

# QUESTIONS<sup>1</sup> AND ANSWERS<sup>2</sup>

IN

## PARTNERSHIP

(For Business Law Students)

BY:

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<sup>1</sup> Questions came from the Book of Atty. Fidelito Soriano on Partnership.

<sup>2</sup> Initial Answers were prepared by the following students of the undersigned namely: Antonino Bayson, Grace Leonor Falogme, Normina Genesis, Claudeth Martillano and Danica Rustila. As such, special thanks is hereby being made upon them.

1. A contract whereby two or more persons bind themselves to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves is a:
  - a. **Partnership**
  - b. Corporation
  - c. Sole Proprietorship
  - d. Joint Stock Company

*The above is the definition of Partnership in accordance with Article 1767 of the New Civil Code. In addition, other attributes of Partnership is it is a consensual contract so it is perfected by the mere agreement of parties. It is also onerous as they bind themselves to contribute money, property or industry to a common fund with the purpose of dividing profits among themselves.*

2. A partnership is:
  - a. a contract
  - b. a business organization
  - c. **both (a) and (b)**
  - d. neither (a) nor (b)

*Under the Civil Code, a partnership is both a contract and a business organization. As a contract, partnership exists when two or more persons agree to place their money, property and skill in lawful commerce, with understanding that there shall be a proportionate sharing of profits and losses among them. As a business organization, it has a juridical personality separate and distinct from that of each of the partners.*

3. A partnership is a consensual, principal and bilateral/multilateral contract. It is also the following, except that it is not:
  - a. a preparatory contract
  - b. a nominate contract
  - c. an onerous contract
  - d. **an aleatory contract**

*A partnership is nominate (has a special name given to it by law), preparatory (other contracts will be entered into as the partnership pursues its business) and an onerous (partners contribute money, property or industry to a common fund). Therefore, it is not an aleatory contract since it is not dependent on chance, luck, or an uncertain outcome.*

4. When, as a rule, does a partnership begin to exist?
  - a. On the date of the recording of the partnership agreement with the Securities and Exchange Commission.
  - b. **Upon the execution of the partnership agreement by the partners.**
  - c. On the date when all the capitalist partners have delivered their contributions to the partnership.
  - d. On the date when the partnership agreement is acknowledged before a notary public.

Article 1784 deals with the commencement of a partnership. As a rule, a partnership commences to exist from the time of the execution of the partnership contract or agreement by the partners. The partners, however, may stipulate for a different date when the partnership begins to exist and any such stipulation is valid.

5. Which of the following is not an essential requisite of a partnership contract?
- It must be established for the common benefit of the members which is to earn profits and divide the profits among the members.
  - The articles are kept secret among the members.**
  - There must be a mutual contribution of money, property or industry to a common fund.
  - It must have a lawful object or purpose.

*The essential requisites of partnership includes: a) there must be a valid contract; b) there must be a mutual contribution of money, property or industry to a common fund; c) there must have a lawful object or purpose; and d) must established for the common benefit of the partners which is to obtain profits and to divide the profits among themselves. Therefore, keeping the articles secret among the members is not an essential requisite of a partnership contract.*

6. Who/which of the following may not be a partner in a partnership?
- Natural Person
  - Partnership
  - Corporation**
  - None of the foregoing

*A corporation may not be a partner in a partnership because the law provides that a corporation cannot act without the authority of the Board of Directors. A contrary rule will make the corporation liable for the act of the other partners even if there was no authority from the board of directors.*

7. The doctrine of delectus personae/personarum refers to the right of a person to choose:
- The persons whom he wants to be associated in partnership.**
  - The business in which he wishes to engage with another person or other persons.
  - Both (a) and (b)
  - Neither (a) nor (b)

*No person can be forced to become a partner of another due to the fiduciary relationship (relationship based on trust and confidence) between partners. As such, person is free to choose as partners those in whom he has trust and confidence. This right of a person to choose the persons whom he wants to be associated in partnership is referred to as the doctrine of delectus personae (or personarum).*

8. The following may be contributed by a partner to a partnership, except:
- Money
  - Tangible property such as a piece of land
  - Intellectual industry, such as that of a chemist, or manual industry such as that of a mechanic.
  - Political connection or credit.**

*Since a partnership is onerous, the partners are required to make a mutual contribution in money (cash), property (real, personal or intangible) or industry (physical or manual). Thus, any political connection or credit may not be contributed by a partner to a partnership since it is neither money, property or service.*

9. In which of the following cases is there a prima facie evidence that one is a partner in a business?
- His receipt of a share in the gross returns derived from a property where he has a joint or common interest with another.
  - His receipt of a share of the profits realized from the use of property that he co-owns with another.
  - His receipt of a share of the net profits of a business.
  - His receipt of share of the profits realized from the use of a property that he co-possesses with another.

*Article 1769 provides for the rules in determining whether a partnership exists. In accordance with Article 1769 (4), the receipt of a share of the net profits of a business is a prima facie evidence that he is a partner in the business. This is based on the rule that one would not be sharing in the profits of a business unless he is a partner therein.*

*Also, Article 1769 (2) provides that co-ownership or co-possession does not itself establish a partnership even if the co-owners or co-possessors share any profits made by the use of the said property.*

10. A voluntary association or society whose articles are kept secret among its members and where any one of the members may transact in his own name possesses which of the following characteristics?
- It is governed by the rules on co-ownership.
  - It has a juridical personality.
  - The members are treated as partners.
  - It shall be governed by the provisions on partnership.

*Article 1775 states that a voluntary association or society whose articles are kept secret among its members and where any one of the members may transact in his own name, shall have no juridical personality, and shall be governed by the provisions relating to co-ownership.*

11. A, B, C, D, E, F, G, H, I and J are members of “Alpha Association” whose articles are kept among themselves and wherein any one of the members may transact in his own name.
- The association may sue under the name “Alpha Association”.
  - The association may be sued under the name “Alpha Association”
  - Both (a) and (b).
  - Neither (a) nor (b).

