**2007 BAR EXAMINATION Q&A**

**Summary of Topics covered**

**Recognition of foreign judgments**

**Foreign Arbitral Award**

**Global Injunction**

**Petition for Relief from judgment**

**Hearsay Rule**

**Declaration of Nullity of Marriage**

**Habeas Corpus (Custody of minor child)**

**Demurrer to Evidence**

**Speedy Trial**

**Certificate against Forum Shopping**

**Extrajudicial Settlement of Estate**

**Reversed Trial**

**Petition for Annulment of Judgment**

I

(Total 10%)

(a) What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)

***SUGGESTED ANSWER:***

**Judgments of foreign courts are given recognition in our courts thus:**

**In case of judgment upon a specific thing, the judgment is conclusive upon the title to the thing, unless otherwise repelled by evidence of lack of jurisdiction, want of due notice to the party, collusion, fraud, or clear mistake of law or fact(Rule 39, Sec. 48 [a], Rules of Court); and**

**In case of judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by subsequent title, unless otherwise repelled by evidence on grounds above stated (Rule 39, Sec. 48 [b], Rules of Court).**

**However, judgments of foreign courts may only be enforced in the Philippines through an action validly heard in a Regional Trial Court. Thus, it is actually the judgment of the Philippine court enforcing the foreign judgment that shall be executed.**

(b) Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2%)

***SUGGESTED ANSWER:***

**No, a foreign arbitral award cannot be enforced in the Philippines under the rules on the recognition and enforcement of foreign judgments above-stated. A foreign arbitral award is not a foreign judgment, and pursuant to the Alternative Dispute Resolution Act of 2004 (R.A. No. 9285), in relation to 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the recognition and enforcement of the foreign arbitral awards shall be in accordance with the rules of procedure to be promulgated by the Supreme Court. At present, the Supreme Court is yet to promulgate rules of procedure on the subject matter.**

How about a global injunction issued by a foreign court to prevent dissipation of funds against a defendant therein who has assets in the Philippines? Explain briefly. (2%)

***SUGGESTED ANSWER:***

**Yes, a global injunction issued by a foreign court to prevent dissipation of funds against a defendant who has assets in the Philippines may be enforced in our jurisdiction, subject to our procedural laws.**

**As a general rule, no sovereign is bound to give effect within its dominion to a judgment or order of a tribunal of another country. However, under the rules of comity, utility and convenience, nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries (St. Aviation Services Co., Pte., Ltd. v. Grand International Airways, Inc., 505 SCRA 30/2006); Asiavest Merchant Bankers (M) Berhadv. Court of Appeals, 361 SCRA 489 [2001]).**

**II.**

**(Total 10%)**

True or False. If the answer is false, explain your answer briefly.

The surviving parties rule bars Maria from testifying for the claimant as to what the deceased Jose had said to her, in a claim filed by Pedro against the estate of Jose. (3%)

***SUGGESTED ANSWER:***

**False. The said rule bars only parties-plaintiff and their assignors, or persons prosecuting a claim against the estate of a deceased; it does not cover Maria who is a mere witness. Furthermore, the disqualification is in respect of any matter of fact occurring before the death of said deceased (Sec. 23, Rule 130, Rules of Court, Razon v. Intermediate Appellate Court, 207 SCRA 234 [1992]). It is Pedro who filed the claim against the estate of Jose.**

(b)A defendant who has been declared in default can avail of a petition for relief from the judgment subsequently rendered in the case. (3%)

***SUGGESTED ANSWER:***

**False. The remedy of petition for relief from judgment is available only when the judgment or order in question is already final and executory, i.e., no longer appealable. As an extraordinary remedy, a petition for relief from judgment may be availed only in exceptional cases where no other remedy is available.**

(c) A motion is a pleading, (2%)

***SUGGESTED ANSWER:***

**False. A motion is not a pleading but a mere application for relief other than by a pleading (Rule 15, Sec. 1, Rules of Court).**

(d) A counterclaim is a pleading. (2%)

***SUGGESTED ANSWER:***

**True. A counterclaim is a pleading by which a defending party makes a claim against an opposing party (Sec. 6, Rule 6, Rules of Court).**

**III.**

**(Total 10%)**

(a) What is the hearsay rule? (5%)

***SUGGESTED ANSWER:***

**The hearsay rule is a rule of evidence to the effect that a witness can testify only to those facts which he knows of his own knowledge or derived from his own perceptions, except as otherwise provided in the Rules of Court (Rule 130, Sec. 36, Rules of Court).**

(b) In relation to the hearsay rule, what do the following rules of evidence have in common? (5%)

(1)The rule on statements that are part of the res gestae;

(2) The rule on dying declarations;

(3) The rule on admissions against interest.

***SUGGESTED ANSWER:***

**The rules on the evidence specified in the question asked, have in common the following:**

**(a) The evidence although hearsay, are allowed by the Rules as exceptions to the hearsay rule;**

**(b) The facts involved are admissible in evidence for reasons of necessity and trustworthiness; and**

**(c) The witness is testifying on facts which are not of his own knowledge or derived from his own perception.**

**IV.**

(Total 10%)

Husband H files a petition for declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife's petition on the ground of the pendency of the other case. Rule.

***SUGGESTED ANSWER:***

**The motion to dismiss the petition for habeas corpus should be granted to avoid multiplicity of suits. The question of who between the spouses should have custody of their minor child could also be determined in the petition for declaration of nullity of their marriage which is already pending in the RTC of Pasig City. In other words, the petition filed in Pasig City, praying for custody of the minor child is unnecessary and violates only the cardinal rule of procedure against multiplicity of suits. Hence, the latter suit may be abated by a motion to dismiss on the ground of litis pendentia (Yu v. Yu, 484 SCRA 485 [2006]).**

**V.**

**(Total 10%)**

(a) Distinguish the effects of the filing of a demurrer to the evidence in a criminal case and its filing in a civil case. (5%)

***SUGGESTED ANSWER:***

**The following are the distinctions in effects of demurrer to the evidence in criminal cases from that in civil cases:**

1. **In criminal cases, demurrer to the evidence requires prior leave of court, otherwise the accused would lose his right to present defense evidence if filed and denied; in civil cases, no leave of court is required for filing such demurrer.**

**2.** **In criminal cases, when such demurrer is granted, the dismissal of the case is not appealable inasmuch as the dismissal would amount to an acquittal, unless made by a court acting without or in excess of jurisdiction; in civil cases, when such demurrer is granted, the dismissal of the case can be appealed by the plaintiff.**

**3. In criminal cases, the accused loses his right to present his defense-evidence in the trial court when he filed the demurrer without prior leave of court; while in civil cases, the defendant loses his right to present his defense-evidence only if the plaintiff appealed such dismissal and the case is before the appellate court already since the case would be decided only on the basis of plaintiff's evidence on record.**

(b) What is reverse trial and when may it be resorted to? Explain briefly. (5%)

***SUGGESTED ANSWER:***

**A reverse trial is one where the defendant or the accused present evidence ahead of the plaintiff or prosecution and the latter is to present evidence by way of rebuttal to the former's evidence. This kind of trial may**

**take place in a civil case when the defendant's Answer pleads new matters by way of affirmative defense, to defeat or evade liability for plaintiff's claim which is not denied but controverted.**

**In a criminal case, a reverse trial may take place when the accused made known to the trial court, on arraignment, that he is to adduce affirmative defense of a justifying or exempting circumstance and thus impliedly admitting the act imputed to him. The trial court may then require the accused to present evidence first, proving the requisites of the justifying or exempting circumstance he is invoking, and the prosecution to present rebuttal evidence controverting the same.**

**VI.**

**(Total 10%)**

(a) On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station is? Explain briefly. (5%)

***SUGGESTED ANSWER:***

**No, the arresting officer may not take the arrested suspect from Pasay City to Caloocan City. The arresting officer is required to deliver the person arrested without a warrant "to the nearest police station or jail” (Rule 112, sec. 5, 2000 Rules of Criminal Procedure). To be sure, the nearest police station or jail is in Pasay City where the arrest was made, and not in Caloocan City.**

**(b) In the course of serving a search warrant, the police finds an unlicensed firearm. Can the police take the firearm even if it is not covered by the search warrant? If the warrant is subsequently quashed, is the police required to return the firearm? Explain briefly. (5%)**

***SUGGESTED ANSWER:***

**Yes, the police may take with him the “unlicensed" firearm although not covered by the search warrant. Possession of an "unlicensed firearm" is a criminal offense and the police officer may seize an article which is the "subject of an offense." This is especially so considering that the "unlicensed firearm" appears to be in "plain view" of the police officer when he conducted the search.**

**Even if the warrant was subsequently quashed, the police is not mandated to return the "unlicensed firearm." The quashal of the search warrant did not affect the validity of the seizure of the “unlicensed firearm." Moreover, returning the firearm to a person who is not otherwise allowed by law to possess the same would be tantamount to abetting a violation of the law.**

**VII.**

**(Total 10%)**

B files a petition for cancellation of the birth certificate of her daughter R on the ground of the falsified material entries therein made by B's husband as the informant. The RTC sets the case for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was served on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for annulment of judgment before the Court of Appeals, saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed saying that the publication of the court order was sufficient compliance with due process. Rule. (5%)

***SUGGESTED ANSWER:***

**R's petition for annulment of judgment before the Court of Appeals should be granted. Although there was**

**publication of the court order acting the petition to cancel the birth certificate, reasonable notice still has to be served on R as she has an a interest affected by the cancellation. (Secs. 3 and 4, Rule 108, Rules of Court) She is an indispensable party (Republic v. Benemerito, 425 SCRA 488 [2004]), and notice has to be served on her, not for the purpose of vesting the court with jurisdiction, but to comply with the requirements of fair play and due process (Ceruila v.Delantar, 477 SCRA 134 [2005]).**

***ALTERNATIVE ANSWER:***

**The petition for annulment of judgment should not be granted. While R is an indispensable party, it has been held that the failure to serve notice on indispensable parties is cured by the publication made because the action is one in rem (Alba v. Court of Appeals, 465 SCRA 495 [2005]; Barco v. Court of Appeals, 420 SCRA 39 [2005]).**

(b) G files a complaint for recovery of possession and damages against F. In the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. E then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F's evidence. Was the court correct? Explain briefly. (5%)

***SUGGESTED ANSWER:***

**No, the trial court is not correct in ruling in favor of F. Tax Declarations are not by themselves evidence of ownership; hence, they are not sufficient evidence to warrant a judgment that F's father is a co-owner of the property.**

**Plaintiff's failure to make a formal offer of his evidence may mean a failure to prove the allegations in**

**his complaint. However, it does not necessarily result in a judgment awarding co-ownership to the defendant.**

**While the court may not consider evidence which is not offered, the failure to make a formal offer of evidence is a technical lapse in procedure that may not be allowed to defeat substantive justice. In the interest of justice, the court can require G to offer his evidence and specify the purpose thereof.**

**VIII.**

**(Total 10%)**

(a) X files an unlawful detainer case against Y before the appropriate Metropolitan Trial Court. In his answer, Y avers as a special and affirmative defense that he is a tenant of X's deceased father in whose name the property remains registered. What should the court do? Explain briefly. (5%)

***SUGGESTED ANSWER:***

**The court should hold a preliminary conference not later than thirty (30) days after the defendant's Answer was filed, since the case is governed by summary procedure under Rule 70, Rules of Court, where a Reply is not allowed. The court should receive evidence to determine the allegations of tenancy. If tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction.**

**If it would appear that Y's occupancy of the subject property was one of agricultural tenancy, which is governed by agrarian laws, the court should dismiss the case because it has no jurisdiction over agricultural tenancy cases. Defendant's allegation that he is a "tenant" of plaintiff's deceased father suggests that the case is one of landlord tenant relation and therefore, not within the jurisdiction of ordinary courts.**

(b) The heirs of H agree among themselves that they will honor the division of H's estate as indicated in her Last Will and Testament. To avoid the expense of going to court in a Petition for Probate of the Will, can they instead execute an Extrajudicial Settlement Agreement among themselves? Explain briefly. (5%)

***SUGGESTED ANSWER:***

**The heirs of H cannot validly agree to resort to extrajudicial settlement of his estate and do away with the probate of H's last will and testament. Probate of the will is mandatory (Guevarra v. Guevarra, 74 Phil. 479 [1943]). The policy of the law is to respect the will of the testator as manifested in the other dispositions in his last will and testament, insofar as they are not contrary to law, public morals and public policy. Extrajudicial settlement of an estate of a deceased is allowed only when the deceased left no last will and testament and all debts, if any, are paid (Rule 74, Sec. 1, Rules of Court).**

**IX.**

**(Total 10%)**

I was charged with illegal possession of shabu before the RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postponed nineteen times over a period of two years. Twice during that period, L's counsel filed motions to dismiss, invoking the right of the accused to a speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus? Reason briefly.

