

With this premise therefore, the author starts with the exposition of the subject in subsequent chapters.

The following chapters are principally comparisons of the Indian and American Constitutions. The author discusses first the American Concept or aspect or provisions and then proceeds with the dissertations of the Indian law. In making such exposition, he oftentimes cites cases, both American and Indian decisions. Among the subjects treated are: the Judicial Powers, Legislative Prerogatives, Administrative agencies, Dual Systems of Courts, the Reach of Due Process, Fundamental Rights (specifically of Speech, Press and Religion), Right to a Fair Trial, Equal Protection, Commerce Clause and other matters. All these are treated in a comparative manner.

Critical Observation. After going through the whole Lectures, we realize that the Indian Constitution and laws favorably compare with that of the American. In fact, in some aspects the Indian law surpasses that of the American because at the time of the adoption of the Indian Constitution, the framers were fully cognizant of the past, present and even future conditions. The American Constitution, on the other hand, was passed a long time ago and although it had been authored by some of the greatest legal minds of that day and had already undergone several amendments, yet in some aspect at least it is already outmoded both in theory and application.

The book is comprehensive in scope, objective in observation, flawless in style, clear in exposition and authoritative in statements. The author has made an excellent exposition. Physically, the book is well bound, the printing is clear, the cover simple and subdued and black in color background.

Practical Importance. Right now we have a dire need for more constitutional law books. It seems that local authors have not had much interest in writing on constitutional law subjects. There are very few books on this matter, fewer still with respect to good ones. We can only count by our fingers those good ones — such as those of Tañada, Fernando and Carreon. For lack of good materials therefore, we could make some extra reading outside of our local books. One of them could be this book, **WE THE JUDGES.**

ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1957

COMMERCIAL LAW

Answered by the Editorial Board in consultation with Acting Government Corporate Counsel, Simeon Gopengco, Professor and Reviewer at the Ateneo College of Law.

I.

- (a) Distinguish between the following: "dividends" and "profits"; "capital" and "capital stock"; "Cash dividend" and "stock dividend".
- (b) What determines the nationality of a corporation? For what matters are foreign corporations doing business in the Philippines subject to the laws, rules and regulations of the country of their creation?

(a) As a general rule the net profit of the corporation is the excess of the total present value of its assets, over the losses, liabilities and its capital stock. If the law or the board of directors requires a certain per cent of the net profits to be set aside as trust fund or reserve fund, the surplus profits shall be the excess of the net profits over the amount required to be set aside. Dividends are portions of the surplus profits arising from the business of the corporation that have been declared and set aside for proportionate distribution among the stockholders.

Capital is the actual property or estate of the corporation; while the capital stock is the amount determined in the articles of incorporation to be submitted and paid in or secured to be paid in upon which the corporation is to do business.

Cash dividend is a disbursement in cash to the stockholder of part of the profits. In the absence of fraud, it becomes the property of the stockholder. Stock dividend is a dividend in the form of stocks and the stockholder is deemed to have invested cash in the purchase of additional shares of stock of the corporation. Inasmuch as the property represented by the stock dividend still belongs to the corporation, the same may be levied upon by its creditors.

(b) As a rule, the nationality of a corporation is determined by the laws of the country under which it was incorporated. Under the modern trend, for special reasons, such as national security in time of war, a domestic corporation controlled by enemy aliens may be considered a foreign corporation under the control test. (*Filipinas Cia de Seguros v. Huenefeld & Co.*, G.R. No. L-2294, May 25, 1951; *Winship v. Phil. Trust Co.*, G.R. No. L-3869, January 31, 1952; *Ingenohl v. Olsen*, 273 U.S. 541.)

Any foreign corporation doing business in the Philippines shall be bound by the laws, rules and regulations of their own country, with reference to the creation, the relations, liabilities, responsibilities, or duties of members, stockholders or officers to each other or to the corporation. (Sec. 73, Corporation Law.)

II.

- (a) A California corporation takes part in a bidding for the construction of a building in Manila. The California corporation won the bid, the construction company which opened the bid, refused to sign a contract with the California corporation for the construction of the building. As the California corporation did not previously obtain a license to engage in business in the Philippines, the construction company moved to dismiss the suit on the ground that the California corporation has no right or personality to sue in Philippine courts. How should the motion to dismiss be resolved? Reasons for your answer.
- (b) In the suit brought as above indicated, the construction company claims that it may not be sued, as it has not yet registered its By-Laws. May not this fact be set up by it as a defense in its answer? Reasons.

