

# 1963 BAR EXAMINATION QUESTIONS

(Continuation)

## REMEDIAL LAW

### I.

- (a) State the rule on splitting a cause of action, and the effect on the respective rights of the parties for failure to comply with the same.
- (b) May different causes of action be joined or alleged in a complaint? In the affirmative, what should be the basis for determining the jurisdiction of the court as to the amount of the demand?

### II.

- (a) What actions do not survive the defendant? In case the defendant dies before final judgment is rendered by the Court of First Instance in an action that does not survive, what must be done with such action, and where must the claim sought to be enforced by the action be prosecuted or presented?
- (b) When may the deposition of any person, whether a party or not, be taken without leave of court, and when must such leave be first obtained? If the party upon whom notice of the taking of his deposition is served be not agreeable to the time scheduled or fixed in the notice, what step or steps should be taken by him to protect his interests?

### III.

- (a) What property sold upon execution may be redeemed, who may redeem it, and within what time must the redemption from the purchaser be made by the judgment debtor or his successors in interest, or by the redemptioner?
- (b) May the Court of First Instance, instead of dismissing a case tried by an inferior court without jurisdiction over the subject-matter, and appealed to it, proceed with the trial thereof in the exercise of its original jurisdiction? In the affirmative, state in what instances may the court exercise such original jurisdiction and what step should the party concerned take to prevent the court from legally exercising it.

### IV.

- (a) May a defendant who has been declared in default appeal from the judgment taken against him by default? What remedy or remedies are available to said defendant for the protection of his interests?
- (b) State how and within what time may a party appeal to the Supreme Court from a judgment of the Court of Appeals. What question or questions may the parties raise in the appellate court, and when must the Court of Appeals be made a party to the action?

### V.

- (a) "A", an alien who arrived at the City of Manila from Hongkong, asked that he be allowed to land as an American citizen. After hearing, the board of special inquiry found "A's" claim unfounded and denied his petition. The decision was affirmed by the Commissioner of Immigration. After said denial, "A" filed in the Court of First Instance of the city a petition for a writ of habeas corpus alleging that the decision of the board of special inquiry, affirmed by the Commissioner, was erroneous, and that for that reason he claimed that he was illegally detained. After due hearing, the court denied "A's" petition. Two days after the attorney of "A" had been served with notice of the order of denial of his petition, he filed a motion for reconsideration of the order. This motion was likewise denied by the court. Upon receipt of the order of denial of his motion for reconsideration, "A" appealed to the Supreme Court from the judgment of the Court of First Instance denying his petition for a writ of habeas corpus. The So-

licitor-General moved that "A's" appeal be dismissed, on the ground that it was not taken within the period prescribed by the Rules of Court. Is the position of the Solicitor-General well-taken? Reason out your answer.

- (b) State what is sought to be secured or obtained by a petition for a writ of certiorari, prohibition, mandamus and *que warrant*, and against whom and upon what showing may the writ issue in each?

### VI.

- (a) On what grounds may the last will and testament of a person be disallowed?
- (b) Who may intervene in the proceedings for the probate of a will? May a person, who has a contingent interest in the will, be allowed to intervene in the proceedings for the probate of said will?

### VII.

- (a) In what place or places should criminal actions be instituted and tried? Where may the crime of piracy be prosecuted?
- (b) In what instances may the offended party intervene personally or by counsel in the prosecution of an offense? State the reason for the rule, and the limitations on the offended party's right to intervene.

### VIII.

- (a) Is the right of the defendant to be present at every stage of the proceeding waivable? In the affirmative, state in what instances may said right be waived, and when it may not be waived?
- (b) Under what conditions or when may the accused in a criminal case invoke double jeopardy?

### IX.

- (a) When and on what grounds may one of several defendants in a criminal case be discharged to be a witness for the prosecution, and what is the effect of such discharge?
- (b) "A" and "B" were charged in an information filed in the Court of First Instance with the crime of murder. Before arraignment, "A" was, on motion of the prosecution, discharged to be a witness for the government. Subsequently, the fiscal filed in the case an amended information in which he included "A" as defendant together with "B", "C" and "D", charging them with the same crime. Counsel for defendant "A" moved to quash the information in so far as said defendant is concerned, on the ground that the latter previously had been acquitted of the crime charged. The fiscal objected to the motion, contending that "A" was not entitled to the benefits of his previous discharge, because when the prosecution discovered that he, among his co-defendants, was the most guilty of the crime charged, it no longer availed itself of his testimony. If you were the trial Judge, how would you decide the incident? State the reasons on which you would ground your opinion or judgment.

### X.

- (a) When may a witness be allowed in the course of his testimony to read a memorandum? What rights, if any, over said memorandum are reserved to the adverse party?
- (b) By what evidence may a witness be impeached by the party against whom he was called? May said witness be impeached by evidence of particular wrongful acts committed by him?
- (c) Before a witness may be impeached by evidence of inconsistent statements previously made by him, what must be done by the party impeaching his testimony? How is the process called?