

ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1961

COMMERCIAL LAW

Answered by Prof. William R. Veto

I

(a) *Distinguish insurable interest in life from insurable interest in property.*
Insurable interest in life is distinguished from insurable interest in property in the following respects:

1. Insurable interest in life is not limited to any amount for the life of a person insured is not subject to pecuniary estimation, while insurable interest in property is limited only to the value of such interest which may be lost or destroyed by the risk insured against.
2. Insurable interest in life should exist only at the time of the inception of the policy, the cessation or loss thereof does not preclude recovery on such policy. Insurable interest in property, however, must exist both at the inception of the policy and at the time of the loss, for if the insured ceases to have such interest at the time of the loss, he is precluded from recovering on the policy.

(b) *A took out a P30,000.00 life insurance policy and designated his wife, B, as the sole beneficiary. All the premiums on the policy were paid out from his salaries. The spouses have three (3) children, X, Y and Z. A died intestate.*

1. *Divide the proceeds of the policy.*
2. *In the same case, suppose A, instead of designating his wife as sole beneficiary, designated his child X only as sole beneficiary? Reason out your answer.*

1. The proceeds of the policy should not be divided at all but should be given solely to B, the beneficiary designated in the policy, because a life insurance contract is a special kind, the designation as to who is entitled to the proceeds thereof is not governed by the ordinary laws on donation and succession, but solely by the terms of said contract (Del Val v. Del Val, 29 Phil. 534).

2. For the same reason above-stated, the whole proceeds of the policy should go solely to X, the child designated in the policy as sole beneficiary.

II

The "Manila Cigar Company" was organized with a capital stock of P50,000, divided into 500 shares of the value of P100 a share. X subscribed for 20 shares and paid thereof the sum of P1,500. Five years later, the Company was declared insolvent and A was duly appointed assignee who, upon assuming his position, found that X has an unpaid subscription in the amount of P1,500. Prior to the Company's declaration of insolvency, its Board of Directors, by resolution, released W (another subscriber) from the payment of his (W's) remaining unpaid subscription. The assignee brought action to recover from X the amount representing his unpaid subscription.

(a) *Is the action properly filed although there was no prior call made pursuant to Sections 37 and 39 of the Corporation Law?*

Yes, the action is properly filed because when a corporation is declared insolvent, all unpaid subscriptions, become, by operation of law, due and demandable without the necessity of a prior call made by its Board of Directors (Poizat v. Velasco, 37 Phil. 802).

(b) *Has X been released from his obligation to pay because the Board of Directors had previously released another stockholder (W) from the payment of his unpaid subscription? Reason out your answer.*

No, X was not released from his obligation of paying his unpaid subscription. The act of the Board of Directors in releasing W, unless for a valuable consideration, is inoperative against the creditors of the corporation, and much less, could it be invoked by X who was not the subscriber in whose favor the release was made.

III

(a) *Name the different classes or kinds of shares of stock and briefly discuss at least two of said classes.*

The different classes of shares of stock of a corporation are:

1. common
2. preferred
3. voting
6. non-par value share
4. non-voting
5. par value share
7. watered stock
8. treasury stock

Common stocks are those shares of stock of the corporation, which entitles the owner thereof to a pro-rata dividend without any priority or preference over other stockholders of the same class.

Preferred stocks are those shares of stock of a corporation, the owners of which have preference over the holders of common stocks in the distribution either of dividends or assets of the corporation upon liquidation.

(b) *In what cases or instances may a corporation acquire or purchase its own shares of stock?*

A corporation may acquire or purchase its own shares of stock in the following instances:

1. When the corporation decides to invest its funds in another corporation or any other business whose purpose is other than the main purpose for which it was organized, and any stockholder objects thereto in writing, the shares of such dissenting stockholder may be acquired by the corporation;

2. When the corporation amends its articles of incorporation and such amendment consists in any change in the rights of the holders of shares of any class or in authorizing shares with preferences in any respect superior to those of the outstanding shares of any class or in restricting the rights of any stockholder, and any stockholder objects thereto in writing, the shares of such dissenting stockholder may be acquired by the corporation;

3. When a corporation decides to sell, exchange, lease or otherwise dispose all or substantially all of its assets including its goodwill and any stockholder objects thereto in writing, the shares of such dissenting stockholder may be acquired by the corporation;

4. Where a corporation has a surplus, the corporation may repurchase its own shares of stock out of such surplus provided such acquisition is made in good faith and not for the purpose of defrauding creditors of the corporation.

