

PREPARING FOR THE 2011 BAR EXAMS AND BEYOND

I. CHANGES IN THE 2011 BAR EXAMINATIONS

A. FIRST APPROVED CHANGE: REDEFINE COVERAGE

The current practice is to define the coverage of the bar exams by naming the laws that each subject will cover. For example, in Civil Law the coverage is –

1. The Civil Code of the Philippines
2. The Family Code
3. The Domestic Adoption Act
4. The Inter-Country Adoption Act
5. The Property Registration Decree,
6. Conflict of Laws
7. Supreme Court decisions touching the above

Everybody insists that questions in bar exams, to be reasonable, must stick to the “basics.” But does the above list tell you the “basics” of Civil Law?

It does not. The description of coverage by just naming the law is too general. Examiners and students are unsure of what questions to expect. Consider some examples from past bar exams:

True or False. The Howey Test states that there is an investment contract when a person invests money in a common enterprise and is led to expect profits primarily from the efforts of others. 1%

Would you have predicted this kind of question? Another example:

In several policy addresses extensively covered by media since his appointment on December 21, 2005, Chief Justice Artemio V. Panganiban vowed to leave a judiciary characterized by “four Ins” and to focus in solving the “four ACID” problems that corrode the administration of justice in our country.

Explain this “four Ins” and “four ACID” problems. 2.5%

Would you have anticipated this? Here is another one:

Where is the seat of the International Court of Justice? 1%

How many are its members? 1 %

What is the term of their office? 1 %

Who is its incumbent president? 1 %

What is his/her nationality? 1 %

Is this basic in public international law?

Does knowing the answers qualify one to practice law? Why did these kind of questions creep into the bar examinations? It is because there has been no prior attempt to determine what constitutes the basics of law practice.

In the past, particularly the pre-war era, there were only a few laws and jurisprudence making it unnecessary to define the basics of law practice. But our laws and jurisprudence have since grown

enormously. Describing coverage by enumerating the laws has made the determination of what is basic a hazardous guessing game. Examinees are forced to memorize trivial details, lest these be asked in the bar exams. Fear of the unknown dissipates the energies and time of candidates and takes them away from the really important and basic matters.

To address this need, coverage shall be drawn up by topics and sub-topics rather than by just stating the covered law.

The test for including a topic or sub-topic in the coverage of the bar exams is whether it covers laws, doctrines, principles and rulings that a new lawyer needs to know to begin his practice. After all, the objective of the bar exams is to determine who among law graduates are fit to practice law. For example, in Political Law, rather than say that the exam will cover the Constitution of the Philippines, it will name the important topics and sub-topics under the Constitution. Thus:

POLITICAL LAW

- Bill of Rights
 - Equal Protection
 - Meaning
 - Valid Classification
 - Substantial distinctions
 - Relevance to purpose
 - Duration
 - Applicability to all
- Double Jeopardy
 - Valid Complaint
 - Competent Court
 - Valid Plea
 - Termination of case
 - Prosecution's appeal
 - Same offense
 - Supervening event
 - Inseparable offenses

Even the description of coverage by topics and sub-topics cannot be too generalized, like this:

MERCANTILE LAW

- x x x
- Intellectual Property
 - General provisions
 - Patents
 - Trademarks
 - Copyrights
- x x x

The description is too general. The Intellectual Property Code has 241 sections that include administrative matters. It would be unreasonable to assume that all the provisions of the Intellectual Property Code may be regarded as basic materials for beginning practitioners when their potential clients' rights are affected only by a few of such provisions.

The U.P. Law Center is convening the country's leading reviewers and lecturers to draw up a proposed coverage of the 2011 bar exams per law subject by topics and sub-topics. When approved, these new definitions of coverage will be disseminated early to enable the current fourth year law students to focus their review on what is basic and stay away from the non-essentials.

Thus, the first approved change: Redefine Coverage.

B. SECOND APPROVED CHANGE: MEASURE KNOWLEDGE OF LAW AND ITS APPLICATIONS THROUGH MCQ EXAMS

The mandate of the Constitution is for the Supreme Court to promulgate rules concerning **admission to the practice of law**. The Supreme Court's duty then is to establish by rules the means for determining who may be admitted to the practice of law. And to fairly practice law, the examinee should:

1. Know the law and its applications; and
2. Be capable of practicing it.

The bar exams shall test the examinee's working knowledge of the law and its applications. The key word is "working" as distinguished from "idle" knowledge or knowledge for the sake of knowing, like a lawyer knowing the circumference of the earth.