***SUGGESTED ANSWER:***

**Yes, L can file a petition for mandamus to enforce his constitutional right to a speedy trial which was capriciously denied to him.**

**There is absolutely no justification for postponing an arraignment of the accused nineteen (19) times and over a period of two (2) years. The numerous, unreasonable postponements of the arraignment demonstrate an abusive exercise of discretion (Lumanlaw v. Peralta, 482 SCRA 396 [2006]). Arraignment of an accused would not take thirty minutes of the precious time of the court, as against the preventive imprisonment and deprivation of liberty of the accused just because he does not have the means to post bail although the crime charged is bailable.**

**The right to a speedy trial is guaranteed by the Constitution to every citizen accused of a crime, more so when he is under preventive imprisonment. L, in the given case, was merely invoking his constitutional right when a motion to dismiss the case was twice filed by his counsel. The RTC is virtually enjoined by the fundamental law to respect such right; hence a duty. Having refused or neglected to discharge the duty enjoined by law whereas there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, the remedy of mandamus may be availed of.**

**X.**

**(Total 10%)**

(a) RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses. RC filed a motion to dismiss the counterclaim on the ground that Bank V's Answer with Counterclaim was not accompanied by a certification against forum shopping. Rule. (5%)

***SUGGESTED ANSWER:***

**A certification against forum shopping is required only in initiatory pleadings. In this case, the counterclaim pleaded in the defendant's Answer appears to have arisen from the plaintiff's complaint or compulsory in nature and thus, may not be regarded as an initiatory pleading. The absence thereof in the Bank's Answer is not a fatal defect. Therefore, the motion to dismiss on the ground raised, lacks merit and should be denied (UST v. Surla, 294 SCRA 382 [1998]).**

**On the other hand, if the counterclaim raised by the defendant Bank's Answer was not predicated on the** **plaintiff's claim or cause of action, it is considered a u permissive counterclaim. In which case, it would partake of an initiatory pleading which requires a certification against forum shopping. Correspondingly, the motion to dismiss based on lack of the required certificate against forum shopping should be granted.**

(b) A files a case against B. While awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines, seven years later, A discovers that a decision was rendered by the court in her favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

***SUGGESTED ANSWER:***

**On the assumption that the judgment had been final and executory for more than five (5) years as of A's return to the Philippines seven (7) years later, a motion for execution of the judgment is no longer availing because execution of judgment by mere motion is allowed by the Rules only within five (5) years from entry of judgment; thereafter, and within ten (10) years from entry of judgment, an action to enforce the judgment is required**

**2006 BAR EXAMINATION**

**Remedial Law vs. Substantive Law**

**Jurisdiction vs. Venue**

**Real Actions vs. Personal Actions**

**Jurisdiction of Courts**

**Forum Shopping**

**Expropriation**

**Certiorari**

**Modes of Appeal**

**Court of tax Appeals Jurisdiction**

**Rule 43 of the 1997 Revised Rules of Civil Procedure**

**Writ of Preliminary Injunction**

**Temporary Restraining Order**

**TRO vs. status quo order**

**Interlocutory Order**

**Ratio Decidendi**

**Summons**

**Probate**

**Bail**

**Evidence**

**I**.

1. What is the concept of remedial law? 2%

**SUGGESTED ANSWER:**

**The concept of Remedial Law is that it is a branch of public law which prescribes the procedural rules to be observed in litigations, whether civil, criminal, or administrative, and in special proceedings, as well as the remedies or reliefs available in each case.**

2. Distinguish between substantive law and remedial law. 2%

***SUGGESTED ANSWER:***

**Substantive law is that part of the law which creates, defines and regulates rights and obligations, the violation of which gives rise to a cause of action. On the other hand, remedial law prescribes the method of enforcing rights or obtaining redress for their invasion (cf. Bustos v. Lucero, 81 Phil. 540, 650 (1948]).**

3. How are remedial laws implemented in our system of government? 2%

***SUGGESTED ANSWER:***

**Remedial Laws are implemented in our system of government through the judicial system, including the prosecutory service, our courts and quasi-judicial agencies.**

4. Distinguish jurisdiction from venue? 2%

***SUGGESTED ANSWER:***

**Jurisdiction is the power of the Court to decide a case on the merits, while venue refers to the place where** **the suit may be filed. In criminal actions, however, venue is jurisdictional. Jurisdiction may not be conferred upon a court by consent through waiver, but venue may be waived except in criminal cases.**

5. What do you mean by (a) real actions; and (b) personal actions? 2%

***SUGGESTED ANSWER:***

**Real actions are actions affecting title to or possession of real property or an interest therein. All other actions are personal actions (Sec. 1, Rule 4 of the 1997 Revised Rules of Civil Procedure).**

**II**

What court has jurisdiction over an action for specific performance filed by a subdivision homeowner against a subdivision developer? Choose the correct answer. Explain. 2.5%

1. The Housing and Land Use Regulatory Board

2. The Securities and Exchange Commission

3. The Regional Trial Court

4. The Commercial Court or the Regional Trial Court designated by the Supreme Court to hear and decide "commercial cases".

***SUGGESTED ANSWER:***

**The Housing and Land Use Regulatory Board (HLURB) that has jurisdiction over an action for specific performance filed by a subdivision homeowner, who is a lot-buyer or the latter's successor-in-interest, against a subdivision developer (Manila Bankers v. Ng Kok Wei 418 SCRA 454 [2001).**

***ANOTHER SUGGESTED ANSWER:***

**It is the RTC that has jurisdiction where the issue involved is an ordinary sale between buyer and seller. "Mere assertion by the petitioner that it is a subdivision developer and the land involved is a subdivision lot, will not automatically strip the trial court of its jurisdiction and authorize the HLURB to take cognizance of the complaint" (Lacson Hermanos, Inc. v. Heirs of Ignacio, 462 SCRA 291 (2005). The mere relationship between the "Homeowner" and the Developer alone does not vest the HLURB with jurisdiction, but the nature of the action which is to be determined by the allegations of the complaint. Jurisdiction of the HLURB in cases of specific performance refers to complaints for compliance with contractual and statutory obligations. The question does not specify what is the contractual stipulation or statutory obligation sought to be performed. An action for specific performance is an action incapable of pecuniary estimation which falls under the jurisdiction of the Regional Trial Court unless it is shown that the action falls under the jurisdiction of any other court or quasi-judicial agency like the HLURB.**

**III**

1. What is forum shopping? 2.5%

***SUGGESTED ANSWER:***

**Forum-shopping is the act of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment (Executive Secretary v. Gordon, 298 SCRA 735 (1998).**

2. Honey filed with the Regional Trial Court, Taal, Batangas a complaint for specific performance against Bernie. For lack of a certification against forum shopping, the judge dismissed the complaint. Honey's lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how will you resolve the motion? 5%

***SUGGESTED ANSWER:***

**If I were the judge, I will deny the Motion for Reconsideration. The requirement of filing a certificate of non-forum shopping is mandatory: it is not curable by mere amendment of the complaint but the dismissal of the case shall be without prejudice. Sec. 5, Rule 7 of the 1997 Revised Rules of Civil Procedure). However, the rule may be liberally construed when there are compelling reasons and a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice (Valte v. Court of Appeals, 433 SCRA 185 (2004); Wack Wack Golf & Country Club v. National Labor Relations Commission, 456 SCRA 280 (2005)).**

**IV**

Jojie filed with the Regional Trial Court of Laguna a complaint for damages against Joe. During the pre-trial, Jojie and her counsel (sic) failed to appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as in default and Jojie was allowed to present her evidence ex parte. Thereafter, the court rendered its Decision in favor of Jojie.

Joe hired Jose as his counsel. What are the remedies available to him? Explain. 5%

***SUGGESTED ANSWER:***

**Under the present rule, there can be no judgment by default by mere failure of the defendant to appear in the pre-trial. The only consequence of such failure to appear is that the plaintiff can present his evidence ex parte and the court may render judgment on the basis thereof (Sec. 5. Rule 18 of the 1997 Revised Rules of Civil Procedure). The following are the remedies available to Joe:**

**(a) motion for reconsideration;**

**(b) motion for new trial;**

**(c) appeal; (d) petition for relief from a judgment of default;**

**(e) annulment of judgment under Rule 47; and**

**(f) certiorari under Rule 65.**

**V.**

May Congress enact a law providing that a 5,000 square meter lot, a part of the UST compound in Sampaloc, Manila, be expropriated for the construction of a park in honor of former City Mayor Arsenio Lacson? As compensation to UST, the City of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. 5%

***SUGGESTED ANSWER:***

**Yes, Congress can enact a law to expropriate property, but it cannot limit just compensation. The determination of just compensation is a judicial function and Congress may not supplant or prevent the exercise of judicial discretion to determine just compensation (EPZA V. Dulay, 149 SCRA 305(1987). Under Sec. 5, Rule 67 of the 1997 Revised Rules of Civil Procedure, the ascertainment of just compensation requires the evaluation of three commissioners.**

**VI**

Explain each mode of certiorari:

a. As a mode of appeal from the Regional Trial Court or the Court of Appeals to the Supreme Court. 2.5%

***SUGGESTED ANSWER:***

**A petition for review on certiorari under Rule 45 of the 1997 Revised Rules on Civil Procedure is a mode of appeal on pure questions law from a judgment or final order or resolution of the Court of Appeals or the Regional Court to the Supreme Court.**

b. As a special civil action from the Regional Trial Court or the Court of Appeals to the Supreme Court. 2.5%

***SUGGESTED ANSWER:***

**A special civil action for certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure, is an original action from the Regional Trial Court or the Court of Appeals to the Supreme Court against any tribunal, board or officer exercising judicial or quasi-judicial functions raising the issue of lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, there being no appeal or any plain, speedy and adequate remedy in the ordinary course of law.**

c. As a mode of review of the decisions of the National Labor Relations Commission and the Constitutional Commissions. 2.5%

**SUGGESTED ANSWER:**

**The mode of review of the decision of the NLRC is via a special civil action for certiorari under Rule 65, but pursuant to the hierarchy of the courts enunciated in the case of St. Martin's Funeral Homes v. NLRC, 295 SCRA 494 (1998), the same should be filed in the Court of Appeals.**

**The mode of review of the decisions of two Constitutional Commissions, the Commission on Elections and the Commission on Audit, as provided under Rule 64 of the 1997 Revised Rules of Civil Procedure, is a special civil action for certiorari under Rule 65. Decisions of the Civil Service Commission, however, are**

**reviewable by petition for review to be filed with the Court of Appeals under Rule 43 of the 1997 Revised Rules of Civil Procedure.**

**VII**

Mark filed with the Bureau of Internal Revenue a complaint for refund of taxes paid, but it was not acted upon. So, he filed a similar complaint with the Court of Tax Appeals raffled to one of its Divisions. Mark's complaint was dismissed. Thus, he filed with the Court of Appeals a petition for certiorari under Rule 65.