IV

(a) *X has assets worth ₱20,000. On the other hand, he has liabilities in the total amount of ₱10,000. May he be declared insolvent? Why? What obligations are not affected by a discharge in insolvency?*

No, X cannot be legally declared insolvent because one of the essential requisites in order that a person may be declared insolvent, is that he does not have sufficient property to pay for all his obligations. Inasmuch as he has assets worth more than his liabilities, he could not be declared insolvent but only under suspension of payments.

The obligations not affected by a discharge in insolvency are:

(1) Tax or assessment due the national government or any provincial or municipal government (Sec. 68, Insolvency Law);

(2) Debt created by the fraud or embezzlement of the debtor, or by his defalcation as a public officer or while acting in a fiduciary capacity (*ibid.*)

(3) Liability of a person for the same debt, for or with the insolvent debtor, either as partner, joint contractor, indorser, surety, or otherwise (*ibid.*);

(4) Provable claims not duly scheduled and creditor was without notice or knowledge of the insolvency proceedings (*Hoskyn & Co. v. Martin*, 40 O.G. Sup. 10, 101).

(b) *Give the requisites of a promissory note, and a bill of exchange.*

The requisites of a promissory note are:

1. The instrument must be in writing, and signed by the maker;
2. It must contain an unconditional promise to pay a sum certain in money;
3. It must be payable on demand or at a fixed or determinable future time;
4. It must be payable to order or to bearer.

The requisites of a bill of exchange are:

1. The instrument must be in writing, and signed by the drawer;
2. It must contain an unconditional order to pay a sum certain in money;
3. It must be payable on demand or at a fixed or determinable future time;
4. It must be payable to order or to bearer;
5. The drawee must be named or otherwise indicated therein with reasonable certainty.

V

(a) *When may a warehouseman legally refuse to deliver goods covered by a warehouse receipt?*

A warehouseman may legally refuse to deliver goods covered by his warehouse receipt if:

1. The demand for delivery is not covered by an offer to satisfy his warehouseman's lien or an offer to surrender the receipt if negotiable with such indorsements as would be necessary for the negotiation of the receipt, and a readiness and willingness to sign, when the goods are delivered, an acknowledgement that they have been delivered when such signature is requested by the warehouseman;

2. The warehouseman has been requested by a person lawfully entitled to the goods not to make delivery or if he has information that the delivery which is about to be made is to a person not lawfully entitled to the goods;

3. When the goods had been lawfully sold to third persons to satisfy the warehouseman's lien or by reason of their being perishable or hazardous in nature; and

4. When the goods have been previously lost without any negligence on the part of the warehouseman.

(b) *What are speculative securities? Give an example.*

Speculative securities are those:

1. Securities to promote or induce the sale of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised or promised;

2. Securities the value of which materially depends upon proposed or promised future promotion or development rather than on present tangible assets and conditions;

3. Securities for promoting the sale of which a commission of more than five per centum is offered or paid;

4. Securities into the value of which the element of chance or hazard or speculative profit or possible loss equals or predominates over the element of reasonable certainty or safety of investment;

5. The securities of any enterprise or corporation which has included, or proposes to include, in its assets, as a material part thereof, patents, formulae, goodwill, promotion or other tangible assets, or which has issued or proposes to issue a material part of its securities in payment for patents, formulae, goodwill, promotion or other intangible assets; and

6. The securities of any enterprise engaged in the business of promoting, exploring, developing, exploiting or operating mineral properties and/or mineral rights.

An example of a speculative security is the shares of stock of the Philippine Oil Development Co., a corporation engaged in the exploitation for oil in the Philippines.

VI

(a) *Define or explain: (1) wash sales, (2) short sales, (3) floor trader, (4) unfair competition.*

(1) Wash sales are sales of securities which involve no change in the beneficial ownership thereof.

(2) Short sales are sales of securities made by a seller who does not own or control the securities he is selling.

(3) A floor trader is a trader on securities who buys or sells securities for his own account and not as agent for others.

(4) Unfair competition is the employment of deception or any other means contrary to good faith by which a person passes off the goods ma-

nufactured by him or in which he deals or his business or services for those of one having established goodwill on such goods, business or services, or any act calculated to produce said result.

