohibited under Article 818 of the Civil Code and declared void under Article 819. The prohibition should apply even to the American wife because the Joint will is offensive to public policy. Moreover, it is a single juridical act which cannot be valid as to one testator and void as to the other.

Wills; Joint Wills (2008)

John and Paula, British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage the couple acquired substantial landholdings in London and in Makati. Paula bore John three children, Peter, Paul and Mary. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that

upon the death of the survivor between them the entire estate would go to Peter and Paul only but the two could not dispose of nor divide the London estate as long as they live. John and Paul died tragically in the London Subway terrorist attack in 2005. Peter and Paul filed a petition for probate of their parent's will before a Makati Regional Trial Court.

(A). Should the will be admitted to probate? (2%)

SUGGESTED ANSWER:

No. The will cannot be admitted to probate because a joint will is expressly prohibited under Art. 818 of the Civil Code. This provision applies John and Paula became Filipino citizens after their marriage.

(B). Are the testamentary dispositions valid? (2%)

SUGGESTED ANSWER:

No. The testamentary dispositions are not valid because (a) omission of Mary, a legitimate child, is tantamount to preterition which shall annul the institution of Peter and Paul as heirs (Art. 854, Civil Code); and, (b) the disposition that Peter and Paul could not dispose of nor divide the London estate for more than 20 years is void (Art. 870, Civil Code).

Wills; Joint Wills (2012)

b) John Sagun and Maria Carla Camua, British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage, the couple acquired substantial landholdings in London and in Makati. Maria begot three (3) children, Jorge, Luisito, and Joshur. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that upon the death of the survivor between them, the entire estate would go to Jorge and Luisito only but the two (2) could not dispose of nor divide the London estate as long as they live. John and Maria died tragically in the London subway terrorist attack in 2005. Jorge and Luisito filed a petition for probate of their parents' will before a Makati Regional Trial Court. Joshur vehemently objected because he was preterited.

1) Should the will be admitted to probate? Explain. (2%)

2) Are the testamentary dispositions valid? Explain. (2%)

3) Is the testamentary prohibition against the division of the London estate valid? Explain. (1%)

SUGGESTED ANSWER:

- No, the will should not be admitted to probate. Since the couple are both Filipino citizens. Article 818 and 819 of the NCC shall apply. Said articles prohibits the execution of joint wills and make them void, even though authorized by the laws of the country where they were executed.
- Since the joint will is void, all the testamentary dispositions written therein are also void. However, if the will is valid, the institutions of heirs shall be annulled because Joshur was preterited. He was preterited because he will

receive nothing from the will, will receive nothing by intestacy, and the facts do not show that he received anything as an advance on his inheritance. He was totally excluded from the inheritance of his parents.

- Assuming the will of John and Maria is valid, the testamentary prohibition on the division of the London Estate shall be valid but only for 20 years. Under Articles 1083 and 494 of the NCC, a testamentary disposition of the testator cannot forbid the partition of all or part of his estate for a period longer than twenty (20) years.

Wills; Joint Wills; 'Depecege' (2015)

Alden and Stela were both former Filipino citizens. They were married in the Philippines but they later migrated to the United States where they were naturalized as American citizens. In their union they were able to accumulate several real properties both in the US and in the Philippines. Unfortunately, they were not blessed with children. In the US, they executed a joint will instituting as their common heirs to divide their combined estate in equal shares, the five siblings of Alden and the seven siblings of Stela. Alden passed away in 2013 and a year later, Stela also died. The siblings of Alden who were all citizens of the US instituted probate proceedings in a US court impleading the siblings of Stela who were all in the Philippines.

a) Was the joint will executed by Alden and Stela who were both former Filipinos valid? Explain with legal basis. (3%)

SUGGESTED ANSWER:

a. The joint shall be valid if it was executed in accordance with U.S law. At the time of will's execution, Alden and Stela were U.S citizens. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the place of the law in which he resides, or according to the formalities observed in his country. (Art. 816, Civil Code). Art 819 of the Civil Code does not apply as it refers specifically to the invalidity of joint wills "executed by Filipinos in a foreign country".

b) Can the joint will produce legal effect in the Philippines with respect to the properties of Alden and Stela found here? If so, how? (3%)

SUGGESTED ANSWER:

b. The joint may produce legal effect in the Philippines if it was validly executed in accordance with the laws of the U.S. To be given legal effect in the Philippines, it must be probated in this country. Since the will was executed abroad by aliens, it must comply with Article 17 or Art 816 of the Civil Code. Under Article 17, the forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed. Under Article 816, the will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the place of the law in which he resides, or according to

the formalities observed in this country, or in conformity with those which this Code prescribes.

Since Alden and Stela were both naturalized American citizens at the time of the execution of the will, they are allowed to execute a will in accordance with the formalities prescribed by the law of their country, where they reside, or Philippine law.

Moreover, Article 16 (2) requires a will to be intrinsically in accordance with the national law of the testator, hence should also be in accordance with the U.S. law. However, Alden's siblings are all US citizens. Insofar as the real properties situated in the Philippines, the prohibition regarding alien ownership of Philippine land found in the Constitution is applicable. Article 17 of the Civil Code provides that prohibitive laws concerning persons, their acts and property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

c) Is the situation presented in Item I an example of *depeçage*? (2%)

SUGGESTED ANSWER:

c. No, the situation presented in item 1 is not an example of *depeçage*. *Depeçage* is a term used where different aspects of a case involving a foreign element may be governed by different systems of law. In this case, only one system of laws governs that of U.S. law. Under Article 16 par (2) of the Civil Code, intestate and testamentary succession, with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found. For the will to be probated, it must also comply with US law under Article 17 and 816 of the Civil Code, as the US was the place of the will's execution, the residence of the spouses, and the country where they are nationals.

(Note: It is suggested that the examinees be given full credit for 1-c as the term 'dépeçage' is not commonly taught in this jurisdiction.)

Wills; Revocation of Wills; Dependent Relative Revocation (2003)

Mr. Reyes executed a will completely valid as to form. A week later, however, he executed another will which expressly revoked his first will, which he tore his first will to pieces. Upon the death of Mr. Reyes, his second will was presented for probate by his heirs, but it was denied probate due to formal defects. Assuming that a copy of the first will excluded by a legitimate son of the decedent is available, may it now be admitted to probate and given effect? Why?

SUGGESTED ANSWER:

Yes, the first will may be admitted to probate and given effect. When the testator tore first will, he was under the

mistaken belief that the second will was perfectly valid and he would not have destroyed the first will had he known that the second will is not valid. The revocation by destruction therefore is dependent on the validity of the second will.

Since it turned out that the second will was invalid, the tearing of the first will did not produce the effect of revocation. This is known as the doctrine of dependent relative revocation (**Molo v. Molo, 90 Phil 37.**)

ALTERNATIVE ANSWERS:

No, the first will cannot be admitted to probate. While it is true that the first will was successfully revoked by the second will because the second will was later denied probate, the first will was, nevertheless, revoked when the testator destroyed it after executing the second invalid will.

(**Diaz v. De Leon, 43 Phil 413 [1922].**)

Wills; Holographic Wills; Probate (2009)

On December 1, 2000, Dr. Juanito Fuentes executed a holographic will, wherein he gave nothing to his recognized illegitimate son, Jay. Dr. Fuentes left for the United States, passed the New York medical licensure examinations, resided therein, and became a naturalized American citizen. He died in New York in 2007. The laws of New York do not recognize holographic wills or compulsory heirs.

(A). Can the holographic will of Dr. Fuentes be admitted to probate in the Philippines? Why or why not? (3%)

SUGGESTED ANSWER:

Yes, the holographic will of Dr. Fuentes may be admitted to probate in the Philippines because there is no public policy violated by such probate. The only issue at probate is the due execution of the will which includes the formal validity of the will. As regards formal validity, the only issue the court will resolve at probate is whether or not the will was executed in accordance with the form prescribed by the law observed by the testator in the execution of his will. For purposes of probate in the Philippines, an alien testator may observe the law of the place where the will was executed (Art 17, NCC), or the formalities of the law of the place where he resides, or according to the formalities of the law of his own country, or in accordance with the Philippine Civil Code (Art. 816, NCC). Since Dr. Fuentes executed his will in accordance with the Philippine law, the Philippine court shall apply the New Civil Code in determining the formal validity of the holographic will. The subsequent change in the citizenship of Dr. Fuentes did not affect the law governing the validity of his will. Under the new Civil Code, which was the law used by Dr. Fuentes, the law enforced at the time of execution of the will shall govern the formal validity of the will (Art. 795, NCC).

(B). Assuming that the will is probated in the Philippines, can Jay validly insist that he be given his legitime? Why or why not? (3%)

SUGGESTED ANSWER:

No, Jay cannot insist because under New York law he is not a compulsory heir entitled to a legitime.

The national law of the testator determines who his heirs are, the order that they succeed, how much their successional rights are, and whether or not a testamentary disposition in his will is valid (Art 16, NCC). Since, Dr. Fuentes was a US citizen, the laws of the New York determines who his heirs are. And since the New York law does not recognize the concept of compulsory heirs, Jay is not a compulsory heir of Dr. Fuentes entitled to a legitime.

Wills; Holographic Wills; Insertions and Cancellations (2012)

a) Natividad's holographic will, which had only one (1) substantial provision, as first written, named Rosa as her sole heir. However, when Gregorio presented it for probate, it already contained an alteration, naming Gregorio, instead of Rosa, as sole heir, but without authentication by Natividad's signature. Rosa opposes the probate alleging such lack of proper authentication. She claims that the unaltered form of the will should be given effect. Whose claim should be granted? Explain. (5%)

SUGGESTED ANSWER:

a. It depends. If the cancellation of Rosa's name in the will was done by the testator himself, Rosa's claim that the holographic will on its original tenor should be given effect must be denied. The said cancellation has revoked the entire will as nothing remains of the will after the name of Rosa was cancelled. Such cancellation is valid revocation of the will and does not require authentication by the full signature of the testator to be effective.

However, if the cancellation of Rosa's name was not done by the testator himself, such cancellation shall not be effective and the will in its original tenor shall remain valid. The efficacy of a holographic will cannot be left to the mercy of unscrupulous third parties.

The writing of Gregorio's name as sole heir was ineffective, even though written by the testator himself because such is an alteration that requires the authentication by the full signature of the testator to be valid and effective. Not having been authenticated, the designation of Gregorio as an heir was ineffective. (Kalaw v. Relova, G.R. No. L-40207, September 28, 1984).

Wills; Testamentary Disposition (2006)

Don died after executing a Last Will and Testament leaving his estate valued at P12 Million to his common-law wife Roshelle. He is survived by his brother Ronie and his half-sister Michelle.

(1) Was Don's testamentary disposition of his estate in accordance with the law on succession? Whether you agree or not, explain your answer. Explain.

SUGGESTED ANSWER:

Yes, Don's testamentary disposition of his estate is in accordance with the law on succession. Don has no compulsory heirs not having ascendants, descendants

nor a spouse [Art. 887, New Civil Code]. Brothers and sisters are not compulsory heirs. Thus, he can bequeath his entire estate to anyone who is not otherwise incapacitated to inherit from him. A common-law wife is not incapacitated under the law, as Don is not married to anyone.

(2) If Don failed to execute a will during his lifetime, as his lawyer, how will you distribute his estate? Explain. (2.5%)

SUGGESTED ANSWER:

After paying the legal obligations of the estate, I will give Ronie, as full-blood brother of Don, 2/3 of the net estate, twice the share of Michelle, the half-sister who shall receive 1/3. Roshelle will not receive anything as she is not a legal heir [Art. 1006 New Civil Code].

(3) Assuming he died intestate survived by his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? Explain. (2.5%)

SUGGESTED ANSWER:

Jayson will be entitled to the entire P12 Million as the brother and sister will be excluded by a legitimate son of the decedent. This follows the principle of proximity, where "the nearer excludes the farther."

(4) Assuming further he died intestate, survived by his father Juan, his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? Explain. (2.5%)

SUGGESTED ANSWER:

Jayson will still be entitled to the entire P12 Million as the father, brother and sister will be Civil Code]. This follows the principle that the descendants exclude the ascendants from inheritance.

Wills; Testamentary Dispositions (2012)

b) How can RJP distribute his estate by will, if his heirs are JCP, his wife; HBR and RVC, his parents; and an illegitimate child, SGO?

SUGGESTED ANSWER:

b. A testator may dispose of by will of the free portion of his estate. Since the legitime of JCP is 1/8 of the estate, that of SGO is 1/4 of the estate, and that of HBR & RVC is 1/2 of the hereditary estate under Article 889 of the NCC, the remaining 1/8 of the estate is the free portion which the testator may dispose of by will.

Wills; Prohibition to Partition (2008)

John and Paula, British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage the couple acquired substantial landholdings in London and in Makati. Paula bore John three children, Peter, Paul and Mary. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that upon the death of the survivor between them the entire estate would go to Peter and Paul only but the two could not dispose of nor divide the London estate as long as they live. John and Paul died tragically in the

London Subway terrorist attack in 2005. Peter and Paul filed a petition for probate of their parent's will before a Makati Regional Trial Court.

(C). Is the testamentary prohibition against the division of the London estate valid? (2%)

SUGGESTED ANSWER:

No. the testamentary prohibition against the division of the London estate is void (Art. 870, Civil Code). A testator, however, may prohibit partition for a period which shall not exceed twenty (20) years (Art. 870 in relation to Art. 494, par 3, Civil Code).

Wills; Prohibition to Partition (2010)

TRUE OR FALSE:

b. X, a widower, died leaving a will stating that the house and lot where he lived cannot be partitioned for as long as the youngest of his four children desires to stay there. As coheirs and co-owners, the other three may demand partition anytime. (1%)

SUGGESTED ANSWER:

FALSE.

The other three co-heirs may not at any time demand the partition of the house and lot since it was expressly provided by the decedent in his will that the same cannot be partitioned will his youngest child desire to stay there. Article 1083 of the New Civil Code allows the decedent to prohibit, by will, the partition of a property in his estate for a period of no longer than 20 years no matter what his reason may be. Hence, the three co-heirs cannot demand its partition at any time but only after 20 years from the death of their father. Even if the deceased parent did not leave a will, if the house and lot constituted their family home, Article 159 of the Family Code prohibits its partition for a period of ten years, or for as long as there is a minor beneficiary living in the family home.

Wills; Prohibition to Partition (2014)

Crispin died testate and was survived by Alex and Josine, his children from his first wife; Rene and Ruby, his children from his second wife; and Allan, Bea, and Cheska, his children from his third wife.

One important provision in his will reads as follows:

"Ang lupa at bahay sa Lungsod ng Maynila ay ililipat at ilalagay sa pangalan nila Alex at Rene hindi bilang pamana ko sa kanila upang pamahalaan at pangalagaan lamang nila at nang ang sinuman sa aking mga anak, sampu ng aking mga apo at kaapuapuhan ko sa habangpanahon, ay may tutuluyan kung magnanais na mag-aral sa Maynila o sa kalapit na mga lungsod."

Is the provision valid? (4%)

SUGGESTED ANSWER:

The provision imposing the indivision of the property "habangpanahon" is invalid. In *Santiago v. Santiago*, (G.R. No. 179859, August 9, 2010), a similar

provision appears in the will of the testator. In that case, the court rules that it is clear that the testator intended the house and lot in Manila be transferred in petitioners' names for administration purposes only, and that the property be owned by the heirs in common. However, the same case rules that the condition set by the decedent on the property's indivisibility is subject to a statutory limitation provided by Article 1083 of the Civil Code which states that the period of indivision imposed by a testator shall not exceed twenty years. Although the Civil Code is silent as to the effect of the indivision of a property for more than twenty years, it would be contrary to public policy to sanction co-ownership beyond the period expressly mandated by the Civil Code. Thus, the provision leaving the administration of the house and lot in Manila to Alex and Rene is valid but the provision imposing the indivision of the property "habangpanahon" is invalid as to excess beyond twenty years, it being contrary to Article 1083 limiting the period of indivision that may be imposed by a testator to twenty years.

ALTERNATIVE ANSWER:

The provision is valid. Article 944 of the Civil Code provides in part that "a legacy for education lasts until the legatee is of age or beyond the age of majority in order that the legatee may finish some professional, vocational or general course, provided he pursues his course diligently." In this case, the intention of the testator in transferring the property to them as their inheritance, but for them to administer the same for the benefit of his descendants' use in pursuit of their education. Thus, this provision is a legacy for education, which lasts as long as legatee/s come of age or until such legatee's finish their course.

ANOTHER ALTERNATIVE ANSWER:

The provision is not valid. Article 870 of the Civil Code provides that "the dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void." In this case, the provision "habangpanahon" clearly provides for inalienability of the house for more than twenty years; hence, it is void.

SECOND ALTERNATIVE ANSWER:

The provision is valid. The institution of heir in this case is a modal institution under article 882 of the Civil Code. In this type of institution, which is present in that case bar, the ownership of the thing is passed on to the heir, except that there is a mode or charge imposed upon the heir. In a modal institution, the testator states (1) the object of the institution, (2) the purpose or application of the property left by the testator, or (3) the charge imposed by the testator upon the heir (*Rabadilla v. Court of Appeals*, G.R. No. 113725. June 29, 2000).

Will; Provision Acknowledging a Child (2014)

Mario executed his last will and testament where he acknowledges the child being conceived by his live-in partner Josie as his own child; and that his house and lot in Baguio City be given to his unborn conceived child. Are the acknowledgment and the donation mortis causa valid? Why? (4%)

SUGGESTED ANSWER:

The acknowledgment of the unborn child is effective because a will may still constitute a document which contains an admission of illegitimate filiation. The donation to the conceived child is also valid provided that the child is born later on and that it complies with the formalities required of a will (*Article 728, Civil Code*). A fetus has a presumptive personality for all purposes favorable to it provided it be born under the conditions specified in Article 41. However, there has to be compliance with the formal requisites for a valid last will and testament.

Preterition (2001)

Because her eldest son Juan had been pestering her for capital to start a business, Josefa gave him P100,000. Five years later, Josefa died, leaving a last will and testament in which she instituted only her four younger children as her sole heirs. At the time of her death, her only properly left was P900,000.00 in a bank. Juan opposed the will on the ground of preterition. How should Josefa's estate be divided among her heirs? State briefly the reason(s) for your answer. (5%)

SUGGESTED ANSWER:

There was no preterition of the oldest son because the testatrix donated 100,000 pesos to him. This donation is considered an advance on the son's inheritance. There being no preterition, the institutions in the will shall be respected but the legitime of the oldest son has to be completed if he received less. After collating the donation of P100,000 to the remaining property of P900,000, the estate of the testatrix is P1,000,000. Of this amount, one-half or P500,000, is the legitime of one legitimate child is P100,000. The legitime, therefore, of the oldest son is P100,000. However, since the donation given him was P100,000, he has already received in full his legitime and he will not receive anything anymore from the decedent. The remaining P900,000, therefore, shall go to the four younger children by institution in the will, to be divided equally among them. Each will receive P225,000.

ALTERNATIVE ANSWER:

Assuming that the donation is valid as to form and substance, Juan cannot invoke preterition because he actually had received a donation inter vivos from the testatrix (III Tolentino 188,1992 ed.). He would only have a right to a completion of his legitime under Art. 906 of the Civil Code. The estate should be divided equally among the five children who will each receive P225,000.00 because the total hereditary estate, after collating the donation to Juan (Art. 1061, CC), would be P1 million. In the actual distribution of the net estate, Juan gets nothing while his siblings will get P225,000.00 each.

Preterition; Disinheritance (2000)

In his last will and testament, Lamberto 1) disinherits his daughter Wilma because "she is disrespectful towards me and raises her voice talking to me", 2) omits entirely his spouse Elvira, 3) leaves a legacy of P100,000.00 to his mistress Rosa and P50,000.00 to his driver Ernie

and 4) institutes his son Baldo as his sole heir. How will you distribute his estate of P1,000,000.00? (5%)

SUGGESTED ANSWER:

The disinheritance of Wilma was ineffective because the ground relied upon by the testator does not constitute maltreatment under Article 919(6) of the New Civil Code. Hence, the testamentary provisions in the will shall be annulled but only to the extent that her legitime was impaired. The total omission of Elvira does not constitute preterition because she is not a compulsory heir in the direct line. Only compulsory heirs in the direct line may be the subject of preterition. Not having been preterited, she will be entitled only to her legitime. The legacy in favor of Rosa is void under Article 1028 for being in consideration of her adulterous relation with the testator. She is, therefore, disqualified to receive the legacy of 100,000 pesos. The legacy of 50,000 pesos in favor of Ernie is not inofficious not having exceeded the free portion. Hence, he shall be entitled to receive it. The institution of Baldo, which applies only to the free portion, shall be respected. In sum, the estate of Lamberto will be distributed as follows:

Baldo-----	450,000
Wilma-----	250,000
Elvira-----	250,000
Ernie-----	50,000
	1,000,000

ALTERNATIVE ANSWER:

The disinheritance of Wilma was effective because disrespect of, and raising of voice to, her father constitute maltreatment under Article 919(6) of the New Civil Code. She is, therefore, not entitled to inherit anything. Her inheritance will go to the other legal heirs. The total omission of Elvira is not preterition because she is not a compulsory heir in the direct line. She will receive only her legitime. The legacy in favor of Rosa is void under Article with the testator. She is, therefore, disqualified to receive the legacy. Ernie will receive the legacy in his favor because it is not inofficious. The institution of Baldo, which applies only to the free portion, will be respected. In sum, the estate of Lamberto shall be distributed as follows:

Heir	Legitime	Legacy	Institution	TOTAL
Baldo	500,000	200,000	700,000	Elvira 250,000 250,000
Ernie	50,000	50,000		
TOTAL	750,000	50,000	200,000	1,000,000

ANOTHER ALTERNATIVE ANSWER:

Same answer as the first Alternative Answer except as to distribution. Justice Jurado solved this problem differently. In his opinion, the legitime of the heir who was disinherited is distributed among the other compulsory heirs in proportion to their respective legitimes, while his share in the intestate portion. If any, is distributed among the other legal heirs by accretion under Article 1018 of the NCC in proportion to their respective intestate shares. In sum the distribution shall be as follows:

Preterition; Disinheritance (2008)

Arthur executed a will which contained only: (i) a provision disinheriting his daughter Bernica for running off with a married man, and (ii) a provision disposing of his share in the family house and lot in favor of his other children Connie and Dora. He did not make any provisions in favor of his wife Erica, because as the will stated, she would anyway get $\frac{1}{2}$ of the house and lot as her conjugal share. The will was very brief and straightforward and both the above provisions were contained in page 1, which Arthur and his instrumental witness, signed at the bottom. Page 2 contained the attestation clause and the signatures, at the bottom thereof, of the 3 instrumental witnesses which included Lambert, the driver of Arthur; Yoly, the family cook, and Attorney Zorba, the lawyer who prepared the will. There was a 3rd page, but this only contained the notarial acknowledgment.

The attestation clause stated the will was signed on the same occasion by Arthur and his instrumental witnesses who all signed in the presence of each other, and the notary public who notarized the will. There are no marginal signatures or pagination appearing on any of the 3 pages. Upon his death, it was discovered that apart from the house and lot, he had a P 1 million account deposited with ABC bank.

(A). Was Erica preterited? (1%)

SUGGESTED ANSWER:

Erica cannot be preterited. Art. 854 of the Civil Code provides that only compulsory heirs in the direct line can be preterited.

(B). What other defects of the will, if any, can cause denial of probate? (2%)

SUGGESTED ANSWER:

The other defects of the will that can cause its denial are as follows: (a) Atty. Zorba, the one who prepared the will was one of the three witnesses, violating the three-witnesses rule; (b) no marginal signature at the last page; (c) the attestation did not state the number of pages upon which the will is written; and, (d) no pagination appearing correlatively in letters on the upper part of the three pages (*Azuela v. C.A.*, G.R.No. 122880, 12 Apr 2006 and cited cases therein, Art 805 and 806, Civil Code).

(C). Was the disinheritance valid? (1%)

SUGGESTED ANSWER:

Yes, the disinheritance was valid. Art. 919, par 7, Civil Code provides that "when a child or descendant leads a dishonorable or disgraceful life, like running off with a married man, there is sufficient cause for disinheritance."

Intestate Succession (2000)

Eugenio died without issue, leaving several parcels of land in Bataan. He was survived by Antonio, his legitimate brother; Martina, the only daughter of his predeceased sister Mercedes; and five legitimate children of Joaquin, another predeceased brother.

Shortly after Eugenio's death, Antonio also died, leaving three legitimate children. Subsequently, Martina, the children of Joaquin and the children of Antonio executed an extrajudicial settlement of the estate of Eugenio, dividing it among themselves. The succeeding year, a petition to annul the extrajudicial settlement was filed by Antero, an illegitimate son of Antonio, who claims he is entitled to share in the estate of Eugenio. The defendants filed a motion to dismiss on the ground that Antero is barred by Article 992 of the Civil Code from inheriting from the legitimate brother of his father. How will you resolve the motion? (5%)

SUGGESTED ANSWER:

The motion to dismiss should be granted. Article 992 does not apply. Antero is not claiming any inheritance from Eugenio. He is claiming his share in the inheritance of his father consisting of his father's share in the inheritance of Eugenio

Intestate Succession (2008)

Ramon Mayaman died intestate, leaving a net estate of P10,000,000.00. Determine how much each heir will receive from the estate:

(A). If Ramon is survived by his wife, three full-blood brothers, two half-brothers, and one nephew (the son of a deceased full-blood brother)? Explain. (3%)

SUGGESTED ANSWER:

Having died intestate, the estate of Ramon shall be inherited by his wife and his full and half blood siblings or their respective representatives. In intestacy, if the wife concurs with no one but the siblings of the husband, all of them are the intestate heirs of the deceased husband. The wife will receive half of the intestate estate, while the siblings or their respective representatives, will inherit the other half to be divided among them equally. If some siblings are of the full-blood and the other of the half blood, a half blood sibling will receive half the share of a full-blood sibling.

(1). The wife of Ramon will, therefore, receive one half ($\frac{1}{2}$) of the estate or the amount of P5,000,000.00.

(2). The three (3) full-blood brothers, will, therefore, receive P1,000,000.00 each.

(3). The nephew will receive P1,000,000.00 by right of representation.

(4). The two (2) half-brothers will receive P500,000.00 each.

(B). If Ramon is survived by his wife, a half-sister, and three nephews (sons of a deceased full-blood brother)? Explain. (3%)

SUGGESTED ANSWER:

The wife will receive one half ($\frac{1}{2}$) of the estate or P5,000,000.00. The other half shall be inherited by (1) the full-blood brother, represented by his three children, and (2) the half-sister. They will divide the other half between them such that the share of the half-sister is just half the share of the full-blood brother. The share of the full-blood brother shall in turn be inherited by the three nephews in equal shares by right of presentation.

Therefore, the three (3) nephews will receive

P1,111,111.10 each the half-sister will receive the sum of P1,666,666.60.

Intestate Succession (2008)

Arthur executed a will which contained only: (i) a provision disinheriting his daughter Bernica for running off with a married man, and (ii) a provision disposing of his share in the family house and lot in favor of his other children Connie and Dora. He did not make any provisions in favor of his wife Erica, because as the will stated, she would anyway get $\frac{1}{2}$ of the house and lot as her conjugal share. The will was very brief and straightforward and both the above provisions were contained in page 1, which Arthur and his instrumental witness, signed at the bottom. Page 2 contained the attestation clause and the signatures, at the bottom thereof, of the 3 instrumental witnesses which included Lambert, the driver of Arthur; Yoly, the family cook, and Attorney Zorba, the lawyer who prepared the will. There was a 3rd page, but this only contained the notarial acknowledgement. The attestation clause stated the will was signed on the same occasion by Arthur and his instrumental witnesses who all signed in the presence of each other, and the notary public who notarized the will. There are no marginal signatures or pagination appearing on any of the 3 pages. Upon his death, it was discovered that apart from the house and lot, he had a P 1 million account deposited with ABC bank.

(D). How should the house and lot, and the cash be distributed? (1%)

SUGGESTED ANSWER:

Since the probate of the will cannot be allowed, the rules on intestate succession apply. Under Art. 996 of the Civil Code, if a widow or widower and legitimate children or descendants are left, the surviving spouse has the same share as of the children. Thus, ownership over the house and lot will be created among wife Erica and her children Bernice, Connie and Dora. Similarly, the amount of P 1 million will be equally divided among them.

Intestate Succession; Rights of Representation: Illegitimate, Adopted Child; Iron Curtain Rule (2007)

For purpose of this question, assume all formalities and procedural requirements have been complied with.

In 1970, Ramon and Dessa got married. Prior to their marriage, Ramon had a child, Anna. In 1971 and 1972, Ramon and Dessa legally adopted Cherry and Michelle respectively. In 1973, Dessa died while giving birth to Larry. Anna had a child, Lia. Anna never married. Cherry, on the other hand, legally adopted Shelly. Larry had twins, Hans and Gretel, with his girlfriend, Fiona. In 2005, Anna, Larry and Cherry died in a car accident. In 2007, Ramon died. Who may inherit from Ramon and who may not? Give your reason briefly. (10%)

SUGGESTED ANSWER:

The following may inherit from Ramon:

(1). Michelle, as an adopted child of Ramon, will inherit as a legitimate child of Ramon. As an adopted child,

Michelle has all the rights of a legitimate child (Sec 18, Domestic Adoption Law).

(2). Lia will inherit in representation of Anna. Although Lia is an illegitimate child, she is not barred by Articles 992, because her mother Anna is an illegitimate herself. She will represent Anna as regards Anna's legitimate under Art. 902, NCC and as regards Anna's intestate share under Art. 990, NCC.

The following may not inherit from Ramon:

(1). Shelly, being an adopted child, she cannot represent Cherry. This is because adoption creates a personal legal relation only between the adopter and the adopted. The law on representation requires the representative to be a legal heir of the person he is representing and also of the person from whom the person being represented was supposed to inherit. While Shelly is a legal heir of Cherry, Shelly is not a legal heir of Ramon. Adoption created a purely personal legal relation only between Cherry and Shelly.

(2). Hans and Gretel are barred from inheriting from Ramon under Art. 992, NCC. Being illegitimate children, they cannot inherit ab intestato from Ramon.

ALTERNATIVE ANSWER:

The problem expressly mentioned the dates of the adoption of Cherry and Michelle as 1971 and 1972. During that time, adoption was governed by the New Civil Code. Under the New Civil Code, husband and wife were allowed to adopt separately or not jointly with the other spouse. And since the problem does not specifically and categorically state, it is possible to construe the use of the word "respectively" in the problem as indicative of the situation that Cherry was adopted by Ramon alone and Michelle was adopted by Dessa alone. In such case of separate adoption the alternative answer to the problem will be as follows: Only Lia will inherit from Ramon in representation of Ramon's illegitimate daughter Anna. Although Lia is an illegitimate child, she is not barred from inheriting from Ramon because her mother is herself illegitimate. Shelly cannot inherit in representation of Cherry because Shelly is just an adopted child of Cherry. In representation, the representative must not only be a legal heir of the person he is representing but also of the decedent from whom the represented person is supposed to inherit. In the case of Shelly, while she is a legal heir of Cherry by virtue of adoption, she is not a legal heir of Ramon. Adoption creates a personal legal relation only between the adopting parent and the adopted child (Teotico v. Del Val, 13 SCRA 406, 1965). Michelle cannot inherit from Ramon, because she was adopted not by Ramon but by Dessa. In the eyes of the law, she is not related to Ramon at all. Hence, she is not a legal heir of Ramon. Hans and Gretel are not entitled to inherit from Ramon, because they are barred by Art. 992 NCC. Being illegitimate children of Larry, they cannot inherit from the legitimate relatives of their father Larry. Ramon is a legitimate relative of Larry who is the legitimate father.

Intestate Succession; Intestate Proceedings; Jurisdiction (2004)

In his lifetime, a Pakistani citizen, ADIL, married three times under Pakistani law. When he died an old widower, he left behind six children, two sisters, three homes, and an estate worth at least 30 million pesos in the Philippines. He was born in Lahore but last resided in Cebu City, where he had a mansion and where two of his youngest children now live and work. Two of his oldest children are farmers in Sulu, while the two middle-aged children are employees in Zamboanga City. Finding that the deceased left no will, the youngest son wanted to file intestate proceedings before the Regional Trial Court of Cebu City. Two other siblings objected, arguing that it should be in Jolo before a Shari'a court since his lands are in Sulu. But Adil's sisters in Pakistan want the proceedings held in Lahore before a Pakistani court. Which court has jurisdiction and is the proper venue for the intestate proceedings? The law of which country shall govern succession to his estate? (5%)

SUGGESTED ANSWER:

In so far as the properties of the decedent located in the Philippines are concerned, they are governed by Philippine law (Article 16, Civil Code). Under Philippine law, the proper

venue for the settlement of the estate is the domicile of the decedent at the time of his death. Since the decedent last resided in Cebu City, that is the proper venue for the intestate settlement of his estate. However, the successional rights to the estate of ADIL are governed by Pakistani law, his national law, under Article 16 of the Civil Code.

Succession; Rule on Survivorship (2008)

At age 18, Marian found out that she was pregnant. She insured her own life and named her unborn child as her sole beneficiary. When she was already due to give birth, she and her boyfriend Pietro, the father of her unborn child, were kidnapped in a resort in Bataan where they were vacationing. The military gave chase and after one week, they were found in an abandoned hut in Cavite. Marian and Pietro were hacked with bolos. Marian and the baby delivered were both found dead, with the baby's umbilical cord already cut. Pietro survived.

(B). Between Marian and the baby, who is presumed to have died ahead? (1%)

SUGGESTED ANSWER:

Marian is presumed to have died ahead of the baby. Art. 43 applies to persons who are called to succeed each other. The proof of death must be established by positive or circumstantial evidence derived from facts. It can never be established from mere inference. In the present case, it is very clear that only Marian and Pietro were hacked with bolos. There was no showing that the baby was also hacked to death. The baby's death could have been due to lack of nutrition.

ALTERNATIVE ANSWER:

The baby is presumed to have died ahead of Marian. Under Par. 5, rule 131, Sec. 5 (KK) of the Rules of

Court, if one is under 15 or above 60 and the age of the other is in between 15 and 60, the latter is presumed to have survived. In the instant case, Marian was already 18 when she found out that she was pregnant. She could be of the same age or maybe 19 years of age when she gave birth.

(C). Will Pietro, as surviving biological father of the baby, be entitled to claim the proceeds of the life insurance on the life of Marian? (2%)

SUGGESTED ANSWER:

Pietro, as the biological father of the baby, shall be entitled to claim the proceeds of life insurance of the Marian because he is a compulsory heir of his child.

Succession; Rule on Survivorship (2009)

Dr. Lopez, a 70-year old widower, and his son Roberto both died in a fire that gutted their home while they were sleeping in their air-conditioned rooms. Roberto's wife, Marilyn, and their two children were spared because they were in the province at the time. Dr. Lopez left an estate worth P20M and a life insurance policy in the amount of P1M with his three children ---one of whom is Roberto --- as beneficiaries.

Marilyn is now claiming for herself and her children her husband's share in the estate left by Dr. Lopez, and her husband's share in the proceeds of Dr. Lopez's life insurance policy. Rule on the validity of Marilyn's claims with reasons. (4%)

SUGGESTED ANSWER :

As to the Estate of Dr. Lopez:

Marilyn is not entitled to a share in the estate of Dr. Lopez. For purpose of succession, Dr. Lopez and his son Roberto are presumed to have died at the same time, there being no evidence to prove otherwise, and there shall be no transmission of rights from one to the other (Article 43, NCC). Hence, Roberto, inherited nothing from his father that Marilyn would in turn inherit from Roberto. The children of Roberto, however, will succeed their grandfather, Dr. Lopez, in representation of their father Roberto and together Roberto will receive 1/3 of the estate of Dr. Lopez since their father Roberto was one of the three children of Dr. Lopez. Marilyn cannot represent her husband Roberto because the right is not given by the law to a surviving spouse.

As to the proceeds of the insurance on the life of Dr. Lopez:

Since succession is not involved as regards the insurance contract, the provisions of the Rules of Court (Rule 131, Sec. 3, [jj] [5]) on survivorship shall apply. Under the Rules, Dr. Lopez, who was 70 years old, is presumed to have died ahead of Roberto who is presumably between the ages 15 and 60. Having survived the insured, Roberto's right as a beneficiary became vested upon the death of Dr. Lopez. When Roberto died after Dr. Lopez, his right to receive the insurance became part of his hereditary estate, which in turn was inherited in equal shares by his legal heirs,

namely, his spouse and children. Therefore, Roberto's children and his spouse are entitled to Roberto's one-third share in the insurance proceeds.

DONATION

Donation vs. Sale (2003)

a) May a person sell something that does not belong to him? Explain. b) May a person donate something that does not belong to him? Explain. 5%

SUGGESTED ANSWER:

(a) Yes, a person may sell something which does not belong to him. For the sale to be valid, the law does not require the seller to be the owner of the property at the time of the sale. (Article 1434, NCC). If the seller cannot transfer ownership over the thing sold at the time of delivery because he was not the owner thereof, he shall be liable for breach of contract.

(b) As a general rule, a person cannot donate something which he cannot dispose of at the time of the donation (Article 751, New Civil Code).

Donations; Formalities (2007)

In 1986, Jennifer and Brad were madly in love. In 1989, because a certain Picasso painting reminded Brad of her, Jennifer acquired it and placed it in his bedroom. In 1990, Brad and Jennifer broke up. While Brad was mending his broken heart, he met Angie and fell in love.

Because the Picasso painting reminded Angie of him, Brad in his will bequeathed the painting to Angie. Brad died in 1995. Saddened by Brad's death, Jennifer asked for the Picasso painting as a remembrance of him. Angie refused and claimed that Brad, in his will, bequeathed the painting to her. Is Angie correct? Why or why not? (10%)

SUGGESTED ANSWER:

NO. Angie is not correct. The Picasso painting is not given or donated by Jennifer to Brad. She merely "placed it in his bedroom." Hence, she is still the owner of the painting. Not being the owner of the Picasso painting, Brad cannot validly bequeath the same to Angie (Art. 930, NCC). Even assuming that the painting was impliedly given or donated by Jennifer to Brad, the donation is nevertheless void for not being in writing. The Picasso painting must be worth more than 5,000 pesos. Under Art. 748, NCC, the donation and acceptance of a movable worth more than 5,000 pesos must be in writing, otherwise the donation is void. The donation being void, Jennifer remained the owner of the Picasso painting and Brad could not have validly disposed of said painting in favor of Angie in his will.

