

ANSWERS TO BAR EXAMINATION QUESTIONS
FOR 1958

LEGAL ETHICS AND PRACTICAL EXERCISES

Answered by Prof. Pablo M. Anzures

I.

- (a) What are the sources of Legal Ethics?
(b) Enumerate the statutory causes for which a lawyer may be suspended or disbarred.
(c) May a lawyer be disbarred for causes other than those mentioned? Explain.

(a) The sources of LEGAL ETHICS are: ((A) Tradition: (1) those permanent in nature as matters *malum per se* which are considered wrong anywhere and at all times and (2) those transitory in nature or matters *malum prohibitum* (Ulanday vs. Manila Railroad Co., 45 Phil. 541); (B) Statutes and Rules of Court, namely, Sec. 13, Art. VIII of the Constitution of the Philippines, Rules 127, 128, Sec. 22, Rule 3, Rule 27, Sec. 2, Rule 41, Sec. 16, Rule 86, Sec. 7, No. 4, Rule 100, Sec. 4, Rule 112, Sec. 4, Rule 130; Sec. 4 and all of Rule 131, also Republic Acts Nos. 136, 145, 636 and 972; (C) Court Decisions; (D) Treatises on Legal Ethics by standard authors; (E) Canon of Ethics for Lawyers which is the Canon of Ethics of the American Bar Association adopted by the Philippine Bar Association, 1917 (In re Tagorda, 53 Phil. 37; In re Atty. Eusebio Tiongko, 43 Phil. 191).

(b) The statutory causes for which a lawyer may be suspended or disbarred are: (1) Deceit, malpractice or other gross misconduct in office (Rule 127, Sec. 25), (2) Conviction of crime involving moral turpitude (Ibid.), (3) Violation of Oath (Ibid.) and (4) Willful disobedience to court's orders.

(c) A lawyer may be disbarred for causes other than those mentioned as for "gross misconduct not connected with his professional duties which shows him unfit for the office and unworthy of the privileges which his license and the law confer upon him." In re Pelaez 44 Phil. 567.)

II.

- (a) What constitutes malpractice?
(b) Besides suspension and disbarment how else may lawyers be disciplined by the courts?
(c) May the Court of Appeals disbar a lawyer?

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- (d) What disciplinary measures may be taken by inferior courts against lawyers?

(a) The practice of soliciting cases at law for the purpose of gain, (Rule 127, Sec. 25), either personally or through paid agents or brokers, representing both parties in a criminal action (Cantorne vs. Ducusin, 57 Phil. 23), preparing a document wherein husband and wife are authorized to marry another again (In re Santiago, Adm. Case No. 923), collecting money for the appeal of a case wherein the decision had already become final and unappealable (Melegrito vs. Barba, 58 Phil. 513), representing the prosecutor in a criminal case and accepting money from the defendant in consideration of a dismissal (Tudor vs. Com., 84 S.W. 522), preparing a deed of sale in his favor after the death of the alleged vendor (Monteroy vs. Arayata and Montoya, 61 Phil. 820), misappropriation by an attorney of the funds entrusted to him by his client (Cabigao et al vs. Rodrigo, 57 Phil. 20), carelessness and neglect of professional duties (In re Carmen, 41 Phil. 899), lack of fidelity to clients, publication of malicious and unjustifiable insinuations against the integrity of a judge and the giving of false testimony (In re Sotto, 38 Phil. 532), having an accused plead guilty to an offense which he had not committed (Nueno vs. Santos, 58 Phil. 557), advising and counseling the plaintiff and then appearing for the defendant (In re Hamilton 24 Phil. 100) and similar acts constitute malpractice.

(b) Besides suspension and disbarment, lawyers may be disciplined by the courts by imposing penalties for direct and indirect or constructive contempt (Rule 64, Sec. 1, Sec. 3, a, b, c, d, e, f, g, and h).

(c) The Court of Appeals may disbar or suspend an attorney for practice for any of the causes named in Sec. 25 of Rule 127 and after such suspension such attorney shall not practice his profession until further action of the Supreme Court (Rule 127, Sec. 26).

(d) Inferior courts may impose penalties of fine or imprisonment on lawyers for contempt and Courts of First Instance may suspend an attorney from practice for any of the causes mentioned in Rule 127, Sec. 25.

III.

- (a) What is the lawyer's proper norm of conduct regarding communications upon the subject matter in controversy or moves to compromise the case, with the adverse party who is represented by counsel?

(b) When dealing with an adverse party who is not represented by counsel, what must a lawyer avoid?

(a) A lawyer should not in any way communicate upon the subject matter in controversy with a party represented by another counsel, much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel (Canon 9, Canons of Professional Ethics).

(b) When dealing with an adverse party who is not represented by counsel, a lawyer must avoid everything that may tend to mislead said adverse party and he should not undertake to advise him as to the law (Ibid.)

