

- VII. (a) What do you know about the so-called impossible crimes? Do the perpetrators thereof incur any criminal liability under the provisions of the Revised Penal Code? Why?
- (b) In the affirmative case, give an example of a felonious act punished by the Penal Code that turns out to be an impossible crime. In the negative case, explain briefly why the perpetrator of a so-called impossible crime does not incur any criminal liability.

VIII. In January, 1959, Romeo was prosecuted and convicted in the Court of First Instance of Manila of 3 crimes of theft for which he was sentenced by reason of the value of the properties stolen to the following penalties of *prison correccional*: P6,200 fine to 3 years, 6 months and 20 days; P1,000 and P500 fine to 1 year, 8 months and 21 days in each case. Romeo immediately commenced to serve these penalties in Muntinglupa. In 1960, while serving sentence, he escaped therefrom and went to Lingayen, Pangasinan, where he also committed 10 crimes of *estafa*, each in the sum of P1,000, for all which crimes, he again was prosecuted and convicted after hearing in May, 1961. Under these circumstances, can the penalties imposed to Romeo, for the crimes committed before his escape from Muntinglupa, affect the imposition and service of the penalties for which he was sentenced for the second group of crimes under the threefold-length-of-time rule prescribed in Article 70, last paragraph, of the Revised Penal Code, as amended by Commonwealth Act 217, section 2?

- IX. X-newspaper of general circulation in the Philippines, published in its issue of August 1, 1962, a libelous article accusing A, B and C of having acted in confederation to smuggle as they did smuggle into the Philippines, several items of merchandise worth P1,000,000. A resides in Manila; B in Quezon City; and C in Polo, Bulacan. Under these facts, may the criminal liability of the author of that libel be divided into 3 distinct and separate offenses so that said author might be prosecuted and convicted of 3 crimes of libel? Explain your answer.
- X. (a) A, B, C and D, without any right whatsoever squatted on a piece of land in the City of Manila, the property of Z. Inasmuch as ejectment proceedings would take quite a very long time to produce results, if ever successful, can the Fiscal of Manila, upon complaint of Z, charge A, B, C and D with the crime of coercion or unjust vexation which, though light felonies, covered by Article 287, last paragraph, of the Revised Penal Code, would, upon conviction of the culprits, bring about their immediate ejection from the premises? Express your opinion giving your reasons therefor.
- (b) Rogelio was prosecuted for murder. After hearing, he was found guilty of the crime charged attended by the mitigating circumstance of the offender having voluntarily surrendered himself to a person in authority or his agents. He was, therefore, sentenced, among others, to the principal penalty provided for murder in its minimum degree, that is, to 17 years, 4 months and 1 day of *reclusion temporal*. May the provisions of Acts 4103 and 4225, known as the indeterminate sentence law be applied in this case? Explain your answer.

#### REMEDIAL LAW

TO THE EXAMINEE: Where you are given a problem, first give your answer and then your reasoning.

- I. *Antonio* was run over by a jeepney driven by *Cirilo* but owned by *Baldomero* and he suffered serious physical injuries as a result; in due time, *Antonio* filed a civil action for damages against *Baldomero* in the Justice of the Peace

Court and immediately secured a writ of attachment upon *Baldomero's* properties which was levied upon a parcel of unregistered land owned by *Baldomero*; trial was held and *Antonio* won in the Justice of the Peace but *Baldomero* appealed.

- (a) If pending trial in the Court of First Instance, *Antonio* died whereupon, *Baldomero* moved to dismiss but *Antonio's heirs* oppose the motion, how would you rule on the motion?
- (b) If pending trial in the Court of First Instance, it was *Baldomero* who died and his heirs therefore move to dismiss but *Antonio* opposes the motion, how would you rule on said motion?

