



Republic of the Philippines
Supreme Court
Manila

2022 BAR EXAMINATIONS

COMMERCIAL LAW

November 13, 2022

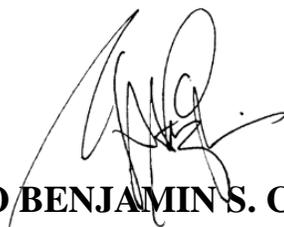
2:00 p.m. to 5:00 p.m.

INSTRUCTIONS

1. **This is a 3-hour examination consisting of 12 items, each worth 5 points.** If the item contains sub-questions, please mark your answer separately with “(a)” followed by the corresponding answer, then “(b)” followed by the answer.
2. **Read each question carefully.** Do not assume facts that are not provided in the question.
3. **Answer the questions clearly and concisely.** Your answer should demonstrate your ability to analyze the facts, identify issues, apply the law and jurisprudence, and arrive at a sound and logical conclusion. A mere “Yes” or “No” answer, or a mere legal conclusion without an explanation will not be given full credit.
4. **Allocate your time efficiently.** The items are in random sequence. You may skip items and move to items that you may find easier to answer. Use the 'Flag' feature so that you can return to the unanswered items.
5. **Do not write your name, distinguishing marks, or extraneous words or phrases in any of your answers.** This may be considered cheating and may disqualify you from the entire Bar Examinations.
6. **Do not type your final answer in the notes box, which is an optional tool.** Any text written in the notes box will not be included in your final answer.
7. **Technical issues during the exam are rare, but if you experience one, do not panic. Do not attempt to submit your exam answers.** Call the attention of your proctor for assistance.
8. If you need to step out of the room, **use the Hide Screen feature** to prevent anyone else from seeing your answers.
9. **You have until 5:00 p.m. to finish the exam.** Make sure you have completed and reviewed your answers before then. When submitting, the system will ask

you one more time to confirm if you are ready to submit your answer file, to give you another opportunity to review your answers.

10. **Once done, show your proctor the green screen confirming your submission.** If the green screen does not appear, check with your proctor before leaving the room.



ALFREDO BENJAMIN S. CAGUIOA

*Associate Justice and
2022 Bar Examinations Chairperson*

1. Samson Manufacturing, Inc. insured its own goods with Delilah Insurance for Php 2,000,000.00. The same goods were insured by Alibaba Shipping Co. with Assured Corp. for the same amount pursuant to its contract of carriage with Samson Manufacturing, Inc. Both policies warranted that no other insurance exists, and in case another insurance does exist, such would not void either policy, but in no case should the claim exceed the total amount of Php 2,000,000.00 at the time of loss.

Is this a case of double insurance? Explain briefly. (5 points)

2. [This item has two questions.] Muviel obtained a life insurance policy from X Insurance Corp. Muviel underwent a medical examination and was certified as qualified to be insured. Unknown to X Insurance Corp., Muviel had a mild stroke some years earlier. The insurance policy expressly provided that any misrepresentation in the questionnaire filled up by Muviel for the issuance of the policy would render the policy null, void and of no effect.

(a) If Muviel dies within the two-year period from the time of issuance of the policy, will the beneficiaries of Muviel be entitled to claim the proceeds of the life insurance policy? Explain briefly.

(b) Should Muviel die after the two-year period, will your answer be the same? Explain briefly.

(5 points)

3. [This item has two questions.] Kotse Corp. is an entity that provides pre-arranged transportation services for a fee using an online-enabled platform technology that connects passengers with drivers using their own vehicles.

(a) Is Kotse Corp. a common carrier? Explain briefly.

(b) Are the drivers engaged in common carrier service? Explain briefly.

(5 points)

4. At around 4:00 p.m. of December 25, 2020, Christmas Day, Queenie and her child, Paeng, boarded a jeepney being operated by Emil and driven by Amor. Queenie was made to sit on an empty beer case at the edge of the rear entrance/exit of the jeepney with her sleeping child on her lap. When they reached an uphill incline on the road, the jeepney slid backwards. Queenie pushed both her feet against the step board to prevent herself and her child from being thrown out of the exit, but because the step board was wet, her left foot slipped and was crushed between the step board and the coconut tree which halted the jeepney's backward motion. As a result, Queenie's leg was badly injured and had to be amputated.

Queenie then sued Emil and Amor for breach of contract of carriage. Emil and Amor countered that the injuries Queenie sustained were due to her own fault since Amor had instructed everyone not to panic, but Queenie nevertheless tried to disembark which caused her foot to be crushed.

If you were the judge, would you hold Emil and Amor solidarily liable? Explain briefly. (5 points)

5. FLIP Co. is engaged in a nationalized activity requiring at least 60% Filipino ownership. Its outstanding capital stock consists of 1,000,000 shares broken down into 400,000 non-voting preferred shares and 600,000 voting common shares out of which 20,000 are treasury shares.

How many shares of the corporation must be owned by Filipinos? Explain briefly. (5 points)

6. Yoongi, a director of BTS Corp. PH, bought substantial shares of its major supplier, Hybe, Inc. When Hybe, Inc.'s contracts were taken up by the BTS Corp. PH Board, Yoongi not only voted for their approval but influenced other directors to do so. Later, the Hybe, Inc. contracts turned out to be disadvantageous to BTS Corp. PH and caused it substantial losses.