IV.

- (a) Briefly discuss the propriety of a lawyer giving testimony for his client in a case in which he is appearing as counsel.

(b) Briefly discuss the right and duty of a lawyer with respect to under-

taking the defense of an accused whom he personally believes to be guilty of the offense charged?

(c) When an attorney is appointed de officio counsel for an accused person, what should be his attitude?

(a) A lawyer should not testify on material matters connected with the cause of his client in court, and when it becomes necessary for him to do so, he should withdraw from the case and leave the trial to another counsel. He may however testify in behalf of his client on merely formal matters, such as the attestation or custody of an instrument, and when essential to the ends of justice (Canon 19, Canons of Professional Ethics).

(b) It is the right and duty of a lawyer to undertake the defense of an accused regardless of his personal opinion as to the guilt of the accused, otherwise, innocent persons, victims only of suspicious circumstances, might be denied proper defense. It is his duty to present every defense that the law permits to the end that no person may be deprived of life or liberty but by due process of law (Canon 5, Canons of Professional Ethics).

(c) When an attorney is appointed de officio counsel, he ought not to ask to be excused for any trivial reason and he should always exert his best efforts in his behalf (Canon 4, Canons of Professional Ethics).

V.

(a) Briefly discuss the propriety of a lawyer suing his clients to recover his fees.

(b) In fixing a reasonable compensation for legal services on the basis of quantum meruit, what elements are generally to be considered?

(a) Controversies with clients concerning compensation are to be avoided by the lawyer as far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services. Lawsuits with client should be resorted to only to prevent injustices, imposition or fraud (Canon 14, Canons of Professional Ethics).

(b) On the basis of quantum meruit, the following elements are generally to be considered:

- 1—Importance of the subject matter,
- 2—Extent of services rendered,
- 3—Professional standing of the lawyer,
- 4—Ability of the client to pay,
- 5—Customary charges of the bar for similar service,
- 6—Contingency or certainty of compensation,
- 7—Whether service is for casual or established client, and
- 8—Whether acceptance will preclude appearance of the lawyer for others in cases likely to arise out of the transaction. (Canon 12, Canons of Professional Ethics).

VI.

(a) Outline the procedure to be followed in the substitution of the original attorney of record.

(b) Atty. "A" is the original counsel of record in a pending case: (1) his client suggests that he wants to get the services of additional counsel, Atty. "B", to assist him. How should "A" regard this offer. (2) should

Atty. "B" be afterwards informed by the prospective client that Atty. "A" objects to associate with him in the case, what course of action should Atty. "B" take? (3) Supposing B and A become jointly associated, and their opinions conflict on a matter vital to the interest of the client, how should they proceed to resolve such conflict? (4) If the lawyer whose opinion is not followed feels he can no longer cooperate effectively in the case, what should he do?

(a) An attorney may retire at any time from any action or special proceeding by the written consent of his client, filed in court, and a client may at any time dismiss his attorney or substitute another in his place. An attorney may also retire at any time from an action or special proceeding, without the consent of his client, should the court on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of such substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one and written notice of the change shall be given to the adverse party. (Rule 127, Sec. 24.)

(b) (1) "A" should accept the offer with good grace. It should not be regarded as evidence of want of confidence. Canon 7, Code of Prof. Ethics).

(2) Atty. "B" should decline association as colleague if it is objectionable to Atty. "A". (Ibid.)

(3) If the opinions of "A" and "B" conflict on a matter vital to the interest of the client, the conflict should be frankly stated to him for his final determination. (Ibid.)

(4) If the lawyer whose opinion is not followed feels he can no longer cooperate effectively in the case, he should ask the client to relieve him. (Ibid.)

VII.

(a) May an attorney be disciplined for not appearing in court on the day of the hearing, even if he had previously filed a written motion for postponement with the written conformity of the opposing lawyer? Reasons.

(b) "A" goes to you and exhibits a decision of the Court of First Instance rendered four (4) years ago, against "B" and in "A's" favor. He wants you to enforce the judgment against "B". Prepare the necessary pleading. (Omit heading and title, supply the necessary facts.)

(a) An attorney may be disciplined for not appearing in court on the day of the hearing even if he had previously filed a written motion for postponement with the written conformity of the opposing lawyer because he cannot presume that the court will grant the same, the court having control of the conduct of all persons in any manner connected with a case before it (Rule 124, Sec. 5-d) and that the granting or refusing of a motion for postponement is in the sound discretion of the trial court (Corporacion de PP. Agustinos vs. Dey Rey, 55 Phil. 163, Linis vs. Rovira, 61 Phil. 137), and because it is equivalent to disobedience of a lawful order issued by the court (Rule 64, Sec. 3-b).