Does the Court of Appeals have jurisdiction over Mark's petition? 2.5%

***SUGGESTED ANSWER:***

**No. A decision of a Division of the Court of Tax Appeals (CTA) is appealable within 15 days to the CTA en banc (Sec. 18, Rep. Act No. 9282, as amended). On the other hand, a party adversely affected by a decision or ruling of the CTA en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure (Sec. 19, Rep. Act No. 9282, as amended].**

**Rep. Act No. 9282 expanded the jurisdiction of the Court of Tax Appeals and elevated the same to the level of a collegiate court equivalent to the rank of the Court of Appeals. Hence, the Court of Appeals no longer has jurisdiction to review decisions of the Court of Tax Appeals en banc.**

**VIII**

Does the Court of Appeals have jurisdiction to review the Decisions in criminal and administrative cases of the Ombudsman? 2.5%

***SUGGESTED ANSWER:***

**The Court of Appeals can only review the Decisions of the Ombudsman in administrative cases in an appeal by petition for review under Rule 43 of the 1997 Revised Rules of Civil Procedure. It has no jurisdiction to review Decisions of the Ombudsman in 'criminal cases, the proper remedy being to file with the Supreme Court an original petition for certiorari under Rule 65 (Fabian v. Ombudsman Desierto, 295 SCRA 470 (1998); Kuizon v. Ombudsman Desierto, 354 SCRA 158 (2001); MendozaArce v. Ombudsman, 380 SCRA 325 (2002).**

**IX**

1. What are the requisites for the issuance of (a) a writ of preliminary injunction; and (b) a final writ of injunction? 2.5%

***SUGGESTED ANSWER:***

**The requisites for the issuance of a writ of preliminary injunction are: (1) a right in esse or a clear and unmistakable right to be protected: (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage (Tayag v. Lacson, 426 SCRA 282 [2004]).**

**A final writ of injunction may be granted if after trial of the action, it appears that the applicant is entitled to have the act or acts complained of permanently enjoined (Sec. 9, Rule 58 of the 1997 Revised Rules on Civil Procedure)**

1. Distinguish between injunction as an ancillary remedy and injunction as a main action. 2.5%

***SUGGESTED ANSWER:***

**Injunction as an ancillary remedy presupposes the existence of a principal or a main action (Vallangca v. Court of Appeals, 173 SCRA 42 (1989). Its main function** **is to preserve the status quo until the merits can be heard and resolved (Urbanesv. Court of Appeals, 335 SCRA 537 [2001].**

**On the other hand, an injunction as the main action is brought specifically to obtain a judgment perpetually restraining or commanding the performance of an act after trial (Del Mar v. PAGCOR, 346 SCRA 485 [2000]).**

1. Define a temporary restraining order (TRO). 2%

***SUGGESTED ANSWER:***

**A temporary restraining order is an interlocutory order issued to preserve the status quo, and is granted to a party until the hearing of the application for preliminary injunction (Sec. 5, par. 2, Rule 58 of the 1997 Rules of Civil Procedure).**

1. May a Regional Trial Court issue injunction without bond? 2%

***SUGGESTED ANSWER:***

***Yes, if the injunction issued is a final injunction. Generally, however, a preliminary injunction may not be issued without the posting of a bond, unless exempted by the trial court (Rule 58, sec. 4 [b], 1997 Revised Rules of Civil Procedure) or otherwise provided for by law.***

1. What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? 2%

***SUGGESTED ANSWER:***

**The duration of the TRO issued by the executive judge of a Regional Trial Court is seventy-two (72) hours from issuance, which is issued only if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, and the duration of the** **TRO issued by him as the judge assigned to the case, may be effective for a total of twenty (20) days, including the original period of 72 hours.**

1. Differentiate a TRO from a status quo order. 2%

***SUGGESTED ANSWER:***

**A temporary restraining order is issued upon application of a party and upon the posting of the required bond. On the other hand, a status quo order may be issued motu proprio on equitable considerations, and does not require the posting of a bond. Unlike a temporary restraining order or a preliminary injunction, a status quo order is more in the nature of a cease and desist order, since it neither directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief (Garcia v. Mojica, 314 SCRA 207(1999).**

1. May a justice of a Division of the Court of Appeals issue a TRO? 2%

***SUGGESTED ANSWER:***

**Yes, a Justice of a Division of the Court of Appeals may issue a TRO, as authorized under Rule 58 and by Section 5, Rule IV of the IRCA which additionally requires that the action shall be submitted on the next working day to the absent members of the division for their ratification, modification or recall (Heirs of the late Justice Jose B.L. Reyes v. Court of Appeals, 338 SCRA 282 [2000]).**

**XI**

1. What is an interlocutory order?

***SUGGESTED ANSWER:***

1. **An interlocutory order is an order which decides some point or matter between the commencement and end of the suit but it is not the final decision on the whole** ***controversy. It leaves something to be done by the court before the case is finally decided on the merits. (Metropolitan Bank & Trust Co. v. Court of Appeals, 356 SCRA 563 [2001]; Gallardo v. People, 456 SCRA 494 (2005).***
2. What is the difference between a judgment and an opinion of the court? 2.5%

***SUGGESTED ANSWER:***

**The judgment or fallo is the final disposition of the Court which is reflected in the dispositive portion of the decision, while the opinion of the court is contained in the body of the decision that serves as a guide or enlightenment to determine the ratio decidendi of the decision.**

**XII**

Tina Guerrero filed with the Regional Trial Court of Biñan, Laguna, a complaint for sum of money amounting to P1 Million against Carlos Corto. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglamentary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence ex parte. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution of the promissory note: and contending that he has fully paid his loan with interest at 12% per annum.

1. Was the summons validly served on Carlos? 2.5%

***SUGGESTED ANSWER:***

**No, the summons was not validly served on Carlos. As a general rule, summons must be served on the**

**defendant in person (Sec. 6, Rule 14 of the 1997 Revised Rules of Civil Procedure). Substituted service may be resorted to only when the defendant cannot be served personally within a reasonable time and for a justifiable reason (Sec. 7, Rule 14 of the 1997 Revised Rules of Civil Procedure). The return must show impossibility of service and efforts of the Sheriff to effect personal service.**

2. If you were the judge, will you grant Tina's motion to declare Carlos in default? 2.5%

***SUGGESTED ANSWER:***

**No, I will not grant Tina's motion to declare Carlos in default. Considering that there was no proper service of summons, the reglementary period to file a responsive pleading was not tolled. Carlos was not duty bound to submit an Answer. Moreover, Carlos submitted a verified Answer. It is better to decide a case on the merits than on sheer technicality.**

**XIII**

Sergio Punzalan, Filipino, 50 years old, married, and residing at Ayala Alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him proficiently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P300 Million. He bequeathed P50 Million each to his 3 sons and P150 Million to his wife. He devised a piece of land worth P100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond.

1. Is Cancio Vidal, after learning of Sergio's death, obliged to file with the proper court a petition for probate of the latter's last will and testament? 2%

***SUGGESTED ANSWER:***

**No, Cancio Vidal is not obliged to file a petition for** **probate because under Sec. 3, Rule 75, he is only obliged to deliver the will within twenty (20) days after he knows of the death of the testator.**

2. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court? 2%

***SUGGESTED ANSWER:***

**Yes, as a person having custody of the will, Susan has the duty to deliver the will to the court having jurisdiction or to the executor named in the will within twenty (20) days upon learning the death of the testator (Sec. 2, Rule 75 of the Rules of Court).**

1. Can the probate court appoint the widow as executor of the will? 2%

***SUGGESTED ANSWER:***

**Yes, the probate court can appoint the widow as an executor of the will if Cancio Vidal is found to be incompetent, refuses the trust, or fails to give a bond, provided that she is competent and willing to serve (Sec. 6. Rule 78 of the Rules of Court).**

1. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? 2%

***SUGGESTED ANSWER:***

**No, an extrajudicial settlement of estate by agreement between or among the heirs of the deceased may be had only when the decedent left no will (Sec. 1, Rule 75 of the Rules of Court).**

1. Can the widow and her children initiate a separate petition for partition of the estate pending the probate of the last will and testament by the proper court? 2%

***SUGGESTED ANSWER:***

**No, the widow and her children cannot file a separate petition for partition pending the probate of the Will (Sec. 1, Rule 75 of the Rules of Court: Vda. de Kilayko v. Tengco, 207 SCRA 600, (1992)). Partition is part of the testate estate proceeding.**

**XIV**

When is bail a matter of right and when is it a matter of discretion? 5%

***SUGGESTED ANSWER:***

***Bail is a matter of right: (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court: (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment (Sec. 4, Rule 114 of the 2000 Revised Rules on Criminal Procedure) and (c) if the charge involves a capital offense and the evidence of guilt is not strong (Sec. 7. Rule 114 of the 2000 Revised Rules on Criminal Procedure).***

**Bail is a matter of discretion upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment (Sec. 5, Rule 114 of the 2000 Revised Rules on Criminal Procedure).**

***XV***

Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel, their neighbor. She was temporarily living with her sister in Pasig City.

For unknown reasons, the house of Leticia's sister was burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later, he was

charged with arson in an Information filed with the Regional Trial Court, Pasig City.