*Article 1775 states that when articles are kept secret among the members and wherein any one of the members may transact in his own name, shall have no juridical personality, and shall be governed by the provisions relating to co-ownership.*

*Such association CANNOT SUE another person or file a case against a person under the name of the said association. However, with respect to a suit/case by a third person against such association, the same may be filed against the said association in its common name.*

*Therefore, although Alpha Association may not file a suit/case using the name “Alpha Association”, any third person may file a case against the corporation under the name “Alpha Association”.*

12. Three years ago, Benjamin and Bienvenido, brothers, inherited a five-floor commercial building and the lot on which it was constructed, from Facundo, their father, who died without a will. For the past three years, the brothers have divided between the two of them the profit on the rental of the property. Are Benjamin and Bienvenido partners?
- Yes, because of their receipt of the profit from the use of the property.
  - No, they are merely co-owners of the whole property.**
  - No, each one is a sole proprietor of one-half of the whole property.
  - No, they are considered as stockholders of the whole property.

*Benjamin and Bienvenido are not partners even if they share in the profit on the rental of the property but considered as merely co-owners of the whole property. They merely inherited the property from their father. There is NO AGREEMENT to contribute money, property or service in a common fund in order to divide profits. As a rule, based on Article 1769, co-ownership or co-possession does not of itself establish a partnership, whether or not such co-owners or co-possessioners share in any profits made by the use of the property.*

*Note: In the above example, if after Benjamin and Bienvenido inherited the property, they subsequently made an agreement that they will contribute the property which they received from the estate of their father in a common fund for the purpose of dividing profits, then, PARTNERSHIP WILL EXIST in the said situation since all the elements of partnership exist. In other words, partnership can still exist even between co-owners as long as the elements of agreement to contribute to a common fund and distribution of profits are present.*

13. Sanchez and Suarez are both real estate brokers. The two have not entered into any partnership agreement, but to save on costs, they share at the Avenue Twin Towers the same office space on the front door of which is the signage “Sanchez and Suarez, Real Estate Brokers”. They also use the same stationery showing the name appearing on the signage and one telephone number, and share the services of the same secretary. Sanchez, using the stationery, ordered a laptop computer worth P100, 000.00 from Cyber Computers owned by Camarino, who himself delivered the computer to the office. Camarino also issued a receipt acknowledging the down payment of P40, 000.00 from “Sanchez and Suarez” without any objection from Suarez. Sanchez later failed to pay the balance of P60, 000.00. Camarino now seeks to recover the amount of P60, 000.00 from both Sanchez and Suarez as partners.
- Only Sanchez can be held liable by Camarino since the purchase of the laptop computer is the personal transaction of Sanchez.
  - Only Sanchez can be held liable by Camarino since Sanchez and Suarez did not enter into any partnership.

- c. Both Sanchez and Suarez can be held liable by Camarino since the two are considered as partners in so far as Camarino is concerned.
- d. Only “Sanchez and Suarez, Real Estate Brokers”, as a juridical entity is liable to Camarino since an actual partnership exists.

*The problem states that Suarez did not object on the transaction made between Camarino and Sanchez even if the receipt was issued in the name of Sanchez and Suarez. As such, as to Camarino, they are considered as partners and that the thing was purchased for the benefit of the partnership. As such, both partners are to be held liable on the unpaid balance of P60, 000.00.*

*Note: What if Suarez objected or he did not have the opportunity to object? It will then depend on the circumstance. If the computer set was incurred for the benefit of the partnership, then, the partnership and the partners are liable. However, if the computer set was solely for the benefit of Sanchez, then, the partnership, nor Suarez, is NOT liable.*

14. Belinda purchased Cut-N-Curl, a beauty salon owned by Sophia, for P100, 000.00. To finance the acquisition of the business, Belinda obtained from Cristina a loan of P60, 000.00 (at 12% interest per annum) which the parties agreed would be paid by Belinda in an amount equivalent to 20% of the monthly net profits of the salon until the loan and the interest thereon are fully paid. Belinda then gave the P60, 000.00 to Sophia as down payment, promising to pay the balance of P40, 000.00 at an amount equivalent to 10% of the monthly net profits until it is fully paid.

- a. Cristina is a partner of Belinda until Belinda has paid in full her loan obligation of P60, 000.00 and the interest thereon to Cristina.
- b. Sophia is a partner of Belinda until Belinda has paid in full her balance of P40, 000.00 on the purchase price of the beauty salon.
- c. Both Cristina and Sophia who receive a share of the net profits are the partners of Belinda until the latter has fully paid her obligations to them.
- d. No partnership exists between Belinda, Cristina and Sophia whether before or after the payment of Belinda’s obligations to Cristina and Sophia.

*There is no agreement for the mutual contribution of money, property or industry to a common fund between the three of them that is why no partnership shall exist on the given case. Further, the payment to Cristina out of the profits arises NOT out of a partnership obligation but out of a loan obligation. Belinda is liable to pay the same whether or not the business obtains profits.*

15. Buds and Blossoms is a partnership engaged in the flower shop business which is operated by friends Beatriz and Bethliz. The flower shop is located on a lot which Beatriz and Bethliz leased from Oprah at 10% of the yearly gross revenues of the business. Amalia was hired as accountant at a monthly salary of P10, 000.00 plus 5% of the yearly net profits as bonus. Who are the partners in the business?

- a. Beatriz and Bethliz only.
- b. Beatriz, Bethliz and Oprah.
- c. Beatriz, Bethliz and Amalia.
- d. Beatriz, Bethliz, Oprah and Amalia, since all of them receive a share in the net profits.

*Only Beatriz and Bethliz are the partners in the business since they are the ones who organized and contributed the funds to form Buds and Blossoms. Oprah is just the lessor of the leased lot and Amalia is just an employee being an accountant of the partnership. Although they have part in the profit of the partnership, they are not still partners because the profits they have received were merely a rent to a landlord and a wage to an employee. The partnership is liable to pay them whether or not it obtains profits.*

16. Olivia is the owner of a commercial space. She leased the premises to Teresa, a dealer of motorcycles and bicycles using Trikes and Bikes as trade name. Their contract provides that Teresa shall pay Olivia 10% of the net profits as rent. Teresa has a loan obligation to Carmela amounting to P500, 000.00 which Teresa used in expanding the business. The loan was not paid on due date, so Carmela now seeks to recover the amount.
- Carmela can go after the assets of Trikes and Bikes. If such assets are not enough, Carmela can go after the separate assets not only of Teresa, but also those of Olivia who is considered as Teresa's partner by reason of Olivia's receiving a share of the profits.
  - Carmela can go after Teresa alone since the latter is a mere sole proprietor.**
  - Carmela can go after Trikes and Bikes which is considered a partnership and the only one liable.
  - Carmela can go after Teresa and Olivia as partners who will be liable jointly, but not against Trikes and Bikes.