Does the existing essay-type of bar exams correctly measure the bar examinee's level of knowledge of the law and its applications? Many have complained that the essay type of exams suffers from the following problems:

1. The bar exams follow the essay-type classroom model. Example: 10 questions in a 2-hour exam in Property. Applied to the bar exams, only 20 questions could ideally be asked for a 4-hour exam in all of civil law. This cannot hit a significant cross-section of such law. The desire to squeeze in as many essay questions as possible (10 items with 5 to 7 sub-items) has compelled examinees to give sloppy and quickie answers.
2. Great emphasis is placed on identifying the examiner to narrow down the guessing on questions that will be asked.
3. An eloquently presented but incorrect answer could gain a good mark.
4. Uniformity and fairness in correction is not assured because about 6,000 notebooks have to be corrected in 5 months. Correctors scan the answers rather than read to appreciate them.
5. The mood of the correctors and their varying levels of attentiveness jeopardize judgment and unfairly influence grading.

Multiple choice questions (MCQs) type of exam is a method of choice for qualifying professionals, including lawyers, in the United States and all over the world because of their proven reliability. The MCQ type of exam has of course the following disadvantages:

1. It does not measure communication skills.
2. It is not a reliable gauge of true or ideal knowledge, fine reasoning and creative thinking.
3. Developing well-constructed MCQs is time-consuming and difficult.

These disadvantages, however, can be overcome by exercising care in drawing up MCQs and by providing for a mix of MCQ and essay types of exams. Furthermore, the advantages of MCQs, on the other hand, are weighty:

1. Since correction can be done by scanning machine, the result can be known in one or two days.
2. Correction is objective since every question has one definite answer. Hand writing, no problem.
3. It permits a wider scope of topics since the examiner can ask as many as 100 questions in a 1 ½ hour exam.
4. Mastery of subject is encouraged because of the difficulty of distinguishing between a correct and a nearly-correct answer.
5. Since questions are straightforward, gaps in knowledge can be easily identified, helping schools adopt remedies.
6. Since the answers are given, understanding, not memorization, is required for a correct choice of answer.

The bar exams team, assisted by experts, will monitor and evaluate the construction and selection of appropriate MCQs.

Thus, the second approved change: measure knowledge of law and its applications through MCQ Exams.

C. THIRD APPROVED CHANGE: LAWYERING SKILLS ESSAY EXAM

Of course, it is not enough for the Court to find out if an examinee knows the law and its applications. Determining whether the examinee has the basic skills required in the practice of law is just as important. Thus, the Supreme Court shall give separate essay-type of exams dedicated to determining the examinee's lawyering skills. He will be presented with one or two legal-dispute situations in each law subject. He will then prepare a paper, like a memorandum or a decision, for the side of the dispute that he chooses to uphold or defend.

This will test the examinee's skills in writing in English, sorting out the relevant facts, identifying the issue or issues, organizing his thoughts, constructing his arguments, and persuading his reader to his point of view. It will not be graded for technically right or wrong answers, but for the quality of the examinee's legal advocacy.

The skills exams will help measure depth of learning and true intelligence. The passing standard for correction will be work expected of a beginning practitioner, not a seasoned lawyer. Since this kind of exam will be given in all subjects, 8 examiners will be assessing the examinee's lawyering skills. Their collective judgment ought to minimize the subjectivity of the correction.

Thus, the third approved change: dedicated essay-type exams to measuring lawyering skills.

These changes are the product of consultations with the law schools, a major stakeholder in bar exams. We have a Resolution from the Philippine Association of Law Schools fully endorsing these changes. The law schools undertake to prepare their present fourth year students for these kinds of exams in 2011.

To summarize, the three approved changes are:

1. Redefine coverage.
2. Measure knowledge of law and its applications through MCQ exams.
3. Dedicate essay-type exams to measuring lawyering skills.

Thus, beginning in 2011, the bar examinations shall be of two kinds:

1. Multiple Choice Questions that will measure the examinee's knowledge of law and its applications; and
2. Essay-Type exams that will measure the examinee's lawyering skills.

II. PREPARING FOR THE MCQ BAR EXAMINATIONS

A. MULTIPLE CHOICE QUESTIONS IN THE 2011 BAR EXAMS

1. What makes a good MCQ exam?

The multiple choice questions (MCQs) should be able to measure the level of the examinee's preparedness for the work of a lawyer. But it will be valid only to the extent that it can reach this objective. Exams of this kind in the classrooms are encouraged to prepare the students for the bar exams.