During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson

Can Leticia testify over the objection of her husband on the ground of marital privilege? 5%

***SUGGESTED ANSWER:***

**Yes, Leticia can testify over the objection her husband. As a general rule, neither the husband nor the wife, during their marriage, may testify for or against the other without the consent of the affected spouse, except in civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants (Rule 130, sec. 22, Revised Rules on Evidence). In a number of cases, it has been held that the marital disqualification is aimed at protecting the harmony and confidences of marital relations; hence, where the marital and domestic relations are so strained that there is no more harmony to be preserved nor peace and tranquility which may be disturbed, the marital disqualification no longer applies.**

**The act of Paul in setting fire to the house of his sister-in-law, knowing fully well that his wife was there, is an act totally alien to the harmony and confidences of marital relation which the disqualification primarily seeks to protect. The criminal act complained of had the effect of directly and vitally impairing the conjugal relation. It underscored the fact that the marital and domestic relations between her and the accused-husband have become so strained that there is no more harmony, peace or tranquility to be preserved (Alvarez v. Ramirez, 473 SCRA 72 [2005); Ordono v. Daquigan, 62 SCRA 270 [1975]).**

**XVI**

1. What are the requirements in order that an admission of guilt of an accused during a custodial investigation be admitted in evidence? 2.5%

**SUGGESTED ANSWER:**

**An admission of guilt during a custodial investigation is a confession. To be admissible in evidence, the requirements are: (1) the confession must be voluntary: (2) the confession must be made with the assistance of competent and independent counsel; (3) the confession must be express; and (4) the confession must be in writing (People v. Principe, 381 SCRA 642 [2002].**

2. As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take? Explain. 2.5%

***SUGGESTED ANSWER:***

**As counsel for the accused, I will advise my client to ask for a reinvestigation and convince the prosecutor for him to move for the discharge of my client as a state witness, or the accused can apply as a state witness with the Department of Justice pursuant to Rep. Act No. 6981, The Witness Protection, Security and Benefit Act. The right to prosecute vests the prosecutor with a wide range of discretion, including what and whom to charge (Soberano v. People, 472 SCRA 125 (2005]).**

**XVII**

In 1996, Congress passed Republic Act No. 8189, otherwise known as the Voters' Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voters' Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 Billion and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 Billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina filed with the RTC a petition for mandamus to compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

1. May the OSG represent Chairman Go before the RTC notwithstanding that his position is contrary to that of the majority? 5%

***SUGGESTED ANSWER:***

**Yes, the Office of the Solicitor General can represent Chairman Go before the Regional Trial Court. The OSG is an independent office. Its hands are not shackled to the cause of its client agency. In the discharge of its task, the primordial concern of the OSG is to see to it that the best interests of the government is upheld (COMELEC v. Quijano-Padilla, 389 SCRA 353 (2002).**

2. Is a petition for mandamus an appropriate remedy to enforce contractual obligations? 5%

***SUGGESTED ANSWER:***

***No, the COMELEC cannot be compelled by a writ of mandamus to discharge a duty that involves the exercise ofjudgment and discretion, especially where disbursement of public funds is concerned (COMELECv. Quijano-Padilla, (supra) and other cases.)***

**2005 BAR EXAMINATION**

a) Under Article 1144 of the New Civil Code, an action upon a judgment must be brought within 10 years from the time the right of action accrues.

Is this provision applicable to an action filed in the Philippines to enforce a foreign judgment? Explain.

***SUGGESTED ANSWER:***

**Article 1144 of the Civil Code is applicable because it is merely an action in a domestic court to enforce a foreign judgment. Foreign judgments should be treated in the same manner as domestic judgments.**

***ALTERNATIVE SUGGESTED ANSWER:***

**a) Article 1144 of the Civil Code which requires that an action upon a judgment (though without distinction) must be brought within 10 years from the time the right of action accrues, does not apply to an action filed in the Philippines to enforce a foreign judgment. While we can say that where the law does not distinguish, we should not distinguish, still the law does not evidently contemplate the inclusion of foreign judgments. A domestic judgment may be enforced by motion within five years and by action within the next five years. That is not the case with respect to foreign judgments which cannot be enforced by mere motion. A foreign judgment, in fact, is merely presumptive evidence of a right between the parties and their successors in interests. (Van Dorn v. Romillo. Jr.. 139 SCRA 139 [1985]). The word "judgment" refers to one mentioned in Section 1, Rule 36, which is filed with the clerk of court. If no period is fixed in our law, the period of prescription is five (5) years under Art. 1149 of the Civil Code.**

b) May the aggrieved party file a petition for certiorari in the Supreme Court under Rule 65 of the 1997 Rules of Civil Procedure instead of filing a petition for review on certiorari under Rule 45 thereof for the nullification of a decision of the Court of Appeals in the exercise either of its original or appellate jurisdiction? Explain.

***SUGGESTED ANSWER:***

**b) The remedy to nullify a decision of the Court of Appeals is a petition for review on certiorart in the Supreme Court under Rule 45, instead of a petition for certiorari under Rule 65, except in certain exceptional circumstances such as where appeal is inadequate. By settled jurisprudence, certiorari is not a substitute for a lost appeal.**

c) May a private document be offered and admitted in evidence both as documentary evidence and as object evidence? Explain.

***SUGGESTED ANSWER:***

**c) Yes. A private document may be offered and admitted in evidence both as documentary evidence and as object evidence. A document can also be considered as an object for purposes of the case. Objects as evidence are those addressed to the senses of the court. (Sec. 1, Rule 130, Rules of Court.) Documentary evidence consists of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions, offered as proof of their contents. (Sec. 2, Rule 130, Rules of Court) A tombstone may be offered in evidence to prove what is written on it and if the same tombstone is found on a tomb, then it is object evidence. It can be considered as both documentary and object evidence. (See Gupit, Jr., Revised Rules of Evidence, 1989, p. 12.)**

d) Distinguish a derivative suit from a class suit.

***SUGGESTED ANSWER:***

**d) A derivative suit is a suit in equity that is filed by a minority shareholder in behalf of a corporation to redress wrongs committed against it, for which the directors refuse to sue, the real party in interest being the corporation itself (Lim v. Lim-Yu, 352 SCRA 216 [2001]). A class suit is filed in behalf of many persons so numerous that it is impracticable to join all as parties. (Sec. 12, Rule 3, 1997 Rules of Civil Procedure).**

e) When may the trial court order that the testimony of a child be taken by live-link television? Explain. (10%)

***SUGGESTED ANSWER:***

**e) The testimony of a child may be taken by live link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child. (Sec. Sec. 25 [f], Rule on Examination of a Child Witness).**

(1.) While Marietta was in her place of work in Makati City, her estranged husband Carlo barged into her house in Parañaque City, abducted their six-year old son, Percival, and brought the child to his hometown in Baguio City. Despite Marietta's pleas, Carlo refused to return their child. Marietta, through counsel, filed a petition for habeas corpus against Carlo in the Court of Appeals in Manila to compel him to produce their son before the court and for her to regain custody. She alleged in the petition that despite her efforts, she could no longer locate her son.

In his comment, Carlo alleged that the petition was erroneously filed in the Court of Appeals as the same should

have been filed in the Family Court in Baguio City which, under Republic Act no. 8369, has exclusive jurisdiction over the petition. Marietta replied that under Rule 102 of the Rules of Court, as amended, the petition may be filed in the Court of Appeals and if granted, the writ of habeas corpus shall be enforceable anywhere in the Philippines.

Whose contention is correct? Explain. (5%)

***SUGGESTED ANSWER:***

(1.) Marietta's contention is correct. The Court of Appeals has concurrent jurisdiction with the family courts and the Supreme Court in petitions for habeas corpus where the custody of minors is at issue, notwithstanding the provision in the Family Courts Act (Republic Act No.8369) that family courts have exclusive jurisdiction in such cases. (Thornton v. Thornton, 436 SCRA 550 [2004]).

Sec. 20, par. 6 of SC AM No. 03-04-04 [2003] provides: "the petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits."

(2) Under Republic Act No. 8353, one may b charged with and found guilty of qualified rape if he knew on or before the commission of the crime that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

Under Section 17(a) of Republic Act No. 8504 the curt may compel the accused to submit himself to a blood test where blood samples would be extracted from his veins to determine whether he has HIV.

a) Are the rights of the accused to be presumed innocent of the crime charged, to privacy, and against self incrimination violated by such compulsory testing? Explain.

***SUGGESTED ANSWER:***

**(2) a) No. The court may compel the accused to submit himself to a blood test to determine whether he has HIV under Sec. 17(a) of Republic Act No. 8054. His rights to be presumed innocent of the crime charged, to privacy and against self-incrimination are not violated by such compulsory testing. In an action in which the physical condition of a party is in controversy, the court may order the accused to submit to a physical examination. The right against self-incrimination refers to compulsory testimonial compulsion and does not include the body of the accused as evidence when it may be material (U.S.v. Tan Teng, 23 Phil.145[1912]; Villaflor V. Summers, 41 Phil. 62 [1920]: Section 1, Rule 28, 1997 Rules of Civil Procedure).**

b) If the result of such test shows that he is HIV positive, and the prosecution offers such result in evidence to prove the qualifying circunstance under the information for qualified rape, should the court reject such result on the ground that it is the fruit of a poisonous tree? Explain. (8%)

***SUGGESTED ANSWER:***

**(2.) b) The fruits of the poisonous tree doctrine applies only where the primary source is shown to have been unlawfully obtained or was the result of an illegal act (People v. Alicando, G.R. No. 117487, 251 SCRA 293 [1995]) Since the rights of the accused are not violated because the compulsory testing is authorized by law, the result of the testing cannot be considered to be the fruit of a poisonous tree and can be offered in evidence to prove the qualifying circumstance under the information for qualified rape under Republic Act No. 8353.**

Perry is a resident of Manila, while Ricky and Marvin are residents of Batangas City. They are the co-owners of a parcel of residential land located in Pasay City with an assessed value of P100,000.00. Perry borrowed P100,000.00 from Ricky which he promised to pay on or before December 1. 2004. However, Perry failed to pay his loan. Perry also rejected Ricky and Marvin's proposal to partition the property.

Ricky filed a complaint against Perry and Marvin in the Regional Trial Court of Pasay City for the partition of the property. He also incorporated in his complaint his action against Perry for the collection of the latter's P100,000.00 loan, plus interests and attorney's fees.

State with reasons whether it was proper for Ricky to join his causes of action in his complaint for partition against Perry and Marvin in the Regional Trial Court of Pasay City. (5%)

***SUGGESTED ANSWER:***

**It was not proper for Ricky to join his causes of action against Perry in his complaint for partition against Perry and Marvin. The causes of action may be between the same parties, Ricky and Perry, with respect to the loan but not with respect to the partition which includes Marvin. The joinder is between a partition and a sum of money, but the partition is a special civil action under Rule 69, which cannot be joined. (Sec. 5, Rule 2, 1997 Rules of Civil Procedure.). Also, the causes of action pertain to different venues and jurisdictions. The case for a sum of money pertains to the municipal court and cannot be filed in Pasay City because the plaintiff is from Manila while Ricky and Marvin are from Batangas City. (Sec. 5, Rule 2, 1997 Rules of Civil Procedure.)**

**IV**

Raphael, a warehouseman, filed a complaint against V Corporation, X Corporation and Y Corporation to compel

them to interplead. He alleged therein that the three corporations claimed title and right of possession over the goods deposited in his warehouse and that he was uncertain which of them was entitled to the goods. After due proceedings, judgment was rendered by the court declaring that X Corporation was entitled to the goods. The decision became final and executory.

Raphael filed a complaint against X Corporation for the payment of P100,000.00 for storage charges and other advances for the goods. X Corporation filed a motion to dismiss the complaint on the ground of res judicata. X Corporation alleged that Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances and that for his failure he was barred fr interposing his claim. Raphael replied that he could not have claimed storage fees and other advances in his complaint for interpleader because he was not yet certain as to who was liable therefore,

Resolve the motion with reasons. (4%)

***SUGGESTED ANSWER:***

**The motion to dismiss should be granted. Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances. They are part of Raphael's cause of action which he may not split. The filing of the interpleader is available as a ground for the dismissal of the second case. (Sec. 4, Rule 2, 1997 Rules of Civil Procedure.) It is akin to a compulsory counterclaim which, if not set up, is barted. (Sec. 2, Rule 9, 1997 Rules of Civil Procedure). The law also abhors the multiplicity of suits; hence, the claim for storage fees should have been made part of his cause of action in the interest of complete adjudication of the controversy and its incidents. (Arreza v. Diaz, 364 SCRA 88 [2001]).**

***ALTERNATIVE SUGGESTED ANSWER:***

**The motion to dismiss should not be granted. Raphael not being a party to the case cannot file a counter** **complaint. A complaint for interpleader which is a special civil action is merely an action for the parties to interplead among themselves. The claim for storage fees is a separate and distinct cause of action. It is an ordinary action for collection which cannot be joined in a special civil action. (Sec. 5(b) Rule 2)**

(1) After Lulu's death, her heirs brought her last will to a lawyer to obtain their respective shares in the estate. The lawyer prepared a deed of partition distributing Lulu's estate in accordance with the terms of her will.

