

1961 BAR EXAMINATION QUESTIONS
(Conclusion)

REMEDIAL LAW

I. (a) Distinguish; (1) "admission" from "declaration against interest", (2) action from special proceeding, (3) *Factum probans* from *factum probandum*, (4) preventive injunction from mandatory injunction, and (5) amended pleading from a supplemental pleading.

(b) In civil cases, when may a pleading in the CFI be amended as a matter of course and when may it be amended only by leave of court?

II. FACTS: After the plaintiff rested his case in an ordinary civil action in the Court of First Instance, the defendant filed a motion to dismiss for insufficiency of evidence, reserving the right to present his evidence in case his motion is denied.

QUESTIONS: (1) Suppose the court finds that the plaintiff's evidence is sufficient to prove a *prima facie* case, and consequently denies the motion, may the court forthwith render judgment in favor of the plaintiff or should the court allow the defendant to present his evidence first? Reason out your answer.

(2) Suppose the Court of First Instance grants the defendant's motion, but on appeal to the Court of Appeals, the latter finds that the lower court erred, should the Court of Appeals proceed to render judgment in favor of the plaintiff, or should it remand the case to the lower court for reception of the defendant's evidence and further proceedings?

III. (a) When and under what circumstances: (1) may a defendant file a third party complaint? (2) may a person be permitted to intervene in a civil action? (3) may a person file an action for interpleader?

(b) Over what cases does the Juvenile and Domestic Relations Court have exclusive original jurisdiction?

IV. (a) A group of 40 laborers had been in the employ of a corporation for many years until they resigned in December, 1959. At the time of their separation from the service, they were each entitled to receive from the corporation the sum of P6,000.00 representing their overtime pay arising from the Eight-Hour Labor Law, as well as their gratuity arising from a collective bargaining agreement, which the corporation refused to pay despite repeated demands therefor. Hence, they filed a petition with the Court of Industrial Relations against the corporation for the collection of the above-stated sum. But the defendant's counsel filed a motion to dismiss, contending that it is the Court of First Instance which had jurisdiction over the subject matter. Decide the motion. Reason briefly.

(b) Point out four (4) instances when a witness may be interrogated by leading questions or direct examination.

V. (a) In the special proceeding on the intestate of San Jose, a parcel of land is adjudicated pro-indiviso to heirs Juan and Pedro, and Juan wants to compel immediate partition thereof. As Juan's lawyer, what would you do. Reason briefly.

(b) In a certain civil case, Armando, an official of the BIR, was utilized as the sole witness for the plaintiff, and the defendant's counsel wanted to adduce evidence to prove the bad moral character of Armando for truth, honesty and integrity, in order to discredit his testimony. Hence, defendant's counsel called on Toribio to testify that on two different occasions, Armando solicited bribes from Toribio in connection with the latter's tax case pending with the BIR. But the plaintiff's counsel objected to Toribio's testimony. Rule on the objection. Reason briefly.

VI. (a) Point out three (3) ways of impeaching a judicial record.

(b) What are the requisites in order that an admission of a partner may be admissible in evidence against his co-partner?

VII. (a) In criminal actions, when may a mere summons be issued instead of warrant of arrest?

(b) Cite three (3) instances where final judgment in civil cases may be executed, as of right, before the expiration of the time to appeal.

VIII. (a) State fully the rules on venue in inferior courts regarding civil actions.

(b) FACTS: Lazaro was an insurance agent assigned to Davao, with the obligation to turn over to his principal's office in Manila all the premiums collected by him. As such agent, Lazaro was able to collect premiums in Davao in the total sum of P10,000, but he misappropriated the entire amount in Davao. QUESTION: Where is the venue of the criminal action that may be possibly instituted against Lazaro for his above-described acts? Reason briefly.

IX. FACTS: Victor was the Director, and Lucas the Assistant Director, of the Bureau of Forestry. Victor met accident, lost his right arm and left leg, and was hospitalized for six months, during which period, Lucas assumed the position of Director of Forestry. On the seventh (7) month, Victor wanted to resume his office as Director but Lucas refused to relinquish the position, claiming that Victor had been permanently incapacitated to discharge the duties of the office. QUESTIONS: (a) What judicial remedy may Victor avail of in order to establish his right to the office of Director of Forestry?