(b) *What are "averages" in maritime commerce?*

Averages in maritime commerce are:

1. All extraordinary or incidental expenses which may be incurred during the voyage for the preservation of the vessel or cargo, or both; and

2. All damages or deterioration which the vessel may suffer from the time she puts to sea at the port of departure until she casts anchor at the port of destination, and those suffered by the goods from the time they are loaded in the port of shipment until they are unloaded in the port of their consignment.

VII

A succeeded in making B affix his signature on a check without his (B's) knowing that it was a check. At the time of the signing, the check was complete in all respects. A intended to cash the check the following morning, but, that night, it was stolen by C who succeeded in negotiating the same to D a holder in due course. D cashed the check the following morning. B refused to have the amount of the check deducted from his bank deposit.

Who may properly be charged with the amount of the check? Reason out your answer.

Assuming that B was not guilty of any negligence in not knowing that the instrument he was affixing his signature to was a check, the bank cannot legally deduct the amount of said check from the deposit of B because the fraud employed by A upon B in making him affix his signature on the check is a fraud *in factum*. The signature of B is tantamount to being a forgery. The bank should be charged with the amount of the check and will have to suffer the loss if it cannot recover anything from either A or C.

VIII

(a) *When is a contract of transportation considered commercial?*

A contract of transportation is considered commercial:

1. When its object is merchandise or any commercial effects; and

2. When no matter what its object may be, the carrier is a merchant or is habitually engaged in transportation for the public.

(b) *Define and illustrate a loan on bottomry or respondentia. Distinguish it from an ordinary loan.*

IX

(a) A holds a mortgage of P12,000 on a house belonging to B. Later, B reduced the amount of the mortgage loan by paying A the sum of P3,000. Still later, A assigned the P12,000 mortgage to X for P10,000. When the mortgage became due, B tendered P9,000 in payment but X demanded P12,000. Who is right and why?

B is right in tendering P9,000 in payment, because by the assignment X, as assignee, acquired only whatever right A, his assignor, had over the credit and since A had only the right to receive P9,000, X is, therefore, entitled only to the reduced balance of the mortgage loan.

(b) When is a commercial contract entered into by correspondence deemed perfected?

Commercial contracts entered into by correspondence are perfected from the moment an answer is made accepting the offer.

X

State briefly what you understand by the policy of "Filipino First" as applied to trade and commerce. Cite legislations intended to give life to this declared policy.

By the policy of "Filipino First" applied to trade and commerce the State wants that, as far as the equal protection clause of our Constitution would permit, natural born Filipinos would be given priority in the privileges and favors dispensed with or granted by the Government to traders and merchants. The obvious purpose is to gradually transfer to the hands of Filipinos the control of our economy which is at present admittedly in the hands of aliens. Legislations intended to give life to this policy are as follows:

1. The provisions in our Constitution reserving to Filipino citizens the right to exploit our natural resources, and right to acquire and own public land, and the right to operate public utilities;
2. The nationalization of the Retail Trade;
3. The nationalization of the Rice and Corn Trade
4. The nationalization of the Coastwise Trade
5. The Overseas Shipping Act.

INTERNATIONAL LAW

Answered by Prof. Luis D. Panlilio

(a) Name five attributes of an independent state.

The attributes of a State may refer to either the necessary elements of a State in international law, or to the rights of a State in international law.

The necessary elements are: people more or less numerous; territory more or less sizeable; organized government; independence or sovereignty; and recognition by other States. The normal rights of States are those connected with national existence: independence; property; jurisdiction; equality; and diplomatic intercourse.

(b) Distinguish: (1) military occupation from belligerent occupation of an enemy territory; (2) insurrection from rebellion.

(1) Military occupation of enemy territory presupposes firm control or possession by an army of occupation, while belligerent occupation is merely temporary control or possession.

(2) Insurrection is an uprising or civil commotion which has not attained serious proportions. When it becomes more widespread it becomes a rebellion. Insurrection is only a condition of insurgency, whereas rebellion may be extended a recognition of a status of belligerency.

II

(a) Who are considered citizens of the Philippines under our Constitution?

Under Art. IV, Sec. 1, par. 1, of the Philippine Constitution, the following are citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of the Constitution.
2. Those born in the Philippines of foreign parents who, before the adoption of the Constitution have been elected to public office.
3. Those whose fathers are citizens of the Philippines.
4. Those whose mothers are citizens of the Philippines, and upon attaining majority age, elect Philippine citizenship.
5. Those who are naturalized in accordance with law.

(b) Under our existing laws, can a Filipino citizen renounce his citizenship in times of war? Reasons.