ALTERNATIVE ANSWER:

YES. Angie is correct. Even assuming that there was void donation because the same was not in writing, Brad was in uninterrupted possession of the Picasso painting from 1989 to 1995, lasting for six (6) years prior to his death. Brad has already acquired ownership of the painting through acquisitive prescription. Under Art. 1132, NCC, ownership of movables prescribes through

continuous possession for four

(4) years in good faith and for eight (8) years without need of other conditions. A void donation may be the basis of possession in the concept of owner and of just title for purposes of acquisitive prescription.

Donations; Illegal & Impossible Conditions (2007)

Distinguish the following concepts:

(B). Illegal and impossible conditions in a simple donation v. illegal and impossible conditions in an onerous donation. (5%)

SUGGESTED ANSWER:

Illegal and impossible conditions in a simple donation are considered as not written. Such conditions, shall therefore, be disregarded but the donation remains valid (Art. 727, NCC). On the other hand, illegal and impossible donations imposed in an onerous donation shall annul the donation (Art. 1183, NCC). This is so, because onerous donations are governed by the law on contracts (Art. 733, NCC).

Donations; Formalities (2010)

c. A executed a Deed of Donation in favor of B, a bachelor, covering a parcel of land valued at P1 million. B was, however, out of the country at the time. For the donation to be valid, (1%)

1. B may e-mail A accepting the donation.
2. The donation may be accepted by B's father with whom he lives.
3. B can accept the donation anytime convenient to him.
4. B's mother who has a general power of attorney may accept the donation for him.
5. None of the above is sufficient to make B's acceptance valid

SUGGESTED ANSWER:

No. 5. None of the above is sufficient to make B's acceptance valid.

Since the donation covered an immovable property, the donation and acceptance must be in public document. An email is not a public document. Hence, No.1 is false.

No. 2 and No. 4 are both false. The acceptance by the donee's father alone or mother alone, even though in a public document, is not sufficient because the father and the mother did not have a special power of attorney for the purpose. Under Article 745 (NCC), the donee must accept the donation personally, or through an authorized person with a special power of attorney for the purpose; otherwise, the donation shall be void.

No. 3 is also false. B cannot accept the donation anytime at his convenience. Under Article 749 NCC, the donee may accept the donation only during the lifetime of the donor.

Donations; Formalities (2014)

The Roman Catholic Church accepted a donation of a real property located in Lipa City. A deed of donation was executed, signed by the donor, Don

Mariano, and the donee, the Church, as represented by Fr. Damian. Before the deed could be notarized, Don Mariano died. Is the donation valid? (4%)

SUGGESTED ANSWER:

The donation is void. Article 749 of the Civil Code provides that a donation of an immovable must be made in a public instrument to be valid. In this case, it is clear that the deed of donation never became a public instrument because the donor died before it could be notarized. The deed of donation cannot be notarized after the death of the donor since it is now impossible for him to acknowledge before a notary public. The donation was never perfected. Thus, the donation is void for not complying with the formalities required by law.

Donations; Unregistered; Effects; Non-Compliance; Resolutory Condition (2006)

Spouses Alfredo and Racquel were active members of a religious congregation. They donated a parcel of land in favor of that congregation in a duly notarized Deed of Donation, subject to the condition that the Minister shall construct thereon a place of worship within 1 year from the acceptance of the donation. In an affidavit he executed on behalf of the congregation, the Minister accepted the donation. The Deed of Donation was not registered with the Registry of Deeds. However, instead of constructing a place of worship, the Minister constructed a bungalow on the property he used as his residence. Disappointed with the Minister, the spouses revoked the donation and demanded that he vacate the premises immediately. But the Minister refused to leave, claiming that aside from using the bungalow as his residence, he is also using it as a place for worship on special occasions.

Under the circumstances, can Alfredo and Racquel evict the Minister and recover possession of the property? If you were the couple's counsel, what action you take to protect the interest of your clients? (5%)

ALTERNATIVE ANSWER:

Yes, Alfredo and Racquel can bring an action for ejectment against the Minister for recovery of possession of the property evict the Minister and recover possession of the property. An action for annulment of the donation, reconveyance and damages should be filed to protect the interests of my client. The donation is an onerous donation and therefore shall be governed by the rules on contracts. Because there was no fulfillment or compliance with the condition which is resolutory in character, the donation may now be revoked and all rights which the donee may have acquired under it shall be deemed lost and extinguished (**Central Philippine University, G.R. No. 112127, July 17, 1995**).

ALTERNATIVE ANSWER:

No, an action for ejectment will not prosper. I would advice Alfredo and Racquel that the Minister, by constructing a structure which also serves as a place of worship, has pursued the objective of the donation. His taking up residence in the bungalow may be regarded

as a casual breach and will not warrant revocation of the donation. Similarly, therefore, an action for revocation of the donation will be denied

Donations; with Resolutory Condition (2003)

In 1950, Dr. Alba donated a parcel of land to Central University on condition that the latter must establish a medical college on the land to be named after him. In the year 2000, the heirs of Dr. Alba filed an action to annul the donation and for the reconveyance of the property donated to them for the failure, after 50 years, of the University to established on the property a medical school named after their father. The University opposed the action on the ground of prescription and also because it had not used the property for some purpose other than that stated in the donation. Should the opposition of the University to the action of Dr. Alba's heirs be sustained? Explain.

SUGGESTED ANSWER:

The donation may be revoked. The non-established of the medical college on the donated property was a resolutory condition imposed on the donation by the donor. Although the Deed of Donation did not fix the time for the established of the medical college, the failure of the donee to establish the medical college after fifty (50) years from the making of the donation should be considered as occurrence of the resolutory condition, and the donation may now be revoked. While the general rule is that in case the period is not fixed in the agreement of the parties, the period must be fixed first by the court before the obligation may be demanded, the period of fifty (50) years was more than enough time for the donee to comply with the condition. Hence, in this case, there is no more need for the court to fix the period because such procedure with the condition. (**Central Philippine University v. CA. 246 SCRA 511**).

ANOTHER SUGGESTED ANSWER:

The donation may not as yet revoked. The establishment of a medical college is not a resolutory or suspensive condition but a —charge, obligation, or a —mode The noncompliance with the charge or mode will give the donor the right to revoke the donation within four (4) years from the time the charge was supposed to have been complied with, or to enforce the charge by specific performance within ten (10) years from the time the cause of action accrued. Inasmuch as the time to established the medical college has yet default in his obligation until the period is fixed by order of the court under Article 1197 of the New Civil Code. Since the period has not been fixed as yet, the donee is not yet default, and therefore the donor has no cause of action to revoke the donation. (**Dissenting opinion of Davide, CJ, Central Philippine University v. Court of Appeals, 246 SCRA 511 [1995]**)

Donation; Formalities (2015)

Jose, single, donated a house and lot to his only niece, Maria, who was of legal age and who accepted the donation. The donation and Maria's acceptance thereof were evidenced by a Deed of Donation. Maria then lived in the house and lot donated to her, religiously paying

real estate taxes thereon. Twelve years later, when Jose had already passed away, a woman claiming to be an illegitimate daughter of Jose filed a complaint against Maria. Claiming rights as an heir, the woman prayed that Maria be ordered to reconvey the house and lot to Jose's estate. In her complaint she alleged that the notary public who notarized the Deed of Donation had an expired notarial commission when the Deed of Donation was executed by Jose. Can Maria be made to reconvey the property? What can she put up as a defense? (4%)

SUGGESTED ANSWER:

Maria cannot be made to reconvey the property. In order for a donation of an immovable to be void, it must be made in public document (Art. 749, Civil Code). Since the notary public before whom the deed of donation was acknowledged had an expired notarial commission, the deed of donation remained a private instrument; hence, the donation was void. However, assuming that the donation was not inofficious, Maria can put up the defense of prescription. Since she possessed the house and lot in the concept of an owner and in good faith that she had just title to the property by virtue of the donation, she became the owner of the property by virtue of acquisitive prescription of 10 years after she took permission thereof, assuing that the land on which the house was built was not registered land. (Arts. 1117, 1118, 1127, and 1134, Civil Code).

Donations Inter Vivos vs. Donations Mortis Causa (2013)

Josefa executed a deed of donation covering a one-hectare rice land in favor of her daughter, Jennifer. The deed specifically provides that:

"For and in consideration of the love and service Jennifer has shown and given to me, I hereby freely, voluntarily and irrevocably donate to her my one-hectare rice land covered by TCT No. 11550, located in San Fernando, Pampanga. This donation shall take effect upon my death."

The deed also contained Jennifer's signed acceptance, and an attached notarized declaration by Josefa and Jennifer that the land will remain in Josefa's possession and cannot be alienated, encumbered, sold or disposed of while Josefa is still alive.

Advise Jennifer on whether the deed is a donation inter vivos or mortis causa and explain the reasons supporting your advice. (8%)

SUGGESTED ANSWER:

The donation is a donation *inter vivos*.

When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation inter vivos (Art. 729, Civil Code)

The Civil Code favors inter vivos transmissions. Moreover, mortis causa donations should follow the formalities of a will (Art. 728, Civil Code). Here, there is no showing that such formalities were followed. Thus, it

is favorable to Jennifer that the deed is a donation inter vivos.

Furthermore, what is most significant in determining the type of donation is the absence of stipulation that the donor could revoke the donation; on the contrary, the deeds expressly declare them to be "irrevocable", a quality absolutely incompatible with the idea of conveyances mortis causa where revocability is the essence of the act, to the extent that a testator cannot lawfully waive or restrict his right of revocation. The provisions of the deed of donation which state that the same will only take effect upon the death of the donor and there is a prohibition to alienate, encumber, dispose, or sell the same should be harmonized with its express irrevocability (Austria-Magat v. CA, G.R. No. 106755, February 1, 2002).

ALTERNATIVE ANSWER:

The donation is a donation *mortis causa*.

The deed clearly states that the donation shall take effect upon the death of the donor, Josefa. The donor, moreover, retained the ownership of the subject property as it was declared that the property cannot be alienated, encumbered, sold, or disposed of while the donor is still alive.

As the donation is in the nature of mortis causa disposition, the formalities of a will should have been complied with under Article 728 of the Civil Code; otherwise, the donation is void and would produce no effect. (The National Treasurer of the Philippines v. Vda. De Meimban, G.R. No. L-61023, August 22, 1984.)

Prescriptive Period; Writ of Possession over Foreclosed Real Property (2012)

a) Does the right to request for the issuance of a writ of possession over a foreclosed real property prescribe in five (5) years? (5%)

SUGGESTED ANSWER:

a. Yes, it prescribes in 5 years. If the real property mortgaged is judicially foreclosed, the action for judicial foreclosure should be filed within a period of ten (10) years. The request for issuance of a writ of possession should be filed upon motion of the winning bidder within five (5) years after the judgment of foreclosure. The writ of possession is an order commanding the sheriff to place a person named therein in possession of real property. (BPI v. Icot, G.R. No. 168081, October 12, 2009.)

PROPERTY

Property; Movable or Immovable (2007)

Manila Petroleum Co. owned and operated a petroleum operation facility off the coast of Manila. The facility was located on a floating platform made of wood and metal, upon which was permanently attached the heavy equipment for the petroleum operations and living quarters of the crew. The floating platform likewise contained a garden area, where trees, plants and flowers were planted. The platform was tethered to a

ship, the MV 101, which was anchored to the seabed.

Please briefly give the reason for your answers. (10%)

(A). Is the platform movable or immovable property?

SUGGESTED ANSWER:

The platform is an immovable property under Art. 415 (9) NCC, which provides that "docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake or coast." Since the floating platform is a petroleum operation facility, it is intended to remain permanently where it is situated, even if it is tethered to a ship which is anchored to the seabed.

ALTERNATIVE ANSWER:

The platform is a movable property because it is attached to a movable property, i.e. the vessel which was merely anchored to the seabed. The fact that the vessel is merely anchored to the sea bed only shows that it is not intended to remain at a fixed place; hence, it remains a movable property. If the intention was to make the platform stay permanent where it was moored, it would not have been simply tethered to a vessel but itself anchored to the seabed.

(B). Are the equipment and living quarters movable or immovable property?

SUGGESTED ANSWER:

The thing and living quarters of the crew are immovable property under Art. 415

(3) NCC, classifies as an immovable "everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object." Both the equipment and the living quarters are permanently attached to the platform which is also an immovable. The equipment can also be classified as an immovable property under Art. 415 (5) NCC because such equipment are "machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land and which tend directly to meet the needs of the industry or works." It is logically assumed that the petroleum industry may be carried on in a building or on a piece of land and the platform is analogous to a building.

ALTERNATIVE ANSWER:

The equipment and living quarters of the crew are movable properties since they are attached to a platform which is also a movable property, because it is simply attached to a vessel is likewise a movable property since it was merely anchored on the seabed only shows that it is not intended to remain at a fixed place; hence, it remains a movable property.

(C). Are the trees, plants and flowers immovable or movable property?

SUGGESTED ANSWER:

The trees, plants and flowers planted in the garden area of the platform are immovable property under Art. 415 (2) NCC which classifies as an immovable property

"trees, plants and growing fruits, while they are attached to the land or form an integral part of an immovable, the petroleum operation facility.

ALTERNATIVE ANSWER:

The trees, plants and flowers planted in the garden area of the platform are movable property because they are not permanently attached to the land and do not form an integral part of an immovable. The platform is not an immovable property for the same reason already given in the Alternative Answer to Item (a) above.

Immovable Property; When Treated as Movable; Chattel Mortgage (2003)

X constructed a house on a lot which he was leasing from Y. Later, X executed a chattel mortgage over said house in favor of Z as security for a loan obtained from the latter. Still later, X acquired ownership of the land where his house was constructed, after which he mortgaged both house and land in favor of a bank, which mortgage was annotated on the Torrens Certificate of Title. When X failed to pay his loan to the bank, the latter, being the highest bidder at the house and lot. Learning of the proceedings conducted by the bank, Z is now demanding that the bank reconvey to him X's house or pay X's loan to him plus interests. Is Z's demand against the bank valid and sustainable? Why? 5%

SUGGESTED ANSWER:

No, Z's demand is not valid. A building is immovable or real property whether it is erected by the owner of the land, by a usufructuary, or by a lessee. It may be treated as a movable by the parties to chattel mortgage but such is binding only between them and not on third parties (**Evangelista v. Alto Surety Co., Inc. 103 Phil. 401 [1958]**). In this case, since the bank is not a party to the chattel mortgage, it is not bound by it, as far as the Bank is concerned, the chattel mortgage, does not exist. Moreover, the chattel mortgage is void because it was not registered. Assuming that it is valid, it does not bind the Bank because it was not annotated on the title of the land mortgaged to the bank. Z cannot demand that the Bank pay him the loan Z extended to X, because the Bank was not privy to such loan transaction.

ANOTHER SUGGESTED ANSWER:

No, Z's demand against the bank is not valid. His demand that the bank reconvey to him X's house presupposes that he has a real right over the house. All that Z has is a personal right against X for damages for breach of the contract of loan. The treatment of a house, even if built on rented land, as movable property is void insofar as third persons, such as the bank, are concerned. On the other hand, the Bank already had a real right over the house and lot when the mortgage was annotated at the back of the Torrens title. The bank later became the owner in the foreclosure sale. Z cannot ask the bank to pay for X's loan plus interest. There is no privity of contract between Z and the bank.

ALTERNATIVE ANSWER:

The answer hinges on whether or not the bank is an innocent mortgagee in good faith or a mortgagee in bad faith. In the former case, Z's demand is not valid. In the

latter case, Z's demand against the bank is valid and sustainable. Under the Torrens system of land registration, every person dealing with registered land may rely on the correctness of the certificate of title and the law will not in any way oblige to him to look behind or beyond the certificate in order to determine the condition of the title. He is not bound by anything not annotated or reflected in the certificate. If he proceeds to buy the land or accept it as a collateral relying on the certificate, he is considered a buyer or a mortgagee in good faith. On this ground, the Bank acquires a clean title to the land and the house. However, a bank is not an ordinary mortgagee. Unlike private individuals, a bank is expected to exercise greater care and prudence in its dealings. The ascertainment of the condition of a property offered as collateral for a loan must be a standard and indispensable part of its operation. The bank should have conducted further inquiry regarding the house standing on the land considering that it was already standing there before X acquired the title to the land. The was then valued only at P1 Million. Lawrence was declared bank cannot be considered as a mortgagee in good faith. On this ground, Z's demand against the Bank is valid and sustainable.

Accretion; Alluvion (2001)

For many years, the Rio Grande river deposited soil along its bank, beside the titled land of Jose. In time, such deposit reached an area of one thousand square meters. With the permission of Jose, Vicente cultivated the said area. Ten years later, a big flood occurred in the river and transferred the 1000 square meters to the opposite bank, beside the land of Agustin. The land transferred is now contested by Jose and Agustin as riparian owners and by Vicente who claims ownership by prescription. Who should prevail? Why? (5%)

SUGGESTED ANSWER:

Jose should prevail. The disputed area, which is an alluvion, belongs by right of accretion to Jose, the riparian owner (Art. 457 CC). When, as given in the problem, the very same area "was transferred" by flood waters to the opposite bank, it became an avulsion and ownership thereof is retained by Jose who has two years to remove it (Art. 459, CC). Vicente's claim based on prescription is baseless since his possession was by mere tolerance of Jose and, therefore, did not adversely affect Jose's possession and ownership (Art. 537, CC). Inasmuch as his possession is merely that of a holder, he cannot acquire the disputed area by prescription.

Accretion; Avulsion (2003)

Andres is a riparian owner of a parcel of registered land. His land, however, has gradually diminished in area due to the current of the river, while the registered land of Mario on the opposite bank has gradually increased in area by 200 square meters.

(a) Who has the better right over the 200 square meter area that has been added to Mario's registered land, Mario or Andres?

(b) May a third person acquire said 200-square meter land by prescription?

SUGGESTED ANSWER:

a. Mario has a better right over the 200 square meters increase in area by reason of accretion, applying Article 457 of the New Civil Code, which provides that —to the owners of lands adjoining the banks of rivers belong the accretion which they gradually received from the effects of the current of the waters. Andres cannot claim that the increase in Mario's land is his own, because such is an accretion and not result of the sudden detachment of a known portion of his land and its attachment to Mario's land, a process called —avulsion. He can no longer claim ownership of the portion of his registered land which was gradually and naturally eroded due to the current of the river, because he had lost it by operation of law. That portion of the land has reasonable rent, if the owner of the land does not choose to become part of the public domain.

SUGGESTED ANSWER:

b. Yes, a third party may acquire by prescription the 200 square meters, increase in area, because it is not included in the Torrens Title of the riparian owner. Hence, this does not involve the imprescriptibility conferred by Section 47, P.D. No. 1529. The fact that the riparian land is registered does not automatically make the accretion thereto a registered land.

Accretion; Alluvion (2008)

The properties of Jessica and Jenny, who are neighbors, lie along the banks of the Marikina River. At certain times of the year, the river would swell and as the water recedes, soil, rocks and other materials are deposited on Jessica's and Jenny's properties. This pattern of the river swelling, receding and depositing soil and other materials being deposited on the neighbors' properties have gone on for many years. Knowing his pattern, Jessica constructed a concrete barrier about 2 meters from her property line and extending towards the river, so that when the water recedes, soil and other materials are trapped within this barrier. After several years, the area between Jessica's property line to the concrete barrier was completely filled with soil, effectively increasing Jessica's property by 2 meters. Jenny's property, where no barrier was constructed, also increased by one meter along the side of the river.

(A). Can Jessica and Jenny legally claim ownership over the additional 2 meters and one meter, respectively, of land deposited along their properties? (2%)

SUGGESTED ANSWER:

Only Jenny can claim ownership over the additional one meter of land deposited along her property. Art. 457 of the Civil Code provides that "to the owners of lands adjoining the banks of river belong the accretion which they gradually receive from the effects of the current of the water." Where the land is not formed solely by the natural effect of the water current of the river bordering land but is also the consequences of the direct and deliberate intervention of man, it is man-made accretion and a part of the public domain (*Tiongco v. Director of Lands*, 16 C.A. Rep 211, cited in *Nazareno v. C.A.*, G.R. No. 98045, 26 June 1996). Thus, Jessica cannot

legally claim ownership of the additional 2 meters of land along her property because she constructed a concrete barrier about 2 meters from her property causing deposits of soil and other materials when the water recedes. In other words, the increase in her property was not caused by nature but was man-made.

(B). If Jessica's and Jenny's properties are registered, will the benefit of such registration extend to the increased area of their properties? (2%)

SUGGESTED ANSWER:

If the properties of Jessica and Jenny are registered, the benefit of such registration does not extend to the increased area of their properties. Accretion does not automatically become registered land because there is a specific technical description of the lot in its Torrens title. There must be a separate application for registration of the alluvial deposits under the Torrens System (*Grande v. CA*, G.R. No. L-17652, 30 June, 1962).

(C). Assume the two properties are on a cliff adjoining the shore of Laguna Lake. Jessica and Jenny had a hotel built on the properties. They had the earth and rocks excavated from the properties dumped on the adjoining shore, giving rise to a new patch of dry land. Can they validly lay claim to the patch of land? (2%)

SUGGESTED ANSWER:

No. Jessica and Jenny cannot validly lay claim to the patch of land because in order to acquire land by accretion, there should be a natural and actual continuity of the accretion to the land of the riparian owner caused by natural ebb and flow of the current of the river (*Delgado v. Samonte*, CA-G.R. No. 34979-R, 10 Aug 1966).

Accretion; Rights of the Riparian Owner (2009)

Marciano is the owner of a parcel of land through which a river runs out into the sea. The land had been brought under the Torrens System, and is cultivated by Ulpiano and his family as farmworkers therein. Over the years, the river has brought silt and sediment from its sources up in the mountains and forests so that gradually the land owned by Marciano increased in area by three hectares.

Ulpiano built three huts on this additional area, where he and his two married children live. On this same area, Ulpiano and his family planted peanuts, munggo beans and vegetables. Ulpiano also regularly paid taxes on the land, as shown by tax declarations, for over thirty years.

When Marciano learned of the increase in the size of the land, he ordered Ulpiano to demolish the huts, and demanded that he be paid his share in the proceeds of the harvest. Marciano claims that under the Civil Code, the alluvium belongs to him as a registered riparian owner to whose land the accretion attaches, and that his right is enforceable against the whole world.

(A). Is Marciano correct? Explain. (3%)

SUGGESTED ANSWER:

Marciano's contention is correct. Since that accretion was deposited on his land by the action of the waters of the river and he did not construct any structure to increase the deposition of soil and silt, Marciano automatically owns the accretion. His real right of ownership is enforceable against the whole world including Ulpiano and his two married children. Although Marciano's land is registered, the three (3) hectares land deposited through accretion was not automatically registered. As an unregistered land, it is subject to acquisitive prescription by third persons.

Although Ulpiano and his children live in the three (3) hectare unregistered land owned by Marciano, they are farm workers; therefore, they are possessors not in the concept of owners but in the concept of mere holders. Even if they possess the land for more than 30 years, they cannot become the owners thereof through extraordinary acquisitive prescription, because the law requires possession in the concept of the owner. Payment of taxes and tax declaration are not enough to make their possession one in the concept of owner. They must repudiate the possession in the concept of holder by executing unequivocal acts of repudiation amounting to ouster of Marciano, known to Marciano and must be proven by clear and convincing evidence. Only then would his possession become adverse.

(B). What rights, if any, does Ulpiano have against Marciano? Explain. (3%)

SUGGESTED ANSWER:

Although Ulpiano is a possessor in bad faith, because he knew he does not own the land, he will lose the three huts he built in bad faith and make an accounting of the fruits he has gathered, he has the right to deduct from the value of the fruits the expenses for production, gathering and preservation of the fruits (Art 443, NCC).

He may also ask for reimbursement of the taxes he has paid, as these are charges on the land owned by Marciano. This obligation is based on a quasi-contract (Art 2175, NCC).

Builder; Good Faith vs. Bad Faith (2000)

In good faith, Pedro constructed a five-door commercial building on the land of Pablo who was also in good faith. When Pablo discovered the construction, he opted to appropriate the building by paying Pedro the cost thereof. However, Pedro insists that he should be paid the current market value of the building, which was much higher because of inflation.

1) Who is correct Pedro or Pablo?(1%) 2) In the meantime that Pedro is not yet paid, who is entitled to the rentals of the building, Pedro or Pablo? (1%)

SUGGESTED ANSWER:

Pablo is correct. Under Article 448 of the New Civil Code in relation to Article 546, the builder in good faith is entitled to a refund of the necessary and useful expenses incurred by him, or the increase in value which the land may have acquired by reason of the improvement, at the option of the landowner. The builder is entitled to a refund of the expenses he

incurred, and not to the market value of the improvement

The case of **Pecson v. CA, 244 SCRA 407**, is not applicable to square meters. Jose claims that Mike is a builder in bad faith the problem. In the Pecson case, the builder was the owner of the land who later lost the property at a public sale due to non-payment of taxes. The Court ruled that Article 448 does not apply to the case where the owner of the land is the builder but who later lost the land; not being applicable, the indemnity that should be paid to the buyer must be the fair market value of the building and not just the cost of construction thereof. The Court opined in that case that to do otherwise would unjustly enrich the new owner of the land.

ALTERNATIVE ANSWER:

Pedro is correct. In Pecson vs. CA, it was held that Article 546 of the New Civil Code does not specifically state how the value of useful improvements should be determined in fixing the amount of indemnity that the owner of the land should pay to the builder in good faith. Since the objective of the law is to adjust the rights of the parties in such manner as "to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him", the Court ruled that the basis of reimbursement should be the fair market value of the building.

SUGGESTED ANSWER:

2) Pablo is entitled to the rentals of the building. As the owner of the land, Pablo is also the owner of the building being an accession thereto. However, Pedro who is entitled to retain the building is also entitled to retain the rentals. He, however, shall apply the rentals to the indemnity payable to him after deducting reasonable cost of repair and maintenance.

ALTERNATIVE ANSWER:

Pablo is entitled to the rentals. Pedro became a possessor in bad faith from the time he learned that the land belongs to Pablo. As such, he loses his right to the building, including the fruits thereof, except the right of retention.

Builder; Good Faith vs. Bad Faith; Accession (2000)

a) Demetrio knew that a piece of land bordering the beach belonged to Ernesto. However, since the latter was studying in Europe and no one was taking care of the land, Demetrio occupied the same and constructed thereon nipa sheds with tables and benches which he rented out to people who want to have a picnic by the beach. When Ernesto returned, he demanded the return of the land. Demetrio agreed to do so after he has removed the nipa sheds. Ernesto refused to let Demetrio remove the nipa sheds on the ground that these already belonged to him by right of accession. Who is correct? (3%)

SUGGESTED ANSWER:

Ernesto is correct. Demetrio is a builder in bad faith because he knew beforehand that the land belonged to Ernesto, under Article 449 of the New Civil Code, one who builds on the land of another loses what is built

without right to indemnity. Ernesto becomes the owner of the nipa sheds by right of accession. Hence, Ernesto is well within his right in refusing to allow the removal of the nipa sheds.

Builder; Good Faith vs. Bad Faith; Presumption (2001)

Mike built a house on his lot in Pasay City. Two years later, a survey disclosed that a portion of the building actually stood on the neighboring land of Jose, to the extent of 40 sq. Meters. Jose claims that Mike is a builder in bad faith because he should know the boundaries of his lot, and demands that the portion of the house which encroached on his land should be destroyed or removed. Mike replies that he is a builder in good faith and offers to buy the land occupied by the building instead.

1) Is Mike a builder in good faith or bad faith? Why? (3%)

2) Whose preference should be followed? Why? (2%)

SUGGESTED ANSWER:

1) Yes, Mike is a builder in good faith. There is no showing that when he built his house, he knew that a portion thereof encroached on Jose's lot. Unless one is versed in the science of surveying, he cannot determine the precise boundaries or location of his property by merely examining his title. In the absence of contrary proof, the law presumes that the encroachment was done in good faith

Builder in Good Faith (2013)

Anselmo is the registered owner of a land and a house that his friend Boboy occupied for a nominal rental and on the condition that Boboy would vacate the property on demand. With Anselmo's knowledge, Boboy introduced renovations consisting of an additional bedroom, a covered veranda, and a concrete block fence, at his own expense. Subsequently, Anselmo needed the property as his residence and thus asked Boboy to vacate and turn it over to him. Boboy, despite an extension, failed to vacate the property, forcing Anselmo to send him a written demand to vacate. In his own written reply, Boboy signified that he was ready to leave but Anselmo must first reimburse him the value of the improvements he introduced on the property as he is a builder in good faith. Anselmo refused, insisting that Boboy cannot ask for reimbursement as he is a mere lessee. Boboy responded by removing the improvements and leaving the building in its original state.

(A) Resolve Boboy's claim that as a builder in good faith, he should be reimbursed the value of the improvements he introduced. (4%)

SUGGESTED ANSWER:

Boboy's claim that he is a builder in good faith has no legal basis. A builder in good faith is someone who occupies the property in the concept of an owner. The provisions on builder-planter-sower under the Civil Code cover cases in which the builder, planter and

sower believe themselves to be the owners of the land, or atleast, to have a claim of title thereto.

As Boboy is a lessee of the property, even if he was paying nominal rental, Article 1678 of Civil Code, is applicable. Under this provision, if the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby.

(B) Can Boboy be held liable for damages for removing the improvements over Anselmo's objection? (4%)

SUGGESTED ANSWER:

No. Boboy cannot be held liable for damages.

The lessor, Anselmo, refused to reimburse one-half of the value of the improvements, so the lessee, Boboy, may remove the same, even though the principal thing may suffer damage thereby. If in removing the useful improvements Boboy caused more impairment on the property leased than is necessary he will be liable for damages (Art. 1678, Civil Code).

Builder in Good Faith (2013)

Ciriaco Realty Corporation (CRC) sold to the spouses Dela Cruz a 500-square meter land (Lot A) in Paranaque. The land now has a fair market value of P1,200,000. CRC likewise sold to the spouses Rodriguez, a 700-square meter land (Lot B) which is adjacent to Lot A. Lot B has a present fair market value of P1,500,000.

The spouses Dela Cruz constructed a house on Lot B, relying on their presentation of the CRC sales agent that it is the property they purchased. Only upon the completion of their house did the spouses Dela Cruz discover that they had built on Lot B owned by the spouses Rodriguez, not on Lot A that they purchased. They spent P 1 000,000 for the house.

As their lawyer, advise the spouses Dela Cruz on their rights and obligations under the given circumstances, and the recourses and options open to them to protect their interests. (8%)

SUGGESTED ANSWER:

Based on the facts as stated, the spouses Dela Cruz as builders and the spouses Rodriguez as land owners, are both in good faith. The spouses Dela Cruz are builders in good faith because before constructing the house, they exercised due diligence by asking the agent of CRC the location of the lot A, and they relied on the information given by the agent who is presumed to know the identity of the lot purchased by the Dela Cruz spouses (*Pleasantville v. CA*, 253 SCRA 10 [1996]). On the other hand, there is no showing that the landowners, spouses Rodriguez, acted in bad faith. The facts do not show that the building was done with their knowledge

and without opposition on their part (Art. 453, Civil Code). Good faith is always presumed (Art. 527, Civil Code).

The owner of the land of which anything has been built, sown or planted in good faith shall have the right:

1. to appropriate as his own the works after payment of the indemnity provided for in Articles 546 and 548, or
2. to oblige the one who built to pay the price of the land.

However, the builder cannot be obliged to buy the land if its value is considerably more than that of the building. In such case, he shall pay reasonable rent of the owner of the land does not choose to appropriate the building or trees after proper indemnity (Art. 448, Civil Code).

The house constructed by the spouses Dela Cruz is considered as a useful expense, since it increased the value of the lot. As such, should the spouses Rodriguez decide to appropriate the house, the spouses Dela Cruz, are entitled to the right of retention pending reimbursement of the expenses they incurred or the increase in value which the thing may have acquired by reason of the improvement (Art. 546, Civil Code). Thus, the spouses Dela Cruz may demand P1,000,000 as payment of the expenses in building the house or increase the value of the land because of the house as a useful improvement, as may be determined by the court from the evidence presented during the trial (*Depra vs. Dumlao*, 136 SCRA 475 [1985]); *Technogas Phils vs. CA*, 268 SCRA 5 [1997]).

Builder in Good Faith (2015)

Mr. and Mrs. X migrated to the US with all their children. As they had no intention of coming back, they offered their house and lot for sale to their neighbors, Mr. and Mrs. A (the buyers) who agreed to buy the property for 128 Million. Because Mr. and Mrs. A needed to obtain a loan from a bank first, and since the sellers were in a hurry to migrate, the latter told the buyers that they could already occupy the house, renovate it as it was already in a state of disrepair, and pay only when their loan is approved and released. While waiting for the loan approval, the buyers spent .PI Million in repairing the house. A month later, a person carrying an authenticated special power of attorney from the sellers demanded that the buyers either immediately pay for the property in full now or vacate it and pay damages for having made improvements on the property without a sale having been perfected.

a) What are the buyers' options or legal rights with respect to the expenses they incurred in improving the property under the circumstances? (3%)

SUGGESTED ANSWER:

a. The sale was perfected and Spouse A acquired ownership over the house and lot upon delivery. Payment of the price was subject to an indefinite period, that is, after the approval of the bank loan. As owners, they have the right to make improvements on the said properties, and do retain the same. Even assuming for

the sake of argument that the sale was not perfected and Spouses A had not acquired ownership over the house and lot because of the notarized deed of sale, or in case of rescission, they may be considered builders in good faith since they entered into the property believing in good faith that they were the owners of the property in question. As builders in good faith, they are entitled to reimbursement for necessary and useful expenses incurred upon the property, and may retain the property until reimbursement therefor (Art. 448 and 546 Civil Code). The improvements in question are necessary and useful since the house was already in a state of despair.

Sower; Good Faith/ Bad Faith (2000)

Felix cultivated a parcel of land and planted it to sugar cane, believing it to be his own. When the crop was eight months old, and harvestable after two more months, a resurvey of the land showed that it really belonged to Fred. What are the options available to Fred? (2%)

SUGGESTED ANSWER:

As to the pending crops planted by Felix in good faith, Fred has the option of allowing Felix to continue the cultivation and to harvest the crops, or to continue the cultivation and harvest the crops himself. In the latter option, however, Felix shall have the right to a part of the expenses of cultivation and to a part of the net harvest, both in proportion to the time of possession. (Art. 545 NCC),

ALTERNATIVE ANSWER:

Since sugarcane is not a perennial crop. Felix is considered a sower in good faith. Being so, Art. 448 applies. The options available to Fred are:

(a) to appropriate the crop after paying Felix the indemnity under Art. 546, or (b) to require Felix to pay rent.

Easement; Effects; Discontinuous Easements; Permissive Use (2005)

Don was the owner of an agricultural land with no access to a public road. He had been passing through the land of Ernie with the latter's acquiescence for over 20 years. Subsequently, Don subdivided his property into 20 residential lots and sold them to different persons. Ernie blocked the pathway and refused to let the buyers pass through his land.

a) Did Don acquire an easement of right of way? Explain.

(2%)

ALTERNATIVE ANSWER:

No, Don did not acquire an easement of right of way. An easement of right of way is discontinuous in nature — it is exercised only if a man passes over somebody's land. Under Article 622 of the Civil Code, discontinuous easements, whether apparent or not, may only be acquired by virtue of a title. The Supreme Court, in **Abellana, Sr. v. Court of Appeals (G.R. No. 97039, April 24, 1992)**, ruled that an easement of right of way being discontinuous in nature is not acquirable by prescription. Further, possession of the easement by

Don is only permissive, tolerated or with the acquiescence of Ernie. It is settled in the case of **Cuaycong v. Benedicto (G.R. No. 9989, March 13, 1918)** that a permissive use of a road over the land of another, no matter how long continued, will not create an easement of way by prescription.

ALTERNATIVE ANSWER:

Yes, Don acquired an easement of right of way. An easement that is continuous and apparent can be acquired by prescription and title. According to Professor Tolentino, an easement of right of way may have a continuous nature of possession and that if coupled with an apparent sign, such easement of way may be acquired by prescription.

ALTERNATIVE ANSWER:

Yes, Ernie could close the pathway on his land. Don has not acquired an easement of right of way either by agreement or by judicial grant. Neither did the buyers. Thus, establishment of a road or unlawful use of the land of Ernie would constitute an invasion of possessory rights of the owner, which under Article 429 of the Civil Code may be repelled or prevented. Ernie has the right to exclude any person from the enjoyment and disposal of the land. This is an attribute of ownership that Ernie enjoys.

ALTERNATIVE ANSWER:

Yes, Ernie may close the pathway, subject however, to the rights of the lot buyers. Since there is no access to the public road, this results in the creation of a legal easement. The lot buyers have the right to demand that Ernie grant them a right of way. In turn, they have the obligation to pay the value of the portion used as a right of way, plus damages.

c) What are the rights of the lot buyers, if any?

Explain. (2%)

SUGGESTED ANSWER:

Prior to the grant of an easement, the buyers of the dominant estate have no other right than to compel grant of easement of right of way. Since the properties of the buyers are surrounded by other immovables and has no adequate outlet to a public highway and the isolation is not due to their acts, buyers may demand an easement of a right of way provided proper indemnity is paid and the right of way demanded is the shortest and least prejudicial to Ernie. (**Villanueva v. Velasco, G.R. No. 130845, November 27, 2000**).