Is the act of the lawyer correct? Why? (2%)

***SUGGESTED ANSWER:***

**(1) No. No will shall pass either real or personal estate unless it is proved and allowed in the proper court. (Section 1, Rule 75, Rules of Court.)**

(2) Nestor died intestate in 2003, leaving no debts. How may his estate be settled by his heirs who are of legal age and have legal capacity? Explain. (2%)

***SUGGESTED ANSWER:***

**(2) If the decedent left no will and no debts, and the heirs are all of age, the parties may, without securing letters of administration, divide the estate among themselves by means of a public instrument or by stipulation in a pending action for partition and shall file a bond with the register of deeds in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned. The fact of extrajudicial settlement shall be published in a newspaper of general circulation once a week for three consecutive weeks in the province. (Section 1, Rule 74, Rules of Court).**

(3) State the rule on venue in judicial settlement of estate of deceased persons. (2%)

***SUGGESTED ANSWER:***

**(3) The rule on venue in judicial settlement of estate of deceased persons may be stated as follows: If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, the venue shall be in the Regional Trial Court in the province in which he resides at the time of his death. It cannot be in the place where he used to live (Jaov. Court of Appeals, 382 SCRA 407 [2002]). If he is an inhabitant of a foreign country, the Regional Trial Court of any province in which he had estate, is the proper venue. The court first taking cognizance of the case shall exercise jurisdiction to the exclusion of all other courts. When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either. (Secs. 1 and 2, Rule 73, Rules of Court.)**

**VI**

While cruising on a highway, a taxicab driven by Mans hit an electric post. As a result thereof, its passenger, Jovy. suffered serious injuries. Mans was subsequently charged before the Municipal Trial Court with reckless imprudence resulting in serious physical injuries.

Thereafter, Jovy filed a civil action against Lourdes, the owner of the taxicab, for breach of contract, and Mans for quasi-delict. Lourdes and Mans filed a motion to dismiss the civil action on the ground of litis pendentia, that is, the pendency of the civil action impliedly instituted in the criminal action for reckless imprudence resulting in serious physical injuries.

Resolve the motion with reasons. (4%)

***SUGGESTED ANSWER:***

**Being a distinct cause of action, the action for breach of contract against the taxicab owner cannot be barred by the criminal action against the taxicab driver, although the taxicab owner can be held subsidiarily liable in the criminal case if the driver is insolvent. On the other hand, the civil action for quasi-delict against the driver is an independent civil action under Article 33 of the Civil Code and Sec. 3, Rule 111 of the Rules of Court, which can be filed separately and can proceed independently of the criminal action and regardless of the result of the latter. (Samson v. Daway, 434 SCRA 612 [2004]) and other cases.**

**VII**

Katy filed an action against Tyrone for collection of the sum of P1 Million in the Regional Trial Court, with an ex-parte application for a writ of preliminary attachment. Upon posting of an attachment bond, the court granted the application and issued a writ of preliminary attachment.

Apprehensive that Tyrone might withdraw his savings deposit with the bank, the sheriff immediately served a notice of garnishment on the bank to implement the writ of preliminary attachment. The following day, the sheriff proceeded to Tyrone's house and served him the summons, with copies of the complaint containing the application for writ of preliminary attachment, Katy's affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15 days) days from service of the summons, Tyrone filed a motion to dismiss and to dissolve the write of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served ahead of the summons; (ii) the writ was improperly implemented; and (iii) said writ was improvidently issued because the obligation in question was already fully paid.

Resolve the motion with reasons. (4%)

***SUGGESTED ANSWER:***

**(1) The fact that the writ of attachment was served ahead of the summons did not affect the jurisdiction of the court over the defendant. The effect is that the writ is not enforceable. (Sec. 5, Rule 57, 1997 Rules of Civil Procedure.) But, as pointed out by jurisprudence, all that is needed to be done is to re-serve the writ. (Onate v. Abrogar, 241 SCRA 659 [1985]).**

**(2) The writ was improperly implemented. Serving a notice of garnishment, particularly before summons is served, is not proper. What should be served on the defendant are a copy of the writ of attachment and notice that the bank deposits are attached pursuant to the writ. (Sec. 7 [d], Rule 57, 1997 Rules of Civil Procedure.)**

**(3) The proper remedy where there is payment is a motion to dismiss under Section 1 (h) Rule 16. A motion to discharge on the ground that the writ was improvidently issued will not lie, since such a motion would be tantamount to trial on the merits of the action which cannot be ventilated at a mere hearing of the motion instead of a regular trial.. The writ is only ancillary to the main case. ( Sec. 13, Rule 57, 1997 Rules of Civil Procedure, Mindanao Savings & Loans Assoc.. Inc. v. C.A., 172 SCRA 480 (1989); Davao Light & Power Co. v. Court of Appeals 204 SCRA 343 [1991]).**

**VIII**

In a complaint for recovery of real property, the plaintiff averted, among others, that he is the owner of the said property by virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex "A" thereof.

In his unverified answer, the defendant denied the allegation concerning the sale of the property in question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof.

Is it proper for the court to render judgment without trial? Explain. (4%)

***SUGGESTED ANSWER:***

**Defendant cannot deny the sale of the property for lack of knowledge or information sufficient to form a belief as to the truth thereof. The answer, being defective, amounts to an admission. (Phil. Advertising Counselors, Inc. v. Revilla, 52 SCRA 246 (1973): Sec. 10, Rule 8, 1997 Rules of Civil Procedure). Moreover, the genuineness and due execution of the deed of sale can only be denied by the defendant under oath and failure to do so is also an admission of the deed. (Sec. 8, 1997 Rules of Civil Procedure). Hence, a judgment on the pleadings can be rendered by the court without need of a trial. (Gutierrez v. Court of Appeals, 74 SCRA 127 [1976)).**

**IX**

On May 12, 2005, the plaintiff filed a complaint in the Regional Trial Court of Quezon City for the collection of P250,000.00. The defendant filed a motion to dismiss the complaint on the ground that the court had no jurisdiction over the action since the claimed amount of P250,000.00 is within the exclusive jurisdiction of the Metropolitan Trial Court of Quezon City.

Before the court could resolve the motion, the plaintiff, without leave of court, amended his complaint to allege a new cause of action consisting in the inclusion of an additional amount of P200,000.00, thereby increasing his total claim to P450,000.00. The plaintiff thereafter filed his opposition to the motion to dismiss, claiming that the Regional Trial Court had jurisdiction over his action.

Rule on the motion of the defendant with reasons. (4%)

***SUGGESTED ANSWER:***

**The motion to dismiss should be denied. A plaintiff is entitled as a matter of right to amend the complaint** **before a responsive pleading is served, without leave of court, even if there is a pending motion to dismiss (Sec. 2, Rule 10, 1997, Rules of Civil Procedure; Soledad v. Manangun, 8 SCRA 110 (1963); Remington Industrial Sales Corporation v. Court of Appeals, 382 SCRA 499 [2002]). While a complaint cannot be amended to confer jurisdiction on a court where there was none (Calabig v. Villanueva, 135 SCRA 300[1985]), the rule applies where a responsive pleading has already been filed because in such a case, amendment should be by leave of court under Section 3 Rule 10. If the court is without jurisdiction, it has no jurisdiction to grant leave of court. A motion to dismiss is not a responsive pleading, therefore, amendment is a matter of right (Rule 10, Sec. 1, Rules of Civil Procedure Dauden-Hernaez v. de los Angeles, 27 SCRA 1276 (1969); Gumabay v. Baralin 77 SCRA 258 [1977]).**

A obtained a money judgment against B. After the finality of the decision, the court issued a writ of execution for the enforcement thereof. Conformably with the said writ, the sheriff levied upon certain properties under B's name. C filed a third-party claim over said properties claiming that B had already transferred the same to him.

A moved to deny the third-party claim and to hold B and C jointly and severally liable to him for the money judgment alleging that Bhad transferred said properties to C to defraud him (A).

After due hearing, the court denied the third-party claim and rendered an amended decision declaring B and C jointly and severally liable to A for the money judgment.

Is the ruling of the court correct? Explain. (4%)

***SUGGESTED ANSWER:***

**No. C has not been properly impleaded as a party defendant. He cannot be held liable for the judgment** **against A without a trial. In fact, since no bond was filed by B, the sheriff is liable to C for damages. C can file a separate action to enforce his third-party claim. It is in that suit that B can properly raise the ground of fraud against C. However, the execution may proceed where there is a finding that the claim is fraudulent. (Tanongan v. Samson, 382 SCRA 130 [2002]). Besides, the judgment is already final.**

**XI**

Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen.

Helen wants her birth certificate corrected by changing her filiation from "legitimate" to “illegitimate" and her citizenship from ""Chinese" to "Filipino" because her parents were not married.

What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

***SUGGESTED ANSWER:***

**A petition to change the record of birth by changing the filiation from "legitimate" to "illegitimate" and petitioner's citizenship from "Chinese" to "Filipino" because her parents were not married, does not involve a simple summary correction of her certificate of birth, which could otherwise be done under the authority of Republic Act No. 9048. A petition has to be filed in an adversarial proceeding under Rule 108 of the Rules of Court, which has now been interpreted to be adversarial in nature (Republic v. Valencia, 141 SCRA 462, (1986); Gupit, Jr., Rules of Procedure in Family Law Annotated, 2005 ed., p. 407.) Procedural requirements include: (a) filing a verified petition; (b) naming as parties all persons who have or claim any interest which would be affected; (c) issuance of an order fixing the time and place of hearing: (d) giving reasonable notice to the parties named** **in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation. (Rule 108, Rules of Court); Co. v. The Civil Registrar of Manila, 423 SCRA 420 [2004]).**

**XII**

Mariano was convicted by the Regional Trial Court for raping Victoria and meted the penalty of reclusion perpetua. While serving sentence at the National Penitentiary, Mariano and Victoria were married. Mariano filed a motion in said court for his release from the penitentiary on his claim that under Republic Act no. 8353, his inarriage to Victoria extinguished the criminal action against him for rape, as well as the penalty imposed on him. However, the court denied the motion on the ground that it had lost jurisdiction over the case after its decision had become final and executory.

a) is the ruling of the court correct? Explain.

***SUGGESTED ANSWER:***

**a) No. The court can never lose jurisdiction so long as its decision has not yet been fully implemented and satisfied. Finality of a judgment cannot operate to divest a court of its jurisdiction to execute and enforce the judgment. (Echegaray v. Secretary of Justice, 301 SCRA 96 [1999]). Besides, there is a supervening event which renders execution unnecessary. (So v. CA, 388 SCRA 107 [2002]).**

b) What remedy/remedies should the counsel of Mariano take to secure his proper and most expeditious release from the National Penitentiary? Explain. (7%)

***SUGGESTED ANSWER:***

**b) To secure the proper and most expeditious release of Mariano from the National Penitentiary, his counsel should file (a) a petition for habeas corpus regarding the illegal confinement of Mariano, or (b) a** **motion in the court which convicted him, to nullify the execution of his sentence or the order of his commitment on the ground that a supervening development had despite the finality of the judgment occurred (Melo v. People, 85 Phil. 766 [1950]).**

XIII

Rodolfo is charged with possession of unlicensed firearms in an information filed in the Regional Trial Court. It was alleged therein that Rodolfo was in possession of two unlicensed firearms: a .45 caliber and a .32 caliber.