II. *Dionisio* filed an action against *Eriberto* but when the Sheriff came to *Eriberto's* house, to serve summons, it happened that *Eriberto* was away having gone to Mindanao on business and the Sheriff only reached *Eriberto's* wife who received the summons for him; now *Eriberto* did not return any more because he died in Mindanao, 1 day before service of summons upon his wife here in Luzon but news of his death came to his wife much later and *Dionisio* was able to secure a default judgment in the action and after that a writ of execution, but when this was about to be levied upon *Eriberto's* properties, his wife having already learned of *Eriberto's* death, consulted an attorney who filed a motion to annul the execution and the default judgment, but because one year had already passed since the entry of the judgment when the wife came to know of *Eriberto's* death so that the motion was filed more than one year after the entry of said judgment, therefore, *Dionisio* opposed the motion alleging it was too late, because according to him, lack of jurisdiction over the person of *Eriberto* should have been availed of under Rule 8 and the period for this had already passed; in any case, the period prescribed in Rule 38 on relief from judgment had also already passed. How do you decide?

III. *Felix* leased his house to *Gregorio*; *Gregorio* failed to pay the rentals due; *Felix* sent him a letter of demand and a threat to sue him on unlawful detainer should he not make payment within 10 days from notice; *Gregorio* received the letter but did not pay nor vacate; instead, *Gregorio* filed an action against *Felix* in the Court of First Instance for specific performance, alleging that the rental agreed upon was much lower than that demanded and that he, *Gregorio*, was willing to pay the correct amount and therefore, he deposited the amount in the Court of First Instance and asked that *Felix* be ordered to receive them and to permit him, *Gregorio*, to continue in possession as lessee. *Felix* having received summons, he filed an answer alleging that the rental he had demanded was the correct one. The case was tried in the Court of First Instance and decision was rendered for *Felix*, dismissing the case. After judgment had become final, *Felix* presented his own action, for unlawful detainer, against *Gregorio*, but *Gregorio*, upon receipt of the summons in this case, now filed a motion to dismiss on the ground that this was a suit on exactly the same cause of action between them and that since *Felix* forgot to secure the correct remedy in the first case by filing his necessary counterclaim for unlawful detainer, the judgment in the first case already barred him from instituting the second action. Decide the motion.

IV. *Juan* sues *Leon* on a sum of money for breach of contract; but before trial, *Juan* goes to *Tokyo* on business; he is there when his attorney receives notice of trial; therefore the attorney at once serves notice upon *Leon's* attorney in Manila for the taking of *Juan's* deposition before the Philippine consul in *Tokyo* upon oral examination, on a definite time and place, before the scheduled trial in Manila; *Leon's*

attorney consulted with Leon but as they did not have any money to make the journey to Tokyo, they did not go there besides the fact which they noted that the taking of the deposition was not at all authorized by the trial Court in Manila for Juan's attorney also forgot to secure that authority thru a motion; therefore, after the deposition had been taken in Tokyo and trial came to be held in Manila, Leon's attorney objected to its admission for said lack of previous authorization from the trial court. How do you decide the question?

- V. (a) What difference is there between manner of service of summons and that of *subpoena* and what is the reason for the difference?  
(b) What do you mean by an order *nunc pro tunc*? What rule, if any, authorizes its issuance?  
(c) Distinguish, if there is any distinction, between a restraint order and a preliminary injunction.

VI. An American sailor having arrived at the port of Manila, goes on shore leave; he is seen by a taxi dancer at a night club and she entices him to go with her to a pleasure house and while there, the taxi dancer robs him of his money; the sailor complains to the police who arrest the dancer and Fiscal charges her in the Municipal Court and she is there convicted but she appeals to the Court of First Instance but pending appeal, the American sailor leaves for America so that when trial was called in the Court of First Instance, he was no longer available; therefore, the Fiscal sought the presentation of the notes taken by the Municipal Judge during the trial of the case as secondary proof of the testimony of the sailor; these notes were attached to the record and the Municipal Judge could be called to identify them; the Fiscal contended that they could be admitted because there were no stenographic notes since the Municipal Court is not a Court of record. Defense however contends that the procedure was wrong and the evidence incompetent. How would you decide the question of the admissibility of said notes of the Municipal Judge?