2. Weight given to each law subject:

Political Law	—	15%
Labor Law	—	10%
Civil Law	—	15%
Taxation	—	10%
Mercantile Law	—	15%
Criminal Law	—	10%
Remedial Law	—	20%
Legal Ethics/Forms	—	5%

3. What specific competences will the MCQs measure?

- a. The examinee’s knowledge of the law and its basic principles and his ability to recall them (20%);
 - b. His ability to understand the meaning and significance of the law and its basic principles (40%);
- and
- c. His ability to analyze legal problems and provide solutions to them (40%).

4. Preparing an MCQ item.¹ Prepare the STEM of the MCQ item, which presents the problem –

The jurisdiction of courts are determined by – (STEM)

Add to the STEM a list of possible options or answers. Of these options, only one will be correct.

The jurisdiction of courts are determined by – (stem)

A. Congress. (correct choice)

The others will be incorrect but plausible options called “distractors.” What is a PLAUSIBLE option? It is an option that appears to be correct and acceptable. Parang pwede rin pero mali. It is an option that can mislead an examinee who is unsure of his answer. If you provide patently wrong options, you practically give away the answer. Thus, the question fails to assess the examinee’s knowledge and ability.

The jurisdiction of courts are determined by – (stem)

A. Congress. (correct choice)

B. The Supreme Court. (distractor)

C. The Judicial and Bar Council. (distractor)

D. The Court Administrator. (distractor)

The stem may be presented either as a question—

Who determines the jurisdiction of courts? (stem)

Or an incomplete statement—

The jurisdiction of courts are determined by (stem)

The stem must present a clear and specific problem.

The jurisdiction of courts are— (this stem does not present a problem)

Improved:

The jurisdiction of courts are determined by—(this asks who determines the jurisdiction of courts)

A. Congress.

B. the Supreme Court.

C. the Judicial and Bar Council.

D. the Court Administrator.

B. THE THREE COMPETENCES MEASURED BY MCQS

1. Knowledge and recall.

When you want to find out if the examinee knows a specific law or principle, write down such specific law or principle as your “proposition” or the subject matter of your MCQ. Thus:

Proposition:

The majority age begins at the age of 18.

The first part of your proposition will be your STEM while the second part will be your correct answer. Then add 3 distractors and mix it with the correct option. Thus:

The majority age begins at the age of (stem)

- A. 21 (distractor)*
- B. 20 (distractor)*
- C. 18 (correct option)*
- D. 16 (distractor)*

This will test the examinee’s knowledge of what the legal majority age is and his ability to recall such fact.

Here are other examples of “knowledge and recall” MCQs:

Proposition:

A Court of Appeals Justice may solemnize marriage anywhere in the Philippines.

MCQ:

Who may solemnize marriage anywhere in the Philippines?

- A. A Consul-general*
- B. A Court of Appeals justice*
- C. A ship captain*
- D. A military commander*

* * *

Proposition:

To be enforceable, a contract must comply with the Statute of Frauds when by its terms it is to be performed beyond a year from its making.

MCQ:

To be enforceable, when must a contract comply with the Statute of Frauds? When by its terms it is to be performed beyond

- A. a year from its making.*
- B. 5 years from its making.*
- C. a year from its ratification.*
- D. 5 years from its ratification.*

* * *

Proposition:

The Revised Penal Code may be enforced outside the jurisdiction of the Philippines when one commits a crime against national security.

MCQ:

The Revised Penal Code may be enforced outside the jurisdiction of the Philippines when
A. one commits an offense on any ship or airship.
B. one introduces into the Philippines any counterfeit coin.
C. a public officer enters into a bigamous marriage.
D. one commits a crime against national security.

* * *

Proposition:

Congress may submit to the electorate the question of calling a constitutional convention by a majority vote of all its Members.

MCQ:

What vote is required for Congress to submit to the electorate the question of calling a constitutional convention?
A. A vote of two-thirds of all its Members.
B. A vote of two-thirds of a quorum.
C. A majority vote of all its Members.
D. A majority vote of a quorum.

A knowledge and recall item is easy to prepare since it evolves from a simple statement of a provision of law or a legal principle. But this skill is the lowest in the ladder of skills for new lawyers. It is sheer memorization. The bar exams will devote only 20% of all MCQ items to this kind of MCQs.

2. Understanding

A higher level of skills for a beginning practitioner is understanding. This type tests whether the examinee truly understands a specific law or principle. And he can show this if he can correctly relate the law or principle to specific situations. For example:

Proposition:

A warrantless search is valid when the search is made by policemen at a COMELEC checkpoint.