(a) The motion to dismiss should be denied. While no foreign corporation shall be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license required by law (Sec. 69, Corporation Law), however, the above prohibition to sue in Philippine Courts does not apply to a foreign corporation not transacting business in the Philippines. (Western Equipment Co. v. Reyes, 51 Phil. 115; Pacific Vegetable Oil Corp. v. Singson, G.R. No. L-7927, April 29, 1955). To take part in a bidding does not constitute "transacting business" in the Philippines, as contemplated in the law. Besides, an isolated act does not fall under the term "business" (Marshall v. Elser, 46 Phil., 70).

(b) The construction company may not set up in its answer as a defense the fact that it has not yet registered its by-laws. Upon issuance of the certificate of incorporation by the Securities and Exchange Commissioner, corporate existence begins (Sec. 11, Corporation Law), notwithstanding failure to register its by-laws.

III.

- (a) A Japanese vessel plies between Manila and Tokyo carrying lumber. It makes one trip each month and receives P100,000 for freight alone. It began its trips in January, 1957. On the third month, and trip, it collides with a Maritima vessel valued at P500,000, because of the negligence of the Japanese vessel's captain. The Maritima boat sank, and with it ten members of its crew. This notwithstanding, the Japanese vessel continued its trip; this in the month of March. In April it made still another trip. In May action was brought against the owners of the vessel, and when the vessel came to the Philippines it was attached. In the action that ensued, the owner of the vessel was sentenced to pay P500,000, and so the Japanese vessel was sold at public auction. But it could be sold only for P300,000. How much is the owner of the Maritima boat entitled to receive, aside from the P300,000 realized from the sale of the Japanese vessel?
- (b) Are the heirs of the ten sailors who died entitled to receive any amount, suppose the Workmen's Compensation Commission awards to them P5,000 for each of the dead sailors? Reasons for answers.

(a) Under Art. 837, Code of Commerce, the civil liability of the negligent Japanese vessel shall be understood as limited to the value of the vessel with all her appurtenances and all the freight earned during the voyage. The freight earned in March, when the collision occurred, was P100,000. The vessel was

sold at public auction for P300,000. Therefore, the owner of the Maritima boat is entitled to receive P100,000 aside from the sum of P300,000 realized from the sale of the vessel.

(b) Yes, for the loss of the vessel does not extinguish liability under the Workmen's Corporation Act. (Abueg et al. v. San Diego, 77 Phil. 730.) It is to be noted that under the Workmen's Compensation Act, the maximum compensation shall not exceed P4,000 in each case.

IV.

A owns a house valued at P50,000 and is insured in two companies, X and Y, for P45,000 and P10,000, respectively. In the policies it is stated that the value of the house is P52,000. (a) Insurance Law, how are the policies denominated? Why? (b) How much is the owner of the house, if destroyed by fire, entitled to collect from each of the insurance companies? (c) If the actual loss amounts to P30,000 only, how much is A entitled to receive from each of the insurance companies? Reasons for answers.

(a) The above policies are valued policies. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum. (Sec. 58, Insurance Law.)

(b) The valuation in a policy of fire insurance being conclusive between the parties thereto in the adjustment of either a partial or total loss (Secs. 149, 163, Insurance Law) and there being over-insurance by double insurance, the insured may recover P25,000 from X alone or he may recover P10,000 from Y and P15,000 from X (Sec. 87, Insurance Law).

(c) If the actual loss amounts to P30,000 only, A is still entitled to receive the same amount as in par (b), the valuation of P25,000 being conclusive between the parties.

V.

Gonzales & Co. owes Jose Garcia P10,000, and draws a check for that amount on Manila Banking Corporation payable to Garcia. The check is delivered to Antonio Cruz, employee of Garcia. Cruz forges the signature of Garcia, as an endorser, then endorsed it personally, cashing it at the International Bankinb Corporation. The latter collects the amount of the check from the Manila Banking Corporation, and the latter charges the amount of the check against the account of Gonzales & Co. Discuss the respective rights of all the rights in relation to the check and the indorsements and payments made in relation thereto, as well as their respective obligations. Give reasons for your answers.