(b) Does Victor have to bring the matter to the Office of the Secretary of Agriculture, and if not satisfied therein, then to the Office of the President, for administrative remedy before he goes to Court? Why?

(c) Within what period of time may Victor possibly bring an action against Lucas for the recovery of whatever damages he may have suffered by reason of the above-described acts of Lucas?

X. (a) State or explain two different general rules of "*Res Inter Alios Acta*".

(b) When is a case considered as presenting a moot question?

(c) May the attorney of the plaintiff or of the appellant, as the case may be, be ordered to pay the costs of the suit, and if so, when?

LEGAL ETHICS AND PRACTICAL EXERCISES

(Warning: Use letter X, never your own name, as signature of attorney or notary public on any pleading or form called for in these questions.)

I. (a) What is the power of the Court of Appeals or a Court of First Instance upon the existence of any of the grounds for suspension or disbarment against a lawyer?

(b) State the effect, and the subsequent proceeding to be taken, when such power is exercised.

II. Discuss the liability of an Attorney-at Law to his client for mistakes or errors on matters of law, and for negligence in filing necessary pleadings and briefs, or in taking the steps necessary to perfect an appeal within the time fixed by statute or the Rules of Court.

III. (a) Upon what grounds does a lawyer find justification in representing an accused who has confessed his guilt to him, or whom he knows to be guilty from the facts disclosed to him. Explain your answer.

(b) A lawyer was convicted of the crime of bigamy. Subsequently, the President of the Philippines pardoned him unconditionally. May this lawyer still be disbarred "for having been convicted of a crime involving moral turpitude"? Give reasons.

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COURT OF APPEALS DIGEST OF DECISIONS

CERTIORARI; EXECUTION OF JUDGMENT; EXAMINATION OF JUDGMENT DEBTOR; CONTEMPT; EXCESS OF JURISDICTION.—A judgment debtor can only be required to appear and answer concerning his property and income before the Court of First Instance of the province in which he resides or is found, so that an order issued by any other Court of First Instance declaring such judgment debtor in contempt and ordering his arrest for failure to appear for such examination is null and void as issued in excess of jurisdiction. *Chiong Bu Hong, vs. Bienvenido Ten, et al.*, CA-G.R. No. 27345-R, June 23, 1960, *Angeles, J.*

CERTIORARI; CONTEMPT; LACK OF JURISDICTION OF COURT ISSUING ORDER; EFFECT; WAIVER.—The power to punish for contempt should be used sparingly, with caution, deliberation, and with due regard to the provisions of the law and the constitutional rights of the individual. Disobedience of, or resistance to, a void mandate, order, judgment, or decree, or one issued by a court without jurisdiction of the subject-matter and party-litigant, is not contempt, and where the court has no jurisdiction to make the order, no waiver can cut off the rights of the party to attack its validity. (U.S. Federal Trade Commission vs. Fairfoot Products Co., 94 F. 3d, 844; 17 C.J.S. p. 19, note 34.) *Ibid.*

CRIMINAL LAW; MITIGATING CIRCUMSTANCE; PLEA OF GUILTY, WHEN NOT MITIGATING.—A judicial plea of guilty after the prosecution had introduced its evidence is no longer a mitigating circumstance (People vs. de la Peña, 66 Phil. 459). Besides, a plea of guilty as a mitigating circumstance is not applicable to a prosecution under special laws (Article 10, Revised Penal Code; People vs. Ramos, 44 O. G. 5288; U. S. Barba 29 Phil. 206; U. S. vs. Santiago, 35 Phil. 20; People vs. Malibez CA-47 O.G. 4226). *People vs. Custodio Tecson, CA-G.R. No. 18256-R, June 30, 1960, Piccio, J.*

CRIMINAL PROCEDURE; PLEA OF GUILTY.—Upon a judicial plea of guilty (Sec. 3 Rule 114, Rules of Court), interposed by the accused generally upon arraignment (before trial on the merits), the court, when satisfied that same had been interposed freely and voluntarily by the defendant who was well aware of its nature and consequences, may pronounce said accused "guilty" and forthwith convict him without requiring the prosecution to introduce its evidence. And it makes no difference that such plea was made after the introduction of prosecution's evidence. The effect is the same. *Ibid.*