MCQ:

A warrantless search is valid when the search is made by *A. a customs officers*
at the home of a known smuggler.
B. anti-drug enforcers.
C. policemen at a COMELEC checkpoint.
D. NBI agents looking for a bomb at a mall.

This item tests the examinee’s understanding of what a warrantless search means. A “warrantless search” is search made of persons or properties without a judicial search warrant.

This kind of MCQ is a grade more difficult to prepare but measures a higher level of ability than just knowledge and recall. To test the examinee’s understanding of “warrantless search,” he is required to choose from the four options the situation that comes under such concept.

When preparing an MCQ item on the examinee’s “UNDERSTANDING” of a specific law or principle, begin by writing down your proposition – the matter you want to turn into an MCQ. For example:

Proposition:

An “antecedent collateral evidence” of a bank robbery that several accused committed would be the kinship among them.

This item tests the examinee’s understanding of a concept in Evidence. An “antecedent collateral evidence” proves a past event to show the likelihood of a subsequent event taking place. He must choose the situation that comes under such concept.

MCQ:

Which of the following constitutes antecedent collateral evidence of a bank robbery that several accused committed?

- A. The act of the lookout during the robbery.*
- B. The kinship among them.*
- C. The amount missing from the bank’s vault*
- D. The fingerprints on the teller’s counter.*

How does “knowledge and recall” differ from “understanding?” Example:

Knowledge and Recall

A justifying circumstance makes an act

- A. three degrees less severe .*
- B. exempt from criminal liability.*
- C. non-criminal. (merely restates the law)*
- D. pardonable.*

Understanding

A justifying circumstance is exemplified by

- A. a retreat from aggression.*
- B. a pre-emptive blow.*
- C. a counter blow. (illustrates meaning)*
- D. a good intention.*

Other examples that test “understanding”:

Proposition:

Real or object evidence is authenticated by showing that it is what it is claimed to be.

MCQ:

Real or object evidence is authenticated by showing

- A. who owns it.*
- B. that it is what it is claimed to be.*
- C. how the evidence got to court.*
- D. similar or like objects.*

Proposition:

An uninterrupted possession for a statutory period of time without the need of just title and good faith are requisites for extraordinary acquisitive prescription.

MCQ:

An uninterrupted possession for a statutory period of time without the need of just title and good faith are requisites for

- A. laches.*
- B. prescription of actions.*

C. ordinary acquisitive prescription.

D. extraordinary acquisitive prescription.

The bar exams will devote 40% of all MCQ items to questions that test the examinee's understanding of the law.

3. Analysis and Solution

Here, you test the examinee's ability to (a) analyze a given problem, (b) determine the law or principle that applies to such problem, and (c) solve the same.

To construct your MCQ, begin by stating your chosen proposition. For example:

Proposition:

Sonny, a Filipino citizen obtained a divorce in Canada from his wife, Lulu, also a Filipino citizen. Is the divorce valid and binding? (facts of the problem)

It is not. (answer to the problem)

The reason is that Philippine law, which is binding upon Filipinos wherever they may be, does not permit absolute divorce. (the applicable rule)

If you analyze this, it is a typical essay-type exam with the answer and reason given here. Actually, this was a bar exam item a few years back. You can convert it into an MCQ item by using the facts of the problem as your STEM, thus:

Sonny, a Filipino citizen, obtained a divorce in Canada from his wife, Lulu, also a Filipino citizen. Is the divorce valid and binding? (This will be your stem.)

You then add to your stem, as one of your options, the answer to the problem and the reason for such answer:

Sonny, a Filipino citizen, obtained a divorce in Canada from his wife, Lulu, also a Filipino citizen. Is the divorce valid and binding?

It is not since Philippine law binds Filipinos abroad and it does not permit divorce.

Now add your distractors as alternate options, varying their locations:

MCQ:

Sonny, a Filipino citizen, obtained in a divorce in Canada from his wife, Lulu, also a Filipino citizen. Is the divorce valid and binding?

A. It is not since Philippine law binds Filipinos abroad and it does not permit divorce.

B. It is since Philippine law does not operate in Canada.

C. It is not since Philippine law is recognized in Canada.

D. It is since international law demands local recognition of foreign acts.

Another example:

Proposition:

A person walks into a police station and declares that he has committed a crime before the police could take him into custody. May his declaration be admitted against him? (the problem)

Yes since what is inadmissible are statements the accused made while under custodial investigation before he could be forewarned of his rights. (the answer and short reason for it)

MCQ:

A person walks into a police station and declares that he has committed a crime before the police could take him into custody. May his declaration be admitted against him?