Garcia, the payee, may recover P10,000 from Gonzales & Co. The former did not indorse the check. Nor did he receive the proceeds thereof.

The Manila Banking Corporation may not properly charge the amount of the check against the account of Gonzales & Co. Since a check is made payable to the order of a specified person, it is the duty of the drawee bank to determine whether the signature of the payee to whose order the check is payable is genuine or not. (Great Eastern Life Insurance Co. v. Hongkong & Shanghai Bank et al. 43 Phil., 678.)

In turn, the Manila Banking Corporation may proceed against the International Banking Corporation, a prior party, on its warranties as an indorser.

The International Banking Corporation may, in turn, proceed against Cruz, the forger, who may not retain the payment made to him, as it is a payment

made under a forged signature, which is void. (Sec. 23, Negotiable Instruments Law.)

VI.

(a) *Who are qualified to apply for adjudication of involuntary insolvency of a (1) natural person; (2) partnership; and (3) corporation? (b) What are the claims that cannot be proved or allowed against the estate of an insolvent debtor? (c) A registers a trade-mark for the shirts he manufactures. The mark consists of a red cock, one by two inches in size. D sells imported shirts, bearing another trade-mark, consisting of a hen laying eggs. Its color is blue. A desires to bring an action against D to prevent D from using his mark (blue hen laying eggs). Does an action lie in his favor? If so, what? If not, why not?*

(a) With respect to a natural person, three or more creditors may apply for adjudication of involuntary insolvency, under the following conditions:

1. All of them are residents of the Philippines;
2. All the credits or demands accrued in the Philippines;
3. The amount of the credits or demands are in the aggregate not less than one thousand pesos;

4. None of the creditors has become a creditor by assignment, however made, within 30 days prior to the filing of the petition. (Sec. 20, Insolvency Law.)

The proceedings in the insolvency of a partnership are the same as those in the insolvency of a natural person. (Sec. 51, Insolvency Law.)

As to corporations, upon a creditor's petition made and presented in the manner provided in respect to debtors, like proceedings shall be had and taken as are provided in the case of debtors. (Sec. 52, Insolvency Law.)

(b) The following claims cannot be proved or allowed against the estate of an insolvent debtor:

1. Claims barred by the statute of limitations;
2. After-acquired claims. (Sec. 53, Insolvency Law.)
3. Secured claims, under Sec. 59, Insolvency Law;

(c) Yes, provided the use of his trade-mark is prior to that of D. The action is on infringement of a trade-mark. Under the dominancy test, if the competing trade-mark has the essential, dominant or main features of another, and confusion and deception may result therefrom, there is infringement. In the mind of the ordinary purchaser, whether a trade-mark is that of a red cock or a blue hen, the idea of manok is dominant. (Lim Hoa v. Director of Patents, 52 O.G. 7259.)

VII.

- (a) *Under what circumstances is the carrier liable for the losses and deteriorations suffered by the goods transported by reason of fortuitous event, force majeure or the inherent nature and defects of the goods?*
- (b) *Are carriers liable for injuries to passengers, even if they have observed ordinary diligence and care? Reasons for answer.*
- (c) *A shipment of rice arrives in Manila from Thailand. The agreement between the shipper and the ship owner is that freight was to be paid upon the discharge of the cargo. The shipper, however, does not pay the freight, but offers a bond to respond therefor. Notwithstanding this offer, the*

owner of the vessel refuses to deliver the rice. May not the charterer be ordered to deliver the rice by the court before which the shipper brings the action, upon furnishing of the bond by the shipper? Reasons for answer.

(a) Where a common carrier did not do all that is possible to prevent or minimize the loss, even if due to fortuitous event, force majeure, or the inherent nature and defect of the goods, it is liable for the losses and deteriorations suffered by the goods transported. (Arts. 1739, 1742, Civil Code.) Where the carrier is guilty of delay in transporting the goods, a natural disaster shall not free it from liability. (Art. 1740, Civil Code.)

(b) Yes, only extraordinary diligence shall free the carrier from liability. (Art. 1757, Civil Code.)