Easement; Right of Lot Buyers; Effect of Non-User and/or Waiver of Right of Way (2010)

Franz was the owner of Lot E which was surrounded by four (4) lots one of which — Lot C — he also owned. He promised Ava that if she bought Lot E, he would give her a right of way in Lot C. Convinced, Ava bought Lot E and, as promised, Franz gave her a right of way in Lot C. Ava cultivated Lot E and used the right of way granted by Franz. Ava later found gainful employment abroad. On her return after more than 10 years, the right of way was no longer available to her because Franz had in the meantime sold Lot C to Julia who had it fenced.

a. Does Ava have a right to demand from Julia the activation of her right of way? Explain. (2.5%)

SUGGESTED ANSWER:

Yes, Ava has the right to demand from Julia the activation of the right of way, for the following reasons:

1. An easement of right of way is a real right which attaches to, and is inseparable from, the estate to which it belongs.
2. The sale of the property includes the easement of servitude, even if the deed of sale is silent on the matter.
3. The vendee of the property in which a servitude or easement exists cannot close or put up obstructions thereon to prevent the dominant estate from using it.
4. Ava's working abroad for more than ten (10) years should not be construed as a non-user, because it cannot be implied from the facts that she or those whom left behind to cultivate the lot no longer use the right of way.

Note: Since a right of way is a discontinuous easement, the period of 10 years of non-user shall be computed from the day it ceased to be used under Art. 6341 (2) CC.

5. Renunciation or waiver of an easement must be specific, clear, express and made in a public instrument in accordance with Article 1358 of the NCC.

ANOTHER SUGGESTED ANSWER:

Yes. Ava has the right to demand from Julia the activation of her right of way. A voluntary easement of right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate. Also, like in any other contract, an easement is generally effective between parties, their heirs and assigns, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law (Unisource Commercial v. Chung, 593 SCRA 500 [2009]).

b. Assuming Ava opts to demand a right of way from any of the owners of Lots A, B, and D, can she do that? Explain. (2.5%)

SUGGESTED ANSWER:

Yes. Ava has the option to demand a right of way on any of the remaining lots of Franz more so after Franz sold Lot C to Julia. The essential elements of a legal right of way under Article 649 and 650 of the New Civil Code are complied with.

ANOTHER SUGGESTED ANSWER:

Yes. Ava has the option to demand a right of way from the other lots. The law provides that whenever a piece of land acquired by sale, exchange or partition is surrounded by other estates of the vendor, exchanger, or co-worker, he shall be obliged to grant a right of way without indemnity (Art. 652, NCC).

ALTERNATIVE ANSWER:

No. There was merely a promise to Ava that a right of way shall be granted to her in Lot C if Ava purchased Lot E. The promise was not reduced into writing (Obra v. Baldria, 529 SCRA 621 [2007]). Hence, it was not or could not have been registered as to warn buyers of Lot

C, about the existence of the easement on the property. Not having been annotated on the TCT to Lot C, the buyer acquired Lot C free from such right of way granted to Ava.

Easement; Nuisance; Abatement (2002)

Lauro owns an agricultural land planted mostly with fruit trees. Hernando owns an adjacent land devoted to his piggery business, which is two (2) meters higher in elevation. Although Hernando has constructed a waste disposal lagoon for his piggery, it is inadequate to contain the waste water containing pig manure, and it often overflows and inundates Lauro's plantation. This has increased the acidity of the soil in the plantation, causing the trees to wither and die. Lauro sues for damages caused to his plantation. Hernando invokes his right to the benefit of a natural easement in favor of his

higher estate, which imposes upon the lower estate of Lauro the obligation to receive the waters descending from the higher estate. Is

Hernando correct? (5%)

SUGGESTED ANSWER:

Hernando is wrong. It is true that Lauro's land is burdened with the natural easement to accept or receive the water which naturally and without interruption of man descends from a higher estate to a lower estate. However, Hernando has constructed a waste disposal lagoon for his piggery and it is this waste water that flows downward to Lauro's land. Hernando has, thus, interrupted the flow of water and has created and is maintaining a nuisance. Under Act. 697 NCC, abatement of a nuisance does not preclude recovery of damages by Lauro even for the past existence of a nuisance. The claim for damages may also be premised in Art. 2191 to time. As Tomas' business grows, the need for use of (4) NCC.

ANOTHER ANSWER:

Hernando is not correct. Article 637 of the New Civil Code provides that the owner of the higher estate cannot make works which will increase the burden on the servient estate. The owner of the higher estate may be compelled to pay damages to the owner of the lower estate.

Easements; Right of Way (2000)

The coconut farm of Federico is surrounded by the lands of Romulo. Federico seeks a right of way through a portion of the land of Romulo to bring his coconut products to the market. He has chosen a point where he will pass through a housing project of Romulo. The latter wants him to pass another way which is one kilometer longer. Who should prevail? (5%)

SUGGESTED ANSWER:

Romulo will prevail. Under Article 650 of the New Civil Code, the easement of right of way shall be established at the point least prejudicial to the servient estate and where the distance from the dominant estate to a public highway is the shortest. *In case of conflict, the criterion of least prejudice prevails over the criterion of shortest distance.* Since the route chosen by Federico will prejudice the housing project of Romulo, Romulo has

the right to demand that Federico pass another way even though it will be longer.

Easements; Right of Way; Inseparability (2001)

Emma bought a parcel of land from Equitable-PCI Bank, which acquired the same from Felisa, the original owner. Thereafter, Emma discovered that Felisa had granted a right of way over the land in favor of the land of Georgina, which had no outlet to a public highway, but the easement was not annotated when the servient estate was registered under the Torrens system. Emma then filed a complaint for cancellation of the right of way, on the ground that it had been extinguished by such failure to annotate. How would you decide the controversy? (5%)

SUGGESTED ANSWER:

The complaint for cancellation of easement of right of way must fail. The failure to annotate the easement upon the title of the servient estate is not among the grounds for extinguishing an easement under Art. 631 of the Civil Code. Under Article 617, easements are inseparable from the estate to which they actively or passively belong. Once it attaches, it can only be extinguished under Art. 631, and they exist even if they are not stated or annotated as an encumbrance on the Torrens title of the servient estate. (II Tolentino 326, 1987 ed.)

ALTERNATIVE ANSWER:

Under Section 44, PD No. 1529, every registered owner receiving a certificate of title pursuant to a decree of registration, and every subsequent innocent purchaser for value, shall hold the same free from all encumbrances except those noted on said certificate. This rule, however, admits of exceptions. Under Act 496, as amended by Act No. 2011, and Section 4, Act 3621, an easement if not registered shall remain and shall be held to pass with the land until cutoff or extinguished by the registration of the servient estate. consistent with this rule, where the distance to the street or However, this provision has been suppressed in Section 44, PD No. 1529. In other words, the registration of the servient estate did not operate to cut-off or extinguish the right of way. Therefore, the complaint for the cancellation of the right of way should be dismissed.

Easement; Right of Way (2013)

In 2005, Andres built a residential house on a lot whose only access to the national highway was a pathway crossing Brando's property. Andres and others have been using this pathway (pathway A) since 1980.

In 2006, Brando fenced off his property, thereby blocking Andres' access to the national highway. Andres demanded that part of the fence be removed to maintain his old access route to the highway (pathway A), but Brando refused, claiming that there was another available pathway (pathway B) for ingress and egress to the highway. Andres countered that pathway B has defects, is circuitous, and is extremely inconvenient to use.

To settle their dispute, Andres and Brando hired Damian, a geodetic and civil engineer, to survey and examine the two pathways and the surrounding areas, and to determine the shortest and the least prejudicial way through the servient estates. After the survey, the engineer concluded that pathway B is the longer route and will need improvements and repairs, but will not significantly affect the use of Brando's property. On the other hand, pathway A that had long been in place, is the shorter route but would significantly affect the use of Brando's property.

In light of the engineer's findings and the circumstances of the case, resolve the parties' right of way dispute. (6%)

SUGGESTED ANSWER:

Andres is not entitled to the easement of right of way for Pathway A. Pathway B must be used.

The owner of a dominant estate may validly obtain a compulsory right of way only after he has established the existence of four requisites, to wit:

1. The (dominant) estate is surrounded by other immovables and is without adequate outlet to a public highway;
2. After payment of the proper indemnity;
3. The isolation was not due to the proprietor's own acts; and
4. The right of way claimed is at a point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance from the dominant estate to the public highway may be the shortest (Art. 650, Civil Code).

However, the Supreme Court has consistently ruled that in case both criteria cannot be complied with, the right of way shall be established at the point least prejudicial to the servient estate.

The first and fourth requisites are not complied with. First, there is another available outlet to the national highway (Pathway B). Second, the right of way obtained (Pathway A) is not the least prejudicial to Brando's property, as evidenced by the reports of the geodetic and civil engineer.

When there is already an existing adequate outlet from the dominant estate to a public highway, even if the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified (Costabella Corp vs. CA, G.R. No. 80511, January 25, 1991). The rule that the easement of right of way shall be established at the point least prejudicial to the servient estate is controlling (Quimen v. Quimen), (CA, G.R. No. 112331, May 29, 1996).

Note: It is not clear from the problem if there exists an easement in favor of the lot belonging to Andres and if Brando's lot is burdened as a servient estate by a right of way as a servient estate. If there is such an easement burdening Brando's lot, was it created as a

legal easement or as a voluntary easement. If the use of Pathway A was only by tolerance then Brando may close it. Andres must ask for the constitution of a legal easement through Brando's lot by proving the four requisites required by Article 649 and 650, Civil Code.

Easement; Voluntary Easement; Apparent Sign (2014)

Mr. Bong owns several properties in Pasig City. He decided to build a condominium named Flores de Manila in one of his lots. To fund the project, he obtained a loan from the National Bank (NB) secured by a real estate mortgage over the adjoining property which he also owned.

During construction, he built three (3) pumps on the mortgaged property to supply water to the condominium. After one (1) year, the project was completed and the condominium was turned over to the buyers. However, Mr. Bong failed to pay his loan obligation to NB. Thus, NB foreclosed the mortgaged property where the pumps were installed. During the sale on public auction of the mortgaged property, Mr. Simon won in the bidding. When Mr. Simon attempted to take possession of the property, the condominium owners, who in the meantime constituted themselves into Flores de Manila Inc. (FMI), claimed that they have earlier filed a case for the declaration of the existence of an easement before the Regional Trial Court (RTC) of Pasig City and prayed that the easement be annotated in the title of the property foreclosed by NB. FMI further claimed that when Mr. Bong installed pumps in his adjoining property, a voluntary easement was constituted in favor of FMI.

Will the action prosper? (4%)

SUGGESTED ANSWER:

Yes, the action will prosper. Article 624 of the Civil Code provides that when an apparent sign of easement exists between two estates established or maintained by the owner of both, shall be considered as a title to the easement should the owner of two properties alienate one of them, unless at the time the ownership between the two estates is divided the contrary is provided in the deed of transfer or the apparent sign of easement is removed before the execution of the deed (*Privatization and Management Office v. Legaspi Towers 300, Inc.*, (593 SCRA 382). In this case, neither any showing that the apparent sign of the easement was removed before the sale on public auction, nor that there was an agreement that the easement will no longer continue; hence, the entitlement of FMI to the easement subsists.

Easement; Prescription; Acquisitive Prescription (2009)

TRUE or FALSE.

(C). Acquisitive prescription of a negative easement runs from the time the owner of the dominant estate forbids, in a notarized document, the owner of the servient estate from executing an act which would be lawful without the easement. (1%)

SUGGESTED ANSWER:

True. In negative easements, acquisitive prescription

runs from the moment the owner of the dominant estate forbade, by an instrument acknowledged before notary public, the owner of the servient estate from executing an act which would be lawful without the easement (Art. 621, NCC).

Ejectment Suit (2006)

Alberto and Janine migrated to the United States of America, leaving behind their 4 children, one of whom is Manny. They own a duplex apartment and allowed Manny to live in one of the units. While in the United States, Alberto died. His widow and all his children executed an Extrajudicial Settlement of Alberto's estate wherein the 2door apartment was assigned by all the children to their mother, Janine. Subsequently, she sold the property to George. The latter required Manny to sign a prepared Lease Contract so that he and his family could continue occupying the unit. Manny refused to sign the contract alleging that his parents allowed him and his family to continue occupying the premises.

If you were George's counsel, what legal steps will you take? Explain. (5%)

SUGGESTED ANSWER:

If I were George's counsel, I would first demand that Manny vacate the apartment. If Manny refuses, I will file an ejectment suit. When Manny was allowed by his parents to occupy the premises, without compensation, the contract of commodatum was created. Upon the death of the father, the contract was extinguished as it is a purely personal contract. As the new owner of the apartment George is entitled to exercise his right of possession over the same.

Ejectment Suit (2014)

Spouses Magtanggol managed and operated a gasoline station on a 1, 000 sq. m. lot which they leased from Francisco Bigla-awa. The contract was for a period of three (3) years. When the contract expired, Francisco asked the spouses to peacefully vacate the premises. The spouses ignored the demand and continued with the operation of the gasoline station.

One month after, Francisco, with the aid of a group of armed men, caused the closure of the gasoline station by constructing fences around it.

Was the act of Francisco and his men lawful? Why? (4%)

SUGGESTED ANSWER:

No, the act of Francisco and his men were not lawful. Even when one has a right, such as the right to enjoy his property and to exclude anyone else from the enjoyment of such, a person cannot take the law unto his own hands and must still file the proper action in court. Even though Francisco had the right to fence his property as part of his right to enjoy it, Spouses Magtanggol are covered by Art. 539 which provides that every possessor has a right to be respected in his possession despite the lapse of their lease. Although there is no apparent force or intimidation employed, fencing off the property would prevent Spouses Magtanggol from entering and possessing the property. The proper recourse of

Francisco is to invoke the aid of a competent court and file an action for unlawful detainer.

Nuisance; Family House; Not Nuisance per se (2006)

A drug lord and his family reside in a small bungalow where they sell shabu and other prohibited drugs. When the police found the illegal trade, they immediately demolished the house because according to them, it was a nuisance per se that should be abated. Can this demolition be sustained? Explain. (5%)

SUGGESTED ANSWER:

No, the demolition cannot be sustained. The house is not a nuisance per se or at law as it is not an act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location or surroundings. A nuisance per se is a nuisance in and of itself, without regard to circumstances

[**Tolentino, p. 695, citing Wheeler v. River Falls Power Co., 215 Ala. 655, 111 So. 907.**]

Nuisance; Public Nuisance vs. Private Nuisance (2005)

State with reason whether each of the following is a nuisance, and if so, give its classification, whether public or private: Article 694 of the Civil Code defines nuisance as any act, omission, establishment, business, condition or property, or anything else which injures or endangers the health or safety of others, or annoys or offends the senses, or shocks, defies or disregards decency or morality or obstructs or interferes with the free passage of any public highway or street or any body of water or hinders or impairs the use of property. It is a public nuisance if it affects a community or neighborhood or any considerable number of persons. It is a direct encroachment upon public rights or property which results injuriously to the public. It is a private nuisance, if it affects only a person or small number of persons. It violates only private rights.

a) A squatter's hut (1%)

If constructed on public streets or riverbeds, it is a public nuisance because it obstructs the free use by the public of said places. (**City of Manila v. Garcia, G.R. No. L-26053, February 21, 1967**) If constructed on private land, it is a private nuisance because it hinders or impairs the use of the property by the owner.

b) A swimming pool (1%)

This is not a nuisance in the absence of any unusual condition or artificial feature other than the mere water. In **Hidalgo Enterprises v. Balandan (G.R. No. L-3422, June 13, 1952)**, the Supreme Court ruled that a swimming pool is but a duplication of nature — thus, could not be considered as a nuisance.

c) A house of prostitution (1%)

Irrespective of its location and how its business is conducted, it is a nuisance since it defies, shocks and disregards decency and morality. It is a public nuisance because of its injury to the public.

d) A noisy or dangerous factory in a private land (1%)

If the noise injuriously affects the health and comfort of ordinary people in the vicinity to an unreasonable extent,

it is a nuisance. It is a public nuisance because there is a tendency to annoy the public. (**Velasco v. Manila Electric Co., G.R. No. L-18390, August 6, 1971**)

e) Uncollected garbage (1%)

It will become a nuisance if it substantially impairs the comfort and enjoyment of the adjacent occupants. The annoyance and the smell must be substantial as to interfere sensibly with the use and enjoyment by persons of ordinary sensibilities. It is a public nuisance because of its injury to the public.

Occupation vs. Possession (2007)

Distinguish the following concepts:

(A). Occupation v. possession. (5%)

SUGGESTED ANSWER:

Occupation is an original mode of acquiring ownership (Art. 712, NCC). Things appropriable by nature which are without an owner, such as animals that are the object of hunting and fishing, hidden treasure and abandoned movables, are acquired by occupation (Art. 713, NCC). However, ownership of a piece of land cannot be acquired by occupation (Art. 714, NCC).

ALTERNATIVE ANSWER:

Occupation is a mode of acquiring dominion by the seizure of corporeal things which have no owner, with the intention of acquiring the ownership thereof. It is an original mode of acquiring ownership upon seizure of a res nullius by the occupant who has the intention to become the owner thereof. Possession, on the other hand, is the holding of the thing or an enjoyment of a right. Possession may be the real right of possession or jus possessiones or it can be merely the right to possess or jus possedendi, which are among the basic rights of ownership. If the real right of possession is possession in the concept of owner, but subject to certain limitations, it may ripen into full ownership of the thing or property right through acquisitive prescription depending on whether it is a case of ordinary or extraordinary prescription and whether the property is movable or immovable.

Co-Ownership; Renunciation (2009)

TRUE or FALSE.

(D). The renunciation by a co-owner of his undivided share in the co-owned property in lieu of the performance of his obligation to contribute to taxes and expenses for the preservation of the property constitutes *dacion en pago*. (1%)

SUGGESTED ANSWER:

True, Under the Civil Code, a co-owner may renounce his share in the co-owned property in lieu of paying for his share in the taxes and expenses for the preservation of the co-owned property.

In effect, there is *dacion en pago* because the co-owner is discharging his monetary obligation by paying it with his non-monetary interest in the co-owned property. The fact that he is giving up his entire interest simply means that he is accepting the value of his interest as equivalent to his share in the taxes and expenses of

preservation.

Co-Ownership; Alteration of Property; Remedy of Co-owners (2008)

Alex died without a will, leaving only an undeveloped and untitled lot in Taguig City. He is survived by his wife and 4 children. His wife told the children that she is waiving her share in the property, and allowed Bobby, the eldest son who was about to get married, to construct his house on $\frac{1}{4}$ of the lot, without however obtaining the consent of his siblings. After settlement of Alex's estate and partition among the heirs, it was discovered that Bobby's house was constructed on the portion allocated to his sister, Cathy asked Bobby to demolish his house and vacate the portion allotted to her. In lieu of demolition, Bobby offered to purchase from Cathy the lot portion on which his house was constructed. At that time, the house constructed was valued at P350,000.

(A). Can Cathy lawfully ask for demolition of Bobby's house? (3%)

SUGGESTED ANSWER:

Yes, Cathy can lawfully ask for the demolition of Bobby's house. Where there are two or more heirs, the whole estate of the decedent, is, before partition, owned in common by such heirs, subject to the payment of debts of the deceased (Art. 1078, Civil Code). Under the rules on co-ownership, "none of the co-owners shall, without the consent of the others make alterations in the thing owned in common, even though benefits for all would result therefrom." In *Cruz v. Catapang*, G.R. No. 164110, 12 Feb., 2008, the Court held that "alterations include any act of strict dominion or ownership such as construction of a house." In the present case, of Alex is the real owner of the undeveloped and untitled lot in Taguig, co-ownership is created among his wife and four children over said property upon his death. Since the construction of the house by Bobby was done without obtaining the consent of his siblings, the alteration effected is illegal. Bobby is considered to be in bad faith and as a sanction for his conduct, he can be compelled by Cathy to demolish or remove the structure at his own expense.

(B). Can Bobby legally insist on purchasing the land? (2%)

SUGGESTED ANSWER:

No. Bobby cannot legally insist on purchasing the land. Being in bad faith, he has no option to pay for the price of the lot (Art. 450, Civil Code).

Co-Ownership; Prescription (2000)

In 1955, Ramon and his sister Rosario inherited a parcel of land in Albay from their parents. Since Rosario was gainfully employed in Manila, she left Ramon alone to possess and cultivate the land. However, Ramon never shared the harvest with Rosario and was even able to sell one-half of the land in 1985 by claiming to be the sole heir of his parents. Having reached retirement age in 1990 Rosario returned to the province and upon learning what had transpired, demanded that

the remaining half of the land be given to her as her share. Ramon opposed, asserting that he has already acquired ownership of the land by prescription, and that Rosario is barred by laches from demanding partition and reconveyance. Decide the conflicting claims. (5%)

SUGGESTED ANSWER:

Ramon is wrong on both counts: prescription and laches. His possession as co-owner did not give rise to acquisitive prescription. Possession by a co-owner is deemed not adverse to the other co-owners but is, on the contrary, deemed beneficial to them (**Pongon v. GA, 166 SCRA 375**). Ramon's possession will become adverse only when he has repudiated the co-ownership and such repudiation was made known to Rosario. Assuming that the sale in 1985 where Ramon claimed he was the sole heir of his parents amounted to a repudiation of the co-ownership, the prescriptive period began to run only from that time. Not more than 30 years having lapsed since then, the claim of Rosario has not as yet prescribed. The claim of laches is not also meritorious. Until the repudiation of the co-ownership was made known to the other co-owners, no right has been violated for the said co-owners to vindicate. Mere delay in vindicating the right, standing alone, does not constitute laches.

ALTERNATIVE ANSWER:

Ramon has acquired the land by acquisitive prescription, and because of laches on the part of Rosario. Ramon's possession of the land was adverse because he asserted sole ownership thereof and never shared the harvest therefrom. His adverse possession having been continuous and uninterrupted for more than 30 years, Ramon has acquired the land by prescription. Rosario is also guilty of laches not having asserted her right to the harvest for more than 40 years.

Co-Ownership; Prescription (2002)

Senen and Peter are brothers. Senen migrated to Canada early while still a teenager. Peter stayed in Bulacan to take care of their widowed mother and continued to work on the Family farm even after her death. Returning to the country some thirty years after he had left, Senen seeks a partition of the farm to get his share as the only co-heir of Peter. Peter interposes his opposition, contending that acquisitive prescription has already set in and that estoppel lies to bar the action for partition, citing his continuous possession of the property for at least 10 years, for almost 30 years in fact. It is undisputed that Peter has never openly claimed sole ownership of the property. If he ever had the intention to do so, Senen was completely ignorant of it. Will Senen's action prosper? Explain. (5%).

SUGGESTED ANSWER:

Senen's action will prosper. Article 494 of the New Civil Code provides that —no prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the coownership nor notified Senen of his having repudiated the same.

ALTERNATIVE ANSWER:

Senen's action will prosper. This is a case of implied trust. (Art 1441, NCC) For purposes of prescription

under the concept of an owner (Art. 540, NCC). There is no such concept here. Peter was a co-owner, he never claimed sole ownership of the property. He is therefore estopped under Art. 1431, NCC.

Co-Ownership; Redemption (2000)

Ambrosio died, leaving his three daughters, Belen, Rosario and Sylvia a hacienda which was mortgaged to the Philippine National Bank due to the failure of the daughters to pay the bank, the latter foreclosed the mortgage and the hacienda was sold to it as the highest bidder. Six months later, Sylvia won the grand prize at the lotto and used part of it to redeem the hacienda from the bank. Thereafter, she took possession of the hacienda and refused to share its fruits with her sisters, contending that it was owned exclusively by her, having bought it from the bank with her own money. Is she correct or not? (3%)

SUGGESTED ANSWER:

Sylvia is not correct. The 3 daughters are the co-owners of the hacienda being the only heirs of Ambrosio. When the property was foreclosed, the right of redemption belongs also to the 3 daughters. When Sylvia redeemed the entire property before the lapse of the redemption period, she also exercised the right of redemption of her co-owners on their behalf. As such she is holding the shares of her two sisters in the property, and all the fruits corresponding thereto, in trust for them. Redemption by one co-owner inures to the benefit of all (**Adille v. CA.157 SCRA 455**). Sylvia, however, is entitled to be reimbursed the shares of her two sisters in the redemption price.

Co-Ownership; Redemption (2002)

Antonio, Bart, and Carlos are brothers. They purchased from their parents specific portions of a parcel of land as evidenced by three separates deeds of sale, each deed referring to a particular lot in meter and bounds. When the deeds were presented for registration, the Register of Deeds could not issue separate certificates of Title had to be issued, therefore, in the names of three brothers as coowners of the entire property. The situation has not changed up to now, but each of the brothers has been receiving rentals exclusively from the lot actually purchased by him. Antonio sells his lot to a third person, with notice to his brothers. To enable the buyer to secure a new title in his name, the deed of sale was made to refer to undivided interest in the property of the seller (Antonio), with the metes and bounds of the lot sold being stated. Bart and Carlos reacted by signifying their exercise of their right of redemption as co owners. Antonio in his behalf and in behalf of his buyer, contends that they are no longer co-owners, although the title covering the property has remained in their names as such. May Bart and Carlos still redeem the lot sold by Antonio? Explain. (5%)

SUGGESTED ANSWER:

No, they may not redeem because there was no Co-ownership among Antonio, Bart, and Carlos to start with. Their parents already partitioned the land in selling separate portions to them. The situation is the same as

in the case **Si v. Court of Appeals, (342 SCRA 653 [2000])**.

Co-ownership; Rights of a Co-owner (2014)

Fe, Esperanza, and Caridad inherited from their parents a 500 sq. m. lot which they leased to Maria for three (3) years. One year after, Fe, claiming to have the authority to represent her siblings Esperanza and Caridad, offered to sell the leased property to Maria which the latter accepted. The sale was not reduced into writing, but Maria started to make partial payments to Fe, which the latter received and acknowledged. After giving the full payment, Maria demanded for the execution of a deed of absolute sale which Esperanza and Caridad refused to do. Worst, Maria learned that the siblings sold the same property to Manuel. This compelled Maria to file a complaint for the annulment of the sale with specific performance and damages.

If you are the judge, how will you decide the case? (4%)

SUGGESTED ANSWER:

I will decide in favor of Maria but only as to the share of Fe, and dismiss the complaint with respect to Esperanza and Caridad. The property in question is co-owned by Fe, Esperanza and Caridad, since it has not yet been divided among them. Article 493 of the Civil Code provides that each co-owner shall have full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, provided that the effect of such alienation or mortgage shall be limited to the portion which may be allotted to him in the division upon termination of the co-ownership. The sale by Fe to Maria would therefore be binding on her 1/3 interest, but not on the 2/3 interest of Esperanza and Caridad because their shares were not validly sold to Maria in the absence of a written authority to Fe to sell their respective portions to Maria as required by Article 1874 of the Civil Code. Fe can only sell whatever property right she has, i.e. 1/3 ideal portion or undivided interest in the 500 sq.m. lot.

The sale to Manuel is valid as to the 2/3 share of Esperanza and Caridad.

Co-ownership; Prohibition to Divide (2015)

X, Y, Z are siblings who inherited a 10-storey building from their parents. They agreed in writing to maintain it as a co-owned property for leasing out and to divide the net profits among themselves equally for a period of 20 years. On the 8th year, X wanted to get out of the co-ownership so he could get his 1/3 share in the property. Y and Z refused, saying X is bound by their agreement to keep the co-ownership for 20 years. Are Y and Z correct? Explain. (3%)

SUGGESTED ANSWER:

Y and Z are partly correct. As a general rule, no co-owners shall be obliged to remain in the co-ownership, and each co-owner may demand at any time the partition of the thing owned in common. However, as one of the exceptions to the general rule, the agreement to keep the thing undivided for a certain period of time,

not exceeding ten years, shall be valid (Art. 494, Civil Code). In this case, X, Y, and Z stipulated for indivision of 20 years, which exceeds the maximum allowed by law. The stipulation would be void only as to the period beyond the maximum of ten years. Hence, X cannot yet ask for partition, as there remains two years for the agreement to remain in force.

Hidden Treasure (2008)

Adam, a building contractor, was engaged by Blas to construct a house on a lot which he (Blas) owns. While digging on the lot in order to lay down the foundation of the house, Adam hit a very hard object. It turned out to be the vault of the old Banco de las Islas Filipinas. Using a detonation device, Adam was able to open the vault containing old notes and coins which were in circulation during the Spanish era. While the notes and coins are no longer legal tender, they were valued at P100 million because of their historical value and the coins silver nickel content. The following filed legal claims over the notes and coins:

- (i). Adam, as finder;
- (ii). Blas, as owner of the property where they were found;
- (iii). Bank of the Philippine Islands, as successor-in-interest of the owner of the vault; and
- (iv). The Philippine Government because of their historical value.

(A). Who owns the notes and coins? (4%)

SUGGESTED ANSWER:

The notes and coins are no longer owned by the Bank of the Philippine Islands, which has either lost or abandoned the vault and its contents, and it has not taken any effort to search, locate or recover the vault. In any case, since the vault is in actual possession of Adam, BPI may attempt, in a judicial action to recover, to rebut the presumption of ownership in favor of Adam and Blas (Art. 433, Civil Code). Hidden treasure is any hidden and unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which does not appear. Given the age and importance of the items found, it would be safe to consider the vault, notes and coins abandoned by BPI and its predecessor (Art. 439, Civil Code). It belongs to the owner of the land on which it is found. When the discovery is made on the property of another, or of the State and by chance, one-half of it shall belong to the finder who is not a trespasser (Art. 438, Civil Code). In the present case, Adam, as finder, and Blas, as owner of the land, are entitled to share 50-50 in the treasure. The government can only claim if it can establish that the notes and coins are of interest to science or the arts, then it must pay just price of the things found, to be divided equally between Adam and Blas (Art. 438, Civil Code).

(B). Assuming that either or both Adam and Blas are adjudged as owners, will the notes and coins be deemed part of their absolute community or conjugal partnership of gains with their respective spouses? (2%)

SUGGESTED ANSWER:

If either or both Adam and Blas are adjudged as owners, the notes and coins shall be deemed part of their absolute community or conjugal partnership of gains with their respective spouses (Art. 117, par 4, FC).

Hidden Treasure (2010)

b. O, owner of Lot A, learning that Japanese soldiers may have buried gold and other treasures at the adjoining vacant Lot B belonging to spouses X & Y, excavated in Lot B where she succeeded in unearthing gold and precious stones. How will the treasures found by O be divided? (1%)

- 1. 100% to O as finder
- 2. 50% to O and 50% to the spouses X and Y
- 3. 50% to O and 50% to the state
- 4. None of the above

SUGGESTED ANSWER:

No. 4. None of the Above.

The general rule is that the treasure shall belong to the spouses X and Y, the owner of Lot B. Under Article 438 (NCC), the exception is that when the discovery of a hidden treasure is made on the property of another and by chance, one half thereof shall belong to the owner of the land and the other half is allowed to the finder. In the problem, the finding of the treasure was not by chance because O knew that the treasure was in lot B. While a trespasser is also not entitled to any share, and there is no indication in the problem whether or not O was a trespasser, O is not entitled to a share because the finding was not "by chance."

Hidden Treasure (2014)

A congregation for religious women, by way of commodatum, is using the real property owned and registered in the name of the Spouses Manuel as a retreat house. Maria, a helper of the congregation discovered a chest in the backyard. When she opened the chest, it contained several pieces of jewelry and money. (4%)

- (A) Can the chest containing the pieces of jewelry and money be considered as hidden treasure?
- (B) Who has the right to claim ownership of it?

SUGGESTED ANSWER:

(A) Yes, the chest containing the pieces of jewelry and money may be considered as a hidden treasure as long as they are hidden and unknown and the lawful ownership of it does not appear as provided in Article 439 of the Civil Code.

(B) Under Article 438 of the Civil Code, when the discovery of the hidden treasure is made on the property of another, one-half thereof shall be allowed to the finder provided the finder is not a trespasser. In this case, the owner of the land are Spouses Manuel. Spouses Manuel owns one-half of the hidden treasure since ownership is not transferred to the borrower but is retained by the lender in a

contract of commodatum. The other half shall belong to Maria as the finder.

ALTERNATIVE ANSWER:

(A) No, the chest containing the pieces of jewelry and money may not be considered as hidden treasure. In the case at bar, there is no indication that the chest was hidden, only that the helper discovered it in the backyard. And since it is clear that the property where the chest was found belongs to the Spouses Manuel, they are presumed the owner of the chest where the jewelry was found. The lawful ownership of the chest is apparent.

(B) Since it does not come within the purview of hidden treasure, the Spouses Manuel have the right to claim ownership over the chest as well as its contents.

INTELLECTUAL PROPERTY

Intellectual Creation (2004)

Dr. ALX is a scientist honored for work related to the human genome project. Among his pioneering efforts concern stem cell research for the cure of Alzheimer's disease. Under corporate sponsorship, he helped develop a microbe that ate and digested oil spills in the sea. Now he leads a college team for cancer research in MSS State. The team has experimented on a mouse whose body cells replicate and bear cancerous tumor. Called —oncomouse, it is a life-form useful for medical research and it is a novel creation. Its body cells do not naturally occur in nature but are the product of man's intellect, industry and ingenuity. However, there is a doubt whether local property laws and ethics would allow rights of exclusive ownership on any life-form. Dr. ALX needs your advice:

(1) whether the reciprocity principle in private international law could be applied in our jurisdiction; and
(2) whether there are legal and ethical reasons that could frustrate his claim of exclusive ownership over the life-form him? (5%)

SUGGESTED ANSWER:

(1) The reciprocity principle in private international law may be applied in our jurisdiction. Section 3 of R.A. 8293, the Intellectual Property Code, provides for reciprocity, as follows: "Any person who is a national, or who is domiciled, or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)" To illustrate: the Philippines may refrain from imposing a requirement of local incorporation or establishment of a local domicile for the protection of industrial property rights of foreign nationals (citizens of Canada, Switzerland, U.S.) if the

countries of said foreign nationals refrain from imposing said requirement on Filipino citizens.

ALTERNATIVE ANSWER:

Reciprocity principle cannot be applied in our jurisdiction because the Philippines is a party to the TRIPS agreement and the WTO. The principle involved is the most-favored nation clause which is the principle of non-discrimination. The protection afforded to intellectual property protection in the Philippines also applies to other members of the WTO. Thus, it is not really reciprocity principle in private international law that applies, but the most-favored nation clause under public international law.

(2) There is no legal reason why "oncomouse" cannot be protected under the law. Among those excluded from patent protection are "plant varieties or animal breeds, or essentially biological process for the production of plants and animals" (Section 22.4 Intellectual Property Code, R.A. No. 8293). The "oncomouse" in the problem is not an essentially biological process for the production of animals. It is a real invention because its body cells do not naturally occur in nature but are the product of man's ingenuity, intellect and industry. The breeding of oncomouse has novelty, inventive step and industrial application. These are the three requisites of patentability. (Sec. 29, IPC)

There are no ethical reasons why Dr. ADX and his college team cannot be given exclusive ownership over their invention. The use of such genetically modified mouse, useful for cancer research, outweighs considerations for animal rights. There are no legal and ethical reasons that would frustrate Dr. ALX's claim of exclusive ownership over "oncomouse". Animals are property capable of being appropriated and owned. In fact, one can own pet dogs or cats, or any other animal. If wild animals are capable of being owned, with more reason animals technologically enhanced or corrupted by man's invention or industry are susceptible to exclusive ownership by the inventor.

ALTERNATIVE ANSWER:

The oncomouse is a higher life form which does not fall within the definition of the term "invention". Neither may it fall within the ambit of the term "manufacture" which usually implies a non-living mechanistic product. The oncomouse is better regarded as a "discovery" which is the common patrimony of man.

ALTERNATIVE ANSWER:

The "oncomouse" is a non-patentable invention. Hence, cannot be owned exclusively by its inventor. It is a method for the treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on said bodies are not patentable under Sec. 22 of the IPC.

LAND TITLESS & DEEDS

Acquisition of Lands; Citizenship Requirement (2003)

In 1970, the spouses Juan and Juana de la Cruz, then Filipinos, bought the parcel of unregistered land in the Philippines on which they built a house which became their residence. In 1986, they migrated to Canada and became Canadian citizens. Thereafter, in 1990, they applied, opposed by the Republic, for the registration of the aforesaid land in their names. Should the application of the spouses de la Cruz be granted over the Republic's opposition? Why? 5%

SUGGESTED ANSWER:

Yes, the application should be granted. As a rule, the Constitution prohibits aliens from owning private lands in the Philippines. This rule, however, does not apply to the spouses Juan and Juana de la Cruz because at the time they acquired ownership over the land, albeit imperfect, they were still Filipino citizens. The application for registration is a mere confirmation of the imperfect title which the spouses have already acquired before they became Canadian citizens.

Acquisition of Lands; Sale of Real Property to an Alien (2009)

In 1972, Luciano de la Cruz sold to Chua Chung Chun, a Chinese citizen, a parcel of land in Binondo. Chua died in 1990, leaving behind his wife and three children, one of whom, Julian, is a naturalized Filipino citizen. Six years after Chua's death, the heirs executed an extrajudicial settlement of estate, and the parcel of land was allocated to Julian. In 2007, Luciano filed suit to recover the land he sold to Chua, alleging that the sale was void because it contravened the Constitution which prohibits the sale of private lands to aliens. Julian moved to dismiss the suit on grounds of *paridelicto*, laches and acquisitive prescription. Decide the case with reasons. (4%)

SUGGESTED ANSWER:

The case must be dismissed. Julian, who is a naturalized Filipino citizen and to whom the property was allocated in an extra-judicial partition of the estate, is now the owner of the property. The defect in ownership of the property of Julian's alien father has already been cured by its transfer to Julian. It has been validated by the transfer of the property to a Filipino citizen. Hence, there is no more violation of the Constitution because the subject real property is now owned by a Filipino citizen (*Halili v. CA*, 287 SCRA 465, [1998]). Further, after the lapse of 35 years, laches has set in and the motion to dismiss may be granted, for the failure of Luciano to question the ownership of Chua before its transfer of ownership to Julian.