A. No since he has not been forewarned of his rights to silence and to counsel.

- B. Yes since he made his declaration before he could be taken into custody and investigated.**
- C. No since he has entered the police station and came within its jurisdiction.**
- D. Yes since he freely gave his declaration to the police.**

* * *

Proposition:

In a case, a very old woman executed a will, witnessed by a friend, a cousin, and a notary public. Is the will valid?

The will is invalid since it is a must that it be attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

MCQ:

In a case, a very old woman executed a will. A friend, a cousin, and a notary public came to witness the will. Due to old age she thumbmarked the will instead of signing it. The friend signed the pages on the right margin, thinking it looked better. The cousin did not see this because his eyes were on a painting that hanged on a nearby wall. Finally, the notary public notarized the will.

The will is invalid because

- A. the cousin looked away just as the friend was signing the will.**
- B. the testator failed to subscribe the will.**
- C. the friend signed at the right margin.**
- D. of lack of sufficient witnesses.**

Note that, in the above, the stem or the facts of the problem also embodied the distractors.

Proposition:

A couple named their son Mario Lopez. But a confused clerk at the hospital registered his name as Maria Lopez and his gender as female. Does the civil registrar have the authority to correct the child's name and gender on the birth certificate?

No since the law authorizes administrative correction by the civil registrar only of clerical or typographical error in an entry and/or change of first name or nickname.

MCQ:

A couple named their son Mario Lopez. But a confused clerk at the hospital registered his name as Maria Lopez and his gender as female. The city civil registrar has authority to:

- A. correct his name and gender.**
- B. correct his name but not his gender.**
- C. correct his gender but not his name.**
- D. indorse the case to court.**

* * *

Proposition:

A decision states that the defendant is entitled to moral damages but its dispositive portion did not carry an award of moral damages. The writ of execution, however, orders the defendant to pay moral damages of ₱5,000. Must he comply?

He does not need to comply since it is the dispositive portion of the decision that controls.

MCQ:

A decision states that the defendant is entitled to moral damages but its dispositive portion did not carry an award of moral damages. The writ of execution, however, orders the defendant to pay moral damages of ₱5,000. Must he comply?

- A. Yes since the body of the decision contains the justification for it.*
- B. No since it is the dispositive portion of the decision that controls.*
- C. Yes since the writ of execution affirms it.*
- D. No since the plaintiff needed to pay docket fee on the ₱5,000.*

The examination shall devote 40% of all MCQ items in the bar exams to analysis-and-application type of MCQs.

C. POINTERS IN THE CONSTRUCTION OF MCQS

1. The examiner can adjust the difficulty level of a test item by simply changing the distractors, making them too close to the correct answer.² You should, however, strive for moderate MCQs.

Poor:

- A criminal action must be filed in the place where*
- A. the offense took place.*
 - B. the accused resides.*
 - C. the offended party resides.*
 - D. the witness resides.*

Improved:

- A criminal action must be filed in the place where*
- A. the offense took place.*
 - B. the accused was apprehended and detained.*
 - C. the offended party resides.*
 - D. the preliminary investigation took place.*

2. The number of options may vary but, for the purpose of the bar and classroom exams, four options would be ideal. This would give only a 25% probability of guessing the right answer. If the examinee sticks to guessing, on the average he would get 25% correct answers, a sure failure.

3. The distractors should be plausible, not obviously wrong.³ A good way to create distractors is to think of ways an examinee can possibly go wrong. Thus:

Poor:

- Rape is sexual intercourse with the use of*
- A. foreplay*
 - B. viagra*
 - C. condom*
 - D. force or intimidation.*

Improved:

- Rape is sexual intercourse with the use of*
- A. deceit*
 - B. moral ascendancy*
 - C. intrigue*
 - D. force or intimidation.*

4. The main stem should clearly inform the examinee regarding what the problem is before he reads his options.⁴

Poor:

The act of the police in placing the accused in a police line-up – (this statement of the stem by itself does not present a clear problem)

- A. *violates his right against self-incrimination.*
- B. *violates his right to counsel.*
- C. *constitutes a valid police investigation procedure.*
- D. *is valid conditioned on his being identified at the trial.*

Improved:

The act of the police in placing the accused in a police line-up without his prior consent— (this now presents a clear problem)

- A. *violates his right against self-incrimination.*
- B. *violates his right to counsel.*
- C. *constitutes a valid police investigation procedure.*
- D. *is valid conditioned on his being identified at the trial.*

5. Include as much of the data in the stem and keep the options as short as possible.⁵

Poor:

A warrantless search is valid -

- A. *when the search is made by customs officers at the home of a known smuggler.*
- B. *when the search is made by anti-drug enforcers.*
- C. *when the search is made by policemen at a COMELEC checkpoint.*
- D. *when the search is made for a bomb at the mall by the NBI.*

Improved:

A warrantless search is valid when it is made -

- A. *by customs officers at the home of a known smuggler.*
- B. *by anti-drug enforcers.*
- C. *by policemen at a COMELEC checkpoint for illegal firearms.*
- D. *by the NBI for a bomb at the mall.*

6. One of the advantages of MCQs is that you can ask many questions to cover a good cross-section of a subject. You can do this only if you make your MCQs simple, clear and short. Do not complicate a problem with unessential facts. Include in the stem only the facts needed to make the problem clear.⁶ Irrelevant materials in the stem cause confusion.

Poor:

The police nabbed two robbery suspects after a police informer fingered them. During the investigation, the police officers succeeded in convincing the suspects to go with them to the scene of the crime, accompanied by the press, to reenact how they committed the crime. Photos were taken. Was the reenactment admissible evidence?

- A. *No since it amounts to waiver of right to silence without the advice of counsel.*
- B. *Yes since the reenactment was voluntary.*
- C. *No since it is irrelevant evidence.*
- D. *Yes since the reenactment was unaccompanied by any statement from the suspects.*

Why is this poorly written? Since only the “reenactment” is being questioned, the stem contains too many unnecessary data.

Improved:

The police nabbed two robbery suspects whom they convinced during the investigation to go with them to the scene of the crime to reenact how they committed it. Is the reenactment admissible in evidence?

- A. No since it amounts to waiver of right to silence without the advice of counsel.
- B. Yes since the reenactment was voluntary.
- C. No since it is irrelevant evidence.
- D. Yes since the reenactment was unaccompanied by any statement from the suspects.

7. Avoid using the negative in the stem since it often confuses the examinee. But the negative is justified when it tests his knowledge or understanding of exceptions to rules. In the latter cases, be creative in using the negative in the problem. Capitalize the negative word to emphasize it.⁷

Poor:

The Supreme Court will NOT entertain a constitutional question UNLESS it is determinative of the case itself because

- A. it would prejudice the administration of justice.
- B. the separation of powers demands respect due the other departments.
- C. the Court would not have acquired jurisdiction over the case.
- D. there is no actual case or controversy that justifies such a review.

Improved:

The Supreme Court will entertain a constitutional question only if it is determinative of the case itself because

- A. it would prejudice the administration of justice.
- B. the separation of powers demands respect due the other departments.
- C. the Court would not have acquired jurisdiction over the case.
- D. there is no actual case or controversy that justifies such a review.

* * *

Poor:

The bank deposit secrecy law bars all inquiries into a bank deposit. But it allows exceptions. Which of the following does NOT belong to the exceptions?

- A. Cases of impeachment.
- B. Cases involving bribery.
- C. Cases of bigamy.
- D. Cases where the money involved is subject of litigation.

Improved:

The bank deposit secrecy law bars all inquiries into a bank deposit. A deposit may, however, be looked into

- A. after prior notice to the depositor.
- B. upon court order in annulment of marriage cases.
- C. in cases of impeachment.
- D. on motion in a bribery case.

8. Be sure that the choices you provide has only one correct answer that experts would generally agree on.⁸ In their desire to make distractors plausible, some writers would include more than one correct answer or choices that remain unsettled among experts and authorities.

9. Give no unintentional clues.⁹

Poor:

To prove that Susan stabbed her husband Sergio, Pete testified that he heard Rico running down the street, shouting excitedly, “Sinaksak daw ni Susan ang asawa niya!” Unfortunately (a clue to a negative answer), Rico’s declaration is –

- A. *admissible as part of res gestae.*
- B. inadmissible as hearsay.**
- C. *admissible as independently relevant statement.*
- D. *inadmissible as a mere opinion.*

10. Avoid grammatical inconsistencies.¹⁰

Poor:

The law that will determine jurisdiction over a particular case is the law in force at the time of

- A. *the cause of action accrued.*
- B. the filing of the action.**
- C. *the issues in the action are joined.*
- D. *the defendant receives the complaint.*

11. Avoid length clues.¹¹

Poor:

The right to be presumed innocent is NOT violated by a law that establishes a presumption of guilt based on a certain fact proved provided that

- A. the burden of proving his innocence is shifted to the accused only when there is a reasonable connection between the fact proved and the fact presumed from it.**
- B. *the nature of the crime permits it.*
- C. *the accused has a chance to overcome it.*
- D. *the law is not retroactive.*

Improved:

The right to be presumed innocent is NOT violated by a law that establishes a presumption of guilt based on a certain fact proved provided that

- A. what is proved and presumed are reasonably connected.**
- B. *the nature of the crime committed permits a reverse presumption.*
- C. *the accused has ample opportunity to overcome the adverse presumption.*
- D. *the law is not retroactive.*

12. Avoid the options: none of the above or all of the above.¹² It gives the impression that the examiner could not create another distractor. It also encourages questions with no correct answers. Instead of “none of the above,” just use another distractor which will enhance the quality of the question.

