

# 1954 BAR EXAMINATION QUESTIONS

## CRIMINAL LAW

I. State briefly what is the fundamental principle on which the right of the State to punish or impose coercive measures upon criminal offenders is based.

II. Mention 2 circumstances of each of the following classification: (a) justifying; (b) exempting; (c) mitigating; (d) aggravating; and (e) alternative.

III. What are the exceptions to the allowance of one-half of the period of preventive imprisonment undergone by criminal offenders?

IV. In what cases the execution of the death penalty must be suspended?

V. (a) What are the only crimes punished under the Revised Penal Code for which the Court, in addition to the penalty attached by the code, may sentence or require the offender to give bond for good behavior? (b) If the culprit fails to give such bond, shall he be **DETAINED** for a period not exceeding 6 months in cases of grave or less grave felonies, or not exceeding 30 days if for a light felony, as provided in Art. 35 of the RPC, or shall he be **SENTENCED** to *destierro* (banishment), as provided in Art. 284 of the same code? What is the reason of your answer?

VI. Sam was prosecuted and found guilty of the crime of malicious mischief under Art. 329, No. 3, of the RPC as amended by Act No. 8999 of the Legislature and sentence to pay a fine of ₱200, value of the damage caused, and to indemnify William, the offended party, in the sum of ₱200, or to suffer the corresponding subsidiary imprisonment in case of insolvency, plus the costs. Sam has money to satisfy both amounts, but he is stubbornly unwilling to pay them and prefer to serve the subsidiary imprisonment. (a) Has Sam the right to choose between the payment of said amounts and the service of the subsidiary imprisonment? (b) Does not such subsidiary imprisonment amount to imprisonment for debt and is, therefore, unconstitutional? Reason out both answers.

VII. At the corner of Rizal Avenue and Zurbaran street, Manila, Peter and Paul stopped Alex and at the point of their respective revolvers the former ordered the latter to deliver to them his wallet containing ₱500 in paper money. Alex handed them the wallet and then the robbers went away in the direction of two detectives who saw the misdeed from a distance and arrested the pair and seized from them the wallet and the money as well as the two revolvers for the possession of which Peter and Paul had no license. The crime committed by these two malefactors is frustrated or consummated robbery? (b) Could they be accused and convicted of a complex crime of robbery through unlawful possession of unlicensed firearms in accordance with the provisions of Art. 48 of the RPC as amended by Act No. 4000 of the Philippine Legislature? State briefly the reasons of your answers to these two questions.

VIII. (a) State the difference between the crimes of **BRI-GANDAGE** and **ROBBERY IN BAND**. (b) What arms or weapons the malefactors must carry to be considered as armed men?

IX. John asked James to exchange him a check for the sum of ₱1,000, and upon receiving this amount from the latter, John, with deliberate intent to defraud and for the purpose of causing the Philippine National Bank, against which it was drawn, to dishonor the check, executed the same by writing his signature very differently from that registered in the Bank. John had funds to meet the check when James presented it for collection, but, as it was expected, the Bank refused payment because the signature of the drawer was not his registered signature and John declined to issue another good check or to return the money he received from James. Has John committed the crime of "estafa"? State briefly your opinion and the reasons on which it is based.

X. Blackmailing for the purpose of extorting money from

the party threatened constitutes what offense? Under what classification of crimes does it fall in the Revised Penal Code?

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## POLITICAL LAW

I. State briefly the procedure to amend the Philippine Constitution until the proposed amendment becomes a part of the Constitution.

II. The State may not be sued without its consent. In what form does this consent take? In other words, how may the plaintiff obtain this consent to file a suit against the State which must be attached as Annex to his complaint?

III. An ordinance in the Municipality of X authorizes the Sanitary Inspector to seize rotten meat or fish offered for sale to be dumped into the sea or otherwise destroyed. Is the ordinance constitutional? Why?

IV. The mother of X was a Filipino citizen before she married an Alien Y. Upon reaching the age of majority X elected Filipino citizenship in accordance with law. Two years later, however, X upon the suggestion of his father, Y, registered under the Alien Registration Act of 1941 (Com. Act No. 653). Is X entitled to acquire public land or to hold an elective Office in spite of his registration under the Alien Registration Act? In other words, is X still a Filipino citizen in spite of his registration under the Alien Registration Act? Give your reasons.