Foreshore Lands (2000)

Regina has been leasing foreshore land from the Bureau of Fisheries and Aquatic Resources for the past 15 years. Recently, she learned that Jorge was able to obtain a free patent from the Bureau of Agriculture, covering the same land, on the basis of a certification

"alienable and disposable". Moreover, Jorge had already registered the patent with the Register of Deeds of the province, and he was issued an Original Certificate of Title for the same. Regina filed an action for annulment of Jorge's title on the ground that it was obtained fraudulently. Will the action prosper? (2%)

SUGGESTED ANSWER:

An action for the annulment of Jorge's Original Certificate of Title will prosper on the following grounds:

1. Under Chapter IX of C.A., No. 141, otherwise known as the Public Land Act, foreshore lands are disposable for purposes, and only by lease when not needed by the government for public service.
2. If the land is suited or actually used for fishpond or aquaculture purposes, it comes under the Jurisdiction of the Bureau of Fisheries and Aquatic Resources (BFAR) and can only be acquired by lease. (P.D. 705)
3. Free Patent is a mode of concession under Section 41, Chapter VII of the Public Land Act, which is applicable only for agricultural lands.
4. The certificate of the district forester that the land is already "alienable and disposable" simply means that the land is no longer needed for forest purposes, but the Bureau of Lands could no longer dispose of it by free patent because it is already covered by a lease contract between BFAR and Regina. That contract must be respected.
5. The free patent of Jorge is highly irregular and void ab initio, not only because the Bureau has no statutory authority to issue a free patent over a foreshore area, but also because of the false statements made in his sworn application that he has occupied and cultivated the land since July 4, 1945, as required by the free patent law. Under Section 91 of the Public Land Act, any patent concession or title obtained thru false representation is void ab initio. In cases of this nature, it is the government that shall institute annulment proceedings considering that the suit carries with it a prayer for the reversion of the land to the state. However, Regina is a party in interest and the case will prosper because she has a lease contract for the same land with the government.

Foreshore Lands; Reclamation; Limitations (2000)

Republic Act 1899 authorizes municipalities and chartered cities to reclaim foreshore lands bordering them and to construct thereon adequate docking and harbor facilities. Pursuant thereto, the City of Cavite entered into an agreement with the Fil-Estate Realty Company, authorizing the latter to reclaim 300 hectares of land from the sea bordering the city, with 30% of the land to be reclaimed to be owned by Fil-Estate as compensation for its services. The Solicitor General questioned the validity of the agreement on the ground that it will mean reclaiming land under the sea which is beyond the commerce of man. The City replies that this is authorized by RA. 1899 because it authorizes the construction of docks and harbors. Who is correct? (3%)

SUGGESTED ANSWER:

The Solicitor General is correct. The authority of the City of Cavite under RA 1899 to reclaim land is limited to foreshore lands. The Act did not authorize it to reclaim land from the sea. "The reclamation being unauthorized, the City of Cavite did not acquire ownership over the reclaimed land. Not being the owner, it could not have conveyed any portion thereof to the contractor.

ALTERNATIVE ANSWER:

It depends. If the reclamation of the land from the sea is necessary in the construction of the docks and the harbors, the City of Cavite is correct. Otherwise, it is not. Since RA 1899 authorized the city to construct docks and harbors, all works that are necessary for such construction are deemed authorized. Including the reclamation of land from the sea. The reclamation being authorized, the city is the owner of the reclaimed land and it may convey a portion thereof as payment for the services of the contractor.

ANOTHER ALTERNATIVE ANSWER:

On the assumption that the reclamation contract was entered into before RA 1899 was repealed by PD 3-A, the City of Cavite is correct. Lands under the sea are "beyond the commerce of man" in the sense that they are not susceptible of private appropriation, ownership or alienation. The contract in question merely calls for the answer or show up on the date of initial hearing, does not reclamation of 300 hectares of land within the coastal waters of the city. Per se, it does not vest, alienate or transfer ownership of land under the sea. The city merely engaged the services of Fil-Estate to reclaim the land for the city.

Forgery; Innocent Purchaser; Holder in Bad Faith (2005)

Rod, the owner of an FX taxi, found in his vehicle an envelope containing TCT No. 65432 over a lot registered in Cesar's name. Posing as Cesar, Rod forged Cesar's signature on a Deed of Sale in Rod's favor. Rod registered the said document with the Register of Deeds, and obtained a new title in his name. After a year, he sold the lot to Don, a buyer in good faith and for value, who also registered the lot in his name.

a) Did Rod acquire title to the land? Explain. (2%)

SUGGESTED ANSWER:

No, Rod did not acquire title to the land. The inscription in the registry, to be effective, must be made in good faith. The defense of indefeasibility of a Torrens Title does not extend to a transferee who takes the certificate of title with notice of a flaw. A holder in bad faith of a certificate of title is not entitled to the protection of the law, for the law cannot be used as a shield for frauds. (Samonte v. Court of Appeals, G.R. No. 104223, July 12, 2001)

In the case at bar, Rod only forged Cesar's signature on the -Deed of Sale. It is very apparent that there was bad faith on the part of Rod from the very beginning. As such, he is not entitled to the protection of the Land Registration Act.

b) Discuss the rights of Don, if any, over the property. (2%)

SUGGESTED ANSWER:

It is a well-known rule in this jurisdiction that persons dealing with registered land have the legal right to rely on the face of the Torrens Certificate of Title and to dispense with

the need to inquire further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry. (Naawan Community Rural Bank v. Court of Appeals, G.R. No. 128573, January 13, 2003)

In the given problem, the property was already registered in the name of Rod when he bought the same from the latter. Thus, Don could be considered as a buyer in good faith and for value. However, since Rod did not actually sell any property to him, Don has no right to retain ownership over the property. He has only the right to recover the purchase price plus damages.

Fraud; Procurement of Patent; Effect (2000)

In 1979, Nestor applied for and was granted a Free Patent over a parcel of agricultural land with an area of 30 hectares, located in General Santos City. He presented the Free Patent to the Register of Deeds, and he was issued a corresponding Original Certificate of Title (OCT) No. 375. Subsequently, Nestor sold the land to Eddie. The deed of sale was submitted to the Register of Deeds and on the basis thereof, OCT No. 375 was cancelled and Transfer Certificate of Title (TCT) No. 4576 was issued in the name of Eddie. In 1986, the Director of Lands filed a complaint for annulment of OCT No. 375 and TCT No. 4576 on the ground that Nestor obtained the Free Patent through fraud. Eddie filed a motion to dismiss on the ground that he was an innocent purchaser for value and in good faith and as such, he has acquired a title to the property which is valid, unassailable and indefeasible. Decide the motion. (5%)

SUGGESTED ANSWER:

The motion of Nestor to dismiss the complaint for annulment of O.C.T. No. 375 and T.C.T. No. 4576 should be denied for the following reasons:

1) Eddie cannot claim protection as an innocent purchaser for value nor can he interpose the defense of indefeasibility of his title, because his TCT is rooted on a void title. Under Section 91 of CA No. 141, as amended, otherwise known as the Public Land Act, statements of material facts in the applications for public land must be under oath. Section 91 of the same act provides that such statements shall be considered as essential conditions and parts of the concession, title, or permit issued, any false statement therein, or omission of facts shall ipso facto produce the cancellation of the concession. The patent issued to Nestor in this case is void ab initio not only because it was obtained by fraud but also because it covers 30 hectares which is far

beyond the maximum of 24 hectares provided by the free patent law.

2) The government can seek annulment of the original and transfer certificates of title and the reversion of the land to the state. Eddie's defense is untenable. The protection afforded by the Torrens System to an innocent purchaser for value can be availed of only if the land has been titled thru judicial proceedings where the issue of fraud becomes academic after the lapse of one (1) year from the issuance of the decree of registration. In public land grants, the action of the government to annul a title fraudulently obtained does not prescribe such action and will not be barred by the transfer of the title to an innocent purchaser for value.

Innocent Purchaser for Value (2001)

Cesar bought a residential condominium unit from Rise Co. and paid the price in full. He moved into the unit, but somehow he was not given the Condominium Certificate of Title covering the property. Unknown to him, High Rise Co. subsequently mortgaged the entire condominium building to Metrobank as security for a loan of P500 million. High Rise Co. failed to pay the loan and the bank foreclosed the mortgage. At the foreclosure sale, the bank acquired the building, being the highest bidder. When Cesar learned about this, he filed an action to annul the foreclosure sale insofar as his unit was concerned. The bank put up the defense that it relied on the condominium certificates of title presented by High Rise Co., which were clean. Hence, it was a mortgagee and buyer in good faith. Is this defense tenable or not? Why? (5%).

SUGGESTED ANSWER:

Metrobank's defense is untenable. As a rule, an innocent purchaser for value acquires a good and a clean title to the property. However, it is settled that one who closes his eyes to facts that should put a reasonable man on guard is not an innocent purchaser for value. In the present problem the bank is expected, as a matter of standard operating procedure, to have conducted an ocular inspection, of the promises before granting any loan. Apparently, Metrobank did not follow this procedure. Otherwise, it should have discovered that the condominium unit in question was occupied by Cesar and that fact should have led it to make further inquiry. Under the circumstances, Metrobank cannot be considered a mortgagee and buyer in good faith.

Innocent Purchaser for Value (2008)

Juliet offered to sell her house and lot, together with all the furniture and appliances therein to Dehlma. Before agreeing to purchase the property, Dehlma went to the Register of Deeds to verify Juliet's title. She discovered that while the property was registered in Juliet's name under the Land Registration Act, as amended by the Property Registration Decree, it property, Dehlma told Juliet to redeem the property from Elaine, and gave her an advance payment to be used for purposes of releasing the mortgage on the property. When the mortgage was released, Juliet executed a Deed of Absolute Sale over the property which was duly

registered with the Registry of Deeds, and a new TCT was issued in Dehlma's name. Dehlma immediately took possession over the house and lot and the movables therein. Thereafter, Dehlma went to the Assessor's Office to get a new tax declaration under her name. She was surprised to find out that the property was already declared for tax purposes in the name of XYZ Bank which had foreclosed the mortgage on the property before it was sold to her. XYZ Bank was also the purchaser in the foreclosure sale of the property. At that time, the property was still unregistered but XYZ Bank registered the Sheriff's Deed of Conveyance in the day book of the Register of Deeds under Act. 3344 and obtained a tax declaration in its name.

(A). Was Dehlma a purchaser in good faith? (2%)

SUGGESTED ANSWER:

Yes, Dehlma is a purchaser in good faith. In the present case, before Dehlma bought the property, she went to the Register of Deeds to verify Juliet's title. When she discovered that the property was mortgaged to Elaine, she gave an advance payment so that Juliet could release the mortgage. It was only after the mortgage was released and free from the claims of other persons that Dehlma bought the property. Thus, Dehlma is a purchaser in good faith (Mathay v. CA, G.R. No. 115788, 17 Sept, 1998).

(B). Who as between Dehlma and XYZ Bank has a better right to the house and lot? (2%)

SUGGESTED ANSWER:

Between Dehlma and XYZ Bank, Dehlma has a better right to the house and lot. After the release of the mortgage, the Deed of Absolute Sale was registered and a new title was issued in Dehlma's name. Act 3344 is applicable exclusively to instruments resulting from agreement of parties thereto and does not apply to deeds of a sheriff conveying to a purchaser unregistered lands sold to him under execution (Williams v. Suñer, 49 Phil. ,534).

(C). Who owns the movables inside the house? (2%)

SUGGESTED ANSWER:

Dehlma owns the movables because when she acquired the house and lot from Juliet, all the furniture and appliances therein were included in the sale. As owner of the real property, Dehlma also owns the movables found therein (Art. 542, Civil Code).

Notice of Lis Pendens; When Proper (2001)

Mario sold his house and lot to Carmen for P1 million payable in five (5) equal annual installments. The sale was registered and title was issued in Carmen's name. Carmen failed to pay the last three installments and Mario filed an. action for collection, damages and attorneys fees against her. Upon filing of the complaint, he caused a notice of lis pendens to be annotated on Carmen's title. Is the notice of lis pendens proper or not? Why? (5%)

SUGGESTED ANSWER:

The notice of lis pendens is not proper for the reason that the case filed by Mario against Carmen is only for collection, damages, and attorney's fees. Annotation of a lis pendens can only be done in cases involving recovery of possession of real property, or to quiet title or to remove cloud thereon, or for partition or any other proceeding affecting title to the land or the use or occupation thereof. The action filed by Mario does not fall on anyone of these.

Notice of Lis Pendens; Transferee Pendente Lite (2002)

Sancho and Pacifico are co-owners of a parcel of land. Sancho sold the property to Bart. Pacifico sued Sancho and Bart for annulment of the sale and reconveyance of the property based on the fact that the sale included his one- the obligation. However, the action was brought within the half pro-indiviso share. Pacifico had a notice of lis pendens annotated on the title covering the property and ordered the cancellation of the notice of lis pendens. The notice of lis pendens could not be cancelled immediately because the title over the property was with a bank to which the property had been mortgaged by Bart. Pacifico appealed the case. While the appeal was pending and with the notice of lis pendens still uncanceled, Bart sold the property to Carlos, who immediately caused the cancellation of the notice of lis pendens, as well as the issuance of a new title in his name.

A: Is Carlos :

- (a) a purchaser in good faith, or
- (b) a transferee pendente lite?

B. If your answer is (a), how can the right of Pacifico as co-owner be protected? Explain. (5%)

SUGGESTED ANSWER:

A. Carlos is a buyer in bad faith. The notice of lis pendens was still annotated at the back of the title at the time he bought the land from Bart. The uncanceled notice of lis pendens operates as constructive notice of its contents as well as interests, legal or equitable, included therein. All persons are charged with the knowledge of what it contains. In an earlier case, it was held that a notice of an adverse claim remains effective and binding notwithstanding the lapse of the 30 days from its inscription in the registry. This ruling is even more applicable in a lis pendens. Carlos is a transferee pendente lite insofar as Sancho's share in the co-ownership in the land is concerned because the land was transferred to him during the pendency of the appeal.

B. Pacifico can protect his right as a co-owner by pursuing his appeal; asking the Court of Appeals to order the re-annotation of the lis pendens on the title of Carlos; and by invoking his right of redemption of Bart's share under Articles 1620 of the New Civil Code.

ALTERNATIVE ANSWER:

A. Carlos is a purchaser in good faith. A possessor in good faith has been defined as —one who is unaware that there exists a flaw which invalidates his acquisition of the thing||

(Art. 526, NCC). Good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title. In the case [at bar], in question, while Carlos bought the subject property from Bart while a notice of lis pendens was still annotated thereon, there was also an existing court order canceling the same. Hence, Carlos cannot be considered as being —aware of a flaw which invalidates [their] the acquisition of the thing since the alleged flaw, the notice of lis pendens, was already being ordered cancelled at the time of the purchase. On this ground alone, Carlos can already be considered a buyer in good faith. (**Po Lam v. Court of Appeals, 347 SCRA 86, [2000]**).

B. To protect his right over the subject property, Pacifico should have timely filed an action for reconveyance and reinstated the notice of lis pendens.

Laches; Elements of Laches (2000)

In an action brought to collect a sum of money based on a surety agreement, the defense of laches was raised as the claim was filed more than seven years from the maturity of ten-year prescriptive period provided by law wherein actions based on written contracts can be instituted. a) Will the defense prosper? Reason. (3%) b) What are the essential elements of laches? (2%)

SUGGESTED ANSWER:

No, the defense will not prosper. The problem did not give facts from which laches may be inferred. Mere delay in filing an action, standing alone, does not constitute laches (**Agra v. PNB. 309 SCRA 509**).

SUGGESTED ANSWER:

b) The four basic elements of laches are;

- (1) conduct on the part of the defendant or of one under whom he claims, giving rise to the situation of which complainant seeks a remedy;
- (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute suit;
- (3) lack of knowledge on the part of the defendant that the complainant would assert the right on which he bases his suit; and
- (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

Laches; Indefeasibility Rule of Torrens Title (2002)

Way back in 1948, Winda's husband sold in favor of Verde Sports Center Corp. (Verde) a 10-hectare property belonging to their conjugal partnership. The sale was made without Winda's knowledge, much less consent. In 1950, Winda learned of the sale, when she discovered the deed of sale among the documents in her husband's vault after his demise. Soon after, she noticed that the construction of the sports complex had started. Upon completion of the construction in 1952, she tried but failed to get free membership privileges in Verde. Winda now files a suit against Verde for the annulment of the sale on the ground that she did not consent to the sale. In answer, Verde contends that, in

accordance with the Spanish Civil Code which was then in force, the sale in 1948 of the property did not need her concurrence. Verde contends that in any case the action has prescribed or is barred by laches. Winda rejoins that her Torrens title covering the property is indefeasible, and imprescriptible.

A. Define or explain the term —lachesll. (2%)

B. Decide the case, stating your reasons for your decision. (3%)

SUGGESTED ANSWER:

A. LACHES means failure or neglect, for an unreasonable and unexplained length of time, to do what, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time. (**De Vera v. CA, 305 SCRA 624 [1999]**)

B. While Article 1413 of the Spanish Civil Code did not require the consent of the wife for the validity of the sale, an alienation by the husband in fraud of the wife is void as held in **Uy Coque v. Navas, 45 Phil. 430 (1923)**. Assuming that the alienation in 1948 was in fraud of Winda and, therefore, makes the sale to Verde void, the action to set aside the sale, nonetheless, is already barred by prescription and laches. More than 52 years have already elapsed from the delivery of the sale in 1950.

ALTERNATIVE ANSWER:

Winda's claim that her Torrens Title covering the property is indefeasible and imprescriptible [does not hold water] is not tenable. The **rule of indefeasibility of a Torrens Title** means that after one year from the date of issue of the decree of registration or if the land has fallen into the hands of an innocent purchaser for value, the title becomes incontestable and incontrovertible.

IMPRESCRIPTIBILITY, on the other hand, means that no title to the land in derogation of that of the registered owner may be acquired by adverse possession or acquisitive prescription or that the registered owner does not lose by extinctive prescription his right to recover ownership and possession of the land. The action in this case is for annulment of the sale executed by the husband over a conjugal partnership property covered by a Torrens Title.

Acquisitive Prescription (2008)

Anthony bought a piece of untitled agricultural land from Bert. Bert, in turn, acquired the property by forging Carlo's signature in a deed of sale over the property. Carlo had been in possession of the property for 8 years, declared it for tax purposes, and religiously paid all taxes due on the property. Anthony is not aware of the defect in Bert's title, but has been in actual physical possession of the property from the time he bought it from Bert, who had never been in possession of the property for one year.

(A). Can Anthony acquire ownership of the property by acquisitive prescription? How many more years does he have possess it to acquire ownership? (2%)

SUGGESTED ANSWER:

Yes, Anthony can acquire ownership of the property through acquisitive prescription. In the present case, Anthony is a buyer/possessor in goodfaith because he was not aware of the defect in Bert's title (Art. 526, Civil Code). As such, Anthony can acquire ownership and other real rights over immovable property through open, continuous possession of 10 years (Art. 1134, Civil Code). Anthony needs nine (9) more years of possession, in addition to his one (1) year of possession in good faith.

(B).If Carlo is able to legally recover his property, can he require Anthony to account for all the fruits he has harvested from the property while in possession? (2%)

SUGGESTED ANSWER:

If Carlo is able to legally recover his property, he cannot require Anthony to account for all the fruits harvested from the property. Anthony is entitled to the fruits harvested in good faith before his possession was legally interrupted (Art. 544, Civil Code).

(C).If there are standing crops on the property when Carlo recovers possession, can Carlo appropriate them? (2%)

SUGGESTED ANSWER:

Yes, Carlos can appropriate only a portion of the standing crops on the property once he recovers possession. Anthony being a possessor in good faith, shall have a right to a part of the expenses of cultivation, and to a part of the net harvest of the standing crops, both in proportion to the time of the possession (Art 545, Civil Code).

Acquisitive Prescription (2014)

On March 27, 1980, Cornelio filed an application for land registration involving a parcel of agricultural land that he had bought from Isaac identified as Lot No. 2716 with an area of one (1) hectare. During the trial, Cornelio claimed that he and his predecessors-in-interest had been in open, continuous, uninterrupted, public and adverse possession and occupation of the land for more than thirty (30) years. He likewise introduced in evidence a certification dated February 12, 1981 citing a presidential declaration to the effect that on June 14, 1980, agricultural lands of the public domain, including the subject matter of the application, were declared alienable and disposable agricultural land. (4%)

(B) Can Cornelio acquire said agricultural land through acquisitive prescription, whether ordinary or extraordinary?

SUGGESTED ANSWER:

(B) Neither can Cornelio acquire the land through acquisitive prescription, whether ordinary (possession for 10 years in good faith or with just title) nor extraordinary (possession for 30 years regardless of good faith or just title). As a rule, properties of public dominion cannot be acquired by prescription. The exception is Section 14 (2) of PD No. 1529 which allows a qualified individual to apply for the registration of property which has been acquired by prescription under

existing laws. Article 1113 of the Civil Code provides the foundation for the application of Section 14 (2) to the effect that only when land of the public domain is patrimonial, and hence, private in character, can said land be susceptible to acquisitive prescription. But in order that land of the public domain may become patrimonial property, there must be an express declaration by the State that such land is no longer needed for public service or for the development of the national wealth to convert it as such. In this case, there is no such official declaration; hence the land cannot be the subject of acquisition through prescription.

Remedies; Reconveyance vs. Reopening of a Decree; Prescriptive Period (2003)

Louie, before leaving the country to train as a chef in a five-star hotel in New York, U.S.A., entrusted to his first-degree cousin Dewey an application for registration, under the Land Registration Act, of a parcel of land located in Bacolod City. A year later, Louie returned to the Philippines and discovered that Dewey registered the land and obtained an Original Certificate of Title over the property in his Dewey's name. Compounding the matter, Dewey sold the land to Huey, an innocent purchaser for value. Louie promptly filed an action for reconveyance of the parcel of land against Huey.

- (a) Is the action pursued by Louie the proper remedy?
(b) Assuming that reconveyance is the proper remedy, will the action prosper if the case was filed beyond one year, but within ten years, from the entry of the decree of registration? 5%

SUGGESTED ANSWER:

(a) An action for reconveyance against Huey is not the proper remedy, because Huey is an innocent purchaser for value. The proper recourse is for Louie to go after Dewey for damages by reason of the fraudulent registration and subsequent sale of the land. If Dewey is insolvent, Louie may file a claim

against the Assurance Fund (**Heirs of Pedro Lopez v. De Castro 324 SCRA 591 [2000] citing Sps. Eduarte v. CA, 323 Phil. 462, 467 [1996]**).

(b) Yes, the remedy will prosper because the action prescribes in ten (10) years, not within one (1) year when a petition for the reopening of the registration decree may be filed. The action for reconveyance is distinct from the petition to reopen the decree of registration (**Grey Alba v. De la Cruz, 17 Phil. 49 [1910]**). There is no need to reopen the registration proceedings, but the property should just be reconveyed to the real owner.

The action for reconveyance is based on implied or constructive trust, which prescribes in ten (10) years from the date of issuance of the original certificate of title. This rule assumes that the defendant is in possession of the land. Where it is the plaintiff who is in possession of the land, the action for reconveyance would be in the nature of a suit for quieting for the title which action is imprescriptible.

Remedies; Fraud; Rights of Innocent Purchaser (2009)

Before migrating to Canada in 1992, the spouses

Teodoro and Anita entrusted all their legal papers and documents to their nephew, Atty. Tan. Taking advantage of the situation, Atty. Tan forged a deed of sale, making it appear that he had bought the couple's property in Quezon City. In 2000, he succeeded in obtaining a TCT over the property in his name. Subsequently, Atty. Tan sold the same property to Luis, who built an auto repair shop on the property. In 2004, Luis registered the deed of conveyance, and title over the property was transferred in his name.

In 2006, the spouses Teodoro and Anita came to the Philippines for a visit and discovered what had happened to their property. They immediately hire you as lawyer. What action or actions will you institute in order to vindicate their rights? Explain fully. (4%)

SUGGESTED ANSWER:

I will institute the following actions against Atty. Tan:

- (a). A civil action for damage for the fraudulent transfer of the title in his name and to recover the value of the property;
(b). An action against the National Treasurer for compensation from the State Assurance Fund which is set aside by law to pay those who lose their land suffer damages as a consequence of the operation of the Torrens system;
(c). A criminal action for forgery or falsification of public document;
(d). A complaint with the Supreme Court/Integrated Bar of the Philippines to disbar or suspend him or other disciplinary action for violation or the Code of Professional Ethics.

Any action against Luis will not prosper because he is an innocent purchaser for value. The Title to the land he bought was already in the name of the person who sold the property to him, and there is nothing on the title which will make him suspect about the fraud committed by Atty. Tan.

Registration; Governing Law (2007)

Bedrock Land & Property Development Corp. is a development company engaged in developing and selling subdivisions, condominium units and industrial estates. In order to replenish its inventories, it embarked on an aggressive land banking program. It employed "scouts" who roam all over the Philippines to look for and conduct investigations on prospective sites for acquisition and development, whether developed, semi-developed or raw land. The management of Bedrock asks you as the company counsel to prepare a manual containing a summary of the pertinent laws and regulations relating to land registration and acquisition of title to land. The manual should include the following items:

- (A). What is the governing law? (5%)

SUGGESTED ANSWER:

The governing law is the Land Registration Act as amended by Property Registration Decree (Act 496 as amended by PD 1529).

[Note: It is respectfully recommended that full credit be given to examinees who did not give the exact title or number of the law but merely stated a description of the law.]

ALTERNATIVE ANSWER:

In general, the governing law relating to registration and acquisition of title to land is Act 496 of 1902 as amended by PD 1529, otherwise known as Property Registration Decree of June 11, 1978.

(1.) Chapter III-I governs original registration of land title under the Torrens System by voluntary ordinary judicial proceedings.

(2.) Chapter II-II governs compulsory registration of lands through cadastral proceedings.

(3.) Section 103 governs registration of homestead, sales, free patent under CA No. 141, as amended, otherwise known as the Public Land Act.

(4.) Section 104 governs registration of certificates of land transfers, emancipation patents and Certificates of Land Ownership Award (CLOA) under Comprehensive Land Reform Law.

(5.) Chapter V governs the registration of land dealings on registered land like conveyances, transfers, mortgages, leases, powers of attorney, trusts and similar contracts inter vivos.

(6.) Chapter V-II governs the registration of involuntary dealings on registered land like attachments, adverse claims, enforcement of liens on registered land, notices of lis pendens.

(7.) Chapter VI governs the registration of judgments, orders and partitions, condemnation in eminent domain proceedings, judicial and extra-judicial settlement of estates.

(8.) Sections 107, 108 and 109 govern petitions and actions after original registration like:

(a.) Compulsory surrender of withheld owner's duplicate certificate of title;

(b.) Amendment and alteration of certificate of title;

(c.) Replacement of lost or destroyed owner's duplicate certificate of title.

(9.) R.A. No. 26 governs judicial reconstitution of lost or destroyed originals of the certificate of title.

(10.) R.A. No. 6732 governs administrative reconstitution of lost or destroyed original certificates of title.

(11.) Section 113 governs the registration of instruments affecting unregistered private lands.

(12.) Section 117 governs "consultas," where the Register of Deeds refuses to register a deed or when he is in doubt as to what action to take on an instrument presented for registration.

Registration; Non-Registrable Properties (2007)

(B). What properties are not registrable? (5%)

Supply this information.

SUGGESTED ANSWER:

The following properties are not registrable:

(1.) Properties of the Public dominion;

(2.) Properties for public use or public service;

(3.) Inalienable lands of the public domain;

(4.) Military installations, civil and quasi-public lands; and

(5.) All lands not classified as alienable and disposable.

ALTERNATIVE ANSWER:

(1) Properties of public dominion intended for public use, like roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and the like, are incapable of private appropriation, much less registration (Art. 420 NCC). This includes public markets, public plazas, municipal streets and public buildings (Municipality of Antipolo v. Zapanta, 133 SCRA 820, 1986; Martinez v. CA, 56 SCRA 647, 1974; Navera v. Quicho, 5 SCRA 454, 1962).

(2.) Lands proclaimed or classified as forest, timberlands, mineral lands and national parks. Under Sec 2, Art XII, Constitution of the Philippines, these lands are inalienable.

(3.) Lands that are reserved by law or Presidential proclamation for military, civic or quasi-public purpose, Under Sec 88, Chapter XII of the Public Land Act, such lands shall be inalienable and shall not be subject to occupation, entry, sale, lease or other disposition.

(4.) In general, all lands of the public domain that has not been classified as alienable and disposable under the Public Land Act.

(5.) Lands that form part of the seabed, riverbed or lakebed. These lands are not susceptible to private appropriation.

(6.) Foreshore lands is that strip of land that lies between the high and low water marks and alternately wet and dry according to the flow of the tide belong to the public domain, and can only be acquired by lease if not needed by the government for public or quasi-public purposes.

(7.) Lands reclaimed by the government from the sea, lakes, or other bodies of water are disposed or acquisible only by lease and not otherwise, under the Public Land Act.

Registration; Alienable and Disposable Land; Requirements (2013)

Manuel was born on 12 March 1940 in a 1 000-square meter property where he grew up helping his father, Michael, cultivate the land. Michael has lived on the property since the land was opened for settlement at about the time of the Commonwealth government in 1935, but for some reason never secured any title to the property other than a tax declaration in his name. He has held the property through the years in the concept of an owner and his stay was uncontested by others. He has also conscientiously and continuously paid the realty taxes on the land.

Michael died in 2000 and Manuel - as Michael's only son and heir - now wants to secure and register title to the land in his own name. He consults you for legal advice as he wants to perfect his title to the land and secure its registration in his name.

- (A) What are the laws that you need to consider in advising Manuel on how he can perfect his title and register the land in his name? Explain the relevance of these laws to your projected course of action. (4%)

SUGGESTED ANSWER:

I would advise Manuel to file an application for registration under Sec 14 of Pres Decree No. 1529, or the Property Registration Decree (PRD), specifically Sec. 14 (1) which requires (a) that the land applied for forms a part of the alienable and disposable (A & D) portion of the public domain, and (b) that the applicant has been in open, continuous and notorious possession and occupation thereof under a bona fide claim of ownership since June 12, 1945, or earlier. However, it is only necessary that the land is already declared A & D land "at the time the application for registration is filed" (Malabanan v. Republic, G.R. No. 180067, June 30, 2009).

Manuel could also invoke Sec 14 (2) of the same Decree, which allows registration through ordinary acquisitive prescription for thirty years, provided, however, that the land is "patrimonial" in character, i.e., already declared by the government (a) as A & D, and (b) no longer needed for public use or public service (Malabanan, supra).

Manuel could also file an application for "confirmation of imperfect or incomplete title" through "judicial legalization" under Sec. 48 (b) of CA No. 141, or the Public Land Act (PLA). But, as held in Malabanan, there is no substantial difference between this provision and Sec. 14 (1) of the PRD, disposable at the time the application is filed, and require possession and occupation since June 12, 1945. The only difference is that under the PRD, there already exists a title which is to be confirmed, whereas under the PLA, the presumption is that land is still public land (Republic v. Aquino, G.R. No. L-33983, January 27, 1983).

Manuel may also invoke "vested rights" acquired under Rep. Act No. 1942, dated June 2, 1957, which amended Sec. 48 (b) of the PLA by providing for a prescriptive period of thirty years for judicial confirmation of imperfect title. It must only be demonstrated that possession and occupation commenced on January 24, 1947 and the 30 year period was completed prior to the effectivity of PD No. 1073 on January 25, 1977. PD No. 1073 now requires possession and occupation since June 12, 1945 (Republic v. Espinosa, G.R. No. 171514, July 18, 2012).

Another alternative is for Manuel to secure title through administrative proceedings under the homestead or free patent provisions of the PLA. The title issues has the same efficacy and validity as a title issued through judicial proceedings, but with the limitations that the land cannot be sold or disposed of within five years from the issuance of patent (Sec. 118, CA. No. 141, as amended).

- (B) What do you have to prove to secure Manuel's objectives and what documentation are necessary? (4%)

SUGGESTED ANSWER:

Manuel has the burden to overcome the presumption of State ownership by "well-nigh incontrovertible" evidence (Ong v. Republic, G.R. No. 175746, March 12, 2008). Accordingly, he must show that the land is already classified as A & D "at the time the application for registration is filed" and that has been in "possession and occupation thereof" in the manner required by law since June 12, 1945, or earlier.

Manuel may tack his possession to that of his predecessor-in-interest (Michael) by the testimony of disinterested and knowledgeable eyewitnesses. Overt acts of possession may consist in introducing valuable improvements like fencing the land, constructing a residential house thereon, cultivating the land and planting fruit bearing trees, declaring the land for taxation purposes and paying realty taxes, all of which are corroborative proof of possession.

To identify the land, he must submit the tracing cloth plan or a duly certified blueprint or whiteprint copy thereof (Director of Lands v. Reyes, G.R. No. L-27594, November 28, 1975; Director of Lands vs. CA and Iglesia ni Cristo, G.R. No. L-56613, March 14, 1988).

To show the classification of the land as A & D, the application must be accompanied by (1) a CENRO or PENRO certification; and (2) a certified true copy of the original classification approved by the DENR Secretary (Republic v. Bantigue, G.R. No. 162322, March 14, 2012). A presidential or legislative act may also be considered.

Registration; Requirements (2014)

On March 27, 1980, Cornelio filed an application for land registration involving a parcel of agricultural land that he had bought from Isaac identified as Lot No. 2716 with an area of one (1) hectare. During the trial, Cornelio claimed that he and his predecessors-in-interest had been in open, continuous, uninterrupted, public and adverse possession and occupation of the land for more than thirty (30) years. He likewise introduced in evidence a certification dated February 12, 1981 citing a presidential declaration to the effect that on June 14, 1980, agricultural lands of the public domain, including the subject matter of the application, were declared alienable and disposable agricultural land. (4%)

- (A) If you are the judge, will you grant the application for land registration of Cornelio?

SUGGESTED ANSWER:

- (A) I will not grant the application for registration. Under the law, specifically Section 48 (b) of the Public Land Act (CA No. 141), as amended by PD No. 1073, and Section 14 (1) of the Property Registration Decree (PD No. 1529), it is required that the applicant, by himself or through his predecessors-in-interest, has been in open,

continuous, exclusive and notorious possession and occupation of alienable and disposable land of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier. Interpreting Section 14 (1) of PD No. 1529, the Supreme Court held that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration is filed and not during the entire period of possession, or since June 12, 1945. (*Republic v. Naguit*, G.R. No. 14 -4057 [Jan.17,2005]; *Malabanan v. Republic*, G.R. No. 179987, Sept. 3, 2013 among others) In this case, the land applied for by Cornelio was declared alienable and disposable agricultural land only on June 14, 1980, or almost 3 months from the date of the filing of his application on March 27, 1980. Hence, his application for registration cannot be granted.

Registration; Collateral vs. Direct Attack (2015)

A. Mr. and Mrs. Roman and Mr. and Mrs. Cruz filed an application for registration of a parcel of land which after due proceedings was granted by the RTC acting as a land registration court. However, before the decree of registration could be issued, the spouses Roman and the spouses Cruz sold the lot to Juan. In the notarized deed of sale, the sellers expressly undertook to submit the deed of sale to the land registration court so that the title to the property would be directly issued in Juan's name. Is such a stipulation valid? (2%)

SUGGESTED ANSWER:

a. Yes, the stipulation is valid. Section 22 of P.D. 1529 expressly provides that "After the filing of the application and before the issuance of the decree of registration, the land therein described may still be the subject of dealings in whole or in part, in which case the interested party shall present to the court the pertinent instruments together with a subdivision plan approved by the Director of Lands in case of transfer of portions thereof and the court, after notice to the parties, shall order such land registered subject to the conveyance or encumbrance created by said instruments, or order that the decree of registration be issued in the name of the person to whom the property has been conveyed by said instruments".

B. Distinguish a direct attack from a collateral attack on a title. (2%)

SUGGESTED ANSWER:

b. An action is deemed an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside the judgment, or enjoin its enforcement. The attack is indirect or collateral when in action to obtain a different relief, an attack on the judgment is nevertheless made an incident thereof.

C. If the title in Item XX-A is issued in the names of the original sellers, would a motion filed by Juan in the same case to correct or amend the title in order to

reflect his name as owner be considered a collateral attack? (2%)

SUGGESTED ANSWER:

c. No, it cannot be considered a collateral attack. A collateral attack exists when an attack on an incidental matter is made on the judgment in an action to obtain a different relief. In this case, Juan's motion to correct or amend the title in order to reflect his name would not be attacking the judgment directing the issuance of the title in the names of the sellers; rather, his motion impliedly admits the validity of the title of the sellers or his predecessors-in-interest.

OBLIGATIONS & CONTRACTS

Obligations; Conditional Obligations (2000)

Pedro promised to give his grandson a car if the latter will pass the bar examinations. When his grandson passed the said examinations, Pedro refused to give the car on the ground that the condition was a purely potestative one. Is he correct or not? (2%)

SUGGESTED ANSWER:

No, he is not correct. First of all, the condition is not purely potestative, because it does not depend on the sole will of one of the parties. Secondly, even if it were, it would be valid because it depends on the sole will of the creditor (the donee) and not of the debtor (the donor).

Obligations; Conditional Obligations (2003)

Are the following obligations valid, why, and if they are valid, when is the obligation demandable in each case?

- If the debtor promises to pay as soon as he has the means to pay;
- If the debtor promises to pay when he likes;
- If the debtor promises to pay when he becomes a lawyer;
- If the debtor promises to pay if his son, who is sick with cancer, does not die within one year. 5%

SUGGESTED ANSWER:

(a) The obligation is valid. It is an obligation subject to an indefinite period because the debtor binds himself to pay when his means permit him to do so (Article 1180, NCC). When the creditor knows that the debtor already has the means to pay, he must file an action in court to fix the period, and when the definite period as set by the court arrives, the obligation to pay becomes demandable 9Article 1197, NCC).

SUGGESTED ANSWER:

(b) The obligation —to pay when he likes—is a suspensive condition the fulfillment of which is subject to the sole will of the debtor and, therefore the conditional obligation is void. (Article 1182, NCC).

SUGGESTED ANSWER:

(c) The obligation is valid. It is subject to a suspensive condition, i.e. the future and uncertain event of his becoming a lawyer. The performance of this obligation does not depend solely on the will of the debtor but also on condition of Eva passing the 1998 Bar Examinations. other factors outside the debtor's control.

SUGGESTED ANSWER:

(d) The obligation is valid. The death of the son of cancer within one year is made a negative suspensive condition to his making the payment. The obligation is demandable if the son does not die within one year (Article 1185, NCC).