*There is no partnership existing between Teresa and Olivia since the two did NOT enter into an agreement to mutually contribute sum of money, property or industry to a common fund. What exist between them is a lessor-lessee relationship, not partnership. Therefore Carmela can only go after Teresa since the latter is a mere sole proprietorship.*

17. An unlawful partnership which constitutes a crime procedures which of the following effects?
- The partnership is void.
  - The proceeds of the crime and instruments or tools through which it was committed shall be confiscated in favour of the government.
  - The partners will be criminally prosecuted.
  - All of the foregoing.**

*Article 1770 states that when an unlawful partnership constitutes a crime, the partnership is void, the partners will will be criminally prosecuted and the proceeds of the crime and the instruments or tools with which it was committed shall be forfeited in favour of the government. Therefore, all are the effects of an unlawful partnership constituting a crime procedure.*

18. Where an immovable property or real rights are contributed to a partnership, the partnership contract must be in a public instrument to which shall be attached an inventory of the immovable property contributed and signed by the parties. Failure to comply with the said requirements:
- makes the partnership void**
  - makes the partnership unenforceable
  - makes the partnership voidable

d. does not affect the acquisition by the partnership of a juridical personality

*Article 1773 states that a contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties and attached to the public instrument. So, failure to comply with the said requirements makes the partnership void.*

*Note: What is needed to be in a public instrument is the contract of partnership. The written inventory need not be in a public instrument. It is sufficient that the inventory is in writing and signed by the partners.*

*Article 1773 is the only instance where the partnership is void if not in public instruments.*

19. If the capital of the partnership is P3, 000.00 or more, in money or property, the partnership must be in public instrument which must be recorded in the office of the Securities and Exchange Commission. Failure to comply with such requirements:
- a. makes the partnership void
  - b. makes the partnership voidable
  - c. makes the partnership rescissible
  - d. does not affect the acquisition by the partnership of a juridical personality

*Article 1772 states that every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.*

*However, failure to comply with the requirements still makes the partnership valid and it still acquires juridical personality. Thus, it shall not affect the liability of the partnership and the members thereof to third persons.*

20. If the partnership intended to be formed is a limited partnership, a certificate must be signed and sworn to by the partners, which certificate must be recorded in the office of the Securities and Exchange Commission. Failure to comply with such requirements:
- a. makes the partnership void
  - b. makes the partnership voidable
  - c. makes the partnership a general partnership
  - d. precludes the acquisition by the partnership of a juridical personality

*If the partnership is a limited partnership, a certificate must be signed and sworn to by the partners and must be recorded with the Securities and Exchange Commission. However, failure to comply with such requirements will NOT affect the existence of the partnership. The partnership still exist and has a juridical personality.*

*What will be affected is the nature of the partnership since it will be considered as a general partnership and NOT a limited one as contemplated by the parties. Consequently, the partners will be liable as general partners.*

21. Which of the following partnership agreement is required to be in a public instrument and an inventory of the property contributed must be made, signed by the parties and attached to the public instruments?
- A general partnership where the capital amounts to P80, 000.00 consisting of P30, 000.00 cash and P50, 000.00 worth of computers.
  - A general partnership where the capital amounts to P150, 000.00 consisting of cash of P100, 000.00 and a vacant lot worth P50, 000.00
  - A general partnership where the capital amounts to P1, 000, 000.00 in cash.
  - A general partnership where the capital amounts to P500, 000.00 in cash.

*Article 1771 states that a partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary. Accordingly, among the partnership agreement, a general partnership where the capital amounts to P150, 000.00 consisting of cash of P100, 000.00 and a vacant lot worth P50, 000.00 requires to be in public instrument and an inventory since the agreement includes an immovable property of vacant lot worth P50, 000.00.*

22. A partnership in which all the partners contribute all the properties which actually belong to them to a common fund with the intention of dividing the same among themselves, as well as the profits which they may acquire therewith.
- Particular partnership
  - Universal partnership of all present property
  - Universal partnership of profits
  - General partnership

*Article 1778 states that a partnership in which all the partners contribute all the properties which actually belong to them to a common fund with the intention of dividing the same among themselves, as well as the profits which they may acquire therewith is considered universal partnership of all present property.*

23. A and B formed a universal partnership of all present property. The partners agreed that property acquired by each partner after the formation of the partnership shall belong to the partnership. Which of the following does not belong to the partnership?
- Agricultural lot inherited by A before the formation of the partnership.
  - Crops harvested from the agricultural lot during the first year of the partnership.
  - Fishpond donated to B during the first year of the partnership.
  - Fish harvested from the fishpond during the first year of the partnership.

*The partnership is a universal partnership of all present property. As a rule; any property which the parties may acquire subsequently by inheritance, legacy, or donation CANNOT be included in such type of partnership. Only the fruits thereof may be included as partnership property. Therefore, the fishpond donated to B during the first year of the partnership does not belong to the partnership.*

24. A partnership that comprises all that the partners may acquire by their work or industry during the existence of the partnership.
- Industrial partnership
  - Particular partnership

- c. Universal partnership of profits
- d. Universal partnership of all present partnership

*Article 1780 states that a partnership that comprises all that the partners may acquire by their work or industry during the existence of the partnership is considered universal partnership of profits.*

25. X and Y formed a universal partnership of profits. Which of the following properties belong to the partnership?
- a. Coconut plantation inherited by X before the formation of the partnership.
  - b. Salary received by Y as professor of a college in Manila during the first year of the partnership.
  - c. Lotto prize won by X during the first year of the partnership.
  - d. Agricultural lot donated to Y during the first year of the partnership.

*Article 1780 states that universal partnership of profits comprises all that the partners may acquire by their industry or work during the existence of the partnership. Properties acquired through inheritance, donation or through other means without the effort of the partners cannot be considered part of the partnership property.*

*In the case mentioned above, the salary of Y as professor was received through his exercise her industry as a professor. Thus, the same will be considered part of the partnership property. The other properties were acquired either through inheritance, donation or by luck. As such, the said properties are not considered partnership properties.*

26. What kind of universal partnership is entered into by the partners if there is no specification as to its nature?
- a. Universal partnership of all present property.
  - b. Universal partnership of profits.
  - c. Either of the two at the option of the partners.
  - d. None, because the partnership is void since there is no meeting of minds among the partners.