V. Name three examples of public corporation. How are public corporations created in the Philippines and by whom?

VI. Give seven officers or officials of the Republic of the Philippines who must be appointed by the President with the consent of the **COMMISSION ON APPOINTMENT**.

VII. Give the composition and the powers of the Electoral Tribunal of the Philippine Senate and the House of Representatives.

VIII. X drives his own automobile. The automobile suffers damages amounting to ₱250.00 because it strikes a hole one meter in diameter and one meter deep in the middle of a City street in the City of Manila. X then files a suit for the recovery of ₱250.00 against the City of Manila. Will the case prosper? Give your reasons.

IX. A is proclaimed elected by the Provincial Board of Canvasers as Representative for the District B in the Province C in the elections of 1953. The election of A is protested and the protest was duly filed. **QUESTIONS:** (a) Can A take part and vote in the election of Speaker at the Inaugural Session of the House of Representatives? (b) May the taking of the oath of Office of A be suspended immediately after the election of Speaker? Give your reasons.

X. X is assessed ₱500,00.00 income tax for the year 1953 by the Collector of Internal Revenue. X believes that the assessment is excessive, unjust and incorrect. State all the steps (Administrative steps) that X may take to protect his rights.

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## REMEDIAL LAW

I. (1) What are the exceptions to the parole evidence rule? What are the reasons for the parole evidence rule? (2) "A" sold a parcel of land to "B" under a written contract. In a litigation over the same property "C" offers parole evidence to the effect that "B" bought the land as his trustee or agent. Is parole evidence admissible in this case? Give reasons.

II. (1) Under the Rules of Court, who are the indispensable parties to an action? Who are the necessary parties? (2) In suit for a foreclosure of mortgage, is the second mortgagee a necessary or indispensable party? What is the effect if the first mortgagee does not include the second mortgagee as party defendant in the foreclosure proceedings?

III. Define *prejudicial question*. What are the necessary elements in order that a prejudicial question may arise?

IV. Distinguish forcible entry from unlawful detainer? State the two peculiar characteristics of these actions. Who may bring suit in each case?

V. Under what circumstances may the testimony of a witness deceased, or unable to testify, given in a former case between the same parties be given in evidence in another case?

VI. (1) "A" was charged with the crime of physical injuries. Upon arraignment, she pleaded not guilty. Subsequently, the Fiscal moved for the dismissal of the case. The motion was granted. Defense counsel said nothing about the dismissal. Ten days later, another information was filed charging her with the same offense. "A" sets up the defense of double jeopardy. Decide the case, giving reasons. (2) What are the rights of a person accused of a crime?

VII. "A" filed an action against "B", a railroad corporation, for the alleged negligence of "B", in that "B" allowed its railroad track to become and remain out of order. The defects consisted allegedly of a broken rail and a defective switch which caused the train on which the plaintiff "A" was riding to be derailed, causing thereby injury to "A", namely, the loss of two hands. A few days after the accident, the railroad corporation made certain repairs and alterations on the switch alleged to be defective. At the trial of the case, plaintiff tried to prove the negligence of the defendant and the defective condition of the railroad track and switch by calling attention to the repair and alteration of the switch done by "E" after the accident. Is this evidence admissible as proof of the negligence of the defendant? Give reasons.

VIII. An information for homicide was filed by the City Fiscal against "B" and "C". The prosecution has proven that "C" has in his possession a letter written to him by "B". To prove the contents of said letter the Fiscal presented secondary evidence, to which the attorney for the accused objected on the ground that the prosecution had not given previous notice of the production of the letter. Is this objection tenable? Upon what ground?

IX. As a result of a fistfight, "X" is prosecuted for serious physical injuries. It so happened that Miss "Z" was present and saw the fight and is one of the witnesses for the prosecution. A week before the trial, "X" married "Z". May "Z" be called to testify as a competent witness against "X"? Has the prosecution a right to call "Z" as a witness or to show from her statements that the accused had married her for the purpose of suppressing her testimony? Give reasons for your answer.