(c) The owner of the vessel has a lien on the rice for the freight. The lien is not satisfied by the furnishing of a bond by the shipper. A bond merely guarantees payment and is not equivalent to actual payment. Therefore, the shipowner may not be compelled to deliver the rice to the shipper upon furnishing of the bond.

VIII.

A quedan for 1,000 piculs of sugar is issued by the Pasudeco in favor of P. P's clerk surreptitiously obtains the quedan and pledges it to the China Banking Corporation for P5,000. P's house is destroyed by fire, and P, believing that the quedan was burned, tries to get the Pasudeco to issue another quedan. The Pasudeco refuses so P brings an action against the Pasudeco for the delivery of the sugar to him. The court orders the delivery of the sugar to P. All of the above was not known to the China Banking Corporation, so subsequently it brought action to collect the loan and enforce the same against the quedan or the Pasudeco. Is the Pasudeco responsible to the bank for the amount loaned on the quedan?

The warehouse receipt in the problem is non-negotiable as it is issued "in favor of P." The China Banking Corporation, therefore, is not a lawful holder of the receipt, since the pledge was made by P's clerk, who has no right to pledge the same. Therefore, the bank may not compel the warehouseman to deliver the goods.

IX.

(a) *The Board of Directors of a corporation approves a resolution to sell substantially all of its property and assets. Discuss the remedy or remedies available to a stockholder who does not conform to the resolution. (b) Under the corporation law nothing but surplus profits may be distributed as dividends. If a dividend was made from any other source, what did it constitute? Is that lawful, or not, by the positive provision of the corporation law? State the provision fully or in substance.*

(a) A stockholder who does not conform to the resolution may, within forty days after the date upon which such action was authorized, object thereto in writing and demand payment for his shares, provided that he did not vote to authorize the action of the board of directors. However, a stockholder shall not be entitled to payment for his share unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of capital stock. (Sec. 28-1/2, Corporation Law.)

(b) The distribution of dividends from any source other than surplus profits constitutes a distribution of capital stock, which is void.

No corporation shall make or declare any dividend except from the surplus profits arising from its business or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution. (Sec. 16, Corp. Law).

X.

On January 2 a non-negotiable warehouse receipt was issued in favor of O. On July 2, O pledged it to L for P1,000. On August 2, C brought an action against O and attached the sugar covered by the receipt, notifying the warehouseman thereof. L claims that C's levy did not affect his loan of P1,000 because O's right at the time of the levy of attachment was already subject to the pledge in favor of L. Whose rights are superior, L's or C's? Reasons for answer.

It depends. If the pledge to L on July 2 appears in a public instrument, then the rights of L shall prevail. If the pledge to L does not appear in a public instrument, then the title of L is defeated by C's attachment and notification.

Under Sec. 42, Warehouse Receipts Law, the transferee of a non-negotiable receipt has the right to notify the warehouseman of the transfer to him of such receipt in order to acquire the direct obligation of the warehouseman to hold possession of the goods for him, and that prior to such notification by the transferor or transferee, the title of the transferee to the goods may be defeated by the levy of an attachment upon the goods by a creditor of the transferor.

LEGAL ETHICS AND PRACTICAL EXERCISES

Answered by the Editorial Board in Consultation with Judge Nicasio Yataco, Professor at the Ateneo College of Law.

I.

- (a) Define: *amicus curiae*; *amicus par excellence*.
 (b) What is the purpose of their intervention in a judicial or quasi-judicial proceeding?

(a) *Amicus curiae* is a bystander, usually a lawyer, who interposes and volunteers an information upon some question of law in regard to which the Judge is doubtful or mistaken, or upon a matter of which the Court may take judicial cognizance; *amicus par excellence* is when a Bar Association undertakes to intervene in a matter of public law or professional concern in Court.

(b) The purpose of their intervention in a judicial or quasi-judicial proceedings is to remind the court of some matter which might escape its notice, and in regard to which it might go wrong.

II.

X is attorney of record of plaintiff A in a civil case pending in court.

- (a) May A dismiss X at any time, with or without cause? Why?
 (b) May X withdraw from the case at any time? If so, How?

(c) Give an example of a good cause, justifying X's withdrawal, even without the consent of A.