VII. Conrado loaned money to Dionisio who executed a deed of real estate mortgage unto Conrado and the mortgage was duly registered, but when the loan fell due, and notwithstanding the demands of Conrado, the loan was not paid; therefore, Conrado sent a final letter of demand unto Dionisio informing him that should he not still pay, Conrado would file action to collect; upon receipt of that letter, Dionisio in turn filed an action to annul the mortgage on the ground of lack of consideration.

(a) If, in such a situation, Conrado filed an answer to the complaint for annulment, setting forth his defenses and then pending the case, he instituted an independent action for foreclosure of the mortgage, but Dionisio moved to dismiss it on the ground of pending action, how would you rule in the motion to dismiss?

(b) If Conrado did not file the independent action for foreclosure but just presented his answer with defenses in the complaint for annulment and the case was decided in his favor, declaring the mortgage valid, and after the judgment had become final, it was then when Conrado filed his complaint for foreclosure but Dionisio met it with a motion to dismiss on the ground of bar by former judgment contending that Conrado had in his favor an alternative cause and failed to avail of the right to foreclose by filing it as a counterclaim in the action to annul, how would you decide Dionisio's motion to dismiss?

VIII. Nestor brought an action to foreclose a mortgage on a parcel of land against Olimpio; the latter upon receipt of the summons realized that the document was a forgery; therefore, he went to the Fiscal and complained to him, and the Fiscal instituted after investigation, a criminal charge for

falsification against Nestor but the contention of Nestor was that the civil case was a prejudicial question and should first be tried and the Court sustained him; and the final judgment in the foreclosure suit was that the document was forged as contended by Olimpio; whereupon, the Fiscal moved to hear the criminal case, but unfortunately, Olimpio died in the meantime, and so the Fiscal sought to present his testimony in the civil case in which he testified that the signature in the deed was a forgery, and also the decision in the civil case upholding the contention of Olimpio that it was indeed a forgery, but the defense of Nestor objects to the competency of both proofs contending that they were incompetent, besides being irrelevant in the criminal case. How do you decide?

IX. In a criminal action for serious physical injuries thru reckless imprudence, the defendant chauffeur was convicted and sentenced to pay damages to the injured party; the latter secured execution against the chauffeur but he turned out to be insolvent according to the sheriff's return; whereupon, the offended party filed a civil action for subsidiary civil liability against the employer of the chauffeur which was a public service transportation company and in the trial of the civil case, attorney of plaintiff presented the same sheriff's return to prove the insolvency of the chauffeur without calling the sheriff himself to testify on how he came to find out that the chauffeur was insolvent; therefore, attorney for defendant transportation company objected to the admission of the return calling the attention of the Court that the sheriff was present and could be called and cross-examined and the return was therefore clearly hearsay and deprived him of the chance to cross examine. How do you decide on the admissibility of the return?

- X. (a) Is there any difference or there is none between "public document" and "official entry"? Explain your answer.  
(b) When do the Rules permit and when do they not permit, proof of bad character by particular wrongful acts? Give the reason for the Rules.

#### LEGAL ETHICS AND PRACTICAL EXERCISES

- I. (a) What are the duties of an attorney?  
(b) According to the Supreme Court, what are the circumstances to be considered in determining the compensation of an attorney?
- II. According to the Canons of Legal Ethics:  
(a) How far may a lawyer go in supporting a client's cause?  
(b) What is the lawyer's duty in its last analysis?
- III. Acting upon a complaint filed by three leading bar associations to the effect that evil practices, more specifically, "ambulance chasing" or personal injuries or damage suits, seemed to be spreading to demoralizing extent, with the consequence that the poor were oppressed and the ignorant taken advantage of, retainers often on extravagant terms solicited and paid for, a practice not limited to lawyers for claimants but likewise availed of by lawyers for defendants and with the added result that the calendars became congested and clogged, the Supreme Court designated the Solicitor General to conduct an investigation of such practices described in the petition and any other practice obstructive or harmful to the administration of justice, with instruction to make a report and recommendation within ninety days. One of the witnesses cited was a lawyer, X, a member of the Bar for more than twenty years, who was asked among others, who were his law office associates and employees, whether he had been paying police officials and hospital personnel for referring cases to him. He was also asked to produce all his records of litigations for damage suits and to explain if some of those records were missing. Law-

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