Under Republic Act No. 8294, possession ofan unlicensed 45 caliber gun is punishable by prision mayorin its minimum period and a fine of P30,000.00, while possession of an unlicensed.32 caliber gun is punishable by prision correccional in its maximum period and a fine of not less than P15,000.00.

As counsel of the accused, you intend to file a motion to quash the Information. What ground or grounds should you invoke? Explain. (4%)

***SUGGESTED ANSWER:***

**The ground for the motion to quash is that more than one offense is charged in the information (Sec. 3[f]. Rule 117, 2000 Rules of Criminal Procedure). Likewise, the RTC has no jurisdiction over the second offense of possession of an unlicensed .32 caliber gun, punishable by prision correccional in its maximum period and a fine of not less than P15,000.00, It is the MTC that has exclusive and original jurisdiction over offenses punishable by imprisonment not exceeding six years. (Sec. 2, Republic Act No. 7691 [1994], amending Sec. 32 (2), B.P. BÌg. 129) (1980).**

**XIV**

Police operatives of the Western Police District, Philippine National Police, applied for a search warrant in the Regional Trial Court for the search of the house of Juan Santos and the seizure of an undetermined amount of shabu. The team arrived at the house of Santos but failed to find him there. Instead, the team found Roberto Co.

The team conducted a search in the house of Santos in the presence of Roberto Coand barangay officials and found ten (10) grams of shabu. Roberto Co was charged in court with illegal possession of ten grams of shabu.

Before his arraignment, Roberto Co filed a motion to quash the search warrant on the following grounds: (a) he was not the accused named in the search warrant; and (b) the warrant does not describe the article to be seized with sufficient particularity.

Resolve the motion with reasons. (4%)

***SUGGESTED ANSWER:***

**The motion to quash should be denied. The name of the person in the search warrant is not important. It is not even necessary that a particular person be implicated (Mantaring v. Roman, 259 SCRA 158 [1996]), so long as the search is conducted in the place where the search warrant will be served. Moreover, it is sufficient to describe the shabuin an undetermined amount. Notably. what is to be seized is a particular drug and an undetermined arount thereof particularizes the things to be seized. (People v. Tee, 395 SCRA 419 [2003]: People v. Dichoso, 223 SCRA 174, 184 [1993]).**

**XV**

For the multiple stab wounds sustained by the victim, Noel was charged with frustrated homicide in the Regional Trial Court. Upon arraignment, he entered a plea of guilty to said crime. Neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds.

Because of his guilty plea, Noel was convicted of frustrated homicide and meted the corresponding penalty. When the prosecution learned of the victim's death, it filed within fifteen (15) days therefrom a motion to amend the Information to upgrade the charge from frustrated homicide to consummated homicide. Noel opposed the motion claiming that the admission of the amended Information would place him in double jeopardy.

Resolve the motion with reasons. (4%)

***SUGGESTED ANSWER:***

**Amending the information from frustrated homicide to consummated homicide does not place the accused in double jeopardy. The conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information when (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge; or (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information. (Sec. 7, second par., Rule 117, 2000 Rules of Criminal Procedure). Here, when the plea to frustrated homicide was made, neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds.**

**The case falls under (b), since the facts constituting e graver charge became known or were discovered only after a plea was entered in the former complaint or information.**

**XVI**

Dencio barged into the house of Marcela, tied her to a chair and robbed her of assorted pieces of jewelry and money. Dencio then brought Candida, Marcela's maid, to a bedroom where he raped her. Marcela could hear Candida crying and pleading: “Huwag! Maawa ka sa akin!" After raping Candida, Dencio fled from the house with the loot. Candida then untied Marcela and rushed to the police station about a kilometer away and told Police Officer Roberto Maawa that Dencio had barged into the house of Marcela, tied the latter to a chair and robbed her of her jewelry and money. Candida also related to the police officer that despite her pleas, Dencio had raped her. The policeman noticed that Candida was hysterical and on the verge of collapse. Dencio was charged with robbery with rape. During the trial, Candida can no longer be located.

a) If the prosecution presents Police Officer Roberto Maawa to testify on what Candida had told him, would such testimony of the policeman be hearsay? Explain.

***SUGGESTED ANSWER:***

**No. The testimony of the policeman is not hearsay. It is part of the res gestae. It is also an independently relevant statement. The police officer testified of his own personal knowledge, i.e., that complainant told him that despite her pleas, Dencio had raped her. He did not testify to the truth of his statement. (People v. Gaddi, 170 SCRA 649 (19891).**

***ALTERNATIVE ANSWER***

**Strictly speaking the testimony is hearsay, but it is an exception to the hearsay rule.**

b) If the police officer will testify that he noticed Candida to be hysterical and on the verge of collapse, would such testimony be considered as opinion, hence, inadmissible? Explain. (8%)

***SUGGESTED ANSWER:***

**b) No, It cannot be considered as opinion, because he was testifying on what he actually observed. A witness may testify on his impressions of the emotion, behavior, condition or appearance of a person.(Rules of Court, Rule 130, Sec. 50, last par.).**

**XVII**

Explain briefly whether the Regional Trial Court may, motu proprio, take judicial notice of the following:

a) The street name of methamphetamine hydrochloride is shabu

***SUGGESTED ANSWER:***

***a) The Regional Trial Court may motu proprio take judicial notice of the fact that the street name of methamphetamine hydrochloride is shabu, considering the chemical composition of shabu (People v. Macasling, 222 SCRA 630 [1993]).***

b) Ordinances approved by municipalities under its territorial jurisdiction;

***SUGGESTED ANSWER:***

**b) The RTC may not take judicial notice of ordinances approved by municipalities under its territorial jurisdiction in the absence of statutory authority, except on appeal from the municipal trial courts which took judicial notice of the ordinance in question. (U.S. v. Blanco, 37 Phil. 126 (1917); U.S. v. Hernandez, 31 Phil. 342 [19151).**

**c) Foreign laws:**

***SUGGESTED ANSWER:***

**c) The RTC may not generally take judicial notice of foreign laws (In re Estate of Johnson, 39 Phil. 156 [1918]): Fluemer v. Hix, 54 Phil. 610 [1930]), which must be proved like any other matter of fact (Sy Joc Lieng v. Sy Quia, 16 Phil. 137 (1910]) except in a few instances, when the court in the exercise of its sound, judicial discretion, may take notice of foreign laws where Philippine courts are evidently familiar with them, such as the Spanish Civil Code, which had taken effect in the** **Philippines, and other allied legislation (Pardov. Republic, 85 Phil. 324 (1950); Delgadov. Republic, L-2546. [January 28, 1950).**

d) Rules and Regulations issued by quasi-judicial bodies implementing statutes;

***SUGGESTED ANSWER:***

***d) The RTC may take judicial notice of Rules and Regulations issued by quasi-judicial bodies implementing statutes, because they are capable of unquestionable demonstration.(Lalchand Chattamalu. Insular Collector of Customs, G.R. No. 16347 [Nov. 3, 1920]).***

e) Rape may be committed even in public places

***SUGGESTED ANSWER:***

**e) The RTC may take judicial notice of the fact that rape may be committed even in public places. The "public setting" of the rape is not an indication of consent (People v. Tongson, 194 SCRA 257 (1991]). The Supreme Court has taken judicial notice of the fact that a man overcome by perversity and beastly passion chooses neither the time, place, occasion nor victim. (People v. Barcelona, 191 SCRA 100 [1990]).**

**XVIII**

Regional Director AG of the Department of Public Works and Highways was charged with violation of Section 3(e) of Republic Act No. 3019 in the Office of the Ombudsman. An administrative charge for gross misconduct arising from the transaction subject matter of said criminal case was filed against him the same office. The Ombudsman assigned a team composed of investigators from the Office of the Special Prosecutor and from the Office of the Deputy Ombudsman for the military to conduct a joint investigation of the criminal case and the administrative case. The team of investigators recommended to the Ombudsman that AG be preventively suspended for a period not exceeding six (6) months on its finding that the evidence of guilt is strong. The Ombudsman issued the said order as recommended by the investigators.

AG moved to reconsider the order on the following grounds: (a) the Office of the Special Prosecutor had exclusive authority to conducta preliminary investigation of the criminal case: (b) the order for his preventive suspension was premature because he had yet to file his answer to the administrative complaint and submit countervailing evidence; and (c) he was a career executive service officer and under Presidential Decree No. 807 (Civil Service Law), his preventive suspension shall be for a maximum period of three months.

Resolve with reasons the motion of respondent AG. (5%)

***SUGGESTED ANSWER:***

**The Motion for Reconsideration should be denied for the following reasons:**

**a) AG's contention that the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case should be rejected considering that the investigatory powers of the Office of the Special Prosecutor is under the supervision of the Office of the Ombudsman, which exercises the investigatory and prosecutory powers granted by the Constitution. (Office of the Ombudsman v. Enoc, 374 SCRA 691 [2002]). This is but in accordance with Sec. 31 of Repubilc Act 6770 which provides that the Ombudsman may utilized the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.**

b) The order of preventive suspension need not wait for the answer to the administrative complaint and the submission of countervailing evidence. (Garcia v. Mojica, 314 SCRA 207 (1999). Lastimosa v. Vasquez, 243 SCRA 497 [1995]).

**c) As a career executive officer, his preventive suspension under the Civil Service Law may only be for a maximum period of three months' (Section 42, Pres. Decree 807). The period of the suspension under the Anti-Graft Law is the same pursuant to the equal protection clause. (Section 13, Republic Act 3019; Garcia v. Mojica, supra; Layno v. Sandiganbayan, 136 SCRA 536 [1985]). However, under Section 24 of the Ombudsman Act, the Ombudsman is expressly authorized to issue an order of preventive suspension of not more than six (6) months without pay. (Lastimosa v. Vasquez, supra.)**

**REMEDIAL LAW**

**a) X files a complaint in the Regional Trial Court for the recovery of a sum of money with damages against Y. Y filles his answer denying liability under the contract of sale and praying for the dismissal of the complaint on the ground of lack of cause of action because the contract of sale was superseded by a contract of lease, executed and signed by X and Y two weeks after the contract of sale was executed. The contract of lease was attached to the answer. X does not file a reply. What is the effect of the non-filing of a reply? Explain. (3%)**

**b) For failure of KJ to file an answer within the reglementary period, the Court, upon motion of LM, declared KJ in default. In due time, KJ filed an unverified motion to lift the order of default without an affidavit of merit attached to it. KJ however attached to the motion his answer under oath, stating in said answer his reasons for his failure to file an answer on time, as well as his defenses. Will the motion to lift the order of default prosper? Explain. (3%)**

**c) PJ engaged the services of Atty. ST to represent hlin in a civil case filed by OP against him which was docketed as Civil Case No. 123. A retainership agreement was executed between PJ and Atty. ST whereby PJ promised to pay Atty. ST a retainer sum of P24,000.00 a year and to transfer the ownership of a parcel of land to Atty. ST after presentation of PJ's evidence. PJ did not comply with his undertaking. Atty. ST filed a case against PJ which was docketed as Civil Case No. 456. During the trial of Civil Case No. 456, PJ died.**

**i) Is the death of PJ a valid ground to dismiss the**

**money claim of Atty. ST in Civil Case No. 456? Explain. (2%)**

**ii) Will your answer be the same with respect to the TE real property being claimed by Atty. ST in Civil** **Case No. 456? Explain. (2%)**

***SUGGESTED ANSWER:***

(a) A reply is generally optional. If it is not filed, the new matters alleged in the answer are deemed controverted. (Sec. 10 of Rule 6, 1997 Rules of Civil Procedure). However, since the contract of lease attached to the answer is the basis of the defense, by not filing a reply denying under oath the genuineness and due execution of said contract, the plaintiff is deemed to have admitted the genuineness and due execution thereof. (Secs. 7 and 8, Rule 8, 1997 Rules of Civil Procedure: Toribio v. Bidin, 134 SCRA 162 (19851).