Obligations; Personal Obligation (2015)

A. X and Y are partners in a shop offering portrait painting. Y provided the capital and the marketing while X was the portrait artist. They accepted the P50,000.00 payment of Kyla to do her portrait but X passed away without being able to do it. Can Kyla demand that Y deliver the portrait she had paid for because she was dealing with the business establishment and not with the artist personally? Why or why not? (3%)

SUGGESTED ANSWER:

a. No, Kyla cannot validly demand that Y deliver the portrait. Although she may be correct that it is partnership that she contracted with. Kyla cannot demand that Y deliver the portrait if the intention of the parties was that the portrait should be done by X and this is precisely why the obligation was constituted. With the death of X, the obligation was extinguished because it is purely personal obligation which is extinguished upon the death of the obligor. Finally, the obligation is the obligation to do. To oblige the surviving partner, Y, to deliver the painting (do the painting) would be tantamount to an involuntary servitude, which is against the law.

ALTERNATIVE ANSWER:

a. Yes, Art. 1768 states that a partnership has a juridical personality separate and distinct from that each of the partners. The facts do not allege that Kyla contracted for a purely personal service, hence, the partnership is the entity which she contracted with, so even upon the death of X, she can demand that Y as the remaining partner deliver the portrait in fulfillment of the obligation of the partnership to her.

Obligations; Without Agreement (2007)

What are obligations without an agreement? Give five examples of situations giving rise to this type of obligations? (10%)

SUGGESTED ANSWER:

"Obligations without an agreement" are obligations that do not arise from contract such as those arising from: 1. delicts; 2. quasi-delicts; 3. solutio indebiti; 4. negotiorum gestio; and 5. all other obligations arising from law.

ALTERNATIVE ANSWER:

"Obligations without an agreement" refer to the juridical relation of quasi-contract which arise from certain lawful, voluntary and unilateral acts to the end that no one shall be unjustly enriched or benefited at the expense of another. (Art. 2142, NCC)

First Example of an obligation without an agreement is a case of negotiorum gestio, whereby one who voluntarily takes charge of the agency or management of the business or property of another without any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the

owner is in a position to do so (Art. 2144, NCC).

Second example, a case of solutio indebiti may also give rise to an obligation without an agreement. This refers to the obligation to return which arises when something is received when there is no right to demand it, and it was unduly delivered through mistake (Art. 2154, NCC).

Third example, is when without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it out of piety and without intention of being repaid (Art. 2164, NCC).

Fourth example, is when through accident or other causes a person is injured or becomes seriously ill, and he is treated or helped while he is not in a condition to give consent to a contract, he shall be liable to pay for the services of the physician or other person aiding him, unless the service has been rendered out of pure generosity (Art. 2167, NCC).

Fifth instance of an obligation without an agreement is when the person obliged to support an orphan or an insane or other indigent person unjustly refuses to give support to the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. The provisions of this article apply when the father or mother of a child under eighteen years of age unjustly refuses to support him (Art. 2166, NCC).

Obligations; Natural Obligations (2015)

A. Sara borrowed P50,000.00 from Julia and orally promised to pay it within six months. When Sara tried to pay her debt on the 8th month, Julia demanded the payment of interest of 12% per annum because of Sara's delay in payment. Sara paid her debt and the interest claimed by Julia. After rethinking, Sara demanded back from Julia the amount she had paid as interest. Julia claims she has no obligation to return the interest paid by Sara because it was a natural obligation which Sara voluntarily performed and can no longer recover. Do you agree? Explain. (4%)

SUGGESTED ANSWER:

a. No, I do not agree with Julia. For a creditor to be entitled to compensatory interest, the debtor must be in delay. As a rule, in order for delay to exist, demand must have been made. In this case, there was no demand made upon the expiration of the 6-month period; thus, Sara cannot be considered in delay, and is not liable to pay compensatory interest. There being no obligation to pay compensatory interest, Julia must return the interest mistakenly paid since she was not entitled thereto, and delivery was made merely through mistake. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises (Art. 2154, Civil Code).

B. Distinguish civil and natural obligations. (2%)

SUGGESTED ANSWER:

b. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof (Art. 1423, Civil Code).

Obligations; Extinguishment; Payment; Payment by Check; Legal Tender (2008)

Felipe borrowed \$100 from Gustavo in 1998, when the Phil P - US\$ exchange rate was P56 - US\$1. On March 1, 2008, Felipe tendered to Gustavo a cashier's check in the amount of P4,135 in payment of his US\$ 100 debt, based on the Phil P - US\$ exchange rate at that time. Gustavo accepted the check, but forgot to deposit it until Sept. 12, 2008. His bank refused to accept the check because it had become stale. Gustavo now wants Felipe to pay him in cash the amount of P5,600. Claiming that the previous payment was not in legal tender, and that there has been extraordinary deflation since 1998, and therefore, Felipe should pay him the value of the debt at the time it was incurred. Felipe refused to pay him again, claiming that Gustavo is estopped from raising the issue of legal tender, having accepted the check in March, and that it was Gustavo's negligence in not depositing the check immediately that caused the check to become stale.

(A). Can Gustavo now raise the issue that the cashier's check is not legal tender? (2%)

SUGGESTED ANSWER:

No. Gustavo previously accepted a check as payment. It was his fault why the check became stale. He is now estopped from raising the issue that a cashier's check is not legal tender.

(B). Can Felipe validly refuse to pay Gustavo again? (2%)

SUGGESTED ANSWER:

Yes, Felipe can refuse to pay Gustavo, who allowed the check to become stale. Although a check is not legal tender (*Belisario v. Natividad*, 60 Phil 156), there are instances when a check produces the effects of payment, for example: (a) when the creditor is in estoppel or he had previously promised he would accept a check (*Paras*, Civil Code Annotated, Vol IV, 2000 ed., p. 394); (b) when the check has lost its value because of the fault of the creditor (Art. 1249, 2nd par.), as when he was unreasonably delayed in presenting the check for payment (*PNB v. Seeto*, G.R. No. L-4388, 13 August 1952).

(C). Can Felipe compel Gustavo to receive US\$100 instead? (1%)

SUGGESTED ANSWER:

Felipe cannot compel Gustavo to receive US\$100 because under RA 529, payment of loans should be at Philippine currency at the rate of exchange prevailing at the time of the stipulated date of payment. Felipe could only compel Gustavo to receive US\$ 100 if they

stipulated that obligation be paid in foreign currency (R.A. 4100).

Obligations; Extinguishment; Payment; Payment by Check (2013)

Lito obtained a loan of ₱1,000,000 from Ferdie, payable within one year. To secure payment, Lito executed a chattel mortgage on a Toyota Avanza and a real estate mortgage on a 200-square meter piece of property.

(B) Lito's failure to pay led to the extra-judicial foreclosure of the mortgaged real property. Within a year from foreclosure, Lito tendered a manager's check to Ferdie to redeem the property. Ferdie refused to accept payment on the ground that he wanted payment in cash: the check does not qualify as legal tender and does not include the interest payment. Is Ferdie's refusal justified? (4%)

SUGGESTED ANSWER:

Ferdie's refusal is justified. A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditors (*Philippine Airlines v. CA and Amelia Tan*, G.R. No. L-49188 [1990]). Mere delivery of checks does not discharge the obligation under a judgment. A check shall produce the effect of payment only when they have been cashed or when through the fault of the creditor, they have been impaired (Art. 1249, Civil Code).

However, it is not necessary that the right of redemption be exercised by delivery of legal tender. A check may be used for the exercise of right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price (*Biana v. Gimenez*, G.R. No. 132768, September 9, 2005, citing *Fortunado v. CA*).

Redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of full redemption price within the said period. Whether the redemption is being made under Act 3135 or under the General Banking law, the mortgagor or his assignee is required to tender payment to make said redemption valid (*Heirs of Quisumbing v. PNB and SLDC*, G.R. No. 178242, January 20, 2009).

Moreover, Ferdie's refusal was justified on the ground that the amount tendered does not include interest. In order to effect the redemption of the foreclosed property, the payment to the purchaser must include the following sums: (a) the bid price; (b) the interest on the bid price, computed at one per centum (1%) per month; and (c) the assessments or taxes, if any, paid by the purchaser, with the same rate of interest (Section 28, 1997 Rules of Civil Procedure). Unless there is an express stipulation to that effect, the creditor cannot be compelled to receive partial payment of the prestation (Art. 1248, Civil Code).

Obligations; Extinguishment; Assignment of Rights (2001)

The sugar cane planters of Batangas entered into a long-term milling contract with the Central Azucarera de Don Pedro Inc. Ten years later, the Central assigned its rights to the said milling contract to a Taiwanese group which would take over the operations of the sugar mill. The planters filed an action to annul the said assignment on the ground that the Taiwanese group was not registered with the Board of Investments. Will the action prosper or not? Explain briefly. (5%)

(Note: The question presupposes knowledge and requires the application of the provisions of the Omnibus Investment Code, which properly belongs to Commercial law)

SUGGESTED ANSWER:

The action will prosper not on the ground invoked but on the ground that the farmers have not given their consent to the assignment. The milling contract imposes reciprocal obligations on the parties. The sugar central has the obligation to mill the sugar cane of the farmers while the latter have the obligation to deliver their sugar cane to the sugar central. As to the obligation to mill the sugar cane, the sugar central is a debtor of the farmers. In assigning its rights under the contract, the sugar central will also transfer to the Taiwanese its obligation to mill the sugar cane of the farmers. This will amount to a novation of the contract by substituting the debtor with a third party. Under Article 1293 of the Civil Code, such substitution cannot take effect without the consent of the creditor. The farmers, who are creditors as far as the obligation to mill their sugar cane is concerned, may annul such assignment for not having given Even [if] assuming that there was a perfect right of first their consent thereto.

ALTERNATIVE ANSWER:

The assignment is valid because there is absolute freedom to transfer the credit and the creditor need not get the consent of the debtor. He only needs to notify him.

Obligations; Extinguishment; Cause of Action (2004)

TX filed a suit for ejectment against BD for non-payment of condominium rentals amounting to P150,000. During the pendency of the case, BD offered and TX accepted the full amount due as rentals from BD, who then filed a motion to dismiss the ejectment suit on the ground that the action is already extinguished. Is BD's contention correct? Why or why not? Reason. (5%)

SUGGESTED ANSWER:

BD's contention is not correct. TX can still maintain the suit for ejectment. The acceptance by the lessor of the payment by the lessee of the rentals in arrears even during the pendency of the ejectment case does not constitute a waiver or abandonment of the ejectment case. (*Spouses Clutario v. CA*, 216 SCRA 341 [1992]).

Obligations; Extinguishment; Compensation (2002)

Stockton is a stockholder of Core Corp. He desires to sell his shares in Core Corp. In view of a court suit that

Core Corp. has filed against him for damages in the amount of P 10 million, plus attorney's fees of P 1 million, as a result of statements published by Stockton which are allegedly defamatory because it was calculated to injure and damage the corporation's reputation and goodwill. The articles of incorporation of Core Corp. provide for a right of first refusal in favor of the corporation. Accordingly, Stockton gave written notice to the corporation of his offer to sell his shares of P 10 million. The response of Core corp. was an acceptance of the offer in the exercise of its rights of first refusal, offering for the purpose payment in form of compensation or set-off against the amount of damages it is claiming against him, exclusive of the claim for attorney's fees. Stockton rejected the offer of the corporation, arguing that compensation between the value of the shares and the amount of damages demanded by the corporation cannot legally take effect. Is Stockton correct? Give reason for your answer. (5%)

SUGGESTED ANSWERS:

Stockton is correct. There is no right of compensation between his price of P10 million and Core Corp.'s unliquidated claim for damages. In order that compensation may be proper, the two debts must be liquidated and demandable. The case for the P 10million damages being still pending in court, the corporation has as yet no claim which is due and demandable against Stockton.

ANOTHER MAIN ANSWER:

The right of first refusal was not perfected as a right for the reason that there was a conditional acceptance equivalent to a counter-offer consisting in the amount of damages as being credited on the purchase price. Therefore, compensation did not result since there was no valid right of first refusal (Art. 1475 & 1319, NCC)

ANOTHER MAIN ANSWER:

refusal, compensation did not take place because the claim is unliquidated.

Obligations; Extinguishment; Compensation (2008)

Eduardo was granted a loan by XYZ Bank for the purpose of improving a building which XYZ leased from him. Eduardo, executed the promissory note ("PN") in favor of the bank, with his friend Recardo as co-signatory. In the PN, they both acknowledged that they are "individually and collectively" liable and waived the need for prior demand. To secure the PN, Recardo executed a real estate mortgage on his own property. When Eduardo defaulted on the PN, XYZ stopped payment of rentals on the building on the ground that legal compensation had set in. Since there was still a balance due on the PN after applying the rentals, XYZ foreclosed the real estate mortgage over Recardo's property. Recardo opposed the foreclosure on the ground that he is only a co-signatory; that no demand was made upon him for payment, and assuming he is liable, his liability should not go beyond half the balance of the loan. Further, Recardo said that when the bank invoked compensation between the rentals and the amount of the loan, it amounted to a new contract or novation, and had the effect of extinguishing the security since he did not give his consent (as owner of

the property under the real estate mortgage) thereto.

(A). Can XYZ Bank validly assert legal compensation? (2%)

SUGGESTED ANSWER:

Yes, XYZ Bank can validly assert legal compensation. In the present case, all of the elements of legal compensation are present: (1) XYZ Bank is the creditor of Eduardo while Eduardo is the lessor of XYZ Bank; (2) both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) the two debts be due; (4) they be liquidated and demandable, and (5) over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor (Art. 1279, Civil Code).

Obligations; Extinguishment; Compensation (2009)

Sarah had a deposit in a savings account with Filipino Universal Bank in the amount of five million pesos (P5,000,000.00). To buy a new car, she obtained a loan from the same bank in the amount of P1,200,000.00, payable in twelve monthly installments. Sarah issued in favor of the bank post-dated checks, each in the amount of P100,000.00, to cover the twelve monthly installment payments. On the third, fourth and fifth months, the corresponding checks bounced.

The bank then declared the whole obligation due, and proceeded to deduct the amount of one million pesos (P1,000,000.00) from Sarah's deposit after notice to her that this is a form of compensation allowed by law. Is the bank correct? Explain. (4%)

SUGGESTED ANSWER:

No, the bank is not correct. While the Bank is correct about the applicability of compensation, it was not correct as to the amount compensated.

A bank deposit is a contract of loan, where the depositor is the creditor and the bank the debtor. Since Sarah is also the debtor of the bank with respect to the loan, both are mutually principal debtors and creditors of each other. Both obligation are due, demandable and liquidated but only up to the extent of P300,000.00 (covering the unpaid third, fourth and fifth monthly installments). The entire one million was not yet due because the loan has no acceleration clause in case of default. And since there is no retention or controversy commenced by third person and communicated in due time to the debtor, then all the requisites of legal compensation are present but only up to the amount of P300,000.00. The bank, therefore, may deduct P300,000.00 from Sarah's bank deposit by way of compensation.

Obligations; Extinguishment; Condonation (2000)

Arturo borrowed P500,000.00 from his father. After he had paid P300,000.00, his father died. When the administrator of his father's estate requested payment of the balance of P200,000.00. Arturo replied that the same had been condoned by his father as evidenced by

a notation at the back of his check payment for the P300,000.00 reading: "In full payment of the loan". Will this be a valid defense in an action for collection? (3%)

SUGGESTED ANSWER:

It depends. If the notation "in full payment of the loan" was written by Arturo's father, there was an implied condonation of the balance that discharges the obligation. In such case, the notation is an act of the father from which condonation may be inferred. The condonation being implied, it need not comply with the formalities of a donation to be effective. The defense of full payment will, therefore, be valid. When, however, the notation was written by Arturo himself. It merely proves his intention in making that payment but in no way does it bind his father (**Yam v. CA, G.R. No. 104726. 11 February 1999**). In such case, the notation was not the act of his father from which condonation may be inferred. There being no condonation at all the defense of full payment will not be valid.

ALTERNATIVE ANSWER:

If the notation was written by Arturo's father, it amounted to an express condonation of the balance which must comply with the formalities of a donation to be valid under the 2nd paragraph of Article 1270 of the New Civil Code. Since the amount of the balance is more than 5,000 pesos, the acceptance by Arturo of the condonation must also be in writing under Article 748. There being no acceptance in writing by Arturo, the condonation is void and the obligation to pay the balance subsists. The defense of full payment is, therefore, not valid. In case the notation was not written by Arturo's father, the answer is the same as the answers above.

Obligations; Extinguishment; Consignation (2014)

Dorotea leased portions of her 2, 000 sq. m. lot to Monet, Kathy, Celia, and Ruth for five (5) years. Two (2) years before the expiration of the lease contract, Dorotea sold the property to PM Realty and Development Corporation. The following month, Dorotea and PM Realty stopped accepting rental payments from all the lessees because they wanted to terminate the lease contracts.

Due to the refusal of Dorotea to accept rental payments, the lessees, Ruth, et al., filed a complaint for consignation of the rentals before the Regional Trial Court (RTC) of Manila without notifying Dorotea.

Is the consignation valid? (4%)

SUGGESTED ANSWER:

The consignation is not valid. Article 1257 of the Civil Code provides that in order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation. Moreover, Article 1258 of the same Code provides that consignation having been made, the interested parties shall also be notified thereof. In this case Dorotea, an interested party, was not notified of the consignation. The consignation is therefore not valid for non-compliance with Article 1257.

ALTERNATIVE ANSWER:

The consignation may be valid. Had the lessees been informed of the transfer of the property to

PM Realty, notice to Dorotea under Article 1257 may no longer be necessary, but it is to notice PM Realty which is required.

Obligations; Extinguishment; Novation (2008)

Eduardo was granted a loan by XYZ Bank for the purpose of improving a building which XYZ leased from him. Eduardo, executed the promissory note ("PN") in favor of the bank, with his friend Recardo as co-signatory. In the PN, they both acknowledged that they are "individually and collectively" liable and waived the need for prior demand. To secure the PN, Recardo executed a real estate mortgage on his own property. When Eduardo defaulted on the PN, XYZ stopped payment of rentals on the building on the ground that legal compensation had set in. Since there was still a balance due on the PN after applying the rentals, XYZ foreclosed the real estate mortgage over Recardo's property. Recardo opposed the foreclosure on the ground that he is only a co-signatory; that no demand was made upon him for payment, and assuming he is liable, his liability should not go beyond half the balance of the loan. Further, Recardo said that when the bank invoked compensation between the rentals and the amount of the loan, it amounted to a new contract or novation, and had the effect of extinguishing the security since he did not give his consent (as owner of the property under the real estate mortgage) thereto.

(C). Does Recardo have basis under the Civil Code for claiming that the original contract was novated? (2%)

SUGGESTED ANSWER:

No. Recardo has no basis for claiming novation of the original contract when the bank invoked compensation because there was simply partial compensation (Art. 1290, Civil Code) and this would not bar the bank from recovering the remaining balance of the obligation.

ALTERNATIVE ANSWER:

No. In order that an obligation may be extinguished by another, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be on every point compatible with each other. Novation is never presumed (Art. 1292, Civil Code).

Obligations; Extinguishment; Novation (2014)

J.C. Construction (J.C.) bought steel bars from Matibay Steel Industries (MSI) which is owned by Buddy Batungbacal. J.C. failed to pay the purchased materials worth P500, 000.00 on due date. J.C. persuaded its client Amoroso with whom it had receivables to pay its obligation to MSI. Amoroso agreed and paid MSI the amount of P50, 000.00. After two (2) other payments, Amoroso stopped making further payments.

Buddy filed a complaint for collection of the balance of the obligation and damages against J.C. J.C. denied any liability claiming that its obligation was extinguished by reason of novation which took place when MSI accepted partial payments from Amoroso on its behalf.

Was the obligation of J.C. Construction to MSI extinguished by novation? Why? (4%)

SUGGESTED ANSWER:

No, the obligation of J.C. Construction to MSI was not extinguished by novation.

Under Article 1292 of the Civil Code, in order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. Novation by substitution of debtor requires the consent of the creditor as provided in Article 1293 of the Civil Code. This requirement is not present in this case.

In *Magdalena Estates, Inc. v. Rodriguez*, (G.R.No. L-18411, December 17, 1966), it was ruled that the mere fact that the creditor received payment from a third person does not constitute novation and does not extinguish the obligation of the original debtor. Since there was no novation, the obligation of the original debtor is not extinguished. Thus, the obligation of J.C. Construction to MSI subsists.

Obligations; Extinguishment; Remission (2015)

A. Iya and Betty owed Jun P500,000.00 for advancing their equity in a corporation they joined as incorporators. Iya and Betty bound themselves solidarily liable for the debt. Later, Iya and Jun became sweethearts so Jun condoned the debt of P500,000.00. May Iya demand from Betty P250,000.00 as her share in the debt? Explain with legal basis. (2%)

SUGGESTED ANSWER:

a. No, Iya may not demand reimbursement from Betty. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him or her to reimbursement from his co-debtors (Art. 1220, Civil Code).

Obligations; Extinguishment; Extraordinary Inflation or Deflation (2001)

On July 1, 1998, Brian leased an office space in a building for a period of five years at a rental rate of P1,000.00 a month. The contract of lease contained the proviso that "in case of inflation or devaluation of the Philippine peso, the monthly rental will automatically be increased or decreased depending on the devaluation or inflation of the peso to the dollar." Starting March 1, 2001, the lessor increased the rental to P2,000 a month, on the ground of inflation proven by the fact that the exchange rate of the Philippine peso to the dollar had increased from P25.00=\$1.00 to P50.00=\$1.00. Brian refused to pay the increased rate and an action for unlawful detainer was filed against him. Will the action prosper? Why? (5%)

SUGGESTED ANSWER:

The unlawful detainer action will not prosper. Extraordinary inflation or deflation is defined as the sharp decrease in the purchasing power of the peso. It does not necessarily refer to the exchange rate of the peso to the dollar. Whether or not there exists an extraordinary inflation or deflation is for the courts to decide. There being no showing that the purchasing power of the peso had been reduced tremendously, there could be no inflation that would justify the increase

in the amount of rental to be paid. Hence, Brian could refuse to pay the increased rate.

ALTERNATIVE ANSWER:

deflation requires an official declaration by the Bangko Sentral ng Pilipinas.

ALTERNATIVE ANSWER:

The unlawful detainer action will prosper. It is a given fact in the problem, that there was inflation, which caused the exchange rate to double. Since the contract itself authorizes the increase in rental in the event of an inflation or devaluation of the Philippine peso, the doubling of the monthly rent is reasonable and is therefore a valid act under the very terms of the contract. Brian's refusal to pay is thus a ground for ejectment.

(Palanca v. CA, 238 SCRA 593).

Obligations; Liability; Lease; Joint Liability (2001)

Four foreign medical students rented the apartment of Thelma for a period of one year. After one semester, three of them returned to their home country and the fourth transferred to a boarding house. Thelma discovered that they left unpaid telephone bills in the total amount of P80,000.00. The lease contract provided that the lessees shall pay for the telephone services in the leased premises. Thelma demanded that the fourth student pay the entire amount of the unpaid telephone bills, but the latter is willing to pay only one fourth of it. Who is correct? Why? (5%)

SUGGESTED ANSWER:

The fourth student is correct. His liability is only joint, hence, pro rata. There is solidary liability only when the obligation expressly so states or when the law or nature of the obligation requires solidarity (Art. 1207, CC). The contract of lease in the problem does not, in any way, stipulate solidarity.

(Arts. 1207, 1216, 1252 and 2047 Civil Code; Bicol Savings and Loan Associates vs. Guinhawa 188 SCRA 642)

Obligations; Liability; Solidary Obligation; Mutual Guaranty (2003)

A, B, C, D, and E made themselves solidarily indebted to X for the amount of P50,000.00. When X demanded payment from A, the latter refused to pay on the following grounds. a) B is only 16 years old.

b) C has already been condoned by X

c) D is insolvent. d) E was given by X an extension of 6 months without the consent of the other four co-debtors. State the effect of each of the above defenses put up by A on his obligation to pay X, if such defenses are found to be true.

SUGGESTED ANSWERS:

(a) A may avail the minority of B as a defense, but only for B's share of P 10,000.00. A solidary debtor may avail himself of any defense which personally belongs to a solidary co-debtor, but only as to the share of that codebtor.

(b) A may avail of the condonation by X of C's share of P 10, 000.00. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those

which are personal to him or pertain to his own share. With respect to those which personally belong to others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible. (Article 1222, NCC).

(c) A may not interpose the defense of insolvency of D as a defense. Applying the principle of mutual guaranty among solidary debtors, A guaranteed the payment of D's share and of all the other co-debtors. Hence, A cannot avail of the defense of D's insolvency.

(d) The extension of six (6) months given by X to E may be availed of by A as a partial defense but only for the share of E, there is no novation of the obligation but only an act of liberality granted to E alone.

Obligations; Liability; Solidary Liability (2008)

Eduardo was granted a loan by XYZ Bank for the purpose of improving a building which XYZ leased from him. Eduardo, executed the promissory note ("PN") in favor of the bank, with his friend Recardo as co-signatory. In the PN, they both acknowledged that they are "individually and collectively" liable and waived the need for prior demand. To secure the PN, Recardo executed a real estate mortgage on his own property. When Eduardo defaulted on the PN, XYZ stopped payment of rentals on the building on the ground that legal compensation had set in. Since there was still a balance due on the PN after applying the rentals, XYZ foreclosed the real estate mortgage over Recardo's property. Recardo opposed the foreclosure on the ground that he is only a co-signatory; that no demand was made upon him for payment, and assuming he is liable, his liability should not go beyond half the balance of the loan. Further, Recardo said that when the bank invoked compensation between the rentals and the amount of the loan, it amounted to a new contract or novation, and had the effect of extinguishing the security since he did not give his consent (as owner of the property under the real estate mortgage) thereto.

(B). Can Recardo's property be foreclosed to pay the full balance of the loan? (2%)

SUGGESTED ANSWER:

Yes, Recardo's property can be foreclosed to pay the full balance of the loan because when he signed as co-signatory in the promissory note, he acknowledged he is solidarily liable with Eduardo. In solidary obligations, a creditor has the right to demand full payment of the obligation from any of the solidary debtors (Art. 1207, Civil Code).

Obligations; Liability; Solidary Obligation (2015)

B. Juancho, Don and Pedro borrowed P150,000.00 from their friend Cita to put up an internet cafe orally promising to pay her the full amount after one year. Because of their lack of business know-how, their business collapsed. Juancho and Don ended up penniless but Pedro was able to borrow money and put up a restaurant which did well. Can Cita demand that Pedro pay the entire obligation since he, together with the two others, promised to pay the amount in full after one year? Defend your answer. (2%)

SUGGESTED ANSWER:

b. No, Cita may not demand payment of the entire obligation from Pedro. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly states, or when the law or the nature of the obligation requires solidarity (Art. 1207, Civil Code). In this case, there is no indication, that they bound themselves solidarily to pay Cita, nor does the law or nature of the obligation require solidarity. Hence, Juancho, Don, and Pedro's obligation is joint, and Cita can only demand of 1/3 payment of the obligation from Pedro, which is presumed to be his share in the obligation in the absence of stipulation to the contrary (Art. 1208, Civil Code).

Obligations; Loss of the thing due; Force Majeure (2000)

Kristina brought her diamond ring to a jewelry shop for cleaning. The jewelry shop undertook to return the ring by February 1, 1999." When the said date arrived, the jewelry shop informed Kristina that the Job was not yet finished. They asked her to return five days later. On February 6, 1999, Kristina went to the shop to claim the ring, but she was informed that the same was stolen by a thief who entered the shop the night before. Kristina filed an action for damages against the jewelry shop which put up the defense of force majeure. Will the action prosper or not? (5%)

SUGGESTED ANSWER:

The action will prosper. Since the defendant was already in default not having delivered the ring when delivery was demanded by plaintiff at due date, the defendant is liable for the loss of the thing and even when the loss was due to force majeure.

Obligations; Non-Payment of Amortizations; Subdivision Buyer; When justified (2005)

Bernie bought on installment a residential subdivision lot from DEVLAND. After having faithfully paid the installments for 48 months, Bernie discovered that DEVLAND had failed to develop the subdivision in accordance with the approved plans and specifications within the time frame in the plan. He thus wrote a letter to DEVLAND informing it that he was stopping payment. Consequently, DEVLAND cancelled the sale and wrote Bernie, informing him that his payments are forfeited in its favor.

a) Was the action of DEVLAND proper? Explain. (2%)**SUGGESTED ANSWER:**

No, the action of DEVLAND is not proper. Under Section 23 of Presidential Decree No. 957, otherwise known as the Subdivision and Condominium Buyer's Protection Decree, non-payment of amortizations by the buyer is justified if non payment is due to

the failure of the subdivision owner to develop the subdivision project according to the approved plans and within the limit for complying.

Contracts; Consideration; Validity (2000)

Lolita was employed in a finance company. Because she could not account for the funds entrusted to her, she was charged with estafa and ordered arrested. In order to secure her release from jail, her parents executed a promissory note to pay the finance company the amount allegedly misappropriated by their daughter. The finance company then executed an affidavit of desistance which led to the withdrawal of the information against Lolita and her release from jail. The parents failed to comply with their promissory note and the finance company sued them for specific performance. Will the action prosper or not? (3%)

SUGGESTED ANSWER:

The action will prosper. The promissory note executed by Lolita's parents is valid and binding, the consideration being the extinguishment of Lolita's civil liability and not the stifling of the criminal prosecution.

ALTERNATIVE ANSWER:

The action will not prosper because the consideration for the promissory note was the non-prosecution of the criminal case for estafa. This cannot be done anymore because the information has already been filed in court and to do it is illegal. That the consideration for the promissory note is the stifling of the criminal prosecution is evident from the execution by the finance company of the affidavit of desistance immediately after the execution by Lolita's parents of the promissory note. The consideration being illegal, the promissory note is invalid and may not be enforced by court action.

Contracts; Stipulation; Arbitration Clause (2009)

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

(A). A clause in an arbitration contract granting one of the parties the power to choose more arbitrators than the other renders the arbitration contract void. (1%)

SUGGESTED ANSWER:

True. The Civil Code provides that "Any clause giving one of the parties power to choose more arbitrators than the other is void and of no effect" (Art 2045, NCC).

Contracts; Inexistent Contracts vs. Annulable Contracts (2004)

Distinguish briefly but clearly between Inexistent contracts and annulable contracts.

SUGGESTED ANSWER:

INEXISTENT CONTRACTS are considered as not having been entered into and, therefore, void ob initio. They do not create any obligation and cannot be ratified or validated, as there is no agreement to ratify or validate. On the other hand, ANNULABLE or VOIDABLE CONTRACTS are valid until invalidated by the court but may be ratified. In inexistent contracts, one or more requisites of a valid contract are absent. In annulable contracts, all the elements of a contract are

present except that the consent of one of the contracting parties was vitiated or one of them has no capacity to give consent.

Contracts; Void Contract for Illegal Consideration (2015)

Z, a gambler, wagered and lost P2 Million in baccarat, a card game. He was pressured into signing a Deed of Absolute Sale in favor of the winner covering a parcel of land with improvements worth P20 Million. One month later, the supposed vendee of the property demanded that he and his family vacate the property subject of the deed of sale. Was the deed of sale valid? What can Z do? (4%)

SUGGESTED ANSWER:

No, the Deed of Sale was not valid. Under Article 2014 of the Civil Code, no action can be maintained by the winner for the collection of what he has won in the game of chance. In this case, the Deed of Sale represents the winnings in the baccarat game; hence, it was made for illegal consideration, and is void.

Contracts;; Voidable Contracts (2015)

Jackie, 16, inherited a townhouse. Because she wanted to study in an exclusive school, she sold her townhouse by signing a Deed of Sale and turning over possession of the same to the buyer. When the buyer discovered that she was still a minor, she promised to execute another Deed of Sale when she turns 18. When Jackie turned 25 and was already working, she wanted to annul the sale and return the buyer's money to recover her townhouse. Was the sale contract void, voidable or valid? Can Jackie still recover the property? Explain. (4%)

SUGGESTED ANSWER:

The contract of sale was voidable. Where one of the parties is incapable of giving consent to a contract, the contract is voidable. (Art. 1390, Civil Code). It appears that only Jackie was incapacitated in virtue of her minority.

Jackie cannot recover the property. First, since the contract is voidable, Jackie only had 4 years from the time she attained the age of majority to bring the action for annulment of the contract. (ART. 1391, Civil Code). In this case, Jackie should have brought the action for annulment of the contract within four years after turning eighteen years old, or up until the age of twenty-two. Since she is already twenty-five years old, the period for bringing the action has prescribed. Second, Jackie may be considered, to have actively misrepresented as to her age. Thus, she will be bound to the contract under the principle of estoppel.

Contracts; Nature of Contracts; Relativity of Contracts (2002)

Printado is engaged in the printing business. Suplico supplies printing paper to Printado pursuant to an order agreement under which Suplico binds himself to deliver the same volume of paper every month for a period of 18 months, with Printado in turn agreeing to pay within 60 days after each delivery. Suplico has been faithfully

delivering under the order agreement for 10 months but thereafter stopped doing so, because Printado has not made any payment at all. Printado has also a standing contract with publisher Publico for the printing of 10,000 volumes of school textbooks. Suplico was aware of said printing contract. After printing 1,000 volumes, Printado also fails to perform under its printing contract with Publico. Suplico sues Printado for the value of the unpaid deliveries under their order agreement. At the same time Publico sues Printado for damages for breach of contract with respect to their own printing agreement. In the suit filed by Suplico, Printado counters that:

(a) Suplico cannot demand payment for deliveries made under their order agreement until Suplico has completed performance under said contract;

(b) Suplico should pay damages for breach of contract; and

(c) Suplico should be liable for Printado's breach of his contract with Publico because the order agreement between Suplico and Printado was for the benefit of Publico. Are the contentions of Printado tenable? Explain your answers as to each contention. (5%)

SUGGESTED ANSWER:

No, the contentions of Printado are untenable. Printado having failed to pay for the printing paper covered by the delivery invoices on time, Suplico has the right to cease making further delivery. And the latter did not violate the order agreement (**Integrated Packaging Corporation v. Court of Appeals, (333 SCRA 170, G.R. No. 115117, June 8, [2000])**).

Suplico cannot be held liable for damages, for breach of contract, as it was not he who violated the order agreement, but Printado. Suplico cannot be held liable for Printado's breach of contract with Publico. He is not a party to the agreement entered into by and between Printado and Publico. There is not a stipulation pour autrui. [Aforesaid] Such contracts do not affect third persons like Suplico because of the basic civil law principle of relativity of contracts which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.

Contracts; Rescission of Contract; Fortuitous Event (2008)

AB Corp. entered into a contract with XY Corp. whereby the former agreed to construct the research and laboratory facilities of the latter. Under the terms of the contract, AB Corp. agreed to complete the facility in 18 months, at the total contract price of P10 million. XY Corp. paid 50% of the total contract price, the balance to be paid upon completion of the work. The work started immediately, but AB Corp. later experienced work slippage because of labor unrest in his company. AB Corp.'s employees claimed that they are not being paid on time; hence, the work slowdown. As of the 17th month, work was only 45% completed. AB Corp. asked for extension of time, claiming that its labor problems is a case of fortuitous event, but this was denied by XY

Corp. When it became certain that the construction could not be finished on time, XY Corp. sent written notice cancelling the contract, and requiring AB Corp. to immediately vacate the premises.

(A). Can the labor unrest be considered a fortuitous event? (1%)

SUGGESTED ANSWER:

No. The labor unrest cannot be considered a fortuitous event under Art. 1174 of the Civil Code. A fortuitous event should occur independent of the will of the debtor or without his participation or aggravation (Paras. Civil Code Annotated, vol. IV, 2000 ed., p 159). As mentioned in the facts, labor unrest of the employees was caused by AB Corp.'s failure to pay its employees on time.

(B). Can XY Corp. unilaterally and immediately cancel the contract? (2%)

SUGGESTED ANSWER:

No, XY Corp. cannot unilaterally and immediately cancel the contract. In the absence of any stipulation for automatic rescission, rescission must be judicial (Art. 1191, Civil Code).

(C). Must AB Corp. return the 50% downpayment? (2%)

SUGGESTED ANSWER:

AB Corp. need not return the 50% down payment because 45% of the work was already completed, otherwise, XY Corp. would be unjustly enriching itself at the expense of AB Corp.

Contracts; Enforceable Contracts; Contract of Loan with Mortgage (2013)

Lito obtained a loan of P1,000,000 from Ferdie, payable within one year. To secure payment, Lito executed a chattel mortgage on a Toyota Avanza and a real estate mortgage on a 200-square meter piece of property.

(A) Would it be legally significant - from the point of view of validity and enforceability - if the loan and the mortgages were in public or private instruments? (6%)

SUGGESTED ANSWER:

From the point of view of validity and enforceability, there would be legal significance if the mortgage was in a public or private instrument. As for the loan, there is no legal significance except if interest were charged on the loan, in which case the charging of interest must be in writing.

A contract of loan is a real contract and is perfected upon the delivery of the object of the obligation. (Art. 1934, Civil Code) Thus, a contract of loan is valid and enforceable even if it is neither in a private nor in a public document.

As a rule, contracts shall be obligatory in whatever form they may have been entered into provided all the essential requisites for their validity are present. With regard to its enforceability, a contract of loan is not among those enumerated under Article 1403 (2) of the Civil Code, which are covered by the Statutes of Frauds.

It is important to note that under Article 1358 of the Civil Code, all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. However, the requirement is not for the validity of the contract, but only for its greater efficacy.

With regard the chattel mortgage, Act No. 1508, the Chattel Mortgage Law, requires an affidavit of good faith stating that the chattel mortgage is supposed to stand as security for the loan; thus, for validity of the chattel mortgage, it must be in a public document and recorded in the Chattel Mortgage Registry in the Registry of Deeds. A real estate mortgage under the provision of Article 2125 of the Civil Code requires that in order that a mortgage may be validly constituted the document in which it appears be recorded. If the instrument is not recorded, the mortgage is nevertheless valid and binding between the parties. Hence, for the validity of both chattel and real estate mortgages, they must appear in a public instrument. But for the purposes of enforceability, it is submitted that the form of the contract, whether in a public or private document, would be immaterial (*Mobil Oil v. Diocaresa*, 20 SCRA 656 [1969]).