(d) May A engage Attorney B as additional counsel? In such an event, how may Attorney X react?

(a) Yes, A may dismiss X at any time with or without cause, because that right is personal to A and can never be questioned.

(b) Attorney X may withdraw for good reasons at anytime. His withdrawal should, however, be with the consent of his client, who should be given sufficient time within which to secure a substitute and should also be with the consent of the Court.

(c) An example of a good cause is when a client insists on his attorney to act improperly in a case.

(d) Yes, A is within the proper bounds in securing B as additional counsel to help Atty. X. In that case X should graciously accept the offer of assistance.

III.

(a) What discretionary measures may the courts impose upon a lawyer who violates the standards of professional conduct established by the Rules of Court and Legal Ethics?

(b) If a court inferior to the Supreme Court suspends a lawyer from practice, is the order of suspension final? Explain.

(a) The Court may admonish, reprimand, fine for contempt, suspend or disbar, an attorney depending upon the extent of the violation of professional conduct.

(b) The Court of Appeals and the Court of First Instance may suspend a lawyer, but such suspension is not considered final. The reason is obvious, because suspension of a lawyer is subject to the review of the Supreme Court who may affirm, modify or reverse the suspension ordered by the CFI or Court of Appeals.

IV.

(a) If a lawyer uses intemperate language in his pleadings against the adverse party and counsel, what remedies are available to the latter?

(b) Discuss the propriety of a lawyer filing court litigations against his client over his fees.

(c) May a lawyer encourage the amicable settlement or compromise of his clients case? Why and How?

(a) Intemperate language is never favored by the Court and, the adverse party and counsel may ask the Court that said intemperate language be stricken out from the record or if the language used is immaterial to the issue, the lawyer may either be punished for contempt of Court or the party affected may file an independent criminal action for libel.

(b) If a client fails to pay a lawyer of his lawful fees, the former should be notified by the latter of his obligation towards him in a most respectful language possible, showing his client that it was not his intention to embarrass him by a Court litigation, but the same is made in a most friendly way. But, if the client still refuses to pay, then the lawyer under the circumstances is justified in filing the proper action for the collection of his fees.

(c) Yes, because it is more beneficial for all the parties concerned to have the case amicably settled and, it is his duty to do so before starting a court action. The best way of doing it is to call the parties into a friendly conference and advising them of the propriety of settling the matter amicably and the disadvantage of bringing the matter to Court if, after all, they could settle it amicably.

V.

A, a cashier, of a big firm, stole P50,000.00 from the Company's funds under his charge, bringing it home. When he became aware that he would momentarily be arrested and prosecuted for his misdeed, he immediately went to your law office bringing with him the entire amount stolen. He frankly admitted his guilt. Then he asked you to handle his defense, leaving to your best judgment as friend and lawyer as to whether he would plead guilty or fight it out in court. He proposed to entrust your care the entire sum and when the case is finally terminated, 1/2 thereof will be your fees and the other half you will return to him if acquitted or after his release from jail, if convicted. Should you accept the case? Reason your answer.

Yes, the lawyer is not a Judge to decide the matter. His duty is to advise his client to plead guilty and, if he refuses to do so he should lay all the facts before the Court and for the Court to act. If he could not acquit his client, at least it is his duty to prove mitigating circumstances, in order to lighten the penalty.

VI.

A has in his possession a promissory note for P2,000.00 allegedly executed by B in his favor, dated Manila, January 1, 1957, payable 4 months from said date with interest of 12% per annum, besides P500.00 as attorney's fees in case of a litigation. When the note became due, A demanded payment but B denied the debt claiming he did not execute any such note in favor of A.

(a) A employs you as his lawyer. Draw up the necessary complaint, complete in form and substance, to be filed in the proper court with prayer for a preliminary attachment.

(b) After the complaint was filed in court, B went to Attorney X, engaged him as his lawyer, assuring him that he (B) owes nothing to A and that the alleged promissory note is a forgery. Draw the necessary pleading which Attorney Z must file in the case for his client B.