(b) Yes, there is substantial compliance with the rule. Although the motion is unverified, the answer attached to the motion is verified. The answer contains what the motion to lift the order of default and the affidavit of merit should contain, which are the reasons for movant's failure to answer as well as his defenses. (Sec. 3 (b) of Rule 9, 1997 Rules of Civil Procedure; Cf. Citibank, N.A. v. Court of Appeals, 304 SCRA 679, (1999); Consul v. Consul, 17 SCRA 667, 671 (1966); Tolentino v. Carlos, 66 Phil. 140, 143-144 [1938], Nasser v. Court of Appeals, 191 SCRA 783 (1992).

(c) (i) No. Under Sec. 20, Rule 3, 1997 Rules of Civil Procedure, when the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action is pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry offinaljudgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner especially provided in the Rules for prosecuting claims against the estate of a deceased person.

(ii) Yes, my answer is the same. An action to recover real property in any event survives the death of the defendant. (Sec. 1. Rule 87, Rules of Court). However, a favorable judgment may be enforced in accordance with Sec. 7(b) Rule 39 (1997 Rules of **Civil Procedure)** against the executor or administrator or successor in interest of the deceased.

**II**

As counsel for A, B, C and D, Atty. XY prepared a complaint for recovery of possession of a parcel of land against Z. Before flling the complaint, XY discovered that his clients were not available to sign the certification of nonforur shopping. To avoid further delays in the filing of the complaint, XY signed the certification and immediately filed the complaint in court. Is XY justified in signing the certification? Why? (5%)

***SUGGESTED ANSWER:***

No, counsel cannot sign the anti-forum shopping certification because it must be executed by the plaintiff or principal party himself (Sec. 5, Rule 7. 1997 Rules of Civil Procedure: Escorpizo v. University of Baguio, 306 SCRA 497. [1999]), since the rule requires personal knowledge by the party executing the certification, unless counsel gives a good reason why he is not able to secure his clients' signatures and shows that his clients will be deprived of substantial justice (Ortiz v. Court of Appeals, 299 SCRA 708, (1998]) or unless he is authorized to sign it by his clients through a special power of attorney.

**III**

The Regional Trial Court rendered fudgment against ST, copy of which was received by his counsel on February 28, 2000. On March 10, 2000, ST, through counsel, filed a motion for reconsideration of the decision with notice to the Clerk of Court submitting the motion for the consideration of the court. On March 15, 2000, realizing that the Motion lacked a notice of hearing, ST's counsel filed a supplemental pleading. Was the Motion for Reconsideration filed within the reglementary period ? Explain. (5%)

**SUGGESTED ANSWER:**

**Yes, because the last day for filing a motion for reconsideration was March 15 if February had 28 days or March 16 if February had 29 days. Although the original** **motion for reconsideration was defective because it lacked a notice of hearing, the defect was cured on time by its filing on March 15 of a supplemental pleading provided the motion was set for hearing and served on the adverse party at least three (3) days before the date of hearing. (Sec. 4. Rule 15, 1997 Rules of Civil Procedure). We**

**ALTERNATIVE ANSWER:**

**Since the supplemental pleading was not set for hearing. it did not cure the defect of the original motion.**

**IV.**

**AB, as mother and in her capacity as legal guardian of her legitimate minor son, CD, brought action for support against EF, as father of CD and AB's lawfully wedded husband. EF filed his answer denying his paternity with counterclaim for damages. Subsequently. AB filed a manifestation in court that in view of the denial made by EF. it would be futile to pursue the case against EF. AB agreed to move for the dismissal of the complaint, subject to the condition that EF will withdraw his counterclaim for damages. ABand EF filed a joint motion to dismiss. The court dismissed the case with prejudice. Later on, minor son CD, represented by AB, filed another complaint for support against EF. EF filed a motion to dismiss on the ground of res judicata.**

**(a) Is res judicata a valid ground for dismissal of the second complaint? Explain your answer. (3%)**

**(b) What are the essential requisites of res judicata?** (2%)

**SUGGESTED ANSWER:**

**(a) No, res judicata is not a defense in an action for support even if the first case was dismissed with prejudice on adjoin motion to dismiss. The plaintiff's mother agreed to the dismissal of the complaint for supporting view of the defendant's answer denying his paternity with a counterclaim for damages. This was in the nature of a compromise of the right of support** **which is prohibited by law. (Art. 2035, Civil Code; De Asis v.**

***Court of Appeals, 303 SCRA 176 [ 1999).***

**(b) The essential requisites of res judicata are:**

**(1) the judgment or order rendered must be final;**

**(2) the court rendering the same must have** **jurisdiction of the subject matter and of the** **parties;**

**(3) it must be a judgment or order on the merits; and**

**(4) there must be between the two cases identity of** **parties, identity of subject matter, and identity of causes of action. (San Diego v. Cardona, 70 Phil. 281 [1940.)**

**V**

**Describe briefly at least five (5) modes of discovery under the Rules of Court. (5%)**

**SUGGESTED ANSWER:**

**Five modes of discovery under the Rules of Court are:**

**(1) Deposition. By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories, (Sec. 1, Rule 23, 1997 Rules of Civil Procedure.)**

**(2) Interrogatories to parties. Under the same conditions specified in section 1 of Rule 23. any party shall file and serve upon any adverse party written interrogatories regarding material and relevant facts to be answered by the party served. (Sec. 1, Rule 25, 1997 Rules of Civil Procedure.)**

**(3) Admission by adverse party. At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document or of the truth of any material and relevant matter of fact. (Sec.** **1, Rule 26, 1997 Rules of Civil Procedure.)**

**(4) Production or inspection of documents or things. Upon motion of any party showing good cause therefor, a court may order any party to produce and permit the inspection and copying or photographing of any designated documents, etc. or order any party to permit entry upon designated land or property for inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. (Sec. 1, Rule 27, 1997 Rules of Civil Procedure.)**

**(5) Physical and mental examination of persons. In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may in its discretion order him to submit to a physical or mental examination by a physician. (Sec. 1, Rule 28, 1997 Rules of Civil Procedure.)**

**VI.**

**What are the requisites for an intervention by a nonparty in an action pending in court? (5%)**

**SUGGESTED ANSWER:**

**The requisites for intervention are:**

**(1) Legal interest in the matter in controversy: or**

**(2) Legal interest in the success of either of the** **parties; or**

**(3) Legal interest against both; or**

**(4) So situated as to be adversely affected by a distribution or other disposition of property in the** **custody of the court or of an officer thereof.**

**(5) Intervention will not unduly delay or prejudice** **the adjudication of the rights of original parties;**

**(6) Intervenor's rights may not be fully protected in a** **separate proceeding. (Acenas II v. Court of Appeals, 247 SCRA 773 [1995): Sec. 1, Rule 19, 1997 Rules of Civil Procedure.)**

**VII.**

**FG was arrested without a warrant by policemen while he was walking inabusy street. After preliminary investigation, he was charged with rape and the corresponding information was filed in the Regional Trial Court. On arraignment, he pleaded not guilty. Trial on the merits ensued. The court rendered judgment convicting him. On appeal, FG claims that the judgment is void because he was illegally arrested. If you were the Solicitor General, counsel for the People of the Philippines, how would you refute said claim? (5%)**

**SUGGESTED ANSWER:**

**Any objection to the illegality of the arrest of the accused without a warrant is deemed waived when he pleaded not guilty at the arraignment without raising the question. It is too late to complain about a warrantless arrest after trial is commenced and completed and a judgment of conviction rendered against the accused. (People v. Cabiles, 284 SCRA 199, (1999)**

**VIII.**

**Your friend YY, an orphan, 16 years old, seeks your legal advice. She tells you that Zz, her uncle, subjected her to acts of lasciviousness; that when she told her grandparents, they told her to just keep quiet and not to file charges against zz, their son. Feeling very much aggrieved, she asks you how her uncle Zz can be made to answer for his crime.**

**(a) What would your advice be? Explain. (3%)**

**(b) Suppose the crime committed against YY by her uncle ZZ is rape, witnessed by your mutual friend XX. But this time, YY was prevailed upon by her grandparents not to file charges. XX asks you if she can initiate the complaint against ZZ. Would your answer be the same? Explain. (2%).**

**SUGGESTED ANSWER:**

**(a) I would advise the minor, an orphan of 16 years of age, to file the complaint herself independently of her grandparents, because she is not incompetent or incapable of doing so upon grounds other than her minority. (Sec. 5, Rule 110. Rules of Criminal Procedure).**

**(b) Since rape is now classified as a Crime Against Persons under the Anti-Rape Law of 1997 (RA 8353), I would advise XX to initiate the complaint against ZZ.**

**IX.**

**CX is charged with estafa in court for failure to remit to MM sums of money collected by him (CX) for MM in payment for goods purchased from MM, by depositing the amounts in his (CX's) personal bank account. CX files a motion to suspend proceedings pending resolution of a civil case earlier filed in court by CX against MM for accounting and damages involving the amounts subject of the criminal case. As the prosecutor in the criminal case, briefly discuss your grounds in support of your opposition to the motion to suspend proceedings. (5%).**

**SUGGESTED ANSWER:**

**As the prosecutor, I will argue that the motion to suspend is not in order for the following reasons:**

**(a) The civil case filed by CX against MM for accounting and damages does not involve an issue similar to or intimately related to the issue of estafa raised in the criminal action.**

**(b) The resolution of the issue in the civil case for accounting will not determine whether or not the criminal action for estafa may proceed. (Sec. 5, Rule 111, Rules of Criminal Procedure.)**

***x***

**BC is charged with illegal possession of firearms under an Information signed by a Provincial Prosecutor. After arraignment but before pre-trial, BC found out that the Provincial Prosecutor had no authority to sign and file the Information as it was the City Prosecutor who has such authority. During the pre-trial, BC moves that the case against him be dismissed on the ground that the Information is defective because the officer signing it lacked the authority to do so. The Provincial Prosecutor opposes the motion on the ground of estoppelas BC did not move to quash the Information before arraignment. If you are counsel for BC, what is your argument to refute the opposition of the Provincial Prosecutor? (5%)**

**SUGGESTED ANSWER:**

**I would argue that since the Provincial Prosecutor had no authority to file the information, the court did not acquire jurisdiction over the person of the accused and over the subject matter of the offense charged. (Cudia v. Court of Appeals, 284 SCRA 173 (1999). Hence, this ground is not waived if not raised in a motion to quash and could be raised at the pre-trial. (Sec 8, Rule 117, Rules of Court).**