*Article 1781 provides that, articles of universal partnership, entered into without specification of its nature, only constitute a universal partnership of profits. This is considering that this is less onerous than universal partnership of all present properties.*

27. The following are disqualified to form a universal partnership, except:
- a. Husband and wife.
  - b. Man and woman living together as husband and wife without the benefit of marriage.
  - c. Brother and sister.
  - d. Those guilty of adultery or concubinage.

*Article 1782 states that persons who are prohibited from giving each other any donation or advantage cannot enter into universal partnership. As such, the following are prohibited to enter into universal partnership, thus:*

- a. *Donations between spouses during the marriage, except moderate gifts given on the occasion of the family rejoicing. The prohibition applies to persons living together as husband and wife without the benefit of marriage.*
- b. *Those made between persons who were guilty of adultery or concubinage at the time of the donation.*
- c. *Those made between two persons found guilty of the same criminal offense, in consideration thereof.*
- d. *Those made to a public officer or his wife, descendants or ascendants, by reason of his office.*

*Therefore, not being enumerated therein, brother and sister are not disqualified in forming a universal partnership.*

28. Which of the following partnership contracts is valid?

- a. **A partnership between a husband and wife for the exercise of a profession.**
- b. A universal partnership of all present property between a public officer and a private individual.
- c. A universal partnership of profits between a public official and a third person.
- d. A universal partnership of all present property between a man and woman living together as husband and wife without the benefit of marriage.

*All of the other choices mentioned above are prohibited from entering into a universal partnership. The prohibition does not extend to a partnership between husband and wife for the exercise of profession because the said partnership is NOT a universal partnership. The rule applicable is Article 1767 which states that two or more persons may also form a partnership for the exercise of a profession.*

29. Hubert and Wendy formed a partnership. Two years after the formation of the partnership, the two got married. The marriage between Hubert and Wendy dissolved the partnership they earlier formed if it were:

- a. **A universal partnership**
- b. A particular partnership
- c. Either (a) or (b)
- d. Neither (a) nor (b) because their marriage has no bearing on the partnership they had earlier formed.

*Article 1782 prohibits person living together as husband and wife to form a universal partnership. The reason for this prohibition is that, they may make it appear that they entered into a universal partnership to hide their actual intention of donating properties or rights to each other.*

30. A partnership which has for its object determinate things, their use of fruits, or specific undertaking, or the exercise of a profession.

- a. Universal partnership of all present property.
- b. Universal partnership of profits
- c. **Particular partnership**
- d. None of the foregoing

*Article 1783 defines particular partnership as a partnership which has for its object determinate things, their use of fruits, or specific undertaking, or the exercise of a profession.*

31. Which of the following is a particular partnership?
- An auditing firm composed of Certified Public Accountants.
  - A partnership formed for the purpose of selling all the lots in a certain subdivision.
  - Both (a) and (b)
  - Neither (a) nor (b)

*Both a and b falls under particular partnership because both are partnership which has for its object determinate things, their use of fruits, or specific undertaking, or the exercise of profession as provided by Article 1783.*

32. A partnership where all the partners are general partners who are liable to the extent of their separate property.
- General partnership
  - Limited partnership
  - Particular partnership
  - Universal partnership

*General partnership is a partnership where all the partners are general partners who are liable to the extent of their separate properties.*

33. If a partnership composed of six (6) partners is formed as a limited partnership:
- All the partners must be limited partners.
  - Three must be limited partners and three (3) must be general partners.
  - Five must be limited partners while one (1) must be a general partner.
  - It is enough that there is at least one (1) limited partner and at least one (1) general partner.

*Limited partnership is one where there is at least one general partner and at least one limited partner. The general partners are liable to the extent of their separate properties, while the limited partners are liable only to the extent of their contributions.*

34. Which of the following statements is false?
- A general partner may contribute money, property and/or services.
  - A limited partner may contribute money and/or property, but not services.
  - A partner may not be a general and limited partner at the same time.
  - A general partner may either be a capitalist or industrial partner.

*There is no prohibition against a general partner being also a limited partner. If stipulated, a person may be general partner in a sense that he is liable to the creditors up to the extent of his personal property. On the otherhand, he can also simultaneously be considered as a limited partner in a sense that he can ask the other partners to reimburse the amount which he paid in excess of his contribution.*

*This situation may arise if the parties agreed that the partners are liable to the third person to the extent of their personal properties but one or more (but not all) of the partners are*

entitled to be reimbursed from the other partners for any payment made in excess of the contribution.

35. Jessica and Sienna want to put up an internet café business. Jessica is an expert in information technology and computers but has no funds or property to invest. Sienna knows nothing about internet and computers but she is willing to contribute the funds and property needed. If Jessica and Sienna decide to enter into a limited partnership, who between the two of them will be the limited partner?
- Jessica only.
  - Sienna only.
  - Both Jessica and Sienna.
  - Neither Jessica nor Sienna; hence, they cannot enter into a limited partnership.

*Sienna is the only one who will be the limited partner because in accordance to Article 1845, the contribution of a limited partner may be cash or other property, but not services. From the foregoing, it is clear that a pure industrial partner CANNOT become a limited partner. Since Jessica is a pure industrial partner since her contribution in the partnership is services only, Jessica cannot become a limited partner in the partnership.*

*Note: If aside from her services, she also contributed property or money, Jessica can become a limited partner.*

36. Refer to the preceding number. Suppose Jessica and Sienna are sisters and they decide to put up a general partnership, who between the two of them may be the general partner?
- Jessica only.
  - Sienna only.
  - Both Jessica and Sienna.
  - Neither Jessica nor Sienna, they being sisters; hence, they cannot put up a general partnership.

*Both Jessica and Sienna may be general partners. There is NO limitations as to the number of general partner in a partnership. An industrial partner can also become a general partner if he contributes money aside from services.*

37. A partner who is active and known to the public as a partner, such as by allowing his name to be included in the firm name.
- Nominal partner
  - Ostensible partner
  - Managing partner
  - Partner by estoppel

*Managing partner is one who manages the business or affairs of the partnership. A managing partner's identity is made known to the public as partner and such name may be included in the firm name.*

*Note: I have reservation to this question and answer. Not every partner who is made known to the public as a partner and allowed himself to be included in the firm name can be considered*

*as managing partner. The definition of managing partner is limited to one who manages the affairs of the business/partnership.- CRH*

38. One who is not actually a partner but may become liable as such to third person
- Ostensible partner
  - Nominal partner**
  - Silent partner
  - Secret partner

*A nominal partner is one who is not actually a partner but who may become liable as such to third persons (such as a partner by estoppels).*

39. One who has no voice or active part in the management of the business of the partnership (though he shares in the profits and losses and may be known to the public as a partner).
- Dormant partner
  - Secret partner
  - Silent partner**
  - Ostensible partner

*Silent partner is one who has no voice of active part in the management of the business of the partnership (though he shares in the profits and losses and may be known to the public as a partner).*

40. One who does not participate in the management of the business of the partnership and is not known to the public as partner.
- Silent partner
  - Secret partner
  - Dormant partner**
  - Liquidation partner

*Dormant partner is one who does not participate in the management of the business and is not known to the public as partner, i.e., he is a secret and silent partner.*

41. These statements are presented to you:
- A limited partner may also be a general partner at the same time.
  - An industrial partner may also be a capitalist partner at the same time.
- In your evaluation of the foregoing statements:
- Both statements are true.**
  - Both statements are false.
  - Only statement I is true.
  - Only statement II is true.