Under Com. Act No. 63, as amended by Rep. Act No. 106, and as held by our Supreme Court in the case of *People v. Manayao* (44 O.G. 4867), although a Filipino citizen can voluntarily renounce his citizenship, he cannot however, do so in times of war. This is because the defense of the State is the prime duty of every citizen, and it is primarily in time of war when the State needs most of the services of its citizens. To allow a citizen to divest himself of his citizenship during war, would make the criminal act the very shield that would protect him from punishment for treason.

III

(a) *A was born in the Philippines of a Chinese father and Filipino mother at the time of her marriage. As A is still a minor what can he later do to become a Filipino citizen?*

The minor child of a Chinese father and a Filipina mother can upon attaining majority age, elect Philippine citizenship. (Art. IV, Sec. 1, par. 4, Phil. Constitution).

A loan on bottomry or respondentia is one in which, under any condition whatsoever, the repayment of the sum loaned and of the premium stipulated depends upon the safe arrival in port of the effects on which it is made, or of the value in case of accident.

Where the loan is given for the use, equipment or repair of the vessel and the vessel is pledged as security for the repayment thereof, it is a loan on bottomry. When the loan is not made upon the ship but on the goods loaded on the vessel, the loan is called a loan on respondentia.

Thus, for example, a vessel is in need of repairs being stranded in a certain port. The captain may borrow such sum of money from a person in such port with which to finance the repairs of the vessel. After the repairs, the vessel continues its voyage. If the vessel is lost just the same on the way, the latter loses his right to recover the money he loaned, but if the vessel arrives safely in the port of destination, the owner of the vessel has the obligation to pay the loan together with the premium.

A loan on bottomry or respondentia is distinguished from a simple loan in that:

1. The rate of interest chargeable on a loan on bottomry or respondentia is not subject to the limitations of the Usury Law, whereas rates of interest in simple loans are restricted by the Usury Law;

2. In loans on bottomry or respondentia, if the loan is made during the voyage, the last lender has preference over the previous lenders, whereas in simple loans, the prior lender has the preference in the security given over the later lenders.

3. In loans on bottomry or respondentia, the right of the lender to recover the loan is lost upon the loss of the vessel, but in simple loans, the right of the lender to recover the loan is absolute and is not affected by the loss of the property given as security.

(b) *Are children born of Filipino father and mother (whether these are native-born or are simply naturalized citizens) Filipino citizens? What about those who are born of Filipino fathers but outside the Philippines and of mothers who are not Filipino citizens?*

Children born of a Filipino father and mother — whether natural born or naturalized — are Filipino citizens. Likewise, children born of a Filipino father outside of the Philippines, and of a foreigner mother, are Filipino

citizens. These children are Filipino citizens under the principle of "jus sanguinis" enunciated in par. 3 of Art. IV of the Philippine Constitution.

IV

What consists of the territorial possessions of a state?

The following comprise the territorial properties of a State, in traditional international law:

1. The land, lakes and rivers within that portion of the earth's surface which a State holds by legal title.
2. The sea to a distance of three miles from shore at lowest tide, as well as narrow bays and straits along its coasts.
3. Islets fringing the coasts of a State.
4. The air-space above a State.
5. The territorial subsoil.
6. Fictional parts of the territory of a State.

V

(a) *Distinguish domicile from residence.*

Domicile presupposes permanency of stay, whereas residence denotes temporary stay.

(b) *Define: (1) genocide, (2) right of asylum, (3) armistice, (4) cartels, exequatur, and (6) diplomatic pouch.*

(1) Genocide, which is comparatively a new term, is mass or group killing of persons for reasons of either race or religion.

(2) Asylum means refuge. And right of asylum in international law, is the grant of protection from arrest or prosecution of political offenders who are wanted by their home governments.

(3) Armistice is a suspension of hostilities in war, over a wide area of conflict.

(4) Cartels are agreements for the exchange of prisoners of war.

(5) Exequatur is the recognition of the authority of a consul to act as such consul, issued by the State to where the consul is sent.

(6) Diplomatic pouch is a mail pouch which contains correspondence sent between a State and its diplomatic missions abroad. It is exempt from local inspection and jurisdiction.

