

## **SYLLABUS FOR THE 2022 BAR EXAMINATIONS**

### **MERCANTILE LAW**

**NOTE:** This syllabus is an outline of the key topics that fall under the core subject “Mercantile Law”. Accordingly, all Bar candidates should be guided that only laws, rules, issuances, and jurisprudence pertinent to these topics as of **June 30, 2021** are examinable materials within the coverage of the 2022 Bar Examinations.

#### **I. INSURANCE (P.D. No. 162, as amended by R.A. No. 10607)**

- A. Basic concepts
  - 1. What may be insured
  - 2. Insurable interest
  - 3. Double insurance and overinsurance
  - 4. No fault, suicide, and incontestability clauses
- B. Perfection of the insurance contract
- C. Rights and obligations of parties
- D. Rescission of insurance contracts

#### **II. TRANSPORTATION LAW**

- A. Common carriers
  - 1. Concept
  - 2. Common carrier vs. private carrier
  - 3. Diligence required
- B. Obligations and liabilities
  - 1. Vigilance over goods
  - 2. Safety of passengers
- C. Defenses available to a common carrier
  - 1. Proof of negligence
  - 2. Due diligence in the selection and supervision of employees
  - 3. Fortuitous event
  - 4. Contributory negligence
  - 5. Doctrine of last clear chance
- D. Extent of liability
  - 1. Recoverable damages
  - 2. Stipulations limiting liability
  - 3. Limitations under the Warsaw Convention

#### **III. CORPORATION LAW (Provisions of B.P. Blg. 68, as amended by R.A. No. 11232)**

- A. General principles
  - 1. Nationality of corporations
    - a. Control Test
    - b. Grandfather rule

2. Doctrine of separate juridical personality
3. Doctrine of piercing the corporate veil
- B. *De facto* corporations versus corporations by *estoppel*
- C. Corporate Powers
  1. How powers are exercised
    - a. *Ultra vires* doctrine
    - b. Trust fund doctrine
- D. Board of directors and trustees
  1. Basic principles
    - a. Doctrine of centralized management
    - b. Business judgment rule
  2. Tenure and qualifications of directors or trustees
  3. Election and removal of directors or trustees
  4. Duties, responsibilities and liabilities for unlawful acts
- E. Stockholders and members
  1. Rights and obligations of stockholders and members
    - a. Doctrine of equality of shares
  2. Participation in management
    - a. Proxy
    - b. Voting trust
    - c. Cases when stockholders' action is required
      - i. By a majority vote
      - ii. By a two-thirds vote
      - iii. By cumulative voting
  3. Proprietary rights
    - a. Right to dividends
    - b. Right to inspect
    - c. Pre-emptive right
    - d. Right of first refusal
  4. Remedial rights
  5. Intra-corporate disputes (individual vs. representative vs. derivative suits)
- F. Capital structure
  1. Shares of stock
    - a. Nature of shares of stock
    - b. Consideration for shares of stock
    - c. Watered stock
    - d. *Situs* of the shares of stock
    - e. Classes of shares of stock
  2. Certificate of stock
    - a. Nature of the certificate
    - b. Uncertificated shares
    - c. Negotiability; requirements for valid transfer of stocks
    - d. Issuance
    - e. Lost or destroyed certificates
  3. Disposition and encumbrance of shares
    - a. Sale of shares
    - b. Allowable restrictions on the sale of shares

- c. Requisites of a valid transfer
    - d. Involuntary dealings
  - G. Dissolution and liquidation
    - 1. Modes of dissolution
      - a. Voluntary and involuntary dissolution
    - 2. Methods of liquidation
  - H. Other corporations
    - 1. Close corporations
    - 2. Non-stock corporations
    - 3. Foreign corporations
      - a. What constitutes “doing business”
      - b. Necessity of a license to do business
      - c. Requisites for issuance of a license
      - d. Resident agent
      - e. Personality to sue and suability
    - 4. One-person corporations
  - I. Mergers and consolidations
    - 1. Concept
    - 2. Effects and limitations

**IV. INTELLECTUAL PROPERTY CODE (R.A. No. 8293; exclude implementing rules and regulations)**

- A. Patents
  - 1. Patentable vs. non-patentable inventions
  - 2. Ownership of a patent
  - 3. Grounds for cancellation of a patent
  - 4. Patent infringement
- B. Trademarks
  - 1. Marks vs. collective marks vs. trade names
  - 2. Acquisition of ownership
    - a. Concept of actual use
    - b. Effect of registration
  - 3. Well-known marks
  - 4. Rights conferred by registration
  - 5. Cancellation of registration
  - 6. Trademark infringement
  - 7. Unfair competition
- C. Copyrights
  - 1. Copyrightable works
  - 2. Non-copyrightable works
  - 3. Rights conferred by copyright
  - 4. Ownership of a copyright
  - 5. Limitations on copyright
  - 6. Doctrine of fair use
  - 7. Copyright infringement

**V. ANTI-MONEY LAUNDERING ACT (R.A. No. 9160, as amended)**

- A. Covered institutions and their obligations
- B. Covered and suspicious transactions
- C. Safe harbor provision
- D. When is money laundering committed (including predicate crimes)
- E. Authority to inquire into bank deposits
- F. Freezing and forfeiture

**VI. ELECTRONIC COMMERCE ACT (R.A. No. 8792)**

- A. Legal recognition of electronic data messages, documents, and signatures
- B. Presumption relating to electronic signatures
- C. Admissibility and evidential weight of electronic data message or electronic document
- D. Obligation of confidentiality

**VII. FINANCIAL REHABILITATION, INSOLVENCY, LIQUIDATION and SUSPENSION OF PAYMENTS (R.A. No. 10142, FR Rules [A.M. No. 12-12-11-SC], and FLSP Rules [A.M. No.15-04-06-SC])**

- A. Basic concepts
  - 1. Rehabilitation
  - 2. Insolvent
  - 3. Liquidation
  - 4. Suspension of payments
- B. Modes of rehabilitation
  - 1. Court-supervised rehabilitation
    - a. Voluntary vs. involuntary
    - b. Commencement order (including stay order)
    - c. Rehabilitation receiver and management committee
    - d. Determination of claims
    - e. Rehabilitation plan
    - f. Creditor approval and confirmation
    - g. Failure of rehabilitation
  - 2. Pre-negotiated rehabilitation
    - a. How initiated
    - b. Period and effect of approval
  - 3. Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan
    - a. Minimum requirements
    - b. Standstill period
    - c. Cram down effect
- C. Liquidation
  - 1. Voluntary liquidation vs. involuntary liquidation vs. conversion

2. Procedure
    - a. Liquidation order; effects
  3. Determination of claims
- D. Suspension of payments; suspension of payment order

*- NOTHING FOLLOWS -*