*Statement I is correct (Please see explanation in No. 34).*

*Statement II is also correct. There is no prohibition for a partner to contribute both money and property.*

42. A general partnership may, at the same time, be any of the following partnerships, except:

- a. Particular partnership
- b. Limited partnership**
- c. Universal partnership
- d. None of the foregoing

*Article 1776 provides that all the partners in general partnership must be a general partner. Therefore, there can be NO limited partner in a general partnership. By reason of this provision, a general partnership cannot be a limited partnership at the same time since in a limited partnership, there should be at least 1 limited partner.*

43. If a partnership is formed to exist for a period of five (5) years, such partnership, if its business is continued upon the expiration of the five-year period:
- a. Remains to be a partnership for a fixed term until another five (5) years.
  - b. Becomes a partnership at will.**
  - c. Becomes a partnership for a particular undertaking.
  - d. Is deemed dissolved, notwithstanding the continuation of its business.

*Article 1785 states that when a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will. A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.*

*A partnership at will is one which has no fixed period of existence. Its existence depends upon the will of the partners.*

44. In which of the following instances is a partnership considered to be a partnership at will?
- a. One where the partners did not agree on a definite term or a specific undertaking.
  - b. One where the partners agreed on a definite term for the partnership, but the business is continued by the partners after the expiration of such term.
  - c. One where the partners agreed on a specific undertaking, but the business is continued after the attainment of such undertaking.
  - d. All of the foregoing.**

*All of the choices mentioned above are instances where the partnership is considered to be a partnership at will.*

45. The following are obligations of a partner who has promised to contribute specific property to the partnership, except:
- a. To deliver to the partnership at the time it was constituted or on the date stipulated the property he has promised to contribute.
  - b. To take care of the property before its delivery to the partnership with the diligence of a good father of a family.
  - c. To answer for eviction in case the partnership is deprived of the property he has contributed.

- d. To be liable for damages only after he fails to deliver the property upon demand by the other partners.

*Article 1786 provides that, every partner is a debtor of the partnership for whatever he may have promised to contribute thereto. A partner is liable to the partnership even without the demand by the other partners.*

46. Who of the following may engage in business even without the consent of the other partners?
- a. a capitalist partner if the business he will engage in is of the same line as the partnership business.
  - b. A capitalist partner if the business he will engage in is of a kind different from the partnership business.
  - c. An industrial partner if the business he will engage in is of the same line as the partnership business.
  - d. An industrial partner if the business he will engage in is of a kind different from the partnership business.

*Being a capitalist partner, he can engage in such business for his own account even without the consent of the partnership provided that the business he would be engage in is different from that of the partnership.*

47. Jack and John put up a partnership to engage in the computer repair business. Jack contributed P200, 000.00, while John his services. On the vacant stall on the left side of the computer repair shop, Jack intends to put up his own eatery business, while on the vacant stall on its right side, John plans to establish a bakery. Who of the two may validly establish his own business without the consent of the other partner?
- a. Jack
  - b. John
  - c. Both Jack and John
  - d. Neither Jack nor John

*Only Jack is allowed to establish his own business even without the consent of the other partner because he is a capitalist partner. A capitalist partner may engaged in another business provided that it not the same with the business of the partnership he is involved.*

*John, however, is not allowed to establish his own business because he is an industrial partner (since his contribution is only his service). Article 1789 states that, an industrial partner cannot engage in business for himself, unless the partnership expressly permits him to do so. This prohibition is absolute whether or not the business is related to the business of the partnership.*

48. Herbert and Wanda are husband and wife. They intend to put up a coffee shop business as partners. Based on the foregoing, which of the following statements is incorrect?
- a. Herbert and Wanda may validly put up a coffee shop business as partners.
  - b. Herbert and Wanda may adopt a firm name “Wanda’s Waffles and Coffee Shop” which includes the name of only one of them.

- c. If the capital of the partnership is P400,000.00, Herbert and Wanda must contribute equally the amount of P200,000.00, unless they agree otherwise.
- d. Herbert shall be the manager, he being the husband and head of the family.

*When there is no stipulation as to who will be the manager of the partnership, it is presumed that all of the partners shall be the manager or agent for all the transactions under the name of the partnership. Hence, Wanda can also be the manager in the absence of any contrary stipulation..*

49. D owes X P4, 000.00. He also owes P6,000.00 to XYZ Company, a partnership of which X is the partner authorized to collect the credits of the partnership. Both debts are due. D gives X P4,000.00 informing X that the amount is in payment of his debt to the latter. Accordingly, X issues his own receipt. To which credit will be the payment applied?
- a. To the credit of X.
  - b. To the credit of XYZ Company.
  - c. To the credit of X and that of XYZ Company proportionately at P1,600.00 and P2,400.00 respectively.
  - d. To the credit of X and that of XYZ Company equally at P2,000.00 each.