Discuss the action/s that may be pursued against Yoongi under the Revised Corporation Code. Explain briefly. (5 points)

7. [This item has two questions.] LOKO Co., using a fraudulent scheme, was able to sell its shares to investors. The sale proceeds were then secretly diverted by LOKO Co. to its wholly owned subsidiaries. Later, LOKO Co. became insolvent and was placed under receivership. On behalf of the investor-stockholders, the receiver demanded the inspection of the books and records of LOKO Co.'s subsidiaries.

(a) Can LOKO Co.'s stockholders exercise, through the receiver, their right of inspection of the books and records of LOKO Co.'s subsidiaries? Explain briefly.

(b) Is this a case of intra-corporate dispute? Explain briefly.

(5 points)

8. EXIT Corp., no longer wanting to continue with its business, transferred to Entra, Inc. under an Asset Purchase Agreement all its properties and assets including goodwill. A creditor of EXIT Corp. demanded from Entra, Inc. the payment of EXIT Corp.'s debt for the reason that the transaction amounted to a merger and, therefore, the surviving corporation, Entra, Inc., must assume the debts of the absorbed corporation, EXIT Corp.

Is the creditor's demand tenable? Explain briefly. (5 points)

9. [This item has two questions.] Zui Cheneris Corp. is a pharmaceutical company operating in the Philippines since 1999. One of its products is a drug called carbamazepine under the brand name "CHENAPS", which is an anti-convulsant used to control all types of seizure disorders of varied causes like epilepsy.

Nutty Pharma, also a pharmaceutical company in the Philippines, sells citicoline under the mark “CHENAPSE”, which is indicated for the treatment of cerebrovascular disease or stroke. “CHENAPSE” was registered as a trademark by Nutty Pharma with the Intellectual Property Office of the Philippines (IPO) on September 24, 2017.

On November 29, 2017, Nutty Pharma filed with the Regional Trial Court (RTC) a Complaint against Zui Cheneris for Injunction, Trademark Infringement, Damages and Destruction with Prayer for Temporary Restraining Order and/or Preliminary Injunction, alleging that Zui Cheneris’ “CHENAPS” is confusingly similar to its registered trademark “CHENAPSE” and the resulting likelihood of confusion is dangerous because the marks cover medical drugs intended for different types of illnesses.

Zui Cheneris, in its Answer, countered that: (i) it has been selling carbamazepine under the brand name “CHENAPS” since 2004; (ii) it was impossible for Nutty Pharma not to have known the existence of “CHENAPS” before the latter’s registration of “CHENAPSE” because Nutty Pharma had promoted its products in the same publications where Zui Cheneris had advertised “CHENAPS”; (iii) despite its knowledge of prior use by Zui Cheneris of “CHENAPS”, Nutty Pharma had fraudulently appropriated the “CHENAPSE” mark by registering the same with the IPO; and, (iv) as the prior user, Zui Cheneris is the owner of “CHENAPS” and the continued use by Nutty Pharma of “CHENAPSE” will cause it grave and irreparable damage. Thus, Zui Cheneris prayed for the cancellation of the trademark registration of Nutty Pharma’s “CHENAPSE”.

(a) As the RTC judge, will you enjoin Zui Cheneris from further using the mark “CHENAPS”? Explain briefly.

(b) Is Zui Cheneris’ prayer for cancellation of Nutty Pharma’s trademark registration tenable? Explain briefly.

(5 points)

10. Bank teller Loris submitted a Suspicious Transaction Report (STR) on Marychelle, a politically exposed person (PEP), who, when asked about her deposit of Php 2,000,000.00 in cash, winked and replied “*Sikreto teh*”. The Anti-Money Laundering Council did not find probable cause which could support the belief that Marychelle had committed an unlawful activity or was otherwise involved in money laundering. Marychelle now wants to sue the bank and Loris for allegedly discriminating against her.

Discuss whether or not Loris and the bank are liable. (5 points)

11. Kauff Corp. had suffered tremendous losses as a result of the COVID-19 pandemic and the resulting economic slump. From a calculation of its assets and liabilities, Kauff Corp. was technically insolvent but management believed that it had the chance to survive if its rights to mineral properties could be exploited. Kauff

Corp. has the rights to several parcels of land containing nickel deposits. Nickel prices had gone up in the world market and nickel was in short supply.

The creditors of Kauff Corp. are set to file suits for collection with application for writs of attachment.

As the counsel for Kauff Corp., what legal action would you take to avert the suits and stave off insolvency and liquidation? Explain briefly. (5 points)

12. In a Facebook livestream, an author offered his books online for sale by asking interested viewers to type in “Mine” in the chatbox. A set of his books was sold to a social media influencer who later turned out to be a “joy reserver.” A “joy reserver” refers to an online buyer who enthusiastically shows interest in an item, but will not actually buy it. The author made a screenshot of the social media influencer’s “Mine” message as proof of the acceptance of the offer.

Does the screenshot of the message prove the perfection of the sale contract? Explain briefly. (5 points)