X. In a certain civil case filed in court, the plaintiff presented a witness to identify a signature appearing in a document. The attorney for the defendant, on cross-examination, propounded questions tending to show that the signature was obtained by fraud. May the defendant on cross-examination be permitted to ask questions of said witness tending to prove fraud? Give reasons.

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#### LEGAL ETHICS & PRACTICAL EXERCISES

I. State the substance of the attorney's oath.

II. Write a short paragraph on the statement that the practice of law is a profession and not a business.

III. State the rule or principle governing the question whether or not an attorney may testify as a witness for his client in the very case he is handling.

IV. For purposes of disbarment or suspension, what is meant by "moral turpitude"?

V. An attorney was required by the court of first instance to show cause why he should not be punished for contempt of court. After answer and hearing, finding that there was sufficient cause or ground, the court suspended the attorney from the practice of law for six months. It the action of the court proper? Reason.

VI. Supplying the necessary details, draw a motion for new trial (complete in form) based on the ground that the decision of the court of first instance is contrary to law, such that the motion will not be treated as *pro forma*.

VII. Draw a registerable contract of sale with right of repurchase within five years, covering one parcel of land, and complete in form. Supply the necessary details.

VIII. In a certain case for the collection of attorney's fees, the unanimous opinion of three attorneys presented as expert witnesses regarding the amount of compensation due to the plaintiff attorney, is uncontradicted. May the court disregard said opinion and follow its own professional knowledge? Explain.

IX. May an attorney be suspended or disbarred on grounds other than those enumerated in the Rules of Court? Explain.

X. Is an attorney *de officio* appointed by the Supreme Court to defend an accused-appellant always bound to uphold the appellant's innocence? Explain.

#### OPINIONS OF THE . . .

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then, that the Philippines may, under the Treaty, enact similar regulations and need not deal with Spanish engineers on the same basis as Filipino citizens. That the Philippines may treat Spanish engineers more liberally than she is obliged to, gives rise to no legal ground for complaint against Spain for doing what the latter has an international treaty right to do.

A party who may deem the actual operation of a treaty as unduly onerous may decide to take steps leading to the modification or even the termination of the treaty. But so long as a treaty remains in force — and there is no doubt that the Treaty here is in full force — a party cannot, without exposing itself to liability for an international delinquency, refuse to give it effect. *Pacta sunt servanda* is a basic norm of international law. (See Harvard Research in International Law, the Law of Treaties, 29 Am. J. Int. L. (Supp.) 977 et seq.)

Considering all the foregoing, I am of the opinion that the Spanish nationals concerned are entitled to be admitted to examination to the practice of their profession in the Philippines. It may be observed that although Mr. Pedro Picornell took the chemical engineer examination on July, 1949, before the Treaty went into effect, there appears no objection to the release of his grades and his admission to practice if those grades are satisfactory.

(Sgd.) PEDRO TUASON  
Secretary of Justice

#### LAWYER WAS SWEATING

NEW YORK, Dec. 14 (UP).—Assistant District Attorney James P. McGrattan stepped toward the prosecution witness and asked the routine question before settling down to serious examination in Queens County court Monday.

"Were any promises made to you in exchange for your testimony at this trial?" McGrattan asked the witness, Michael Garcia, 24.

Garcia's answer was sharp and clear. "Yes," he said.

McGrattan was startled.

"I was promised that the four felony raps against me would be dropped and I would get larceny on the other charge," Garcia said.

Garcia, charged with felony and robbery, was slated to testify that a 21-year-old youth, William Brown, had admitted killing his girl friend.

"Who made these promises?" demanded the prosecutor.

"You did," shouted Garcia. "You did and Assistant District Attorney Thomas Cullen."

"When? How?" asked McGrattan.

"Do you want me to say I was promised nothing?" sneered Garcia. "You want me to lie, and I refuse."

He tossed two coins at the prosecutor. "Here is your two pieces of silver," Garcia said. "I'm not Judas."

McGrattan asked for a recess.