Also, under Article 1358, acts and contracts which have for their object and creation or transmission of real rights over immovable property must be in a public document for greater efficacy and a real estate mortgage is a real right over immovable property.

Contracts; Aleatory Contracts; Gambling (2004)

A. Mr. ZY lost P100,000 in a card game called Russian poker, but he had no more cash to pay in full the winner at the time the session ended. He promised to pay PX, the winner, two weeks thereafter. But he failed to do so despite the lapse of two months, so PX filed in court a suit to collect the amount of P50,000 that he won but remained unpaid. Will the collection suit against ZY prosper? Could Mrs. ZY file in turn a suit against PX to recover the P100,000 that her husband lost? Reason. (5%)

SUGGESTED ANSWER:

A. 1. The suit by PX to collect the balance of what he won from ZY will not prosper. Under Article 2014 of the Civil Code, no action can be maintained by the winner for the collection of what he has won in a game of chance. Although poker may depend in part on ability, it is fundamentally a game of chance.

2) If the money paid by ZY to PX was conjugal or community property, the wife of ZY could sue to recover it because Article 117(7) of the Family Code provides that losses in gambling or betting are borne exclusively by the loser-spouse. Hence, conjugal or community funds may not be used to pay for such losses. If the money were exclusive Article 2016 of the Civil Code if she and the family needed the money for support.

ALTERNATIVE ANSWER (2):

A. (2). Mrs. ZY cannot file a suit to recover what her husband lost. Art 2014 of the Civil Code provides that

any loser in a game of chance may recover his loss from the winner, with legal interest from the time he paid the amount lost. This means that only he can file the suit. Mrs. ZY cannot recover as a spouse who has interest in the absolute community property or conjugal partnership of gains, because under Art. 117(7) of the Family Code, losses are borne exclusively by the loser-spouse. Therefore, these cannot be charged against absolute community property or conjugal partnership of gains. This being so, Mrs. ZY has no interest in law to prosecute and recover as she has no legal standing in court to do so.

SALES

Contract of Sale; Marital Community Property; Formalities (2006)

Spouses Biong and Linda wanted to sell their house. They found a prospective buyer, Ray. Linda negotiated with Ray for the sale of the property. They agreed on a fair price of P2 Million. Ray sent Linda a letter confirming his intention to buy the property. Later, another couple, Bernie and Elena, offered a similar house at a lower price of P 1.5 Million. But Ray insisted on buying the house of Biong and Linda for sentimental reasons. Ray prepared a deed of sale to be signed by the couple and a manager's check for P2 Million. After receiving the P2 Million, Biong signed the deed of sale. However, Linda was not able to sign it because she was abroad. On her return, she refused to sign the document saying she changed her mind. Linda filed suit for nullification of the deed of sale and for moral and exemplary damages against Ray.

Will the suit prosper? Explain. (2.5%)

SUGGESTED ANSWER:

Yes, the suit will prosper. The sale was void because Linda did not give her written consent to the sale.

ALTERNATIVE ANSWER:

No, the suit will not prosper. In a CONTRACT OF SALE, ownership is transferred to perfected when Linda and Ray agreed on the object of the sale and the price [Art. 1475, New Civil Code]. The consent of Linda has already been given, as shown by her agreement to the price of the sale. There is therefore consent on her part as the consent need not be given in any specific form. Hence, her consent may be given by implication, especially since she was aware of, and participated in the sale of the property (**Pelayo v. CA, G.R. No. 141323, June 8, 2005**). Her action for moral and exemplary damages will also not prosper because the case does not fall under any of those mentioned in Art. 2219 and 2232 of the Civil Code.

ALTERNATIVE ANSWER:

The suit will prosper. Sale of community property requires written consent of both spouses. The failure or refusal of Linda to affix her signature on the deed of sale, coupled with her express declaration of opposing the sale negates any valid consent on her part. The consent of Biong by himself is insufficient to effect a valid sale of community property (**Art. 96, Family Code; Abalos v. Macatangay, G.R. No. 155043,**

September 30, 2004).

Does Ray have any cause of action against Biong and Linda? Can he also recover damages from the spouses?

Explain. (2.5%)

Considering that the contract has already been perfected and taken out of the operation of the statute of frauds, Ray can compel Linda and Biong to observe the form required by law in order for the property to be registered in the name of Ray which can be filed together with the action for the recovery of house [Art. 1357 New Civil Code]. In the alternative, he can recover the amount of Two million pesos (P2,000,000.00) that he paid. Otherwise, it would result in solutio indebiti or unjust enrichment. Ray can recover moral damages on the ground that the action filed by Linda is clearly an unfounded civil suit which falls under malicious prosecution (**Ponce v. Legaspi, G.R. No.79184, May 6,1992**).

Contract of Sale; When Perfected (2015)

Mr. and Mrs. X migrated to the US with all their children. As they had no intention of coming back, they offered their house and lot for sale to their neighbors, Mr. and Mrs. A (the buyers) who agreed to buy the property for 128 Million. Because Mr. and Mrs. A needed to obtain a loan from a bank first, and since the sellers were in a hurry to migrate, the latter told the buyers that they could already occupy the house, renovate it as it was already in a state of disrepair, and pay only when their loan is approved and released. While waiting for the loan approval, the buyers spent .PI Million in repairing the house. A month later, a person carrying an authenticated special power of attorney from the sellers demanded that the buyers either immediately pay for the property in full now or vacate it and pay damages for having made improvements on the property without a sale having been perfected.

b) Can the buyers be made to immediately vacate on the ground that the sale was not perfected? Explain briefly. (3%)

SUGGESTED ANSWER:

b. No, the buyers may not be made to vacate the properties. A contract of sale is a consensual contract which is perfected at the moment there is a meeting of the minds upon the thing which is the object upon the contract and upon the price (Art. 1475, Civil Code). In this case, the sale was already perfected since there was already the meeting of the minds as to the object of the sale, which is the house and lot, as to the price, which is P8 Million. The fact that there was no payment yet is immaterial since it is not a requisite for the perfection of the contract.

Even assuming that the sale was rescinded, the buyers may still not be made to vacate the properties. Since the buyers made necessary and useful improvements upon the properties, they have the right to retain the properties in question until the full reimbursement of such expenses (Arts. 448 and 546, Civil Code).

Contract to Sell (2001)

Arturo gave Richard a receipt which states: **Receipt**
Received from Richard as down payment for my 1995
Toyota Corolla with plate No. XYZ-1
23.....P50,000.00

Balance payable: 12/30/01..... P50,000.00

September 15, 2001. (Sgd.) Arturo Does this receipt
evidence a contract to sell? Why? (5%)

SUGGESTED ANSWER:

It is a contract of sale because the seller did not reserve
ownership until he was fully paid.

Contract to Sell vs. Contract of Sale (2010)

a) A contract to sell is the same as a conditional
contract of sale. Do you agree? Explain your answer.
(5%)

SUGGESTED ANSWER:

a. No. A contract to sell is a species of conditional sale.
The contract to sell does not sell a thing or property; it
sells the right to buy property. A conditional sale is a
sale subject to the happening or performance of a
condition, such as payment of the full purchase price, or
the performance of any other prestation to give, to do,
or not to do. Compliance with the condition
automatically gives the right to the vendee to demand
the delivery of the object of the sale. In a contract to sell,
however, the compliance with the condition does not
automatically sell the property to the vendee. It merely
gives the vendee the right to compel the vendor to
execute the deed of absolute sale.

Contract to Sell vs. Contract of Sale (2014)

Nante, a registered owner of a parcel of land
in Quezon City, sold the property to Monica under a
deed of sale which reads as follows:

"That for and in consideration of the sum of
P500,000.00, value to be paid and delivered to me,
and receipt of which shall be acknowledged by me to
the full satisfaction of Monica, referred to as Vendee, I
hereby sell, transfer, cede, convey, and assign, as by
these presents, I do have sold, transferred, ceded,
conveyed and assigned a parcel of land covered by
TCT No. 2468 in favor of the Vendee."

After delivery of the initial payment of P100,
000.00, Monica immediately took possession of the
property. Five (5) months after, Monica failed to pay
the remaining balance of purchase price. Nante filed
an action for the recovery of possession of the property.
Nante alleged that the agreement was one to sell,
which was not consummated as the full contract price
was not paid.

Is the contention of Nante tenable? Why?
(4%)

SUGGESTED ANSWER:

No, the contention of Nante that it is one to
sell is untenable. There is a perfected contract of
sale in this case when Nante agreed to sell and
Monica agreed to buy the subject parcel of land and its
agreed price. Under Article 1475 of the Civil Code,
there is a perfected contract of sale at the moment
there is a meeting of the minds upon the thing which is

the object of the contract and upon the price.
Ownership was transferred upon delivery or upon the
taking of possession by Monica, the buyer. The non-
payment of the full price affects the consummation of
the contract of sale and not its perfection.

The case of *Heirs of Atienza v. Espidol*, (G.R.
No. 180665, August 11, 2010), differentiated a contract
of sale and a contract to sell. In a contract of sale, the
title to the property passes to the buyer upon the
delivery of the thing sold. In a contract to sell, on the
other hand, the ownership is, by agreement, retained
by the seller and is not to pass to the vendee until full
payment of the purchase price. In the contract of sale,
the buyer's non-payment of the price is a negative
resolatory condition; in the contract to sell, the buyer's
full payment of the price is a positive suspensive
condition to the coming into effect of the agreement. In
the first case, the seller has lost and cannot recover
the ownership of the property unless he takes action to
set aside the contract of sale. In the second case, the
title simply remains in the seller if the buyer does not
comply with the condition precedent of making
payment at the time specified in the contract.

The agreement in this case is not a contract
to sell because nothing in the facts shows that the
parties agreed that the ownership is retained by Nante
(seller) and is not to pass to Monica (buyer) until full
payment of the purchase price.

Double Sales (2001)

On June 15, 1995, Jesus sold a parcel of registered
land to Jaime. On June 30, 1995, he sold the same land
to Jose. Who has a better right if: a) the first sale is
registered ahead of the second sale, with knowledge of
the latter. Why? (3%) b) the second sale is registered
ahead of the first sale, with knowledge of the latter?
Why? (5%)

SUGGESTED ANSWER:

(a) The first buyer has the better right if his sale was
first to be registered, even though the first buyer knew
of the second sale. The fact that he knew of the second
sale at the time of his registration does not make him as
acting in bad faith because the sale to him was ahead in
time, hence, has a priority in right. What creates bad
faith in the case of double sale of land is knowledge of a
previous sale.

b) The first buyer is still to be preferred, where the sale
is registered ahead of the first sale but with knowledge
of the latter. This is because the second buyer, who at
the time he registered his sale knew that the property
had already been sold to someone else, acted in bad
faith. (Article 1544, C.C.)

Double Sales (2004)

JV, owner of a parcel of land, sold it to PP. But the deed
of sale was not registered. One year later, JV sold the
parcel again to RR, who succeeded to register the deed
and to obtain a transfer certificate of title over the
property in his own name. Who has a better right over
the parcel of land, RR or PP? Why? Explain the legal
basis for your answer. (5%)

SUGGESTED ANSWER:

It depends on whether or not RR is an innocent purchaser for value. Under the Torrens System, a deed or instrument operated only as a contract between the parties and as evidence of authority to the Register of Deeds to make the registration. It is the registration of the deed or the instrument that is the operative act that conveys or affects the land. (Sec. 51, P.D. No. 1529). In cases of double sale of titled land, it is a well-settled rule that the buyer who first registers the sale in good faith acquires a better right to the land. (Art. 1544, Civil Code). Persons dealing with property covered by Torrens title are not required to go beyond what appears on its face. (**Orquiola v. CA 386, SCRA 301, [2002]; Domingo v. Races 401 SCRA 197, [2003]**). Thus, absent any showing that RR knew about, or ought to have known the prior sale of the land to PP or that he acted in bad faith, and being first to register the sale, RR acquired a good and a

Double Sales (2010)

X was the owner of an unregistered parcel of land in Cabanatuan City. As she was abroad, she advised her sister Y via overseas call to sell the land and sign a contract of sale on her behalf. Y thus sold the land to B1 on March 31, 2001 and executed a deed of absolute sale on behalf of X. B1 fully paid the purchase price. B2, unaware of the sale of the land to B1, signified to Y his interest to buy it but asked Y for her authority from X. Without informing X that she had sold the land to B1, Y sought X for a written authority to sell.

X e-mailed Y an authority to sell the land. Y thereafter sold the land on May 1, 2001 to B2 on monthly installment basis for two years, the first installment to be paid at the end of May 2001.\

Who between B1 and B2 has a better right over the land? Explain. (5%)

SUGGESTED ANSWER:

B-2 has the better title. This is not a case of double sale since the first sale was void. The law provides that when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void (Art. 1874 NCC). The property was sold by Y to B1 without any written authority from the owner X. Hence, the sale to B1 was void.

ALTERNATIVE SUGGESTED ANSWER:

Under the facts, B-1 has a better right to the land. Given the fact that the Deed of Sale in favor of B1 and B2 are not inscribed in the Registry of Deeds, the case is governed by Article 1544 of the NCC which provides that in case of double sales of an immovable property, the ownership shall pertain to the person who in good faith was first in possession and in the absence thereof to the person who presents the oldest title, provided there is good faith.

In a case, the Supreme Court has held that in a sale of real estate the execution of a notarial document of sale is tantamount to delivery of the possession of the property sold. Ownership of the land therefore pertains

to the 1st buyer. It may also be mentioned that under 3344 no instruments or deed establishing, transmitting, acknowledging, modifying, or extinguishing right to real property not registered under Act 496 shall be valid except as between the parties. Thus, the Deed of Sale of B2 has no binding effect on B1.

Prohibition to Purchase Property Subject of Litigation (2013)

Rica petitioned for the annulment of her ten-year old marriage to Richard. Richard hired Atty. Cruz to represent him in the proceedings. In payment for Atty. Cruz's acceptance and legal fees, Richard conveyed to Atty. Cruz a parcel of land in Taguig that he recently purchased with his lotto winnings. The transfer documents were duly signed and Atty. Cruz immediately took possession by fencing off the property's entire perimeter.

Desperately needing money to pay for his mounting legal fees and his other needs and despite the transfer to Atty. Cruz, Richard offered the same parcel of land for sale to the spouses Garcia. After inspection of the land, the spouses considered it a good investment and purchased it from Richard. Immediately after the sale, the spouses Garcia commenced the construction of a three-story building over the land, but they were prevented from doing this by Atty. Cruz who claimed he has a better right in light of the prior conveyance in his favor.

Is Atty. Cruz's claim correct? (8%)

SUGGESTED ANSWER:

No, Atty. Cruz is not correct. At first glance, it may appear that atty. Cruz is the one who has a better right because he first took possession of the property. However, a lawyer is prohibited under Article 1491 of the Civil Code from acquiring the property and rights which may be the object of any litigation in which they may take part by virtue of their profession. While the suit is for annulment of marriage and it may be argued that the land itself is not the object of the litigation, the annulment of marriage, if granted, will carry with it the liquidation of the absolute community or conjugal partnership of the spouses as the case may be (Art. 50 in relation to Art. 43 of the Family Code). Richard purchased the land with his lotto winnings during the pendency of the suit for annulment and on the assumption that the parties are governed by the regime of absolute community or conjugal partnership, winnings from gambling or betting will form a part thereof. Also, since the land is part of the absolute community or conjugal partnership of Richard and Rica, it may not be sold or alienated without the consent of the latter and any disposition or encumbrance of the property of the community or conjugal property without the consent of the other spouse is void (Art. 96 and Art. 124, Family Code).

Equitable Mortgage vs. Sale (2005)

On July 14, 2004, Pedro executed in favor of Juan a Deed of Absolute Sale over a parcel of land covered by TCT No. It appears in the Deed of Sale that Pedro

received from Juan P120,000.00 as purchase price. However, Pedro retained the owner's duplicate of said title. Thereafter, Juan, as lessor, and Pedro, as lessee, executed a contract of lease over the property for a period of one (1) year with a monthly rental of P1,000.00. Pedro, as lessee, was also obligated to pay the realty taxes on the property during the period of lease. Subsequently, Pedro filed a complaint against Juan for the reformation of the Deed of Absolute Sale, alleging that the transaction covered by the deed was an equitable mortgage. In his verified answer to the complaint, Juan alleged that the property was sold to him under the Deed of Absolute Sale, and interposed counterclaims to recover possession of the property and to compel Pedro to turn over to him the owner's duplicate of title. Resolve the case with reasons. (6%)

SUGGESTED ANSWER:

The fact that Pedro remained as lessee and undertook paying the realty taxes can be presumed that the transaction is in fact one of equitable mortgage. Hence, the complaint should be granted.

ALTERNATIVE ANSWER:

The complaint of Pedro against Juan should be dismissed. The instances when a contract — regardless of its nomenclature — may be presumed to be an equitable mortgage are enumerated in Article 1602 of the Civil Code:

"Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

1 When the price of a sale with right to repurchase is unusually inadequate;

2 When the vendor remains in possession as lessee or otherwise;

3 When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

4 When the purchaser retains for himself a part of the purchase price;

5 When the vendor binds himself to pay the taxes on the thing sold;

6 In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. "In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws." Article 1604 states that "the provisions of article 1602 shall also apply to a contract purporting to be an absolute sale." For Articles 1602 and 1604 to apply, two requisites must concur:

1) the parties entered into a contract denominated as a contract of sale; and

2) their intention was to secure an existing debt by way of mortgage.

(Heirs of Balite v. Lim, G.R. No. 152168, December 10, 2004)

In the given case, although Pedro retained possession of the property as lessee after the execution of the Deed of Sale, there is no showing that the intention of the parties was to secure an existing debt by way of

mortgage. Hence, the complaint of Pedro should be dismissed.

Equitable Mortgage vs. Sale (2012)

b) Eulalia was engaged in the business of buying and selling large cattle. In order to secure the financial capital, she advanced for her employees (*biyaheros*). She required them to surrender TCT of their properties and to execute the corresponding Deeds of Sale in her favor. Domeng Bandong was not required to post any security but when Eulalia discovered that he incurred shortage in cattle procurement operation, he was required to execute a Deed of Sale over a parcel of land in favor of Eulalia. She sold the property to her grandniece Jocelyn who thereafter instituted an action for ejectment against the Spouses Bandong.

To assert their right, Spouses Bandong filed an action for annulment of sale against Eulalia and Jocelyn alleging that there was no sale intended but only equitable mortgage for the purpose of securing the shortage incurred by Domeng in the amount of P 70, 000.00 while employed as "*biyahero*" by Eulalia. Was the Deed of Sale between Domeng and Eulalia a contract of sale or an equitable mortgage? Explain. (5%)

SUGGESTED ANSWER:

b. The contract between Domeng banding and Eulalia was an equitable mortgage rather than contract of sale. The purported deed of sale was actually intended to merely secure the payment of the shortage incurred by Domeng in the conduct of the cattle buying operations. Under Article 1602, Civil Code, the contract shall be presumed to be an equitable mortgage when it may be fairly inferred that the real intention of the parties is simply to secure the payment of a debt or the performance of any other obligation. The present transaction was clearly intended to just secure the shortage incurred by Eulalia because Bandong remained in the possession of the property inspite of the execution of the sale.

Immovable Property; Rescission of Contract (2003)

X sold a parcel of land to Y on Jan. 1, 2002 - payment and delivery to be made on 01 February 2002. It was stipulated that if payment were not to be made by Y on 01 February 2002, the sale between the parties would automatically be rescinded. Y failed to pay on 01 February 2002, but offered to pay three days later, which payment X refused to accept, claiming that their contract of sale had already been rescinded. Is X's contention correct? Why? 5%

SUGGESTED ANSWER:

No, X is not correct. In the sale of immovable property, even though it may have been stipulated, as in this case, that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act (Article 1592, New Civil code). Since no demand for rescission was made on Y, either judicially or by a notarial act, X cannot refuse to accept the

payment offered by Y three (3) days after the expiration of the period.

ANOTHER SUGGESTED ANSWER:

This is a contract to sell and not a contract of absolute sale, since as there has been no delivery of the land. Article 1592 of the New Civil code is not applicable. Instead, Article 1595 of the New Civil Code applies. The seller has two alternative remedies:

(1) specific performance, or

(2) rescission or resolution under Article 1191 of the New Civil code. In both remedies, damages are due because of default.

ALTERNATIVE ANSWER:

Yes, the contract was automatically rescinded upon Y's failure to pay on 01 February 2002. By the express terms of the contract, there is no need for X to make a demand in order for rescission to take place. (**Article 1191, New Civil Code, Suria v. IAC 151 SCRA 661 [1987]; U.P. v. de los Angeles 35 SCRA 102 [1970].**)

Maceda Law (2000)

Priscilla purchased a condominium unit in Makati City from the Citiland Corporation for a price of P10 Million, payable P3 Million down and the balance with interest thereon at 14% per annum payable in sixty (60) equal monthly installments of P198,333.33. They executed a Deed of Conditional Sale in which it is stipulated that should the vendee fail to pay three (3) successive installments, the sale shall be deemed automatically rescinded without the necessity of judicial action and all payments made by the vendee shall be forfeited in favor of the vendor by way of rental for the use and occupancy of the unit and as liquidated damages. For 46 months, Priscilla paid the monthly installments religiously, but on the 47th and 48th months, she failed to pay. On the 49th month, she tried to pay the installments due but the vendor refused to receive the payments tendered by her. The following month, the vendor sent her a notice that it was rescinding the Deed of Conditional Sale pursuant to the stipulation for automatic rescission, and demanded that she vacate the premises. She replied that the contract cannot be rescinded without judicial demand or notarial act pursuant to Article 1592 of the Civil Code. a) Is Article 1592 applicable? (3%) b) Can the vendor rescind the contract? (2%)

SUGGESTED ANSWER:

a) Article 1592 of the Civil Code does not apply to a conditional sale. In **Valarao v. CA, 304 SCRA 155**, the Supreme Court held that Article 1592 applies only to a contract of sale and not to a Deed of Conditional Sale where the seller has reserved title to the property until full payment of the purchase price. The law applicable is the Maceda Law.

SUGGESTED ANSWER:

b) No, the vendor cannot rescind the contract under the circumstances. Under the Maceda Law, which is the law applicable, the seller on installment may not rescind the contract till after the lapse of the mandatory grace period of 30 days for every one year of installment payments, and only after 30 days from notice of cancellation or demand for rescission by a notarial act.

In this case, the refusal of the seller to accept payment from the buyer on the 49th month was not justified because the buyer was entitled to 60 days grace period and the payment was tendered within that period. Moreover, the notice of rescission served by the seller on the buyer was not effective because the notice was not by a notarial act. Besides, the seller may still pay within 30 days from such notarial notice before rescission may be effected. All these requirements for a valid rescission were not complied with by the seller. Hence, the rescission is invalid.

Maceda Law; When Inapplicable (2014)

Spouses Macario and Bonifacia Dakila entered into a contract to sell with Honorio Cruz over a parcel of industrial land in Valenzuela, Bulacan for a price of Three Million Five Hundred Thousand Pesos (P3, 500, 000.00). The spouses would give a down payment of Five Hundred Thousand Pesos (P500, 000.00) upon the signing of the contract, while the balance would be paid for the next three (3) consecutive months in the amount of One Million Pesos (P1, 000, 000.00) per month. The spouses paid the first two (2) installments but not the last installment. After one (1) year, the spouses offered to pay the unpaid balance which Honorio refused to accept. The spouses filed a complaint for specific performance against Honorio invoking the application of the Maceda Law. If you are the judge, how will you decide the case? (4%)

SUGGESTED ANSWER:

I will dismiss the complaint. The invocation of the Maceda Law by the spouses is misplaced. Section 3 of RA 6552 (Maceda Law) provides that it is applicable in all transactions or contracts involving the sale or financing of real state on instalment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants. Since the subject of the case is an industrial land, Maceda Law is not applicable.

Condominium Act; Partition of a Condominium (2009)

The Ifugao Arms is a condominium project in Baguio City. A strong earthquake occurred which left huge cracks in the outer walls of the building. As a result, a number of condominium units were rendered unfit for use. May Edwin, owner of one of the condominium units affected, legally sue for partition by sale of the whole project? Explain. (4%)

SUGGESTED ANSWER:

Yes, Edwin may legally sue for partition by sale of the whole condominium project under the following conditions:

(a) the damage or destruction caused by the earthquake has rendered one-half (1/2) or more of the units therein untenable, and (b) that the condominium owners holding an aggregate of more than thirty percent (30%) interests of the common areas are opposed to the restoration of the condominium project (Sec 8 [b], Republic Act No. 472 "Condominium

Act").

Right of First Refusal; Lessee; Effect (2008)

Dux leased his house to Iris for a period of 2 years, at the rate of P25,000.00 monthly, payable annually in advance. The contract stipulated that it may be renewed for another 2-year period upon mutual agreement of the parties. The contract also granted Iris the right of first refusal to purchase the property at any time during the lease, if Dux decides to sell the property at the same price that the property is offered for sale to a third party. Twenty-three months after execution of the lease contract, Dux sold breach of her right of first refusal. Dux said there was no breach because the property was sold to his mother who is not a third party. Iris filed an action to rescind the sale and to compel Dux to sell the property to her at the same price. Alternatively, she asked the court to extend the lease for another 2 years on the same terms.

(A). Can Iris seek rescission of the sale of the property to Dux's mother? (3%)

SUGGESTED ANSWER:

Yes, because the right of first refusal is included in the contract signed by the parties. Only if the lessee failed to exercise the right of first refusal could the lessor lawfully sell the subject property to others, under no less than the same terms and conditions previously offered to the lessee. Granting that the mother is not a third party, this would make her privy to the agreement of Dux and Iris, aware of the right of first refusal. This makes the mother a buyer in bad faith, hence giving more ground for rescission of the sale to her (*Equatorial Realty, et al. v. Mayfair Theater*, G.R. No. 106063, 21 Nov. 1996).

ALTERNATIVE ANSWER:

No, Iris cannot seek rescission of the sale of the property to Dux's mother because the sale is not one of those rescissible contracts under Art. 1381 of the Civil Code.

(B). Will the alternative prayer for extension of the lease prosper? (2%)

SUGGESTED ANSWER:

No. The contract stipulated that it may be renewed for another 2-year period upon mutual agreement of the parties. Contracts are binding between the parties; validity or compliance cannot be left to the will of one of the parties (Art. 1308, Civil Code).

ALTERNATIVE ANSWER:

It depends. The alternative prayer for the extension of the lease may prosper if:

(a) there is a stipulation in the contract of sale; (b) Dux's mother is aware of the existing contract of lease; or (c) the lease is recorded in the Registry of Property (Art. 1676, Civil Code).

Option Contract (2002)

Explain the nature of an option contract. (2%)

SUGGESTED ANSWER:

An OPTION CONTRACT is one granting a privilege to buy or sell within an agreed time and at a determined price. It must be supported by a consideration distinct from the price. (Art. 1479 and 1482, NCC)

Option Contract; Earnest Money (1993)

LT applied with BPI to purchase a house and lot in Quezon City, one of its acquired assets. The amount offered was

P1,000,000.00 payable, as follows: P200,000.00 down payment, the balance of P800,000.00 payable within 90 days from June 1, 1985. BPI accepted the offer, whereupon LT drew a check for P200,000.00 in favor of BPI which the latter thereafter deposited in its account. On September 5, 1985, LT wrote BPI requesting extension until October 10, 1985 within which to pay the balance, to which BPI agreed. On October 5, 1985, due to the expected delay in the remittance of the needed amount by his financier from the United States, LT wrote BPI requesting a last extension until October 30, 1985, within which to pay the balance. BPI denied LT's request because another had offered to buy the same property for P1,500,000.00. BPI cancelled its agreement with LT and offered to return to him the amount of P200,000.00 that LT had paid to it. On October 20, 1985, upon receipt of the amount of P800,000.00 from his US financier, LT offered to pay the amount by tendering a cashier's check therefor but which BPI refused to accept. LT then filed a complaint against BPI in the RTC for specific performance and deposited in court the amount of P800,000.00. Is BPI legally correct in canceling its contract with LT?

SUGGESTED ANSWER:

BPI is not correct in canceling the contract with LT. In *Lina Topacio v Court of Appeals and BPI Investment* (G. R. No. 102606, July 3, 1993, 211 SCRA 291) the Supreme Court held that the earnest money is part of the purchase price and is proof of the perfection of the contract. Secondly, notarial or judicial rescission under Art. 1592 and 1991 of the Civil Code is necessary (*Taguba v. de Leon*, 132 SCRA 722.)

ALTERNATIVE ANSWER:

BPI is correct in canceling its contract with LT but BPI must do so by way of judicial rescission under Article 1191 Civil Code. The law requires a judicial action, and mere notice of rescission is insufficient if it is resisted. The law also provides that slight breach is not a ground for rescission (*Song Fo & Co, vs, Hawaiian Phil Co., 47 Phils. 821*), Delay in the fulfillment of the obligation (Art. 1169, Civil Code) is a ground to rescind, only if time is of the essence. Otherwise, the court may refuse the rescission if there is a just cause for the fixing of a period.

Option Contract (2013)

Sergio is the registered owner of a 500-square meter land. His friend, Marcelo, who has long been interested in the property, succeeded in persuading Sergio to sell it to him. On June 2, 2012, they agreed on the purchase price of P600,000 and that Sergio would give Marcelo up to June 30, 2012 within which to raise the amount. Marcelo, in a light tone usual between them, said that

they should seal their agreement through a case of Jack Daniels Black and P5,000 "pulutan" money which he immediately handed to Sergio and which the latter accepted. The friends then sat down and drank the first bottle from the case of bourbon.

On June 15, 2013, Sergio learned of another buyer, Roberto, who was offering P800,000 in ready cash for the land. When Roberto confirmed that he could pay in cash as soon as Sergio could get the documentation ready, Sergio decided to withdraw his offer to Marcelo, hoping to just explain matters to his friend. Marcelo, however, objected when the withdrawal was communicated to him, taking the position that they have a firm and binding agreement that Sergio cannot simply walk away from because he has an option to buy that is duly supported by a duly accepted valuable consideration.

(A) Does Marcelo have a cause of action against Sergio? (5%)

SUGGESTED ANSWER

Yes. Marcelo has a cause of action against Sergio.

Under Article 1324, when the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price (Art. 1479). Consideration in an option contract may be anything of value, unlike in sale where it must be the price certain in money or its equivalent (San Miguel Properties Inc. v Spouses Huang, G.R. No 137290, July 31, 2000).

Here, the case of Jack Daniels Black and the P5,000 "pulutan" money was a consideration to "seal their agreement", an agreement that Marcelo is given until June 30, 2012 to buy the parcel of land. There is also no showing that such consideration will be considered part of the purchase price. Thus, Sergio's unilateral withdrawal of the offer violated the Option Contract between him and Marcelo.

ALTERNATIVE ANSWER:

Yes. Marcelo has a cause of action against Sergio.

There is a perfected contract of sale between Sergio and Marcelo. Sergio agreed to sell the 500 sq.m. parcel of land to Marcelo for a valuable consideration of P600,000. Being a consensual contract, a sale is perfected by both parties giving their consent to the thing to be sold and the price to be paid therefor. By giving Marcelo time to raise the money, Sergio had agreed to consummate the sale on June 30, 2012. The value of the case of Jack Daniel's Black and the P5,000 "pulutan" money, is considered the earnest money to seal the bargain which shall form a part of the purchase price, and shall be deductible from the price of P600,000. Sergio has breached the obligation arising

from the contract and is liable for damages under Article 1170 of the Civil Code of the Philippines.

(B) Can Sergio claim that whatever they might have agreed upon cannot be enforced because any agreement relating to the sale of real property must be supported by evidence in writing and they never reduced their agreement to writing? (3%)

SUGGESTED ANSWER:

No. Sergio's claim has no legal basis.

The contract at issue in the present case is the option contract, not the contract of sale for the real property. Therefore, Article 1403 does not apply. The Statute of Frauds covers an agreement for the sale of real property or of an interest therein. Such agreement is unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing. (Article 1403 (e) Civil Code). Here, Marcelo and Sergio merely entered into Option Contract, which refers to a unilateral promise to buy or sell, which need not be in writing to be enforceable (Sanchez v. Rigos G.R. No. L-25494, June 14, 1972, citing Atkins, Kroll and Co. Inc. v Cua Hian Tek and Southwestern Sugar & Molasses Co. v. Atlantic Gulf & Pacific Co.).

ALTERNATIVE ANSWER:

No. Sergio's claim has no legal basis.

The contract of sale has already been partially executed which takes it outside the ambit of the Statute of Frauds. It is well-settled in this jurisdiction that the Statute of Frauds is applicable only to executor contracts, not to contracts that are totally or partially performed (Carbonnel v. Poncio, G.R. No. L11231, May 12, 1958).

Option Contract (2014)

Tess leased her 1, 500 sq. m. lot in Antipolo City to Ruth for a period of three (3) years, from January 2010 to February 2013. On March 19, 2011, Tess sent a letter to Ruth, part of which reads as follows:

"I am offering you to buy the property you are presently leasing at P5, 000.00 per sq. m. or for a total of P 7, 500, 000.00. You can pay the contract price by installment for two (2) years without interest. I will give you a period of one (1) year from receipt of this letter to decide whether you will buy the property."

After the expiration of the lease contract, Tess sold the property to her niece for a total consideration of P4 million. Ruth filed a complaint for the annulment of the sale, reconveyance and damages against Tess and her niece. Ruth alleged that the sale of the leased property violated her right to buy under the principle of right of first refusal.

Is the allegation of Ruth tenable?

SUGGESTED ANSWER:

The allegation of Ruth is untenable. There was no right of refusal offered to her, the wording of the letter can at most be considered a mere offer to sell or lease with an option to buy.

In *Sanchez v. Rigos*, (G.R. No. L-25494, June 14, 1972), the Court held that in order that a unilateral promise to buy or to sell may be binding upon the promisor, Article 1479 of the Civil Code

requires that said promise be supported by a consideration distinct from the price. The promisor cannot be compelled to comply with the promise, unless the existence of a consideration distinct from the price is established. In the present case, there was no valuable or independent consideration, thus, it cannot be classified as a unilateral promise to sell, but is only a mere offer to sell. Since there was no valuable or independent consideration, it was not an option contract but a mere option to buy, which may be withdrawn at any time.

SUGGESTION FOR ADDITIONAL CREDIT:

The option to buy or to offer to sell given to Ruth is one year from receipt of Tess' letter by Ruth. The lease is for three (3) years from January 2010 to February 2013. Tess sent the letter on March 19, 2011. The right has already expired when Tess sold the lot to her niece.

Option Contract; Elements (2005)

Marvin offered to construct the house of Carlos for a very reasonable price of P900,000.00, giving the latter 10 days within which to accept or reject the offer. On the fifth day, before Carlos could make up his mind, Marvin withdrew his offer.

a) What is the effect of the withdrawal of Marvin's offer? (2%)

SUGGESTED ANSWER:

The withdrawal of Marvin's offer will cause the offer to cease in law. Hence, even if subsequently accepted, there could be no concurrence of the offer and the acceptance. In the absence of concurrence of offer and acceptance, there can be no consent. (*Laudico v. Arias Rodriguez*, G.R. No. 16530, March 31, 1922) Without consent, there is no perfected contract for the construction of the house of Carlos. (*Salonga v. Farrales*, G.R. No. L-47088, July 10, 1981) Article 1318 of the Civil Code provides that there can be no contract unless the following requisites concur:

- (1) consent of the parties;
- (2) object certain which is the subject matter of the contract; and
- (3) cause of the obligation. Marvin will not be liable to pay Carlos any damages for withdrawing the offer before the lapse of the period granted. In this case, no consideration was given by Carlos for the option given, thus there is no perfected contract of option for lack of cause of obligation. Marvin cannot be held to have breached the contract. Thus, he cannot be held liable for damages.

b) Will your answer be the same if Carlos paid Marvin P10,000.00 as consideration for that option? Explain. (2%)

ALTERNATIVE ANSWER:

My answer will be the same as to the perfection of the contract for the construction of the house of Carlos. No perfected contract arises because of lack of consent. With the withdrawal of the offer, there could be no concurrence of offer and acceptance. My answer will not be the same as to damages. Marvin will be liable for damages for breach of contract of option. With the

payment of the consideration for the option given, and with the consent of the parties and the object of contract being present, a perfected contract of option was created. (*San Miguel, Inc. v. Huang*, G.R. No. 137290, July 31, 2000) Under Article 1170 of the Civil Code, those who in the performance of their obligation are guilty of contravention thereof, as in this case, when Marvin did not give Carlos the agreed period of ten days, are liable for damages.

ALTERNATIVE ANSWER:

My answer will not be the same if Carlos paid Marvin P10,000.00 because an option contract was perfected. Thus, if Marvin withdrew the offer prior to the expiration of the 10-day period, he breached the option contract. (Article 1324, Civil Code)

c) Supposing that Carlos accepted the offer before Marvin could communicate his withdrawal thereof? Discuss the legal consequences. (2%)

SUGGESTED ANSWER:

A contract to construct the house of Carlos is perfected. Contracts are perfected by mere consent manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. (*Gomez v. Court of Appeals*, G.R. No. 120747, September 21, 2000) Under Article 1315 of the Civil Code, Carlos and Marvin are bound to fulfill what has been expressly stipulated and all consequences thereof. Under Article 1167, if Marvin would refuse to construct the house, Carlos is entitled to have the construction be done by a third person at the expense of Marvin. Marvin in that case will be liable for damages under Article 1170.

Perfected Sale; Acceptance of Earnest Money (2002)

Bert offers to buy Simeon's property under the following terms and conditions: P1 million purchase price, 10% option money, the balance payable in cash upon the clearance of the property of all illegal occupants. The option money is promptly paid and Simeon clears the property of illegal occupants in no time at all. However, when Bert tenders payment of the balance and ask Simeon for the deed for absolute sale, Simeon suddenly has a change of heart, claiming that the deal is disadvantageous to him as he has found out that the property can fetch three times the agreed purchase price. Bert seeks specific performance but Simeon contends that he has merely given Bert an option to buy and nothing more, and offers to return the option money which Bert refuses to accept.