COMPLAINT:—

REPUBLIC OF THE PHILIPPINES
IN THE COURT OF FIRST INSTANCE OF
Branch

A Plaintiff
-versus- CIVIL CASE No.
B Defendant

x-----x

COMPLAINT

COMES NOW the plaintiff through his undersigned counsel and unto this Honorable Court respectfully manifests:

1. That he is of legal age and a resident of Manila; while the defendant is likewise of legal age, a resident of Manila, where he may be served with summons;

2. That on January 1, 1957, the defendant herein obtained a loan from the plaintiff in the amount of P2,000.00, and as an evidence of such loan said defendant executed a promissory note in favor of the plaintiff on said date for the said amount of P2,000.00, wherein he promised to pay the said amount of P2,000.00, four (4) months from said date with interest at 12% per annum, besides P500.00 as attorney's fees in case of litigation, a copy of said promissory note having been attached herewith and marked as Annex "A";

3. That after said period of four (4) months had elapsed, plaintiff herein demanded payment from the defendant of the said amount, but said defendant refused and failed, and still fails and refuses to pay said amount;

4. That because of such refusal of the defendant to pay his obligation, plaintiff was compelled to secure the services of counsel to prosecute said claim.

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the plaintiff the amount of P2,000.00, with interest thereon at the rate of 12% per annum from January 1, 1957, until the same is paid; P500.00 as attorney's fees; and the costs.

Plaintiff further prays for further relief as may be just and equitable under the premises.

Manila, 1957.

X

Counsel for the plaintiff,
Manila

(b) ANSWER:—

(CAPTION AND TITLE OMITTED)

x-----x

ANSWER

COMES NOW the defendant through his undersigned counsel and unto this Honorable Court respectfully manifests:

1. That he admits the allegations in par. 1 of the complaint;

2. That he specifically denies each and every allegation in par. 2 of the complaint for the reasons stated in his affirmative defense;

3. That he has no sufficient information to form a belief as to the truth and veracity of the allegations of par. 3 of the complaint;

4. That likewise he has no sufficient information to form a belief as to the truth of the allegations of par. 4 of the complaint.

BY WAY OF AFFIRMATIVE DEFENSE, he alleges:

5. That he does not owe anything to the plaintiff and he knows nothing about the promissory note marked as Annex "A" of the complaint;

6. That said promissory note Annex "A" from all appearances is a forgery.

WHEREFORE, it is respectfully prayed that the complaint be dismissed with costs against the plaintiff.

Defendant further prays for relief as may be just and equitable under the premises.

Manila, _____, 1957.

X

Counsel for the defendant
No. _____, Manila

—VERIFICATION—

I, B, after first having been duly sworn to according to law depose and say: That I am the defendant in the above-entitled case:

That I have caused the preparation of the foregoing answer and read its contents, and the same are true and correct;

That I deny the genuineness and due execution of the promissory note attached to the complaint and marked as Annex "A" thereof.

IN WITNESS WHEREOF, I hereunto set my hand this — day of _____, 1957, at Manila.

B

SUBSCRIBED and sworn to before me this — day of _____, 1957, at Manila, affiant exhibiting to me his Res. Cert. No. _____, issued at _____ on _____.

NOTARY PUBLIC
My commission expires on
Dec. 31, 195—

Doc. No. _____
Page No. _____
Book No. _____
Series of 1957.

VII.

Attorney X, as attorney of A, filed a civil suit (C.F.I. No. 100) against B for a sum money. He obtained a judgment in favor of A. Before the judgment became final he withdrew as attorney for A. When the judgment became final, A with the assistance of a friend lawyer, obtained from the court a writ of execution. The Sheriff attached a parcel of land belonging to B. Pretending to be the owner of the land attached, C, a relative of B, filed a third-party claim for which reason the auction sale was suspended. Then C employed the same Attorney who at once filed on behalf of C a civil suit (C.F.I. No. 200) wherein he asked and obtained against the Sheriff and A, a writ of preliminary injunction restraining them from proceeding with the attachment and sale of the land. Because of this development, the judgment obtained by A in case No. 100 is pending execution. For his actuations in the above-mentioned cases, did Atty. X incur any liability? Reason your answer.

Yes, Atty. X is liable for disciplinary action by the Court. He should not have appeared for C, considering that he had already acted as attorney for A in the original complaint and after he was aware of all the facts of the case while acting as attorney for X. His actuation in a dual capacity in the referred case is a misconduct, hence, subject to the disciplinary action of the Court.