*According to Article 1792, in case a partner authorized to collect partnership debt is also, at the same time, the creditor of the person/entity who has obligation to the partnership, any amount collected by the said partner from the said debtor, shall be applied proportionately to the debts owing to him personally, and to the partnership debt. This rule also applies even if the debtor expressly stated that the payment shall be applied to the obligation owing to the partner in his personal capacity. X, as the partner authorized to collect the credit of the partnership, should not place his interest before of that of the partnership.*

*Note: The foregoing rule is applicable only if the partner is the one authorized to collect debt (either as a managing partner or, if not managing partner, a partner duly authorized to collect debts by the other partners through a resolution). In case the partner is NOT authorized to receive payment for partnership debt, he has no obligation to share with the partnership the amount collected from a mutual debtor UNLESS the debtor particularly stated that the payment shall be applied to the partnership debt. In the latter case, the partner has the obligation to remit the amount which the debtor expressly stated to be applied to his obligation to the partnership.*

50. D owes X P4,000.00. He also owes P6,000.00 to XYZ Company, a partnership. Both debts are due. D gives X P4,000.00 informing X that the amount is in payment of his debt to the latter. However, X issues a receipt of XYZ Company in partial payment of its credit. To which credit will the payment be applied?
- a. To the credit of X.
  - b. To the credit of XYZ Company.
  - c. To the credit of X and that of XYZ Company proportionately at P1,600.00 and P2,400.00 respectively.
  - d. To the credit of X and that of XYZ Company equally at P2,000.00 each.

*If the debtor specifically stated that the amount which he paid should be applied to the partnership credit, or if the partner authorized to receive payment issued receipt of the*

partnership, the payment shall be for the sole benefit of the partnership. It is because Article 1792 provides that if the partner authorized to receive payment issues the receipt of the partnership, payment shall be applied in its entirety to the partnership credit.

51. D owes X P4, 000.00, which is interest bearing. He also owes P6, 000.00 to XYZ Company, a partnership of which X is the partner authorized to collect the credits of the partnership, which debt is due is non interest bearing. Both debts are due. D gives X P4, 000.00 informing X that the amount is in payment of his debt to the latter. Accordingly, X issues his own receipt. To which credit will the payment be applied?

- a. To the credit of X.
- b. To the credit of XYZ Company.
- c. To the credit of X and that of XYZ Company proportionately at P1,600.00 and P2,400.00 respectively.
- d. To the credit of X and that of XYZ Company equally at P2,000.00 each.

*The payment of D is applied in its entirety to X's credit since D's debt to X is more onerous to D for it is interest-bearing while his debt to the partnership is non-interest bearing. D chooses to apply the payment to such more onerous debt, which right is available to him under Article 1252.*

*Note: The foregoing is based on the Answer of Atty. Fidelito Soriano. I just have a reservation on the foregoing Answer. The rule on application of payment is applicable only in case there is a concurrence of debt by one debtor in favor of one creditor. In the instant case, although there is only 1 debtor, there are two creditors involved. As between the rule on application of payment and the express mandate in Article 1792, I prefer to apply the latter. As such, for me, C is the correct answer. The credit should be applied proportionately.- CRH*

52. D owes X P4, 000.00 which is due on March 15. He also owes P6,000.00 to XYZ Company, a partnership of which X is the partner authorized to collect the credits of the partnership, which debt is due on March 30. On March 20, D Gives X P4,000.00 informing X that the amount is in payment of his debt to the latter. Accordingly, X issues his own receipt. To which credit will payment be applied?

- a. To the credit of X.
- b. To the credit of XYZ Company.
- c. To the credit of X and that of XYZ Company proportionately at P1,600.00 and P2,400.00 respectively.
- d. To the credit of X and that of XYZ Company equally at P2,000.00 each.

*The payment of D on March 20 is applied to X's credit because the credit of X is already due on March 15 which is prior to the payment is made. On the other hand, the partnership credit will be due only on March 30. So, the partnership credit cannot yet be demanded from D even if X is the partner authorized to collect the credit of the partnership. The Rule in Article 1792 is applicable only if both debts are due and demandable.*

*Note: Even if the credit in favor of the partnership is not yet due and demandable, the debtor can still apply the payment in favor of the partnership. In that case, the debtor-partner cannot ask for proportionate share. But if the debtor applied the payment solely on the credit in favor of the partner-debtor and the debt in favor of the partnership is not yet due and demandable, then the partnership is NOT entitled to a proportionate share of the payment.*

53. D owes X, P4,000.00. He also owes P6,000.00 to XYZ Company, a partnership composed of X, Y and Z, of which Z is the partner authorized to collect the credits of the partnership. Both debts are due. D gives X P4, 000.00 informing X that the amount is in payment of his debt to the latter. Accordingly, X issues his own receipt. To which credit will be payment be applied?

- a. To the credit of X.
- b. To the credit of XYZ Company.
- c. To the credit of X and that of XYZ Company proportionately at P1,600.00 and P2,400.00 respectively.
- d. To the credit of X and that of XYZ Company equally at P2,000.00 each.

*The payment of D is applied in its entirety to X's credit since X is not the partner authorized to collect the credit of the partnership. So, X cannot be accused of preferring his interest to that of the partnership.*

54. Demetrio owed HOT Company, a partnership composed of partners Hornilla, Ortaleza and Tanchangco, the sum of P6, 000.00. The partners agreed that each one may collect individually his share of P2,000.00 of the credit from Demetrio. Hornilla was able to collect his share of P2,000.00. When Ortaleza and Tanchangco were demanding payment of their respective shares, Demetrio was already insolvent. In this case:

- a. Hornilla must bring to the partnership the amount of P2,000.00 that he collected from Demetrio so that Ortaleza and Tanchangco may be able to share in it.
- b. Hornilla is not obliged to bring to the partnership the amount he collected because the partners had an agreement that each one must each bear his loss.
- c. Ortaleza and Tanchangco must each bear his loss.
- d. The amount collected by Hornilla shall be considered as an advance return of his capital contribution by the partnership.

*Article 1793 provides for the rule in case of insolvency of the debtor after a partner has received his share of partnership credit while the other partners have not collected theirs. In that case, the partner who has received his share has the obligation to bring to the partnership capital what he received even though the receipt which he gave is for his share only.*

*In the instant case, Hornilla, Ortaleza and Tanchangco have agreed to divide the partnership credit among them. Hornilla has collected his share of the credit, after which, the debtor became insolvent. Since Ortaleza and Tanchangco have not collected their shares by the reason of Demetrio's insolvency, Hornilla has the obligation to bring to the partnership what he has collected so that he can share it with the other partners.*

55. These statements are presented to you:

- I. A newly-admitted partner shall be liable for partnership debts incurred before his admission only if there was a stipulation to that effect.
- II. A newly-admitted partner shall be liable for partnership debts incurred before his admission even if there was no stipulation to that effect.
- III. A newly-admitted partner shall be liable for partnership debts incurred after his admission if there was a stipulation to that effect.

- IV. A newly-admitted partner shall be liable for partnership debts incurred after his admission even if there was no stipulation to that effect.

Which of the foregoing Statements are true?