13. Make your questions topic specific, not a hodge-podge of several legal principles.

Poor:

Which of the following laws is unconstitutional?

- A. A law requiring cabinet members to attend all congressional hearings upon proper notice.**
- B. *A law revoking all permits to carry firearms outside of one’s residence.*
- C. *A law authorizing warrantless searches by customs officials.*
- D. *A law providing for dual citizenship.*

Asking which law is unconstitutional could cover any topic in Constitutional law. Option A is on Section 22 of Article VI Legislative Department, while Option B is on undue deprivation of property,

Option C is on rights against warrantless search and seizures and Option D is on citizenship. The choices should be coherent in order to test an examinee's knowledge on a particular topic.

Improved:

Which is unconstitutional for being an invalid exercise of police power?

- A. A law prohibiting the use of motor vehicles on certain days of the week.***
- B. A law imposing rent control.***
- C. A law prescribing minimum standards for the practice of the engineering profession.***
- D. A law prohibiting the sale of cigarettes to young men and women ages 18 to 25.***

14. Do not use "modified" true or false questions. They are time consuming and accomplishes little. Example:

I. The practice of law is a right in the sense that a lawyer cannot be prevented from practicing law except for valid reasons.

II. The practice of law is a privilege because it is limited to persons of good moral character with special qualifications duly ascertained and certified.

Which of the following best describes the statements above?

- A. Only statement I is true.***
- B. Only statement II is true.***
- C. Both statements are true.***
- D. None of the statements are true.***

D. POINTERS IN IMPLEMENTING MCQ EXAMS IN THE CLASSROOM

We encourage you, especially those who are currently teaching review subjects, to use both types of exams (MCQs and essays) for your classes. You need to acquaint your students with the changes in the bar examinations that begin in 2011. You don't want them surprised and unprepared. Constructing MCQs is not difficult once you get the hang of it.

For a classroom examination we suggest that you start with at least 40 to 50 MCQs, eventually to grow to 70 to 80, and one or two essay-type problems. If you use MCQs, correcting test booklets will no longer be the great burden that it used to be. A trusted clerk can correct the MCQs, leaving you with only the one or two essays to correct.

We suggest that you add ten MCQs to what you already have with each new semester until you are able to build up a big collection of MCQs. Students have the tendency to stash away a copy of your exams and build up a collection for future use. Take the following precautions:

1. Personally monitor the printing and xeroxing of your MCQs so no excess copies could be made;
2. Require your students to mark their answers on the test questionnaire itself so you can be sure that they return all the MCQs to you after they have finished; and
3. Secure all used and unused question sheets for subsequent destruction.

To prevent copying between seatmates when the room is full prepare two sets, the second set being a mere rearrangement of the first, and distribute them alternately to students on the same row.

To prepare for the 2011 bar exams, we invite you to send to the Supreme Court the MCQs you have prepared and used for your classes. We will place these in a secure Central Depository of MCQs, essentially as reference for developing bar exam MCQs. We are targeting not less than 1,000 MCQs per bar subject for the 2011 bar exams. We will choose 100 MCQs per subject for the tests.

The MCQs you will send will give the Committee a reference for determining items of interest in the academe. And, with a bit of reconstruction (like changing a few details of the stem and making

alterations in the distractors), such MCQs can acquire altered appearances, making them fair materials for the bar examinations.

We suggest that you send us at least 50 MCQs in the subject you teach, 10 “knowledge and recall” items, 20 “understanding” items, and 20 “analysis and solution” items. We will evaluate these and, if you get it right, we will issue you a certificate as expert, first grade, in MCQ construction. This will qualify you to lecture on the subject and place you in the list of potential bar examiners for the 2011 bar exams and beyond.

III. PREPARING FOR ESSAY LAWYERING SKILLS EXAM

The second part of the bar exams, the essay type, is aimed at measuring the examinee’s lawyering skills. It will cover one or two legal-dispute situations for which the examinee will be required to write a paper.