B. Will Bert's action for specific performance prosper? Explain. (4%)

C. May Simeon justify his refusal to proceed with the sale by the fact that the deal is financially disadvantageous to him? Explain. (4%)

SUGGESTED ANSWER:

B. Bert's action for specific performance will prosper because there was a binding agreement of sale, not just an option contract. The sale was perfected upon acceptance by Simeon of 10% of the agreed price. This amount is in really earnest money which, under Art. 1482, —shall be considered as part of the price and as

proof of the perfection of the contract. (**Topacio v. CA, 211 SCRA 291 [1992]**; **Villongco Realty v. Bormaheco, 65 SCRA 352 [1975]**).

C. Simeon cannot justify his refusal to proceed with the sale by the fact that the deal is financially disadvantageous to him. Having made a bad bargain is not a legal ground for pulling out a bidding contract of sale, in the absence of some actionable wrong by the other party (**Vales v. Villa, 35 Phil 769 [1916]**), and no such wrong has been committed by Bert.

Redemption; Legal; Formalities (2001)

Betty and Lydia were co-owners of a parcel of land. Last January 31, 2001, when she paid her real estate tax, Betty discovered that Lydia had sold her share to Emma on November 10, 2000. The following day, Betty offered to redeem her share from Emma, but the latter replied that Betty's right to redeem has already prescribed. Is Emma correct or not? Why? (5%)

SUGGESTED ANSWER:

Emma, the buyer, is not correct. Betty can still enforce her right of legal redemption as a co-owner. Article 1623 of the Civil Code gives a co-owner 30 days from written notice of the sale by the vendor to exercise his right of legal redemption. In the present problem, the 30-day period for the exercise by Betty of her right of redemption had not even begun to run because no notice in writing of the sale appears to have been given to her by Lydia.

Redemption; Legal; Formalities (2002)

Adela and Beth are co-owners of a parcel of land. Beth sold her undivided share of the property to Xandro, who promptly notified Adela of the sale and furnished the latter a copy of the deed of absolute sale. When Xandro presented the deed for registration, the register of deeds also notified Adela of the sale, enclosing a copy of the deed with the notice. However, Adela ignored the notices. A year later, Xandro filed a petition for the partition of the property. Upon receipt of summons, Adela immediately tendered the requisite amount for the redemption. Xandro contends that Adela lost her right of redemption after the expiration of 30 days from her receipt of the notice of the sale given by him. (5%)

SUGGESTED ANSWER:

Yes, Adela may still exercise her right of redemption notwithstanding the lapse of more than 30 days from notice of the sale given to her because Article 1623 of the New Civil Code requires that the notice in writing of the sale must come from the prospective vendor or vendor as the case may be. In this case, the notice of the sale was given by the vendee and the Register of Deeds. The period of 30 days never tolled. She can still avail of that right.

ALTERNATIVE ANSWER:

Adela can no longer exercise her right of redemption. As co-owner, she had only 30 days from the time she received written notice of the sale which in this case took the form of a copy of the deed of sale being given to her (**Conejero v. CA, 16 SCRA 775 [1966]**). The law does not prescribe any particular form of written notice,

nor any distinctive method for notifying the redemptioner (**Etcuban v. CA, 148 SCRA 507 [1987]**). So long as the redemptioner was informed in writing, he has no cause to complain (**Distrito v. CA, 197 SCRA 606, 609 [1991]**). In fact, in Distrito, a written notice was held unnecessary where the co-owner had actual knowledge of the sale, having acted as middleman and being present when the vendor signed the deed of sale.

OTHER SPECIAL CONTRACTS

Lease; Lease of Rural Lands (2000)

In 1995, Mark leased the rice land of Narding in Nueva Ecija for an annual rental of P1,000.00 per hectare. In 1998, due to the El Nino phenomenon, the rice harvest fell to only 40% of the average harvest for the previous years. Mark asked Narding for a reduction of the rental to P500.00 per hectare

for that year but the latter refused. Is Mark legally entitled to such reduction? (2%)

SUGGESTED ANSWER:

No, Mark is not entitled to a reduction. Under Article 1680 of the Civil Code, the lessee of a rural land is entitled to a reduction of the rent only in case of loss of more than 1/2 of the fruits through extraordinary and unforeseen fortuitous events. While the drought brought about by the "El Nino" phenomenon may be classified as extraordinary, it is not considered as unforeseen.

ALTERNATIVE ANSWER:

Yes, Mark is entitled to a reduction of the rent. His loss was more than 1/2 of the fruits and the loss was due to an extraordinary and unforeseen fortuitous event. The "El Nino" phenomenon is extraordinary because it is uncommon; it does not occur with regularity. And neither could the parties have foreseen its occurrence. The event should be foreseeable by the parties so that the lessee can change the time for his planting, or refrain from planting, or take steps to avoid the loss. To be foreseeable, the time and the place of the occurrence, as well as the magnitude of the adverse effects of the fortuitous event must be capable of being predicted. Since the exact place, the exact time, and the exact magnitude of the adverse effects of the "El Nino" science, the phenomenon is considered unforeseen.

Lease; Lease with Option to Buy (2001)

On January 1, 1980, Nestor leased the fishpond of Mario for a period of three years at a monthly rental of P1,000.00, with an option to purchase the same during the period of the lease for the price of P500,000.00. After the expiration of the three-year period, Mario allowed Nestor to remain in the leased premises at the same rental rate. On June 15, 1983, Nestor tendered the amount of P500,000.00 to Mario and demanded that the latter execute a deed of absolute sale of the fishpond in his favor. Mario refused, on the ground that Nestor no longer had an option to buy the fishpond. Nestor filed an action for specific performance. Will the sublessee can invoke no right superior to that of his action prosper or not? Why? (5%)

SUGGESTED ANSWER:

No, the action will not prosper. The implied renewal of the lease on a month-to-month basis did not have the effect of extending the life of the option to purchase which expired at the end of the original lease period. The lessor is correct in refusing to sell on the ground that the option had expired.

Lease; Liability of the Lessor (2010)

a. A had a 4-storey building which was constructed by Engineer B. After five years, the building developed cracks and its stairway eventually gave way and collapsed, resulting to injuries to some lessees. Who should the lessees sue for damages? (1%)

1. A, the owner
2. B, the engineer
3. both A & B

SUGGESTED ANSWER:

3. Both A & B.

The lessee may proceed against A for breach of contract, and against B for tort or statutory liability.

Under Article 1654 (2, of the) New Civil Code, the lessor is obliged to make all the necessary repairs in order to keep the leased property suitable for the use to which it has been devoted. Consequently, under Article 1659 NCC, the proprietor of a building or structure is responsible for the damages resulting from its total or partial collapse, if it is due to the lack of necessary repairs.

Under Article 1723 NCC, the engineer or architect who drew up the plans and specifications for a building is liable for damages if within 15 years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. This liability may be enforced against the architect or engineer even by a third party who has no privity of contract, with the architect or engineer under Article 2192 NCC.

ALTERNATIVE ANSWER:

No. 1, the Owner.

The lessee can sue only the lessor for breach of contract under Article 1659 in relation to Article 1654 NCC. The lessee cannot sue the architect or the engineer because there was no privity of contract between them. When sued, however, the lessor may file a third party claim against the architect or the engineer.

ANOTHER ALTERNATIVE ANSWER:

No. 2. B, the Engineer.

Under the Article 1723 (NCC), the engineer or architect who drew up the plan and specifications for a building is liable for damages if within 15 years from the completion of the structure, the same should collapse by reason of a defect from those plans and specifications, or due to the defects in the ground. Under Article 2192 (NCC), however, if the damages should be the result of any of the defect in the construction mentioned in Article 1723 (NCC), the third person suffering damages may proceed only against the engineer or architect or contractor within the period

fixed therein. The damages suffered by the lessee in the problem are clearly those resulting from defects in the construction plans or specifications.

Lease; Caveat Emptor (2009)

Jude owned a building which he had leased to several tenants. Without informing his tenants, Jude sold the building to Ildefonso. Thereafter, the latter notified all the tenants that he is the new owner of the building. Ildefonso ordered the tenants to vacate the premises within thirty (30) days from notice because he had other plans for the building. The tenants refused to vacate, insisting that they will only do so when the term of their lease shall have expired. Is Ildefonso bound to respect the lease contracts between Jude and his tenants? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes, Ildefonso must respect the lease contracts between Jude and his tenants. While it is true that the said lease contracts were not registered and annotated on the title to the property, Ildefonso is still not an innocent purchaser for value. He ought to know the existence of the lease because the building was already occupied by the tenants at the time he bought it. Applying the principle of caveat emptor, he should have checked and known the status of the occupants of their right to occupy the building before buying it.

Lease; Sublease vs. Assignment of Lease; Rescission of Contract (2005)

Under a written contract dated December 1, 1989, Victor leased his land to Joel for a period of five (5) years at a monthly rental of P1,000.00, to be increased to P1,200.00 and P1,500.00 on the third and fifth year, respectively. On January 1, 1991, Joel subleased the land to Conrad for a period of two (2) years at a monthly rental of P1,500.00.

On December 31, 1992, Joel assigned the lease to his compadre, Ernie, who acted on the belief that Joel was the rightful owner and possessor of the said lot. Joel has been faithfully paying the stipulated rentals to Victor. When Victor learned on May 18, 1992 about the sublease and assignment, he sued Joel, Conrad and Ernie for rescission of the contract of lease and for damages.

a) Will the action prosper? If so, against whom? Explain. (2%)

SUGGESTED ANSWER:

Yes, the action of for rescission of the contract of lease and for damages will prosper. Under Article 1659 of the Civil Code, "if the lessor or the lessee should not comply with the obligations set forth in Articles 1654 and 1657, the aggrieved party may ask for rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force." Article 1649 of the same Code provides that "the lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary." Consent is necessary because assignment would cause novation by the substitution of one of the parties.

(Bangayan v. Court of Appeals, G.R. No. 123581, August 29, 1997)

However, the rule is different in the case of subleasing. When there is no express prohibition in the Contract of Lease, the lessee may sublet the thing leased. (Art. 1650, Civil Code) In the given case, when Joel assigned the lease to Ernie, the same was done without the consent of Victor. The assignment is void. However, there is no indication that in the written contract of lease between Victor and Joel, that subleasing the premises is prohibited. Hence, the sublease of Joel with Conrad is valid. In view of the foregoing, Victor can file the case of rescission and damages only against Joel and Ernie but he cannot include Conrad.

b) In case of rescission, discuss the rights and obligations of the parties. (2%)

SUGGESTED ANSWER:

Rescission of the lease necessarily requires the return of the thing to the lessor. Hence, the judgment granting rescission of the contract should also order the lessee to vacate and return the leased premises to the lessor. However, since the sublessor, the moment the sublessee has no leg to stand on. The sublessee's right, if any, is to demand reparation for damages from his sublessor, should the latter be at fault.

Lease; Sublease; Sublessee; Liability (2000)

A leased his house to B with a condition that the leased premises shall be used for residential purposes only. B subleased the house to C who used it as a warehouse for fabrics. Upon learning this, A demanded that C stop using the house as a warehouse, but C ignored the demand, A then filed an action for ejectment against C, who raised the defense that there is no privity of contract between him and Will the action prosper? (3%)

SUGGESTED ANSWER:

Yes, the action will prosper. Under Article 1651 of the Civil Code, the sublessee is bound to the lessor for all acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and the lessee.

Lease; Contract for a Piece of Work (2016)

X, a dressmaker, accepted clothing materials from Karla to make two dresses for her. On the day X was supposed to deliver Karla's dresses, X called up Karla to say that she had an urgent matter to attend to and will deliver them the next day. That night, however, a robber broke into her shop and took everything including Karla's two dresses. X claims she is not liable to deliver Karla's dresses or to pay for the clothing materials considering she herself was a victim of the robbery which was a fortuitous event and over which she had no control. Do you agree? Why? (3%)

SUGGESTED ANSWER:

Yes, I agree that X is not liable. The contract between the parties is a contract for a piece of work wherein the contractor, X, bound herself to execute a piece of work for the employer, Karla, in consideration of a certain price or compensation (Art. 1713, Civil Code). Article

1717 of the Civil Code provides that if the contractor bound himself to furnish the material, he shall suffer the loss if the work should be destroyed before its delivery, save when there has been delay in receiving it. Since the contractor X did not furnish the material, she shall not suffer the loss of the work which took place before its delivery. There was no delay in the receipt of the work since the parties agreed to the delivery of the dresses on the day after the original date of delivery. Hence, X is not bound to suffer the loss, and is liable for neither the delivery of the dresses nor the cost of the materials.

ALTERNATIVE ANSWER:

No, I do not agree. The obligation involved in the case is an obligation to do so, since X's obligation is to make dresses for Karla. Under Article 1167 of the Civil Code, if the person obliged to do something fails to do it, the same shall be executed at his cost. Although X may not be compelled to deliver the dresses to Karla, she may be held liable for the cost of having another person to make the dresses for Karla, which including the cost of the materials.

Agency (2003)

Jo-Ann asked her close friend, Aissa, to buy some groceries for her in the supermarket. Was there a nominate contract entered into between Jo-Ann and Aissa? In the affirmative, what was it? Explain. 5%

SUGGESTED ANSWER:

Yes, there was a nominate contract. On the assumption that Aissa accepted the request of her close friend Jo-Ann to buy some groceries for her in the supermarket, what they entered into was a nominate contract of Agency. Article 1868 of the New Civil Code provides that by the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

ALTERNATIVE ANSWER:

Yes, they entered into a nominate contract of lease to service in the absence of a relation of principal and agent between them (Article 1644, New Civil Code).

Agency vs. Sale (2000)

A foreign manufacturer of computers and a Philippine distributor entered into a contract whereby the distributor agreed to order 1,000 units of the manufacturer's computers every month and to resell them in the Philippines at the manufacturer's suggested prices plus 10%. All unsold units at the end of the year shall be bought back by the manufacturer at the same price they were ordered. The manufacturer shall hold the distributor free and harmless from any claim for defects in the units. Is the agreement one for sale or agency? (5%)

SUGGESTED ANSWER:

The contract is one of agency, not sale. The notion of sale is negated by the following indicia:

- (1) the price is fixed by the manufacturer with the 10% mark-up constituting the commission;
- (2) the manufacturer reacquires the unsold units at exactly the same price; and

(3) warranty for the units was borne by the manufacturer. The foregoing indicia units was never intended to transfer to the distributor.

Agency; Coupled with Interest (2001)

Richard sold a large parcel of land in Cebu to Leo for P100 million payable in annual installments over a period of ten years, but title will remain with Richard until the purchase price is fully paid. To enable Leo to pay the price, Richard gave him a power-of-attorney authorizing him to subdivide the land, sell the individual lots, and deliver the proceeds to Richard, to be applied to the purchase price. Five years later, Richard revoked the power of attorney and took over the sale of the subdivision lots himself. Is the revocation valid or not? Why? (5%)

SUGGESTED ANSWER:

The revocation is not valid. The power of attorney given to the buyer is irrevocable because it is coupled with an interest: the agency is the means of fulfilling the obligation of the buyer to pay the price of the land (Article 1927, CC). In other words, a bilateral contract (contract to buy and sell the land) is dependent on the agency.

Agency; Coupled with Interest (2016)

A lawyer was given an authority by means of a Special Power of Attorney by his client to sell a parcel of land for the amount of P3 Million. Since the client owed the lawyer P1 Million in attorney's fees in a prior case he handled, the client agreed that if the property is sold, the lawyer was entitled to get 5% agent's fee plus P1 Million as payment for his unpaid attorney's fees. The client, however, subsequently found a buyer of his own who was willing to buy the property for a higher amount. Can the client unilaterally rescind the authority he gave in favor of his lawyer? Why or why not? (4%)

SUGGESTED ANSWER:

No, the client cannot unilaterally rescind the authority he gave in favor of his lawyer because the agency is coupled with interest, the interest being the attorney's fees which the client owed the lawyer. Under Art. 1927 of the Civil Code, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling the obligation already contracted, or if a partner is appointed manager of the partnership of the contract of partnership and his removal from the management is unjustifiable. In this case, if the lawyer could sell his client's property, the lawyer will be entitled not only to his commission, but also to his attorney's fees. These attorney's fees were already owed by the client to his lawyer before the SPA was executed. The agency is a means of fulfilling an obligation already contracted.

Agency; Guarantee Commission (2004)

As an agent, AL was given a guarantee commission, in addition to his regular commission, after he sold 20 units of refrigerators to a customer, HT Hotel. The customer, however, failed to pay for the units sold. AL's principal, DRBI, demanded from AL payment for the customer's accountability. AL objected, on the ground that his job was only to sell and not to collect payment

for units bought by the customer. Is AL's objection valid? Can DRBI collect from him or not? Reason. (5%)

SUGGESTED ANSWER:

No, AL's objection is not valid and DRBI can collect from AL. Since AL accepted a guarantee commission, in addition to his regular commission, he agreed to bear the risk of collection and to pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser (Article 1907, Civil Code)

Agency; Real Estate Mortgage (2004)

CX executed a special power of attorney authorizing DY to secure a loan from any bank and to mortgage his property covered by the owner's certificate of title. In securing a loan from MBank, DY did not specify that he was acting for CX in the transaction with said bank. Is CX liable for the bank loan? Why or why not? Justify your answer. (5%)

SUGGESTED ANSWER:

CX is liable for the bank loan because he authorized the mortgage on his property to secure the loan contracted by DY. If DY later defaults and fails to pay the loan, CX is liable to pay. However, his liability is limited to the extent of the value of the said property.

ALTERNATIVE ANSWER:

CX is not personally liable to the bank loan because it was contracted by DY in his personal capacity. Only the property of CX is liable. Hence, while CX has authorized the mortgage on his property to secure the loan of DY, the bank cannot sue CX to collect the loan in case DY defaults thereon. The bank can only foreclose the property of CX. And if the proceeds of the foreclosure are not sufficient to All those contracts were executed by B while A was pay the loan in full, the bank cannot run after CX for the deficiency.

ALTERNATIVE ANSWER:

While as a general rule the principal is not liable for the contract entered into by his agent in case the agent acted in his own name without disclosing his principal, such rule does not apply if the contract involves a thing belonging to the principal. In such case, the principal is liable under Article 1883 of the Civil Code. The contract is deemed made on his behalf (**Sy-juco v. Sy-juco 40 Phil. 634 [1920]**).

ALTERNATIVE ANSWER:

CX would not be liable for the bank loan. CX's property would also not be liable on the mortgage. Since DY did not specify that he was acting for CX in the transaction with the bank, DY in effect acted in his own name. In the case of **Rural Bank of Bombon v. CA, 212 SCRA, (1992)**, the Supreme Court, under the same facts, ruled that "in order to bind the principal by a mortgage on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only. It is not enough merely that the agent was in fact authorized to make the mortgage, if he, has not acted in the name of the principal. Neither is it ordinarily sufficient that in the mortgage the agent describes himself as acting by virtue of a power of attorney, if in fact the agent has acted in his own name and has set his own hand and

seal to the mortgage. There is no principle of law by which a person can become liable on a real estate mortgage which she never executed in person or by attorney in fact".

Agency; Authority to Sell (2010)

X was the owner of an unregistered parcel of land in Cabanatuan City. As she was abroad, she advised her sister Y via overseas call to sell the land and sign a contract of sale on her behalf. Y thus sold the land to B1 on March 31, 2001 and executed a deed of absolute sale on behalf of X. B1 fully paid the purchase price. B2, unaware of the sale of the land to B1, signified to Y his interest to buy it but asked Y for her authority from X. Without informing X that she had sold the land to B1, Y sought X for a written authority to sell.

X e-mailed Y an authority to sell the land. Y thereafter sold the land on May 1, 2001 to B2 on monthly installment basis for two years, the first installment to be paid at the end of May 2001.

Who between B1 and B2 has a better right over the land? Explain. (5%)

SUGGESTED ANSWER:

B-2 has the better title. This is not a case of double sale since the first sale was void. The law provides that when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void (Art. 1874 NCC). The property was sold by Y to B1 without any written authority from the owner X. Hence, the sale to B1 was void.

ALTERNATIVE SUGGESTED ANSWER:

Under the facts, B-1 has a better right to the land. Given the fact that the Deed of Sale in favor of B1 and B2 are not inscribed in the Registry of Deeds, the case is governed by Article 1544 of the NCC which provides that in case of double sales of an immovable property, the ownership shall pertain to the person who in good faith was first in possession and in the absence thereof to the person who presents the oldest title, provided there is good faith.

In a case, the Supreme Court has held that in a sale of real estate the execution of a notarial document of sale is tantamount to delivery of the possession of the property sold. Ownership of the land therefore pertains to the 1st buyer. It may also be mentioned that under 3344 no instruments or deed establishing, transmitting, acknowledging, modifying, or extinguishing right to real property not registered under Act 496 shall be valid except as between the parties. Thus, the Deed of Sale of B2 has no binding effect on B1.

Agency; Revocation of Authority (2014)

Joe Miguel, a well-known treasure hunter in Mindanao, executed a Special Power of Attorney (SPA) appointing his nephew, John Paul, as his attorney-in-fact. John Paul was given the power to deal with treasure-hunting activities on Joe Miguel's land and to file charges against those who may enter it without the latter's authority. Joe Miguel agreed to give John Paul

forty percent (40%) of the treasure that may be found on the land.

Thereafter, John Paul filed a case for damages and injunction against Lilo for illegally entering Joe Miguel's land. Subsequently, he hired the legal services of Atty. Audrey agreeing to give the latter thirty percent (30%) of Joe Miguel's share in whatever treasure that may be found in the land.

Dissatisfied however with the strategies implemented by John Paul, Joe Miguel unilaterally revoked the SPA granted to John Paul.

Is the revocation proper? (4%)

SUGGESTED ANSWER:

Yes, the revocation is proper. Article 1920 provides that the principal may expressly or impliedly revoke the agency at will, and compel the agent to return the document evidencing the agency. Joe Miguel may however be held liable for damages if he abused his right in revoking the agency.

ALTERNATIVE ANSWER:

No, the revocation is not proper. Under Article 1927, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.

In the case of *Republic v. Evangelista*, (G.R. No. 156015, August 11, 2005), which has similar facts as the present case, it was held that "an exception to the revocability of a contract of agency is when it is coupled with interest, i.e., if a bilateral contract depends upon the agency. The reason for its irrevocability is because the agency becomes part of another obligation or agreement. It is not solely the rights of the principal but also that of the agent and third persons which are affected. Hence, the law provides that in such cases, the agency cannot be revoked at the sole will of the principal."

In this case, the interest of John Paul and Atty. Audrey in the agency is the treasure that may be found in the land. The contract with the lawyer depends on the agency which renders such agency as one coupled with an interest. Therefore, Joe Miguel cannot unilaterally revoke the agency.

Partnership; Obligations of a Partner; Industrial Partner (2001)

Joe and Rudy formed a partnership to operate a car repair shop in Quezon City. Joe provided the capital while Rudy contributed his labor and industry. On one side of their shop, Joe opened and operated a coffee shop, while on the other side, Rudy put up a car accessories store. May they engage in such separate businesses? Why? [5%]

SUGGESTED ANSWER:

Joe, the capitalist partner, may engage in the restaurant business because it is not the same kind of business the partnership is engaged in. On the other hand, Rudy may not engage in any other business unless their partnership expressly permits him to do so because as

an industrial partner he has to devote his full time to the business of the partnership [Art. 1789, CC).

Partnership; Oral Partnership (2009)

TRUE or FALSE.

(C). An oral partnership is valid. (1%)

SUGGESTED ANSWER:

TRUE. Partnership is a consensual contract, hence, it is valid even though not in writing.

ALTERNATIVE ANSWER:

TRUE. An oral partnership is valid even though not in writing. However, If it involves contribution of an immovable property or a real right, an oral contract of partnership is void. In such a case, the contract of partnership to be valid, must be in a public instrument (Art. 1771 ,NCC), and the inventory of said property signed by the parties must be attached to said public instrument (Art. 1773, NCC).

ALTERNATIVE ANSWER:

TRUE. Partnership is a consensual contract, hence, it is valid even though not in writing. The oral contract of partnership is also valid even if an immovable property or real right is contributed thereto. While the law, in such a case, requires the partnership to be in a public document, the law does not expressly declare the contract void if not executed in the required form (Article 1409 (7 ,NCC). And there being nothing in the law from which it can be inferred that the said requirement is prohibitory or mandatory (Article 5, NCC), the said oral contract of partnership must also be valid. The interested party may simply require the contract to be made into a public document in order to comply with the required form (Article 1357, NCC). The purpose of the law in requiring a public document is simply to notify the public about the contribution.

Partnership; Liability of Partners in Case of Dissolution (2010)

A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to garner considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

a. Who are liable for the settlement of the partnership's obligations? Explain? (3%)

SUGGESTED ANSWER:

The two remaining partners, A and B, are liable. When any partners dies and the business is continued without any settlement of accounts as between him or his estate, the surviving partners are held liable for continuing the business despite the death of C (Articles 1841, 1785, par 2 and 1833 of the New Civil Code).

b. What are the creditors' recourse/s? Explain. (3%)

SUGGESTED ANSWER:

Creditors can file the appropriate actions, for instance, an action for the collection of sum of money against the "partnership at will" and if there are no sufficient funds,

the creditors may go after the private properties of A and B (Articles 816, NCC). Creditors may also sue the estate of C. The estate is not excused from the liabilities of the partnership even if C is dead already but only up to the time that he remained a partner (Article 1829, 1835, par.2; NCC, Testate Estate of Mota v. Serra, 47 Phil. 464 [1925]). However, the liability of C's individual property shall be subject first to the payment of his separate debts (Article 1835, NCC).

Partnership; Right of a Partner to Demand Return of His Share (2012)

b) A partner cannot demand the return of his share (contribution) during the existence of a partnership. Do you agree? Explain your answer. (5%)

SUGGESTED ANSWER:

b. Yes, he is not entitled to the return of his contribution to the capital of the partnership, but only to the net profits from partnership business during the life of the partnership. Of he is a limited partner, however, he may ask for the return of his contributions as provided in Articles 1856 and 1857, Civil Code.

Partnership ; Receipt of Share in Profits (2014)

Timothy executed a Memorandum of Agreement (MOA) with Kristopher setting up a business venture covering three (3) fastfood stores known as "Hungry Toppings" that will be established at Mall Uno, Mall Dos, and Mall Tres. The pertinent provisions of the MOA provides:

1. Timothy shall be considered a partner with thirty percent (30%) share in all of the stores to be set up by Kristopher;
2. The proceeds of the business, after deducting expenses, shall be used to pay the principal amount of P500,000.00 and the interest therein which is to be computed based on the bank rate, representing the bank loan secured by Timothy;
3. The net profits, if any, after deducting the expenses and payments of the principal and interest shall be divided as follows: seventy percent (70%) for Kristopher and thirty percent (30%) for Timothy;
4. Kristopher shall have a free hand in running the business without any interference from Timothy, his agents, representatives, or assigns , and should such interference happen, Kristopher has the right to buy back the share of Timothy less the amounts already paid on the principal and to dissolve the MOA; and
5. Kristopher shall submit his monthly sales report in connection with the business to Timothy.

What is the contractual relationship between Timothy and Kristopher? (4%)

SUGGESTED ANSWER:

The contractual relationship between Timothy and Kristopher is that of partnership. Article 1767 of the Civil Code provides that under a contract of partnership, two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves. Moreover, Article 1769 of the Civil Code states in part

that receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, provided that the said profits were not received in payment of debt, as wages, annuity, interest on a loan, or as consideration for a sale. In this case, the MOA between Timothy and Kristopher stipulated that they shall share in the profits of the business 30-70. The contributions of the partners include a bank loan obtained by Timothy and industry in the form of managing the properties by Kristopher. Thus, the requisites for establishing a contract of partnership are complied with.

Partnership; Joint Venture (2015)

B. In this jurisdiction, is a joint venture (i.e., a group of corporations contributing resources for a specific project and sharing the profits therefrom) considered a partnership? (3%)

SUGGESTED ANSWER:

b. Yes. The Supreme Court has ruled that a joint venture may be considered a species of partnership (Aurbach v. Sanitary Wares Manufacturing Corp., 1989; Philex Mining v. CIR, 2008). It has also ruled that "a joint venture is hardly distinguishable from, and may be likened to, a partnership since their elements are similar, i.e., community of interests in the business and sharing profits and losses. Being a form of partnership, a joint venture is generally governed by the law on partnerships". (Litonjua v. Litonjua, 2005).

ALTERNATIVE ANSWER:

b. No, a joint venture is not considered a partnership. Although the Supreme Court has recognized that for a certain purposes, a joint venture is a form of partnership and should be governed by the law of partnerships, it has also recognized a distinction between the two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others. (Aurbach v. Sanitary Wares Manufacturing Corp., 1989).

Trust (2007)

Explain the following concepts and doctrines and give an example of each:

(A). concept of trust de son tort (constructive trust) (5%)

SUGGESTED ANSWER:

A constructive trust is a trust NOT created by any word or phrase, either expressly or impliedly, evincing a direct intention to create a trust, but is one that arises in order to satisfy the demands of justice. It does not come about by agreement or intention but mainly operation of law and construed as a trust against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold (Heirs of Lorenzo Yap v. CA, 371 Phil 523, 1991). The following are examples of constructive trust: 1. Art. 1456 NCC which provides: "If property is acquired through mistake or fraud, the person obtaining it is, by force of law considered a trustee of an implied trust for the benefit of the person for whom the property comes." 2. Art 1451 NCC which provides: "When land passes by succession through

any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner." 3. Art 1454 NCC which provides: "If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him." 4. Art 1455 NCC which provides: "When any trustee, guardian or any person holding a fiduciary relationship uses trust funds for the purchase of property and causes conveyance to be made to him or to third person, a trust is established by operation of law in favor of the person to whom the funds belong."

Trust (2015)

Mr. A, a businessman, put several real estate properties under the name of his eldest son X because at that time, X was the only one of legal age among his four children. He told his son he was to hold those assets for his siblings until they become adults themselves. X then got married. After 5 years, Mr. A asked X to transfer the titles over three properties to his three siblings, leaving two properties for himself. To A's surprise, X said that he can no longer be made to transfer the properties to his siblings because more than 5 years have passed since the titles were registered in his name. Do you agree? Explain. (4%)

SUGGESTED ANSWER:

No, I do not agree with X. this is clear case of an implied trust provided in Art 1453 of the Civil Code which states that "when property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated." In this case, A is the trustor, X is the trustee, and the three other children of A are the beneficiaries. A and/or his three children may file an action to compel X to transfer title in favour of his three siblings within ten (10) years from the time the cause of action accrues upon an obligation created by law- when the children attains the age of majority (Art. 1144, Civil Code).

Mutuum vs. Commodatum (2004)

Distinguish briefly but clearly between Mutuum and commodatum.

SUGGESTED ANSWER:

In MUTUUM, the object borrowed must be a consumable thing the ownership of which is transferred to the borrower who incurs the obligation to return the same consumable to

the lender in an equal amount, and of the same kind and quality. In COMMODATUM, the object borrowed is usually a non-consumable thing the ownership of which is not transferred to the borrower who incurs the obligation to return the very thing to the lender.

Mutuum; Interests (2001)

Samuel borrowed P300,000.00 housing loan from the bank at 18% per annum interest. However, the

promissory note contained a proviso that the bank "reserves the right to increase interest within the limits allowed by law." By virtue of such proviso, over the objections of Samuel, the bank increased the interest rate periodically until it reached 48% per annum. Finally, Samuel filed an action questioning the right of the bank to increase the interest rate up to 48%. The bank raised the defense that the Central Bank of the Philippines had already suspended the Usury Law. Will the action prosper or not? Why? (5%)

SUGGESTED ANSWER:

The action will prosper. While it is true that the interest ceilings set by the Usury Law are no longer in force, it has been held that PD No. 1684 and CB Circular No. 905 merely allow contracting parties to stipulate freely on any adjustment in the interest rate on a loan or forbearance of money but do not authorize a unilateral increase of the interest rate by one party without the other's consent (**PNB v. CA, 238 SCRA 20 [1994]**). To say otherwise will violate the principle of mutuality of contracts under Article 1308 of the Civil Code. To be valid, therefore, any change of interest must be mutually agreed upon by the parties (**Dizon v. Magsaysay, 57 SCRA 250 [1974]**). In the present problem, the debtor not having given his consent to the increase in interest, the increase is void.

Mutuum; Interests (2002)

Carlos sues Dino for (a) collection on a promissory note for a loan, with no agreement on interest, on which Dino defaulted, and (b) damages caused by Dino on his (Carlos') priceless Michaelangelo painting on which Dino accidentally spilled acid while transporting it. The court finds Dino liable on the promissory note and awards damages to Carlos for the damaged painting, with interests for both awards. What rates of interest may the court impose with respect to both awards? Explain. (5%)

SUGGESTED ANSWER:

With respect to the collection of money or promissory note, it being a forbearance of money, the legal rate of interest for having defaulted on the payment of 12% will apply. With respect to the damages to the painting, it is 6% from the time of the final demand up to the time of finality of judgment until judgment credit is fully paid. The court considers the latter as a forbearance of money. (**Eastern Shipping Lines, Inc. v. CA, 234 SCRA 78 [1994]; Art 2210 and 2211, CC**)

Mutuum; Interests (2004)

The parties in a contract of loan of money agreed that the yearly interest rate is 12% and it can be increased if there is a law that would authorize the increase of interest rates.

Suppose OB, the lender, would increase by 5% the rate of interest to be paid by TY, the borrower, without a law authorizing such increase, would OB's action be just and valid? Why? Has TY a remedy against the imposition of the rate increase? Explain. (5%)

SUGGESTED ANSWER:

OB's action is not just and valid. The debtor cannot be required to pay the increase in interest there being no law authorizing it, as stipulated in the contract. Increasing the rate in the absence of such law violates the principle of mutuality of contracts.

ALTERNATIVE ANSWER:

Even if there was a law authorizing the increase in interest rate, the stipulation is still void because there is no corresponding stipulation to decrease the interest due when

the law reduces the rate of interest.

Pledge; Pactum Commissorium (2009)

Rosario obtained a loan of P100,000.00 from Jennifer, and pledged her diamond ring. The contract signed by the parties stipulated that if Rosario is unable to redeem the ring on due date, she will execute a document in favor of Jennifer providing that the ring shall automatically be considered full payment of the loan.

(A). Is the contract valid? Explain. (3%)

SUGGESTED ANSWER:

The contract is valid because Rosario has to execute a document in favor of Jennifer to transfer the ownership of the pledged ring to the latter. The contract does not amount to pactum commissorium because it does not provide for the automatic appropriation by the pledgee of the thing pledged in case of default by the pledgor.

(B). Will your answer to [a] be the same if the contract stipulates that upon failure of Rosario to redeem the ring on due date, Jennifer may immediately sell the ring and appropriate the entire proceeds thereof for herself as full payment of the loan? Reasons. (3%)

SUGGESTED ANSWER:

No, my answer will be different. While the contract of pledge is valid, the stipulation authorizing the pledgee to immediately sell the thing pledged is void under Art 2088 of the New Civil Code, which provides that "the creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them xxx." Jennifer cannot immediately sell by herself the thing pledged. It must be foreclosed by selling it at a public auction in accordance with the procedure under Art 2112 of the New Civil Code.

Pledge; Pactum Commissorium (2015)

Donna pledged a set of diamond ring and earrings to Jane for P200,000.00. She was made to sign an agreement that if she cannot pay her debt within six months, Jane could immediately appropriate the jewelry for herself. After six months, Donna failed to pay. Jane then displayed the earrings and ring set in her jewelry shop located in a mall. A buyer, Juana, bought the jewelry set for P300,000.00.

a) Was the agreement which Donna signed with Jane valid? Explain with legal basis. (2%)

SUGGESTED ANSWER:

a. No, the agreement that if Donna cannot pay her debt within 6 months, Jane could immediately appropriate the jewelry for herself is void as it constitutes *pactum*

commisoriium, which is void under the law. Under Art. 2088, *pactum commisorium* is a provision in a pledge or mortgage agreement where the property pledged or mortgaged by the debtor automatically becomes the property of the creditor in the event the debtor fails to pay the debt or commits a breach of the loan agreement.

b) Can Donna redeem the jewelry set from Juana by paying the amount she owed Jane to Juana? Explain with legal basis. (2%)

SUGGESTED ANSWER:

b. No, Donna cannot redeem the jewelry set from Juana because there is no privity of contract between Donna and Juana. Moreover, Juana is a third person who purchased the thing in good faith from a merchant store. Under Art. 1505, even if the seller does not have a right to sell, the buyer acquires absolute ownership over the thing if he brought it in a merchant store in good faith, the owner neither having been unlawfully deprived thereof, nor was the thing lost. [Sun Brothers v. Velasco (1963)]

c) Give an example of a pledge created by operation of law. (2%)

SUGGESTED ANSWER:

c. Any of the following answers should be given full credit

1. Art. 546 states: "Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor. Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof."
2. Art. 1731 states: "He who has executed work upon a movable has a right to retain it by way of pledge until he is paid."
3. Art. 1994 states: "The depositary may retain the thing in pledge until the full payment of what may be due him by reason of the deposit."
4. Art. 1914 states: "The agent may retain in pledge the things which are the object of the agency until the principal effects the reimbursement and pays the indemnity set forth in the two preceding articles."

Guaranty (2009)

TRUE or FALSE.

(D). An oral promise of guaranty is valid and binding. (1%)

SUGGESTED ANSWER :

FALSE. An oral contract of guaranty, being a special promise to answer for the debt of another, is unenforceable unless in writing (Article 1403 [2] b, NCC).

ALTERNATIVE ANSWER:

TRUE. An oral promise of guaranty is valid and binding. While the contract is valid, however, it is unenforceable

because it is not in writing. Being a special promise to answer for the debt, or miscarriage of another, the Statute of Frauds requires it to be in writing to be enforceable (Article 1403 [2] b, NCC). The validity of the contract should be distinguished from its enforceability.

Guaranty vs. Surety (2010)

Define, Enumerate or Explain. (2% each)

a. What is the difference between "guaranty" and "suretyship"?