- a. I and II.
- b. II and IV.**
- c. I and IV.
- d. II and III.

*A newly-admitted partner shall be liable for the partnership debts which were incurred before and after his admission even if there is no stipulation. It is stated in Article 1826 that the newly-admitted partner shall be liable for partnership debts incurred before his admission even if there was no stipulation because such incoming partner stands to benefit from an already established business with all the rights of a partner. For the partnership obligations contracted after his admission, the incoming partner is liable pro rata with the other partners for their separate assets if the partnership assets have been exhausted.*

*Note: Article 1826 only means that the contributions made by the newly admitted partner can also be used in order to settle the obligations of the partnership – whether or not the said obligations were incurred before or after the admission of the new partner. However, the newly admitted partner cannot be made liable up to the extent of his personal properties in order to pay the partnership obligations incurred prior to his admission to the partnership. His personal properties can only be used to pay the partnership obligations which were incurred AFTER his admission thereat.*

56. Which loss of the following properties will be borne by the partner concerned?
- a. Fungible things or those that cannot be kept without deteriorating.
  - b. Things brought and appraised in the inventory.
  - c. Things contribute to be sold.
  - d. Things only the use and fruits of which were contributed by a partner for the common benefit.**

*According to 1795, if the things contributed are fungible or cannot be kept without deteriorating, or if they contributed to be sold, or else they were bought and appraised in the inventory in the absence of stipulation, the risk shall be borne by the partnership. This is considering that the ownership of those things were transferred to the partnership. As such, the doctrine of res perit domino applies and the owner (partnership) shall bear the loss.*

57. FINE Company is a partnership composed of Felisa, Irmina, Nerissa and Eloisa. The partners have capital contributions of P10,000.00, P20,000.00, P30,000.00 and P40,000.00, respectively, and share in the profits in the ratio of 2:1:2:5. In 2008, the partnership sustained a loss of P12,000.00. the share of each partner in the losses shall be:
- a. Equal for each partner at P3,000.00 since the partners do not have a loss sharing agreement.
  - b. Felisa, P1, 200.00; Irmina, P2,400.00; Nerissa, P3,600.00; and Eloisa, P4, 800.00, based on their capital contributions of the partners.
  - c. based on their profit sharing ratio.**

- d. The partners need to have an agreement on the sharing of the loss before it can be divided among the partners.

*It is based on the profit sharing ratio because under article 1797, if there is no agreement as to the share of losses and only profit sharing ratio is agreed upon, the share on losses shall be based on the profit sharing ratio.*

58. Which of the following stipulations is valid?
- a. A stipulation excluding a capitalist partner from profits.
  - b. A stipulation exempting a capitalist partner from losses.
  - c. A stipulation excluding an industrial partner from profits.
  - d. A stipulation exempting an industrial partner from losses.**

*The rule is that a stipulation exempting a partner from sharing in the profits and losses is VOID. The exception is in case of a industrial partner. A industrial partner can be exempted from sharing in the losses as stated in Article 1797 industrial partners are only intended to share in the profits and not in losses.*

59. These statements are presented to you:
- I. The designation of the share of the partners in the profits and losses entrusted to a third person is void.
  - II. The designation of the share of the partners in the profits and losses entrusted to one of the partners is valid.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.**
- c. Only Statement I is True.
- d. Only Statement II is true.

*Both statements are false because the designation of the share of the partners in the profits and losses entrusted to a third person is valid but it may be impugned and when it is manifestly inequitable. Also, the designation of the share of the partners in the profits and losses entrusted to one partner is not valid as expressly stated in the last paragraph of Article 1798.*

60. These statements are presented to you:
- I. A partner appointed as manager in the articles of partnership may be removed for a lawful cause by the vote of the partners owning the controlling interest.
  - II. A partner appointed as manager after the constitution of the partnership may be removed even without just cause by the vote of the partners owning the controlling interest.

In your evaluation of the foregoing statements:

- a. Both statements are true.**
- b. Both statements are false.
- c. Only statement I is true.
- d. Only statement II is true.

*Those statements are supported by the Article 1800. If the partner is appointed as the manager in the articles of partnership, his appointment can be revoked ONLY with lawful cause*

and AFTER a vote of the partners owning the controlling interest. It can also be without lawful cause provided that such revocation has the consent of all partners including the managing partner.

If the partner is appointed after the partnership has been constituted, he may be removed with or without lawful cause because such partner is considered merely as an agent whose authority may be revoked at any time by his principal which is the partnership.

Items 61 and 62 are based on the following information:

BAROQUE Company, a partnership engaged in the trading of art supplies, is composed of the following partners with their respective capital contributions: Bernardo, P10,000.00; Antonio, P20,000.00; Renato, P30,000.00; Orlando, P50,000.00; Quintin, P80,000.00; Ulpiano, P200,000.00; and Eustaquio, P300,000.00. Bernardo, Antonio, Renato, Orlando, and Quintin were appointed as managers without any specification of their respective duties. In October 2008, Bernardo proposed to buy art supplies from XYZ Corporation, but Quintin opposed it.

61. A voting took place and Antonio and Renato sided with Bernardo, while Orlando sided with Quintin. How shall the conflict be resolved?

- a. The group of Bernardo, Antonio and Renato will prevail because they constitute the majority of the managing partners.
- b. the group of Orlando and Quintin will prevail because they constitute the controlling interest among the managing partners.
- c. Neither of the two groups will prevail because the partners should act with unanimity.
- d. The votes of Ulpiano and Eustaquio are necessary to resolve the conflict.

Article 1801 is applicable in the instant case because there are 2 or more partners which were appointed as managers. According to the said article, in case 2 or more partners were entrusted to manage the partnership without specification as to their respective function, each one of the partners can bind the partnership in any act for the administration of the partnership.

However, if any one of the managing partner opposes, then, the decision of the majority of the managing partners shall prevail WITHOUT considering their respective interest.

In the instant case, the group of Bernardo, Antonio and Renato shall prevail. This is true even if the group of Quintin own the controlling interest of the partnership among the managing partners because Bernardo, Antonio and Renato constituted the majority of the managing partners.

Note: Article 1801 is applicable only in case the managing partners were appointed without specification as to their respective duties. If each of the managing partners were appointed to perform specific function (ex. if one partner was appointed for purchasing, one for Human Resource, one for operations, etc each.) the decision of each of them within the purview of their authority shall prevail even if the other partners objected.