VI

(a) *Name five crimes in which our courts may exercise extraterritorial jurisdiction.*

Philippine courts have extraterritorial jurisdiction, under Art. 2, Rev. Penal Code, in the following cases:

1. All crimes committed while on a Philippine ship or airship.
2. Forgery or counterfeiting any coin or currency of the Philippines, or obligations or securities of the Philippine Government.
3. Those responsible for the introduction into the Philippines of the obligations or securities mentioned above.
4. Public officials and employees who commit an offense in the exercise of their functions.
5. Crimes against national security, such as treason, espionage, acts provoking war, disloyalty in times of war, and in cases of international piracy.

(b) *State the requisites for the recognition and acceptance of a foreign judgment.*

For a foreign judgment to be recognized and enforced in another jurisdiction, the foreign judgment must be:

1. A judgment of a court of law, in a contentious case.
2. One rendered in a civil or commercial matter, including questions of status.
3. One rendered by a court which must have acquired jurisdiction over the parties and over the subject matter of the case.
5. The judgment must have become final.
4. A judgment rendered on the merits of the case.

VII

During the last days of the Japanese occupation of Manila, A had purchased a money order payable to B in Iloilo. This was accordingly transmitted from Manila to Iloilo but was lost on the way when the liberation forces under Gen. MacArthur came and clashed with the Japanese forces. Upon the advent of peace, was the restored Philippine Government justified in refusing to refund the amount of the lost money order on the ground that the government during the occupation was a usurpation? Why?

Refusal to pay the lost money order on the ground that the government established in the Philippines in the last war by the Japanese Army of occupation was a usurpation, is not justified. Said government was a "de facto" government. It is a recognized principle both in international and political law, that acts or transactions taking place during the regime of a de facto government are valid and will have to be respected upon the resumption of power by the de jure government, unless said acts or transactions are tainted with political complexion. The purchase of the money order was not an act tainted with political color and therefore has to be respected by the government, after the liberation. As an obligation incurred during the war, it may however, be subjected to the so-called "Ballantyne Scale", approved after liberation.

VIII

(a) *What is the so-called right of legation?*

The right of legation is the right of a State to send and receive diplomatic representatives.

(b) *When and where was the United Nations Charter signed?*

The UNO Charter was signed on June 26, 1945, in San Francisco, California, U.S.A.

(c) *How many justices compose the present International Court of Justice under the United Nations and how are they elected.*

There are 15 judges in the International Court of Justice, with a tenure of 9 years. Not all the 15 judges are, however, elected at the same time, only 5 judges are elected by both the General Assembly and the Security Council of the UNO from the various nominees, nominated by the different national groups.

IX

A French vessel in transit is anchored along a pier at the Port Area, Manila. There was found in a cabin of one of the members of the crew, who is a Frenchman, a package of opium. The French sailor admitted possession of the same. May he be criminally prosecuted for illegal possession of opium in our courts? Why?

The French sailor cannot be prosecuted in our Courts because, as held in the case of *U.S. v. Look Chaw* (18 Phil. 573), the mere possession of opium, the use of which is prohibited in the Philippines, aboard a foreign merchant vessel in transit in any local port, does not as a general rule constitute a crime punishable by local Courts, because of the fiction of International law that such vessel is considered an extension of the territory of the State whose flag the vessel flies.

Suppose the package of opium was already lowered from the boat and placed on a banca that was floating on the water alongside the vessel ready to be brought ashore, may a criminal prosecution be filed in the Philippine courts? Why?

Where the opium was already lowered from the boat and placed on a banca floating alongside the vessel and the opium ready to be brought ashore, in the same aforesaid case, our Supreme Court ruled that local courts can take jurisdiction because a crime was already committed in Philippine territory, the fiction of international law with respect to foreign private merchant vessels no longer applying in the case.

X

(a) What general principles are embodied in the Law of Nations?

The principles set forth in Art. 2; of the United Nations Charter may be considered as principles in the Law of Nations, as said Charter and the Organization itself, are the latest development in modern international law or the Law of Nations. These principles are the following:

1. Sovereign equality of all States of the world.
2. Settlement of international disputes by peaceful means.
3. Abstention from use of force against the territorial integrity or political independence of other States.
4. Assist the United Nations Organization in its endeavors.
5. Not to help any law-breaking State.
6. Fulfill all the obligations provided in the Charter.
7. Non-interference in the domestic affairs of other States.

(b) Define: "The Most Favored Nation Clause".

The "Most Favored Nation Clause" is a provision usually inserted in commercial or trade treaties. Under this clause the contracting parties mutually agree to grant each other whatever more favorable terms or conditions either party may subsequently grant to any other party in a trade or commercial treaty.