SUGGESTED ANSWER:

Guaranty and Suretyship distinguished:

1. The obligation in guaranty is secondary; whereas in suretyship, it is primary.
2. In guaranty, the undertaking is to pay if the principal debtor cannot pay; whereas in suretyship, the undertaking is to pay if the principal debtor does not pay.
3. In guaranty, the guarantor is entitled to the benefit of excussion; whereas in suretyship the surety is not so entitled.
4. Liability in guaranty depends upon an independent agreement to pay the obligation of the principal if he fails to do so; whereas in suretyship, the surety assumes liability as a regular party.
5. The guarantor insures the solvency of the principal debtor; whereas the surety insures the debt.
6. In guaranty, the guarantor is subsidiarily liable; whereas, in a Suretyship, the surety binds himself solidarily with the principal debtor. (Art. 2047, Civil Code).

Deposit; Liability of Depositary (2014)

Due to the continuous heavy rainfall, the major streets in Manila became flooded. This compelled Cris to check-in at Square One Hotel. As soon as Cris got off from his Toyota Altis, the Hotel's parking attendant got the key of his car and have him a valet parking customer's claim stub. The attendant parked his car at the basement of the hotel. Early in the morning, Cris was informed by the hotel manager that his car was car napped. (4%)

(A) What contract, if any, was perfected between Cris and the Hotel when Cris surrendered the key of his car to the Hotel's parking attendant?

(B) What is the liability, if any, of the Hotel for the loss of Cris's car?

SUGGESTED ANSWER:

(A) A contract of deposit was perfected between Cris and the Hotel when Cris surrendered the key of his car to the Hotel's parking attendant. In *Triple-V Food Services v. Filipino Merchants Insurance Company*, (G.R. No. 160544, February 21, 2005), it was ruled that when a car is entrusted to a valet attendant there is a contract of deposit. Article 1962 of the Civil Code provides that a deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and of returning the same (*Durban*

Apartments v. Pioneer Insurance, (G. R. No. 179419, March 30, 2011). Furthermore, Article 1998 of the Civil Code provides that the deposit of effects made by travelers in hotels or inns shall be regarded as necessary, and that the keepers of hotels and inns are responsible for the effects deposited as depositories subject to their being notified of the effects being brought in by the travelers and the taking by the travelers of such precautions which the hotel-or inn-keepers or their substitutes advised relative to the care and vigilance of such effects. Article 1999 of the Civil Code also provides for the liability of the hotel-keeper for vehicles introduced or placed in the annexes of the hotel, which in this case is the basement of the hotel.

- (B) The hotel was constituted as the depository in this case. Thus, it has the obligation to safely keep the car which is expected by Cris to be returned to him. With the loss of the car, the Hotel is liable for the cost of the car as actual damages.

SUGGESTION FOR ADDITIONAL CREDIT:

Art. 2001 of the Civil Code provides that the act of a thief or robber, who has entered the hotel, is not deemed force majeure, unless it is done with the use of arms or through an irresistible force. In this case, there is no indication that the carjacking was done with the use of arms or through irresistible force; hence, the hotel cannot claim that it is not liable for the loss of Cris's car.

COMMON CARRIERS

Extraordinary Diligence (2000)

Despite a warning from the police that an attempt to hijack a PAL plane will be made in the following week, the airline did not take extra precautions, such as frisking of passengers, for fear of being accused of violating human rights. Two days later, an armed hijacker did attempt to hijack a PAL flight to Cebu. Although he was subdued by the other passengers, he managed to fire a shot which hit and killed a female passenger.

The victim's parents sued the airline for breach of contract, and the airline raised the defense of force majeure. Is the airline liable or not? (2%)

SUGGESTED ANSWER:

The airline is liable. In case of death of a passenger, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence (Article 1756, Civil Code). The failure of the airline to take extra precautions despite the police warning that an attempt to hijack the plane would be made, was negligence on the part of the airline. Being negligent, it is liable for the death of the passenger. The defense of force majeure is not tenable since the shooting incident would not have happened had the airline taken steps that could have prevented the hijacker from boarding the plane.

ALTERNATIVE ANSWER:

Under Article 1763 of the Civil Code, the common carrier is not required to observe extraordinary diligence in preventing injury to its passengers on account of the willful acts or negligence of other passengers or of strangers. The common carrier, in that case, is required to exercise only the diligence of a good father of a family; hence, the failure of the airline to take EXTRA precautions in frisking the passengers and by leaving that matter to the security personnel of the airport, does not constitute a breach of that duty so as to make the airline liable. Besides, the use of irresistible force by the hijackers was force majeure that could not have been prevented even by the observance of extraordinary diligence.

QUASI-CONTRACTS

Solutio Indebiti (2004)

DPO went to a store to buy a pack of cigarettes worth P225.00 only. He gave the vendor, RRA, a P500-peso bill. The vendor gave him the pack plus P375.00 change. Was there a discount, an oversight, or an error in the amount given? What would be DPO's duty, if any, in case of an excess in the amount of change given by the vendor? How is this situational relationship between DPO and RRA denominated? Explain. (5%)

SUGGESTED ANSWER:

There was error in the amount of change given by RRA. This is a case of *solutio indebiti* in that DPO received something that is not due him. He has the obligation to return the P100.00; otherwise, he will unjustly enrich himself at the expense of RRA. (Art. 2154, Civil Code)

ALTERNATIVE ANSWER:

DPO has the duty to return to RRA the excess P100 as trustee under Article 1456 of the Civil Code which provides: If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. There is, in this case, an implied or constructive trust in favor of RRA.

Solutio Indebiti (2012)

a) Siga-an granted a loan to Villanueva in the amount of ₱ 540, 000.00. Such agreement was not reduced to writing. Siga-an demanded interest which was paid by Villanueva in cash and checks. The total amount Villanueva paid accumulated to ₱ 1, 200, 000.00. Upon advice of her lawyer, Villanueva demanded for the return of the excess amount of ₱ 660, 000.00 which was ignored by Siga-an.

- 1) Is the payment of interest valid? Explain. (3%)

- 2) Is solution indebiti applicable? Explain. (2%)

SUGGESTED ANSWER:

1. No, Article 1956, Civil Code, provides that "no interest shall be due unless it has been expressly stipulated in writing."
2. Yes, solution indebiti is applicable because Villanueva overpaid by ₱660,000.00

representing interest payment which is not due. He can therefore, demand its return.

TORTS & DAMAGES

Damages; Moral & Exemplary (2009)

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

(A). If you were the judge, would you award all the claims of Nanette? Explain. (3%)

SUGGESTED ANSWER:

If Rodolfo's marriage could not have been possibly known to Nanette or there is no gross negligence on the part of Nanette, Rodolfo could be held liable for moral damages. If there is gross negligence in a suit for quasi-delict, exemplary could be awarded.

Damages arising from Death of Unborn Child (2003)

If a pregnant woman passenger of a bus were to suffer an abortion following a vehicular accident due to the gross negligence of the bus driver, may she and her husband claim damages from the bus company for the death of their unborn child? Explain. 5%

SUGGESTED ANSWER:

No, the spouses cannot recover actual damages in the form of indemnity for the loss of life of the unborn child. This is because the unborn child is not yet considered a person and the law allows indemnity only for loss of life of person. The mother, however may recover damages for the bodily injury she suffered from the loss of the fetus which is considered part of her internal organ. The parents may also recover damages for injuries that are inflicted directly upon them, e.g., moral damages for mental anguish that attended the loss of the unborn child. Since there is gross negligence, exemplary damages can also be recovered. (**Hydro Resource vs. CA . 204 SCRA 309**).

Defense; Due Diligence in Selection (2003)

As a result of a collision between the taxicab owned by A and another taxicab owned by B, X, a passenger of the first taxicab, was seriously injured. X later filed a criminal action against both drivers. May both taxicab owners raise the defense of due diligence in the selection and supervision of their drivers to be absolved from liability for damages to X? Reason. 5%

SUGGESTED ANSWER:

It depends. If the civil action is based on a quasi-delict the taxicab owners may raise the defense of diligence of a good father of a family in the selection and supervision of the driver; if the action against them is based on culpa contractual or civil liability arising from a crime, they cannot raise the defense.

Filing of Separate Civil Action; Need for Reservation (2003)

As a result of a collision between the taxicab owned by A and another taxicab owned by B, X, a passenger of the first taxicab, was seriously injured. X later filed a criminal action against both drivers. Is it necessary for X to reserve his right to institute a civil action for damages against both taxicab owners before he can file a civil action for damages against them? Why

SUGGESTED ANSWER:

It depends. If the separate civil action is to recover damages arising from the criminal act, reservation is necessary. If the civil action against the taxicab owners is based on culpa contractual, or on quasi-delict, there is no need for reservation.

ALTERNATIVE ANSWER:

No, such reservation is not necessary. Under Section 1 of Rule 111 of the 2000 Rules on Criminal Procedure, what is —deemed instituted with the criminal action is only the action to recover civil liability arising from the crime or ex delicto. All the other civil actions under Articles 32, 33, 34 and 2176 of the New Civil Code are no longer —deemed instituted, and may be filed separately and prosecuted independently even without any reservation in the criminal action (Section 3, Rule 111, Ibid). The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the New Civil Code

(**Casupanan v. Laroya GR No. 145391, August 26, 2002**).

Fortuitous Event; Mechanical Defects (2002)

A van owned by Orlando driven by Diego while negotiating a downhill slope of a city road, suddenly gained speed, obviously beyond the authorized limit in the area, and bumped a car in front of it, causing severed damage to the car and serious injuries to its passengers. Orlando was not in the car at the time of the incident. The car owner and the injured passengers sued Orlando and Diego for damages caused by Diego's negligence. In their defense, Diego claims that the downhill slope caused the van to gain speed and that, as he stepped on the brakes to check the acceleration, the brakes locked, causing the van to go even faster and eventually to hit the car in front of it. Orlando and Diego contend that the sudden malfunction of the van's brake system is a fortuitous event and that, therefore, they are exempt from any liability. Is this contention tenable? Explain. (2%)

SUGGESTED ANSWER:

No. Mechanical defects of a motor vehicle do not constitute fortuitous event, since the presence of such defects would have been readily detected by diligent maintenance check. The failure to maintain the vehicle in safe running condition constitutes negligence.

Liability; Airline Company; Non-Performance of an Obligation (2004)

DT and MT were prominent members of the frequent travelers' club of FX Airlines. In Hongkong, the couple were assigned seats in Business Class for which they

had bought tickets. On checking in, however, they were told they were upgraded by computer to First Class for the flight to Manila because the Business Section was overbooked. Both refused to transfer despite better seats, food, beverage and other services in First Class. They said they had guests in Business Class they should attend to. They felt humiliated, embarrassed and vexed, however, when the stewardess allegedly threatened to offload them if they did not avail of the upgrade. Thus they gave in, but during the transfer of luggage DT suffered pain in his arm and wrist. After arrival in Manila, they demanded an apology from FX's management as well as indemnity payment. When none was forthcoming, they sued the airline for a million pesos in damages. Is the airline liable for actual and moral damages? Why or why not?

Explain briefly. (5%)

SUGGESTED ANSWER:

FX Airlines committed breach of contract when it upgraded DT and MT, over their objections, to First Class because they had contracted for Business Class passage. However, although there is a breach of contract, DT and MT are entitled to actual damages only for such pecuniary losses suffered by them as a result of such breach. There seems to be no showing that they incurred such pecuniary loss. There is no showing that the pain in DT's arm and wrist resulted directly from the carrier's acts complained of. Hence, they are not entitled to actual damages. Moreover, DT could have avoided the alleged injury by requesting the airline staff to do the luggage transfer as a matter of duty on their part. There is also no basis to award moral damages for such breach of contract because the facts of the problem do not show bad faith or fraud on the part of the airline. (**Cathay Pacific v. Vazquez, 399 SCRA 207 [2003]**). However, they may recover moral damages if the cause of action is based on Article 21 of the Civil Code for the humiliation and embarrassment they felt when the stewardess threatened to offload them if they did not avail of the upgrade.

ALTERNATIVE ANSWER:

If it can be proved that DT's pain in his arm and wrist occasioned by the transfer of luggage was caused by fault or negligence on the part of the airline's stewardess, actual damages may be recovered. The airline may be liable for moral damages pursuant to Art. 2219 (10) if the cause of action is based on Article 21 or an act contrary to morals in view of the humiliation suffered by DT and MT when they were separated from their guests and were threatened to be offloaded.

Liability; Airline Company; Non-Performance of an Obligation (2005)

Dr. and Mrs. Almeda are prominent citizens of the country and are frequent travelers abroad. In 1996, they booked round-trip business class tickets for the Manila-Hong Kong-Manila route of the Pinoy Airlines, where they are holders of Gold Mabalos Class Frequent Flier cards. On their return flight, Pinoy Airlines upgraded their tickets to first class without their consent and, in spite of their protestations to be allowed to remain in the business class so that they could be with their

friends, they were told that the business class was already fully booked, and that they were given priority in upgrading because they are elite members/holders of Gold Mabalos Class cards. Since they were embarrassed at the discussions with the flight attendants, they were forced to take the flight at the first class section apart from their friends who were in the business class. Upon their return to Manila, they demanded a written apology from Pinoy Airlines. When it went unheeded, the couple sued Pinoy Airlines for breach of contract claiming moral and exemplary damages, as well as attorney's fees. Will the action prosper? Give reasons. (5%)

ALTERNATIVE ANSWER:

Yes, the action will prosper. Article 2201 of the Civil Code entitles the person to recover damages which may be attributed to non-performance of an obligation. In **Alitalia Airways v. Court of Appeals (G.R. No. 77011, July 24, 1990)**, when an airline issues ticket to a passenger confirmed on a particular flight, a contract of carriage arises and the passenger expects that he would fly on that day. When the airline deliberately overbooked, it took the risk of having to deprive some passengers of their seat in case all of them would show up. For the indignity and inconvenience of being refused the confirmed seat, said passenger is entitled to moral damages. In the given problem, spouses Almeda had a booked roundtrip business class ticket with Pinoy Airlines. When their tickets were upgraded to first class without their consent, Pinoy Airlines breached the contract. As ruled in **Zulueta v. Pan American (G.R. No. L-28589, January 8, 1973)**, in case of overbooking, airline is in bad faith. Therefore, spouses Almeda are entitled to damages.

ALTERNATIVE ANSWER:

The action may or may not prosper. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Although incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. Moral damages predicated upon a breach of contract of carriage are recoverable only in instances where the carrier is guilty of fraud or bad faith or where the mishap resulted in the death of a passenger. (**Cathay Pacific Airways, Ltd. v. Court of Appeals, G.R. No. 60501, March 5, 1993**) Where there is no showing that the airline acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the contract of carriage which the parties had foreseen or could have reasonably foreseen. In such a case the liability does not include moral and exemplary damages. In the instant case, if the involuntary upgrading of the Almedas' seat accommodation was not attended by fraud or bad faith, the award of moral damages has no leg to stand on. Thus, spouses would not also be entitled to exemplary damages. It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in wanton,

fraudulent or malevolent manner. (**Morris v. Court of Appeals, G.R. No. 127957, February 21, 2001**)

Moreover, to be entitled thereto, the claimant must first establish his right to moral, temperate, or compensatory damages. (Art. 2234, Civil Code) Since the Almedas are not entitled to any of these damages, the award for exemplary damages has no legal basis. Where the awards for moral and exemplary damages are eliminated, so must the award for attorney's fees be eliminated. (**Orosa v. Court of Appeals, G.R. No. 111080, April 5, 2000; Morris v. Court of Appeals, G.R. No. 127957, February 21, 2001**) The most that can be adjudged in their favor for Pinoy Airlines' breach of contract is an award for nominal damages under Article 2221 of the Civil Code. (**Cathay Pacific Airways v. Sps. Daniel & Maria Luisa Vasquez, G.R. No. 150843, March 14, 2003**)

However, if spouses Almeda could prove that there was bad faith on the part of Pinoy Airlines when it breached the contract of carriage, it could be liable for moral, exemplary as well as attorney's fees.

Liability; Owner who was in the vehicle (2002)

Does the presence of the owner inside the vehicle causing damage to a third party affect his liability for his driver's negligence? Explain. (2%)

SUGGESTED ANSWER:

In motor vehicle mishaps, the owner is made solidarily liable with his driver if he (the owner) was in the vehicle and could have, by the use of due diligence, prevented the mishap. (**Caedo v. Yu Khe Thai, 26 SCRA 410 [1968]**).

Liability; School, School Administrators, Teachers (2010)

On May 5, 1989, 16-year old Rozanno, who was issued a student permit, drove to school a car, a gift from his parents. On even date, as his class was scheduled to go on a field trip, his teacher requested him to accommodate in his car, as he did, four (4) of his classmates because the van rented by the school was too crowded. On the way to a museum which the students were scheduled to visit, Rozanno made a wrong maneuver, causing a collision with a jeepney. One of his classmates died. He and the three (3) others were badly injured.

a. Who is liable for the death of Rozanno's classmate and the injuries suffered by Rozanno and his 3 other classmates? Explain. (2%)

SUGGESTED ANSWER:

At the time the incident occurred in May 1989, Rozanno was still a minor. Being a minor, Article 218 of the Family Code applies. Pursuant to Article 218, the school, its administrators and teachers shall be liable for the acts of the minor Rozanno because of the special parental authority and responsibility that they exercise over him. This authority applies to all authorized activities whether inside or outside the premises of the school, entity or institution. The field trip, on which

occasion Rozanno drove the car, was an authorized activity, and, thus, covered by the provision. Furthermore, the parents of Rozanno are subsidiarily liable pursuant to Article 219 (FC), and principally liable under Article 221 (FC) if they were negligent.

b. How about the damage to the jeepney? Explain. (2%)

SUGGESTED ANSWER:

With respect to the damages cause to the jeepney, only Rozanno should be held liable because his negligence or tortuous act was the sole, proximate, and immediate cause thereof.

c. Under the same facts, except the date of occurrence of the incident, this time in mid-1994, what would be your answer? Explain. (2%)

SUGGESTED ANSWER:

Since Rozanno was 16 years old in 1989, if the incident happened sometime in the middle of 1994, Rozanno would have been 21 years old at that time. Hence, he was already of legal age. The law reducing the age of majority to 18 years took effect in December 1989.

Being of legal age, Articles 218, 219 and 221 of the Family Code are no longer applicable. In such case, only consequences of his act unless the school or his parents were themselves also negligent and such negligence contributed to the happening of the incident. In that event, the school or his parents are not liable under Article 218, 219 or 221 of the Family Code, but will be liable under the general provisions of the Civil Code on quasi-delict.

Liability of Possessor of Animal (2010)

Primo owns a pet iguana which he keeps in a man-made pond enclosed by a fence situated in his residential lot. A typhoon knocked down the fence of the pond and the iguana crawled out of the gate of Primo's residence. N, a neighbor who was passing by, started throwing stones at the iguana, drawing the iguana to move toward him. N panicked and ran but tripped on something and suffered a broken leg. Is anyone liable for N's injuries? Explain. (4%)

SUGGESTED ANSWER:

No one is liable. The possessor of an animal or whoever may make use of the same is responsible for the damage which it may cause, although it may escape or be lost. This responsibility shall cease only in case the damage should come from force majeure or from the fault of the person who has suffered damage (Art. 2183, NCC).

Moral Damages & Atty Fees (2002)

Ortillo contracts Fabricato, Inc. to supply and install tile materials in a building he is donating to his province. Ortillo pays 50% of the contract price as per agreement. It is also agreed that the balance would be payable periodically after every 10% performance until completed. After performing about 93% of the contract, for which it has been paid an additional 40% as per agreement, Fabricato, Inc. did not complete the project

due to its sudden cessation of operations. Instead, Fabricato, Inc. demands payment of the last 10% of the contract despite its non-completion of the project. Ortillo refuses to pay, invoking the stipulation that payment of the last amount 10% shall be upon completion. Fabricato, Inc. brings suit for the entire 10%. Plus damages, Ortillo counters with claims for (a) moral damages for Fabricato, Inc.'s unfounded suit which has damaged his reputation as a philanthropist and respect businessman in his community, and (b) attorney's fees.

A. Does Ortillo have a legal basis for his claim for moral damages? (2%)

B. How about his claim for attorney's fees, having hired a lawyer to defend him? (3%)

SUGGESTED ANSWER:

A. There is no legal basis to Ortillo's claim for moral damages. It does not fall under the coverage of Article 2219 of the New Civil Code.

B. Ortillo is entitled to attorney's fees because Fabricato's complaint is a case of malicious prosecution or a clearly unfounded civil action. (Art. 2208 [4] and [11], NCC).

Moral Damages; Non-Recovery Thereof (2006)

Under Article 2219 of the Civil Code, moral damages may be recovered in the cases specified therein several of which are enumerated below. Choose the case wherein you cannot recover moral damages. Explain. (2.5%)

- a) A criminal offense resulting in physical injuries
- b) Quasi-delicts causing physical injuries
- c) Immorality or dishonesty
- d) Illegal search
- e) Malicious prosecution

SUGGESTED ANSWER:

Immorality and dishonesty, per se, are not among those cases enumerated in Article 2219 which can be the basis of an action for moral damages. The law specifically mentions adultery or concubinage, etc. but not any and every immoral act.

Death Indemnity (2009)

Rommel's private car, while being driven by the regular family driver, Amado, hits a pedestrian causing the latter's death. Rommel is not in the car when the incident happened.

(A). Is Rommel liable for damages to the heirs of the deceased? Explain. (2%)

SUGGESTED ANSWER:

Yes, Rommel may be held liable for damages if he fails to prove that he exercised the diligence of a good father of a family (Art. 2180, par 5, NCC) in selecting and supervising his family driver. The owner is presumed liable unless he proves the defense of diligence. If the driver was performing his assigned task when the accident happened, Rommel shall be solidarily liable with the driver.

In case the driver is convicted of reckless imprudence and cannot pay the civil liability, Rommel is subsidiarily liable for the damage awarded against the driver and the

defense of diligence is not available.

(B). Would your answer be the same if Rommel was in the car at the time of the accident? Explain. (2%)

SUGGESTED ANSWER:

Yes, my answer would be the same. Rommel, who was in the car, shall be liable for damages if he could have prevented the misfortune by the use of due diligence in supervising his driver but failed to exercise it (Art. 2184, NCC). In such case, his liability is solidary with his driver.

ALTERNATIVE ANSWER:

Yes, my answer will be the same except that in such case the liability of the owner is not presumed. When the owner is inside the vehicle, he becomes liable only when it is shown that he could have prevented the misfortune by the use of due diligence (Art. 2184, NCC). For the owner to be held liable, the burden of proving that he could have prevented the misfortune rests on the shoulder of the victim.

Quasi-Delict (2005)

Under the law on quasi-delict, aside from the persons who caused injury to persons, who else are liable under the following circumstances:

a) When a 7-year old boy injures his playmate while playing with his father's rifle. Explain. (2%)

SUGGESTED ANSWER:

The parents of the 7-year old boy who caused injury to his playmate are liable under Article 219 of the Family Code, in relation to Article 2180 of the Civil Code since they exercise parental authority over the person of the boy. (Tamargo v. Court of Appeals, G.R. No. 85044, June 3, 1992; Elcano v. Hill, G.R. No. L-24803, May 26, 1977)

b) When a domestic helper, while haggling for a lower price with a fish vendor in the course of buying foodstuffs for her employer's family, slaps the fish vendor, causing her to fall and sustain injuries. Explain. (2%)

SUGGESTED ANSWER:

Employer of the domestic helper who slapped a fish vendor. Under Article 2180, par. 5 of the Civil Code, "employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry."

c) A carpenter in a construction company accidentally hits the right foot of his co worker with a hammer. Explain. (2%)

SUGGESTED ANSWER:

The owner of the construction company. Article 2180, paragraph 4 states that "the owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions."

d) A 15-year old high school student stabs his classmate who is his rival for a girl while they were going out of the classroom after their last class. Explain. (2%)

SUGGESTED ANSWER:

The school, teacher and administrator as they exercise special parental authority. (Art. 2180, par. 7 in relation to Art. 218 and Art. 219 of the Family Code)

e) What defense, if any, is available to them? (2%)

SUGGESTED ANSWER:

The defense that might be available to them is the observance of a good father of the family to prevent the damage. (Last par., Art. 2180, Civil Code)

Quasi-Delict; Mismanagement of Depositor's Account (2006)

Tony bought a Ford Expedition from a car dealer in Muntinlupa City. As payment, Tony issued a check drawn against his current account with Premium Bank. Since he has a good reputation, the car dealer allowed him to immediately drive home the vehicle merely on his assurance that his check is sufficiently funded. When the car dealer deposited the check, it was dishonored on the ground of "Account Closed." After an investigation, it was found that an employee of the bank misplaced Tony's account ledger. Thus, the bank erroneously assumed that his account no longer exists. Later it turned out that Tony's account has more than sufficient funds to cover the check. The dealer however, immediately filed an action for recovery of possession of the vehicle against Tony for which he was terribly humiliated and embarrassed. Does Tony have a cause of action against Premium Bank? Explain. (5%)

SUGGESTED ANSWER:

Yes, Tony has a cause of action against Premium Bank under Art. 2176 of the NCC. The proximate cause of the injury which is the dishonor of Tony's check was the bank's negligence in misplacing his account ledger. The fiduciary nature of banking requires high standard of integrity and performance necessitating banks to treat the accounts of its depositors with meticulous care

Quasi-delict; Action for Damages (2013)

A collision occurred at an intersection involving a bicycle and a taxicab. Both the bicycle rider (a businessman then doing his morning exercise) and the taxi driver claimed that the other was at fault. Based on the police report, the bicycle crossed the intersection first but the taxicab, crossing at a fast clip from the bicycle's left, could not brake in time and hit the bicycle's rear wheel, toppling it and throwing the bicycle rider into the sidewalk 5 meters away.

The bicycle rider suffered a fractured right knee, sustained when he fell on his right side on the concrete side walk. He was hospitalized and was subsequently operated on, rendering him immobile for 3 weeks and requiring physical rehabilitation for another 3 months. In his complaint for damages, the rider prayed for the award of P1,000,000 actual damages, P200,000 moral

damages, P200,000 exemplary damages, P1 00,000 nominal damages and P50,000 attorney's fees.

Assuming the police report to be correct and as the lawyer for the bicycle rider, what evidence (documentary and testimonial) and legal arguments will you present in court to justify the damages that your client claims? (8%)

SUGGESTED ANSWER:

I will base the claim of my client on quasi-delict under Article 2176 of the Civil Code of the Philippines.

The requisites for a claim under quasi-delict to prosper are as follows:

1. Act or omission, there being fault and negligence;
2. Damage or injury; and
3. Causal connection between the damage and the act or omission.

The case clearly involves a quasi-delict where my client, the bicycle rider, suffered injury as a result of the negligence of the over-speeding taxi driver, without fault on my client's part.

To prove actual damages, aside from the testimony of my client, I will present his hospital and medical bills. Receipts of the fees paid on the rehabilitation will also be presented. [The sentence in red should be replaced with the following sentence because he is a business man and not an employee. Furthermore, I will present income tax returns, contracts and other documents to prove unrealized profits as a result of his temporary injury.] I will also call the attending physician to testify as to the extent of the injuries suffered by my client, and to corroborate the contents of the medical documents.

Based on Article 2202, in quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have been foreseen by the defendant.

Unlike actual damages, no proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. This assessment is left to the discretion of the court (Art. 2216, Civil Code). There must still be proof of pecuniary estimation, however.

Moral damages can be recovered by my client under Articles 2219 and 2200. Moral damages may be recovered in case of quasi-delict causing physical injuries. Additionally, it must be proved that such damages were the proximate result of the act complained of. Medical certificates will be presented, along with the testimony from my client and other eyewitness accounts, in order to support the award for moral damages.

Exemplary damages may be granted if the defendant acted in wanton, fraudulent, reckless, oppressive, or

malevolent manner. While the amount of exemplary damages need not be proved, the plaintiff must show that he is entitled to moral or compensatory damages. In support of this, I will present the police report showing the circumstances under which the accident took place, taking into account the actions of the parties. I will ask the officials who responded to the accident to testify as to the conduct of the parties at the time of the accident in order to determine whether defendant was guilty of gross negligence.

Finally, attorney's fees may be recovered when exemplary damages are awarded (Article 2208, Civil Code)

Vicarious Liability (2000)

Silvestre leased a car from Avis-Rent-A-Car Co. at the Mactan International Airport. No sooner had he driven the car outside the airport when, due to his negligence, he bumped an FX taxi owned and driven by Victor, causing damage to the latter in the amount of P100,000.00. Victor filed an action for damages against both Silvestre and Avis, based on quasi-delict. Avis filed a motion to dismiss the complaint against it on the ground of failure to state a cause of action. Resolve the motion. (3%)

SUGGESTED ANSWER:

The motion to dismiss should be granted, AVIS is not the employer of Silvestre; hence, there is no right of action against AVIS under Article 2180 of the Civil Code. Not being the employer, AVIS has no duty to supervise Silvestre. Neither has AVIS the duty to observe due diligence in the selection of its customers. Besides, it was given in the problem that the cause of the accident was the negligence of Silvestre.

ALTERNATIVE ANSWER:

The motion should be denied. Under the Public Service Law, the registered owner of a public utility is liable for the damages suffered by third persons through the use of such public utility. Hence, the cause of action is based in law, the Public Service Law.

Vicarious Liability (2001)

After working overtime up to midnight, Alberto, an executive of an insurance company drove a company vehicle to a favorite Videoke bar where he had some drinks and sang some songs with friends to "unwind". At 2:00 a.m., he drove home, but in doing so, he bumped a tricycle, resulting in the death of its driver. May the insurance company be held liable for the negligent act of Alberto? Why?

SUGGESTED ANSWER:

The insurance company is not liable because when the accident occurred, Alberto was not acting within the assigned tasks of his employment. It is true that under Art. 2180 (par. 5), employers are liable for damages caused by their employees who were acting within the scope of their assigned tasks. However, the mere fact that Alberto was using a service vehicle of the employer at the time of the injurious accident does not necessarily mean that he was operating the vehicle within the scope of his employment. In

Vicarious Liability (2002)

Explain the concept of vicarious liability in quasi-delicts. (1%)

SUGGESTED ANSWER:

It renders a person liable for the negligence of others for whose acts or omission the law makes him responsible on the theory that they are under his control and supervision.

Vicarious Liability (2004)

OJ was employed as professional driver of MM Transit bus owned by Mr. BT. In the course of his work, OJ hit a pedestrian who was seriously injured and later died in the hospital as a result of the accident. The victim's heirs sued the driver and the owner of the bus for damages. Is there a presumption in this case that Mr. BT, the owner, had been negligent? If so, is the presumption absolute or not? Explain. (5%)

SUGGESTED ANSWER:

Yes, there is a presumption of negligence on the part of the employer. However, such presumption is rebuttable. The liability of the employer shall cease when they prove that they observed the diligence of a good father of a family to prevent damage (Article 2180, Civil Code). When the employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that the employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family (**Metro Manila Transit v. CA, 223 SCRA 521 [1993]; Delsan Transport Lines v. C&T Construction, 412 SCRA 524 2003**). Likewise, if the driver is charged and convicted in a criminal case for criminal negligence, BT is subsidiarily liable for the damages arising from the criminal act.

Vicarious Liability (2006)

Arturo sold his Pajero to Benjamin for P1 Million. Benjamin took the vehicle but did not register the sale with the Land Transportation Office. He allowed his son Carlos, a minor who did not have a driver's license, to drive the car to buy pan de sal in a bakery. On the way, Carlos driving in a reckless manner, sideswiped Dennis, then riding a bicycle. As a result, he suffered serious physical injuries. Dennis filed a criminal complaint against Carlos for reckless imprudence resulting in serious physical injuries.

1. Can Dennis file an independent civil action against Carlos and his father Benjamin for damages based on quasi delict? Explain. (2,5%)

SUGGESTED ANSWER:

Yes, Dennis can file an independent civil action against Carlos and his father for damages based on quasi-delict there being an actor omission causing damage to another without contractual obligation. Under Section 1 of Rule 111 of the 2000 Rules on Criminal Procedure, what is deemed instituted with the criminal action is only the action to recover civil liability arising from the act or omission punished by law. An action based on quasi-delict is no longer deemed instituted and may be filed

separately [Section 3, Rule 111, Rules of Criminal Procedure].

2. Assuming Dennis' action is tenable, can Benjamin raise the defense that he is not liable because the vehicle is not registered in his name? Explain. (2.5%)

SUGGESTED ANSWER:

No, Benjamin cannot raise the defense that the vehicle is not registered in his name. His liability, vicarious in character, is based on Article 2180 because he is the father of a minor who caused damage due to negligence. While the suit will prosper against the registered owner, it is the actual owner of the private vehicle who is ultimately liable (**See Duavit v. CA, G.R. No. L-29759, May 18, 1989**). The purpose of car registration is to reduce difficulty in identifying the party liable in case of accidents (**Villanueva v. Domingo, G.R. No. 144274, September 14, 2004**).

Vicarious Liability (2015)

A driver of a bus owned by company Z ran over a boy who died instantly. A criminal case for reckless imprudence resulting in homicide was filed against the driver. He was convicted and was ordered to pay P2 Million in actual and moral damages to the parents of the boy who was an honor student and had a bright future. Without even trying to find out if the driver had assets or means to pay the award of damages, the parents of the boy filed a civil action against the bus company to make it directly liable for the damages.

a) Will their action prosper? (4%)

SUGGESTED ANSWER:

a. Yes, the action will prosper. The cause of the action against the company is different from the cause of action against the driver in the criminal case. The civil action against the employer is rooted in the fact that employers are vicariously liable for the damage caused by their employees while in the performance of their functions. The vicarious liability of the employers under Art 2180 of the Civil Code does not require as a condition sine qua non that the driver should have been declared insolvent or unable to pay the awards of damages. The cause of action against the driver, on the other hand, is rooted in Art. 2176, which defines a quasi-delict. Moreover, if negligence was proven in the criminal case which requires proof beyond reasonable doubt, then it can likewise be proven in a civil action which requires only preponderance of evidence.

b) If the parents of the boy do not wish to file a separate civil action against the bus company, can they still make the bus company liable if the driver cannot pay the award for damages? If so, what is the nature of the employer's liability and how may civil damages be satisfied? (3%)

SUGGESTED ANSWER:

b. Yes. The employer may still be held subsidiary liable under Art. 103 of the Revised Penal Code. In order that an employer may be held subsidiary liable for the employee's civil liability in the criminal action, it should

be shown (1) that the employer is engaged in any kind of industry, (2) that the employee committed the offense in the discharge of his duties and (3) that he is insolvent. The subsidiary liability of the employer, however, arises only after conviction of the employee in the criminal action. If all these requisites are present, the employer becomes ipso facto subsidiarily liable upon the employee's conviction and upon the proof of the employee's insolvency, as ruled in *Carpio v. Doroja*, (1989). For these requisites to be established adequately, however, there must be a hearing which will determine the sufficiency or the insufficiency of the properties of the employee to compensate the plaintiffs, as well as to allow the employer to present his defense.

Doctrine of Discovered Peril (Last Clear Chance) (2007)

Explain the following concepts and doctrines and give an example of each:

(B). doctrine of discovered peril (last clear chance) (5%)

SUGGESTED ANSWER:

The doctrine of last clear chance states that where the plaintiff was guilty of prior or antecedent negligence, but the defendant, who had the ultimate opportunity to avoid the impending harm failed to do so, it is the defendant who is liable for all the consequences of the accident notwithstanding the prior negligence of the plaintiff. An example is where a person was riding a pony on a bridge and improperly pulled the pony to the wrong side when he saw a car coming. The driver of the car did not stop or change direction, and nearly hit the horse, and, the frightened animal jumped to its death. The driver of the car is guilty of negligence because he had a fair opportunity to avoid the accident and failed to avail himself of that opportunity. He is liable under the doctrine of last clear chance (*Picart v. Smith*, 37 Phil. 809, 1918).

Quasi-tort (2010)

b. Define quasi tort. Who are the persons liable under quasi torts and what are the defenses available to them?

Note:

It is recommended that the examiner exercise leniency and liberality in grading the answers given to this question. The term quasi-tort is not a part of legal developments in civil law. In Philippine legal tradition, quasi-delict has been treated as the closest civil law equivalent of the common law tort. In fact, in a number of Supreme Court decisions, the two terms have been considered as synonymous. In reality, however, the common law tort is much broader in scope than the civil law quasi-delict.

In recent developments in common law, the concept of quasi-torts can be considered as the closest common law equivalent of the civil law concept of quasi-delict. This is because it is argued that the growing recognition of quasi-torts as a source of obligation is hinged on the

acceptance at common law of the civil law principles of quasi-delict.

FIRST SUGGESTED ANSWER:

Quasi-tort is a legal concept upholding the doctrine that some legal duty exists that cannot be classified strictly as a personal duty (that is, resulting in a tort), nor as a contractual duty (thus resulting in a breach of contract) but rather some other kind of duty recognizable by the law. "Tort" or "Quasi-Tort" is an Anglo American or Common Law concept, while "Delict" or "Quasi-Delict" is a Civil Law concept. (Wikipedea Encyclopedia).

SECOND SUGGESTED ANSWER:

Quasi-tort is considered as the equivalent of quasi-delict. Hence, the rules of the latter pertaining to persons who can be held liable and their defenses would also apply.

Those liable for quasi-delict include:

1. The tortfeasor or the person causing damage to another through fault or negligence (Article 2176 NCC); and

2. Persons vicariously liable under Article 2180 (NCC).

The defenses available include:

a. That the defendant was not negligent or that he exercised due diligence (Art. 2176 NCC).

b. That although the defendant is negligent, his negligence is not the proximate cause of the injury (Art. 2179 NCC)

c. That the plaintiff's own negligence was the immediate and proximate cause of his injury (Art. 2179 NCC).

d. That the person vicariously liable has observed all the diligence of a good father of a family to prevent damage (2180 NCC).

e. That the cause of action has prescribed after the lapse of 4 years (Article 1146 NCC).

The fact that the plaintiff had committed contributory negligence is a partial defense (Article 2179 NCC)