VIII.

Draw:

- (a) An information to be filed in the C.F.I. of Manila charging A with estafa committed thru false pretenses, the offended party being B.
(b) A motion to quash said information on any of the grounds provided by law.

INFORMATION:—

REPUBLIC OF THE PHILIPPINES
IN THE COURT OF FIRST INSTANCE OF MANILA
Branch _____

THE PEOPLE OF THE PHILIPPINES
Plaintiff

—versus—

CRIM. CASE NO. _____
For: ESTAFA

A _____
Accused

x ----- x

INFORMATION

The undersigned Assistant City Fiscal of Manila accuses A of the crime of Estafa, committed as follows:

That on or about _____ day of _____, 1957, in Manila, Philippines, the above-named accused, did, then and there wilfully, unlawfully and feloniously, with intent of gain and by means of deceit and false pretenses, defrauded "B" in the following manner, to wit: that the said accused on the date mentioned above went to the house of "B" in Manila, bringing with him a ring on which a stone is embedded, and offered the same for sale, representing to the offended party that the same is "diamond" of high quality and that the price of same in the markets of Manila is ₱2,000.00, but he was selling the same only for ₱1,000.00, furthermore representing that the same has been examined by a famous jeweler, and because of such inducements and misrepresentations "B" gave the herein accused the sum of ₱1,000.00, and afterwards, the accused disappeared and it turn out that the ring in question is only made of brass and glass stone to the damage and prejudice of "B" in the amount of ₱1,000.00, in Philippine Currency.

Contrary to Law.

B

Asst. City Fiscal

I hereby certify that a preliminary investigation in this case has been conducted by me in accordance with law; that there is reasonable ground to believe that the offense charged has been committed; and that the accused is guilty thereof.

Manila, Philippines _____, 1957.

B

Asst. City Fiscal

(b) MOTION TO QUASH:
(CAPTION AND TITLE OMITTED)

x ----- x

MOTION TO QUASH

COMES NOW the accused through the undersigned counsel and unto this Honorable Court respectfully moves to quash the information filed in this case, on the following grounds:

- (1) That the facts charged do not constitute an offense;
- (2) That the Fiscal has no authority to file the information.

ARGUMENTS

x x x

WHEREFORE, it is respectfully prayed that the information filed in this case be quashed.

Manila, _____, 1957.

Y

Counsel for the accused
No. —, Manila

Copy furnished:
City Fiscal of Manila

IX.

- (a) *In the absence of a written agreement as to fees, may a lawyer nevertheless recover compensation for services rendered? What facts must be established to support a judgment in his favor?*
- (b) *If, however, there is a written contract stipulating the amount of fees for services, to what extent is said contract binding upon the parties and the courts?*

(a) Yes, he is entitled to the *quantum meruit* for actual services rendered. The criterion to be applied as stated by the Supreme Court in the case of *Jaime v. Bualan*, (58 Phil. 422) are (1) Importance of the subject matter of the controversy; (2) The extent of the services rendered; and (3) The professional standing of the attorney.

(b) When there is a written contract stipulating as to the amount of fees for services, the contract shall prevail unless the same is unconscionable under the old law. However, in view of the passage of Republic Act 636, the lawyer is entitled to the whole amount agreed upon, unless the lawyer is dismissed for cause.

X.

- (a) *Define: retaining lien and charging lien. Explain how each is enforced.*
- (b) *As a result of the attorney's negligence and carelessness in filing pleadings necessary in the proper conduct of the case, his client suffered damages. Is the attorney liable to the client for said damages.*

(a) The retaining lien is the right of the attorney to retain the funds, documents and papers of his client which have lawfully come into his possession until his lawful fees and disbursements have been paid, and to apply such funds to the satisfaction thereof. The charging lien is the right which the

attorney has upon all judgments for the payment of money, and execution issued in pursuance to such judgments which he has secured in the litigation of his clients. (*Rustia v. Abeto*, 40 Off. Gaz., p. 3277). The enforcement of retaining lien is passive and cannot be actively enforced, while charging lien is active and may be enforced in the same proceeding or in independent action.

(b) No, when only simple negligence is present, but when the negligence and carelessness is gross, the attorney can be made liable for damages.