For example, in Civil Law, the test might read like this:

Instructions:

Below is a hypothetical legal dispute.

- a) Choose the side of the dispute that you want to uphold and defend; and*
- b) Prepare a trial memorandum in support of your position.*

Do not write more than 4 arguments.

Suggestions:

- a) Read the problem and get a sense of what the issues are;*
- b) Pick out the facts that are relevant to such issues;*
- c) Make a summary of the conflicting claims of the parties;*
- d) State the issues on which the resolution of the dispute will depend;*
- e) Prepare the arguments against the opposing side and the arguments in support of your own; and*
- f) End with the relief you want, your prayer.*

Alex sued Julio for the injury that his son Andy suffered through the fault of James. Julio resisted the action.

Andy made the following statement:

I am Andy, 10 years old, a grade four student. I am Alex’s son. I have a classmate named James.

On July 7, I jumped from an adobe fence at the back of our barangay hall and fractured my left leg. It was quite painful. I could not forget it. Someone called the barangay captain and he took me to the hospital in a taxicab. The fence was rather tall. A month ago, after school, James and I climbed and walked on top of it, trying to balance ourselves as we went. We had previously done this when nobody was around and we enjoyed the thrill of the heights. We always played together. We even swapped toys when we were bored with what we had.

On that afternoon of July 7, while James and I were walking the fence, James remarked to me that a policeman was coming towards us. I was quite terrified. I had been told that policemen could put misbehaving children in jail. Actually, no policeman had shown up at all where we were playing but James wanted to make fun of me. But, because we never had a joke like it before, I really thought he was serious and would not make such a dangerous joke. So I panicked and jumped from the fence to the ground.

Our teacher once said that James and I were good boys. But we were somewhat full of play, she said. She had previously caught us playing games inside the classroom and sent for our parents. The school was quite strict in the matter of order and discipline inside the campus.

I stayed in the hospital for three days and the doctor had to put a cast on my leg. It itched a lot afterwards. I walked with great difficulty and could not go back to school for at least one week. It took a month before they removed the cast and I still walk awkwardly with a slight pain to this day. I made this statement because my dad, Alex, wants to file an action against James father, Julio for the injury and pain that I suffered.

For his part, James made the following statement:

I am James, 10 years old, and a grade four student. My dad's name is Julio. He is a caring father and always showed concern for his children.

Andy is my classmate and best friend. When Andy jumped from the fence at the back of the barangay hall on the afternoon of July 7 and appeared hurt, I immediately went down and called for help. The barangay chairman came and had Andy taken to the hospital. I did not want Andy to get hurt at all.

Andy and I went together a lot and often played the games that young boys enjoyed, even when at times these games became a little rough. We knew from what our parents have been telling us, however, that we should be careful not to get hurt or to hurt others. Still, we are growing boys and we had previously climbed the fence at the back of the barangay hall before. What happened on the afternoon of July 7 was that we both climbed the fence after school. The day was cloudy and cool. We walked on top of the fence and we enjoyed the thrill that it offered. Andy teased me this time when I walked the fence, saying how slow and afraid I was. This was of course not true because I was not afraid at all.

When Andy's turn came, I also made a joke and said that a policeman was coming towards us when this was not true. I did not expect Andy to be scared by what I said. I made this statement at my dad's request.

Additional suggestions:

It will be best if you can prepare a draft of your work on blank sheets that you have been provided. This will permit you to freely edit your work, making marks, erasures, and insertions to your satisfaction. Just make sure that you leave at least 20 minutes or so for transferring your work to your examination notebook. One short bell will warn you that you have 20 minutes left. When the bell rings twice to signal the end of the exam, your notebook will be collected whether you are finished or not. Time pressure is a part of the exam.

You will not be graded for a technically right or wrong answer but for the quality of your legal advocacy. The test is intended to measure your skills in:

- a) Communicating in English — 20%*
- b) Sorting out the conflicting claims and extracting those facts that are relevant to the issue or issues in the case — 15%*
- c) Identifying the issue or issues presented — 15%*
- d) Constructing your arguments and persuading your reader to your point of view — 50%*

The essay-type exam will help measure depth of learning and true intelligence. The passing standard for correction will be work expected of a beginning practitioner, not a seasoned lawyer.

ROBERTO A. ABAD
Associate Justice

2011 Bar Exams Chairman

¹ Dr. Leticia Asuzano, *How to Construct Multiple Choice Items*, Compendium for PRC Board Examiners *citing* Thorndike, R.M. *Measurement and Evaluation in Psychology and Education*, Prentice-Hall, 1977, New York, New York.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*