**XI**

**Vida and Romeo are legally married. Romeo is charged in court with the crime of serious physical injuries committed against Selmo, son of Vida, step-son of Romeo. Vida witnessed the infliction of the injuries on Selmo by Romeo. The public prosecutor called Vida to the witness stand and offered her testimony as an eyewitness. Counsel for Romeo objected on the ground of the marital disqualification rule under the Rules of Court.**

(a) is the objection valid? (3%)

(b) Will your answer be the same if Vida's testimony is offered in a civil case for recovery of personal property filed by Selmo against Romeo? (2%)

***SUGGESTED ANSWER:***

**(a) No. While neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, one exception is if the testimony of the spouse is in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (Sec. 22, Rule 130, Rules of Court). The case falls under this exception because Selma is the direct descendant of the spouse Vida.**

**(b) No. The marital disqualification rule applies this time. The exception provided by the rules is in a civil case by one spouse against the other. The case here involves a case by Selmo for the recovery of personal property against Vida's spouse, Romeo.**

**XII.**

**Linda and spouses Arnulfo and Regina Ceres were coowners of a parcel of land. Linda died intestate and without any issue. Ten (10) persons headed by Jocelyn, claiming to be the collateral relatives of the deceased Linda, filed an action for partition with the Regional Trial Court praying for the segregation of Linda's 1/2 share, submitting in support of their petition the baptismal certificates of seven of the petitioners, a family bible belonging to Linda in which the names of the petitioners have been entered, a photocopy of the birth certificate of Jocelyn, and a certification of the local civil registrar that its office had been completely razed by fire. The spouses Ceres refused to partition on the following grounds: 1) the baptismal certificates of the parish priest are evidence only of the administration of the sacrament of baptism and they do not prove filiation of the alleged collateral relatives of the deceased; 2) entry in the family bible is hearsay; 3) the certification of the registraron non-availability of the records of birth does not prove filiation; 4) in partition cases where filiation to the deceased is in dispute, prior and separate judicial declaration of heirship in a settlement of estate proceedings is necessary; and 5) there is need for publication as real property is involved. As counsel for Jocelyn and her co-petitioners, argue against the objections** **of the spouses Ceres so as to convince the court to allow the partition. Discuss each of the five (5) arguments briefly but completely. (10%)**

***SUGGESTED ANSWER:***

**(1) The baptismal certificate can show filiation or prove pedigree. It is one of the other means allowed under the Rules of Court and special laws to show pedigree. (Trinidad u. Court of Appeals, 289 SCRA 188 (1998): Heirs of Ignacio Conti v. Court of Appeals, 300 SCRA 345 (1998).**

**(2) Entries in the family bible may be received as evidence of pedigree. (Sec. 40, Rule 130, Rules of Court).**

**(3) The certification by the civil registrar of the non-availability of records is needed to justify the presentation of secondary evidence, which is the photocopy of the birth certificate of Jocelyn. (Heirs of Ignacio Conti v. Court of Appeals, supra.)**

**(4) Declaration of heirship in a settlement proceeding is not necessary. It can be made in the ordinary action for partition wherein the heirs are exercising the right pertaining to the decedent, their predecessor-in-interest, to ask for partition as co-owners (Id.).**

**(5) Even if real property is involved, no publication is necessary, because what is sought is the mere segregation of Linda's share in the property. (Sec. 1 of Rule 69; Id.)**

**XIII.**

**Defendant was declared in default by the Regional Trial Court (RTC). Plaintiff was allowed to present evidence in support of his complaint. Photocopies of official receipts and original copies of affidavits were presented in court, identified by plaintiff on the witness stand and marked as exhibits. Said documents were offered by plaintiff and admitted in evidence by the court on the basis of which the RTC rendered judgment in favor of the plaintiff, pursuant to the relief prayed for. Upon receipt of the judgment, defendant appeals to the Court of** **Appeals claiming that the judgment is not valid because the RTC based its judgment on mere photocopies and affidavits of persons not presented in court.**

**(a)** **Is the claim of defendant valid ? Explain. (3%)**

**(b) Will your answer be the same if the photocopies of official receipts and photocopies of affidavits were attached to the position paper submitted by plaintiff in an action for unlawful detained filed with the Municipal Trial Court on which basis the court rendered judgment in favor of plaintiff? Explain. (2%)**

**SUGGESTED ANSWER:**

**(a) The claim of defendant is not valid because under the 1997 Rules, reception of evidence is not required. After a defendant is declared in default, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence, which may be delegated to the clerk of court. (Sec. 3, Rule 9, 1997 Rules of Civil Procedure)**

***ALTERNATIVE ANSWER:***

**The claim of defendant is valid, because the court received evidence which it can order in its own discretion, in which case the evidence of the plaintiff must pass the basic requirements of admissibility.**

***SUGGESTED ANSWER:***

**(b) The claim of defendant is valid, because although summary procedure requires merely the submission of position papers, the evidence submitted with the position paper must be admissible in evidence. (Sec. 9 of the Revised Rule on Summary Procedure). Photocopies of official receipts and affidavits are not admissible without proof of loss of the originals. (Sec. 3 of Rule 130)**

**XIV.**

**BB files a complaint for ejectment in the Metropolitan Trial Court on the ground of non-payment of rentals against JJ. After two days, JJ files in the Regional Trial Court a complaint against BB for specific performance to enforce the option to purchase the parcel of land subject of the ejectment case. What is the effect of JJ's action on BB's complaint? Explain. (5%)**

***SUGGESTED ANSWER:***

**There is no effect. The ejectment case involves possession de facto only. The action to enforce the option to purchase will not suspend the action of ejectment for non-payment of rentals. (Wilmon Auto Supply Corp. v. Court of Appeals, 208 SCRA 108 [1992]).**

**XV.**

AB mortgaged his property to CD. AB failed to pay his obligation and CD filed an action for foreclosure of mortgage. After trial, the court issued an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from date of receipt of the Order. AB received the Order on August 10, 1999. No other proceeding took place thereafter. On December 20, 1999, AB tendered the full amount adjudged by the court to CD but the latter refused to accept it on the ground that the amount was tendered beyond the 120-day period granted by the court. AB filed a motion in the same court praying that CD be directed to receive the amount tendered by him on the ground that the Order does not comply with the provisions of Section 2, Rule 68 of the Rules of Court which gives AB 120 days from entry of judgment, and not from date of receipt of the Order. The court denied his motion on the ground that the Order had already become final and can no longer be amended to conform with Section 2. Rule 68. Aggrieved, AB files a petition for certiorari against the Court and CD. Will the petition for certiorari prosper? Explain. (5%)

***SUGGESTED ANSWER:***

**Yes. The court erred in issuing an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from receipt of the Order. The court should have rendered a judgment which is appealable. Since no appeal was taken, the judgment became final on August 25, 1999, which is the date of entry of judgment. (Sec. 2, Rule 36, 1997 Rules of Civil Procedure) Hence, AB had up to December 24, 1999 within which to pay the amount due. (Sec 2, Rule 68. 1997 Rules of Civil Procedure) The court gravely abused its discretion amounting to lack or excess of jurisdiction in denying AB's motion praying that CD be directed to receive the amount tendered.**

**XVI.**

JK's real property is being attached by the sheriff in a civil action for damages against LM. JK claims that he is not a party to the case: that his property is not involved in said case; and that he is the sole registered owner of said property. Under the Rules of Court, what must JK do to prevent the Sheriff from attaching his property? (5%)

***SUGGESTED ANSWER:***

**If the real property has been attached, the remedy is to file a third-party claim. The third-party claimant should make an affidavit of his title to the property attached, stating the grounds of his title thereto, and serve such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party. (Sec. 14, Rule 57, 1997 Rules of Civil Procedure.) The third-party claimant may also intervene or file a separate action to vindicate his claim to the property involved and secure the necessary reliefs, such as preliminary injunction, which will not be considered as interference with a court of coordinate jurisdiction. (Ong v. Tating, 149 SCRA 265, (1987)**

**XVII.**

X, an illegitimate child of Y, celebrated her 18th birthday on May 2, 1996. A month before her birthday, Y died. The legitimatefamily of Y refused to recognize X as an illegitimate child of Y. After countless efforts to convince them, X filed on April 25, 2000 an action for recognition against 2, wife of Y. After Z filed her answer on August 14, 2000, X filed a motion for leave to file an amended complaint and a motion to admit the said amended complaint impleading the three (3) legitimate children of Y. The trial court admitted the amended complaint on August 22, 2000. What is the effect of the admission of the amended complaint? Has the action of X prescribed? Explain. (5%)

**SUGGESTED ANSWER:**

**No. The action filed on April 25, 2000 is still within the four-year prescriptive period which started to run on May 2, 1996. The amended complaint impleading the three legitimate children, though admitted on August 22, 2000 beyond the four-year prescriptive period, retroacts to the date of filing of the original complaint. Amendments impleading new defendants retroact to the date of the filing of the complaint because they do not constitute a new cause of action. (Verzosa v. Court of Appeals, 299 SCRA 100 [1998]).**

**(Note: The four-year period is based on Article 285 of the**

**Civil Code)**

***ALTERNATIVE ANSWER:***

**Under the 1997 Rules of Civil Procedure, if an additional defendant is impleaded in a later pleading, the action is commenced with regard to him on the date of the filing of such later pleading, irrespective of whether the motion for its admission, if necessary, is denied by the court. (Sec. 5 of Rule 1).**

**Consequently, the action of X has prescribed with respect to the three (3) legitimate children of Y who are indispensable parties.**

**ANOTHER ALTERNATIVE ANSWER:**

**Under Article 175 of the Family Code, the action must be brought within the lifetime of X if the action is based on a record of birth or an admission of filiation in a public document or a private handwritten instrument signed by Y. In such case, the action of X has not prescribed.**

**However, if the action is based on the open and continuous possession of the status of an illegitimate child, the action should have been brought during the lifetime of Y. In such case, the action of X has prescribed.**

**XVIII.**

(a) A brings an action in the Metropolitan Trial Court of Manila against B for the annulment of an extrajudicial foreclosure sale of real property with an assessed value of P50,000.00 located in Laguna. The complaint alleged prematurity of the sale for the reason that the mortgage was not yet due. B timely moved to dismiss the case on the ground that the action should have been brought in the Regional Trial Court of Laguna. Decide with reasons. (3%)

(b) A files an action in the Municipal Trial Court against B, the natural son of A's father, for the partition of a parcel of land located in Taytay, Rizal with an assessed value of P20,000.00. B moves to dismiss the action on the ground that the case should have been brought in the Regional Trial Court because the action is one that is not capable of pecuniary estimation as it involves primarily a determination of hereditary rights and not merely the bare right to real property. Resolve the motion. (2%)

**SUGGESTED ANSWER:**

**(a) The motion should be granted. The Metropolitan Trial Court of Manila has no jurisdiction because the action for the annulment of the extrajudicial foreclosure is not capable of pecuniary estimation and is therefore under the jurisdiction of the Regional Tral Courts. (Russell v. Vestil, 304 SCRA 738. (1999]).**

**However, the action for annulment is a personal action and the venue depends on the residence of either A or B. Hence, it should be brought in the Regional Trial Court of the place where either of the parties resides.**

**(b) The motion should be granted. The action for partition depends on a determination of the hereditary rights of A and B, which is not capable of pecuniary estimation. Hence, even though the assessed value of the land is P20,000.00, the Municipal Trial Court has no jurisdiction. (Russell v. Vestil, supra)**