ACTIONS; ACTION FOR PARTITION; PRESCRIPTION.—Generally, an action for partition among co-heirs and co-owners does not prescribe. This rule, however, applies only to "actions where-

in the rights of all parties to their respective shares of the inheritance is taken for granted but not to an action wherein the plaintiff's right to participate in the inheritance is denied." (Bargayo vs. Camumot, 40 Phil. 857, 870). *Julio Doler et al., vs. Eliseo Dejascent, et al.*, CA-G.R. No. 24528-R, July 18, 1960, *Amparo, J.*

JUDGMENT; ENFORCEMENT; PRESCRIPTIVE PERIOD.—A valid judgment may be enforced either by motion within five years after entry or by action after the lapse of said period but before it is barred by any statute of limitations, and a valid execution issued and levy made within the five-year period after entry of judgment may be enforced by the sale of the property levied upon, provided the sale is made within ten years after entry of such judgment. *Nestora Rigor Vda. de Quiambao, et al., vs. Manila Motor Company, Inc., et al.*, CA-G.R. No. 17031-R, July 23, 1960, *Natividad, J.*

OBLIGATIONS AND CONTRACTS; VESTED RIGHT, MEANING OF.—Vested right has been defined as accrued, fixed, settled, absolute, having the character or giving the rights of absolute ownership, not contingent, not subject to be defeated by a condition precedent. Primarily, "vested" is to be interpreted as meaning free from all contingency. In this sense, it is nearly equivalent to "possessed." However, the word is often used in a different sense from its technical or strictly legal meaning; thus, "vested" has been construed to mean not subject to be divested or indefeasible; transmissible. It has also been construed to mean payable. 67 C.J., pp. 239-240. *The United States of America vs. Pedro Veragel de Dios, et al.*, CA-G.R. No. 21474-R, July 25, 1960, *Sanchez, J.*

CRIMINAL PROCEDURE; ORAL MOTION TO QUASH; EFFICACY; SECTION 3, RULE 113, RULES OF COURT.—Section 3 of Rule 113 of the Rules of Court states that a motion to quash shall be in writing, signed by the defendant or his attorney, and "shall specify distinctly the ground of objection" relied upon. However, an oral motion to quash presented in open court, at an opportune time, that is, before arraignment, and based on the ground that more than one offense was charged in the information, should be considered as effectively placed before the court for its consideration and decision as if it had been in writing. To deny the motion for being void and inefficacious because it was not reduced to writing, is to place inordinate importance on the shadow rather than on the substance of the law, and to stress technicality while denying justice. Hair-splitting technicalities should be frowned upon and avoided if they do not square with the ends of justice. *People vs. Manuel Ballena, CA-G.R. No. 20810-R, July 25, 1960, Castro, J.*

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IV. A files an action to recover a parcel of land from B based upon a notarial deed of sale and A attaches a copy of the deed of sale to his complaint. B claims that he did not sell his property to A, and that the signature purporting to be his on the deed is a forgery. As lawyer for B, prepare an answer, supplying other details.

V. (a) Define and distinguish attorney's contingent fee and champertous fee.

(b) In the absence of a written contract between attorney and client, what factors are to be considered in determining the amount of attorney's fees?

VI. (a) In the event that several lawyers representing a party in a case should act differently on any matter relating to the litigation, which of these may properly claim the right to bind the client?

(b) What duties, if any, does an attorney owe to a client, after the termination of the relationship of attorney and client?

VII. Draft a motion for leave to intervene in a civil case. Supply necessary details.

VIII. (a) Draw an information for filing in the Court of First Instance, charging an accused for estafa. Supply the necessary details.

(b) Prepare a motion to quash said information on any of the grounds provided by law.

IX. What inhibitions, if any, are imposed upon members of the Bar who are likewise members of Congress in the practice of the law profession and why?

X. Prepare the following: (a) Jurat; (b) acknowledgement in a deed of sale consisting of more than two pages and covering three parcels of land; (c) attestation clause in a last will and testament; (d) affidavit of Good Faith in a Chattel Mortgage.