(b) MOTION FOR EXECUTION OF JUDGMENT

COMES now the plaintiff, by the undersigned counsel, in the above entitled case and to this Honorable Court respectfully shows:

1. That a decision has been rendered in this case on August 24, 1954 in favor of the plaintiff and against the defendant;
2. That the period for appeal has long expired without the defendant having perfected an appeal from said decision;
3. That the said decision is now final and executory.

WHEREFORE, it is respectfully prayed that an order of execution of the above judgment be issued.

Manila, August 24, 1958.

Attorney for Plaintiff
Address

VIII.

A sues B and C on a promissory note, jointly and severally executed by them. C goes to you and, while he acknowledges the genuineness and due execution of the note, he alleges that he signed it merely to accommodate B, who was the only one who actually benefited from the loan. Write his answer, including the proper cross-claim. (Omit heading and supply other necessary facts).

ANSWER WITH CROSS-CLAIM

DEFENDANT C, thru his undersigned counsel, answering plaintiff's complaint, alleges:

1. That defendant C admits the allegations in paragraphs 1 and 2 of the complaint;
2. That he is without knowledge or information to form a belief as to the truth of the allegations made in paragraphs 3 and 4 thereof; and as

CROSS-CLAIM AGAINST B

Defendant C alleges:

3. That while he did sign the promissory note, Annex "A", as co-principal debtor, he was, in truth and in fact, merely acting as surety for his co-defendant B, the latter having received the full amount loaned on said promissory note, without a single centavo having been received by, or having accrued to the benefit of, herein cross-claimant.

WHEREFORE, defendant cross-claimant prays for judgment dismissing the complaint against him and, on the cross-claim:

In the event that judgment be rendered ordering defendant cross-claimant to pay to the plaintiff the amount claimed in latter's complaint, that the cross-defendant be simultaneously ordered to pay back to the cross-claimant whatever amount is paid by the latter to the plaintiff in accordance with said judgment.

Manila, August 24, 1958.

Attorney for Defendant C
Address

IX.

Supposing that, under the facts given in the foregoing problem, only C is sued by A. Prepare the necessary pleading to bring B into the case and to protect C. (Omit heading; supply other necessary facts.)

MOTION FOR LEAVE TO FILE
THIRD PARTY COMPLAINT

DEFENDANT and Third Party Plaintiff C, thru his undersigned counsel, respectfully moves this Honorable Court to admit the filing of the attached Third Party Complaint against B, for the reasons therein stated, and that same be served upon the Third Party Defendant B, in accordance with law.

WHEREFORE, it is respectfully prayed that the attached Thirty Party Complaint be admitted and proper summons be served in accordance with the Rules of Court.

Manila, August 24, 1958.

Attorney for Defendant
and Third Party Plaintiff C
Address

THIRD PARTY COMPLAINT

DEFENDANT and Third Party Plaintiff C, thru his undersigned counsel, upon leave granted by this court to file a Third Party Complaint, alleges:

1. That defendant and third party plaintiff C is of legal age, single and a resident of the City of Manila;
2. That A, as plaintiff in Civil Case No. _____ of this court, filed a complaint against C, copy of which complaint is attached hereto as Annex "A";
3. That third party plaintiff signed the promissory note marked as Annex "A" of the original complaint merely to accommodate B;
4. That third party defendant B was the only one who actually benefited from the loan.

WHEREFORE, third party plaintiff prays this Honorable Court to issue—

1. An order to third party defendant to indemnify the third party plaintiff for whatever is adjudged against the latter in favor of the plaintiff, and
2. Judgment for such relief consistent with law and equity and for costs against third party defendant.

Manila, August 24, 1958.

Attorney for Third Party
Plaintiff
Address

X.

With his carbine, A fired at B several times with the intention of killing the latter — but being a poor shot, he missed. Prepare the proper complaint or information, with heading and signature. (Supply other necessary details.)

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF MANILA

PEOPLE OF THE PHILIPPINES,
Plaintiff
—versus—
A
Accused.
X ----- X

CRIMINAL CASE No. _____
for
ATTEMPTED HOMICIDE

INFORMATION

The undersigned Assistant City Fiscal of Manila accuses A of the crime of attempted homicide committed as follows:

That on or about the 20th day of August, 1958, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there, wilfully and feloniously, and with intent to kill, aimed and fired with his carbine with Serial No. _____ at B several times, thus commencing the commission of the crime of homicide directly by overt acts and does not perform all the acts of execution which should produce the felony by reason of some cause other than his own spontaneous desistance, that is, by being a poor shot, which prevented hitting said B and prevented his death.

Contrary to law.

Manila, August 24, 1958.

Assistant City Fiscal

(See People vs. Kalalo, 59 Phil. 715.)

A T E N E O L A W J O U R N A L

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