62. Supposing that when the voting took place, Antonio sided with Bernardo, Orlando sided with Quintin, while Renato abstained thereby resulting in a tie among the managing partners. In this case:

- a. The group of Quintin will prevail because he and Orlando own the controlling interest among the managing partners.
- b. The group of Bernardo will prevail because there is a tie.
- c. Neither of the two groups will prevail because of the equal number of votes.
- d. Another voting should be conducted to resolve the conflict.

*Article 1801 provides that in case a tie between the managing partners, the vote of the managing partners owning the controlling interest shall prevail. Since the group of Quintin owns the majority interest, then, their decision shall prevail.*

63. STARBOX Enterprises, a partnership engaged in the trading of video films is composed of the following partners with their capital contributions: Simon, P20,000.00; Troy, P40,000.00; Ariel, P50,000.00; Roger, P60,000.00; Benny, P80,000.00; Oscar, P300,000.00; and Xavier, P700,000.00. There was no agreement among the partners as to who shall be the manager.
- a. Xavier shall be the manager because he owns the controlling interest.
  - b. Oscar and Xavier will be the managers because the two of them own the controlling interest.
  - c. All of the partners will be managers.
  - d. The partners will have to agree as to who shall be the manager.

*Under Article 1803, if there was no agreement regarding to be a managing partner, all partners are considered agents and whatever any of them may do, even without the approval of the others, are binding on the partnership.*

*In the instant case, because there was NO agreement as to who will manage the partnership, all of them will be considered as managing partner and any act of each of them shall bind the partnership. The fact that one of the partners has controlling interest does not entitle him to become the managing partner of the firm absent any agreement between the partners.*

64. Refer to No. 63. Assume that Simon desires to buy video films from Z Distributors Company, but Benny opposes it. A voting took place and Troy, Ariel and Roger sided with Simon, while Oscar and Xavier sided with Benny.
- a. The Group of Simon, Troy, Ariel and Roger will prevail because they constitute the majority.
  - b. The group of Benny, Oscar and Xavier will prevail because they own the controlling interest.
  - c. None will prevail because no one was appointed as manager.
  - d. The conflict should be resolved by a unanimous vote among the partners.

*Under Article 1803, all partners are considered an agent of the partnership since there is no agreement appointing a partner as a managing partner. On the other hand, Article 1801 states that in case 2 or more partners were entrusted to manage the partnership without specification as to their respective function, each one of the partners can bind the partnership in any act for the administration of the partnership. And if any one of the managing partner opposes, then, the decision of the majority of the managing partners shall prevail WITHOUT considering their respective interest.*

*As such, the group of Simon will prevail since they constitute the majority of the managing partners.*

65. Refer to No. 63 Assume the voting resulted in the following Troy and Ariel sided with Simon, Oscar and Xavier sided with Benny, while Roger abstained from voting thereby resulting in a tie.
- a. Benny, Oscar and Xavier will prevail because they own the controlling interest.
  - b. None will prevail because of the equal number of votes.
  - c. The tie should be resolved by a unanimous vote among all partners.
  - d. The decision will be held in the meantime until the partners have agreed on who shall be the manager.

*In this case, because there was a tie between the managing partners, the decision of the partners which owns the controlling interest shall prevail*

66. Wilma, Irma, Norma, Donna and Yvonne are partners in the firm WINDY Company. They have contributions of P40,000.00, P30,000.00, P15,000.00, P10,000.00 and P5,000.00. No one was named as manager. Two proposed contracts were voted upon by the partners during a meeting which we took place as follows:
- I. Contract No. 1 – Voting for approval were Wilma and Irma; Voting for rejection of the contract were Norma, Donna and Yvonne.
  - II. Contract No. 2 – Voting for approval were Wilma and Irma; Voting for rejection were Norma and Donna; While Yvonne abstained.
    - a. Both contracts are considered approved.
    - b. Both contracts are considered rejected.
    - c. Only contract I is considered approved.
    - d. Only contract II is considered approved.

*The first contract was not duly approved since it does not get the majority vote of the partners. The second contract is approved because there was a tie so the partners who own the controlling interest will prevail. Wilma and Irma vote for the approval of the contract and their interest consist more than 50% of the partnership capital.*

67. These statements are presented to you:
- I. A partner may associate another person with him in his share with or without the consent of the other partners.
  - II. If the partner having an associate is the manager, the associate automatically becomes a partner even without the consent of the other partners.
- In your evaluation of the foregoing statements:
- a. Both statements are true.
  - b. Both statements are false.
  - c. Only statement I is true.
  - d. Only statement II is true.

*The first statement is supported by the Article 1804 which states that a partner may associate another person with him in his share with or without the consent of their partners. However, that associate cannot automatically considered as having been admitted in the partnership. That's why the second statement is false.*

68. The assignee of a partner's interest is not entitled to any right, except the right to :
- Participate in the management of the partnership.
  - Require any information of partnership transaction.
  - Inspect partnership books.
  - Receive his assignor's share of the profits.

*The other three choices are exclusively rights of the partners. Assignee of the partner's share is not considered a partner unless the other partners consented thereto. So, he shall not enjoy the rights which partners have.*

69. For more than 10 years, Palma and Plaza have been partners in the cultivation of an agricultural lot planted with sweet corn. At the end of the last harvest season, Palma assigned his interest to Toledo, but Plaza objected on the ground that he did not want Toledo to be his partner.
- Palma, without Plaza's consent, cannot convey his interest to Toledo or any other person.
  - The partnership between Palma and Plaza was automatically dissolved when Palma assigned his interest to Toledo.
  - Toledo automatically became Plaza's partner when Palma assigned his interest in the partnership to him.
  - Palma remains as a partner of Plaza with all the rights and obligations of a partner.

*Under Article 1813, assigning partner's interest to a third person does not of itself dissolve the partnership since no admission as partners took place. So, Toledo does not become a partner of Plaza since assignment only took place and it does not dissolve the partnership. Partners have the right to convey his interest to anyone with/without the consent of the other partners. However, such assignment does not automatically make the assignee as a partner on the partnership. He will only have the right to received from the assignor all the amounts to which the assignor is entitled.*

70. The conveyance such as by assignment by a partner of his whole interest in the partnership produces the following effects, except:
- The partnership still remains.
  - The assignee becomes a partner.
  - The assignee is entitled to receive the assignor-partner's interest in the profits.
  - The assignee cannot participate in the management of the partnership.

*It was stated in the Article 1813 that assignee does not become a partner since there is no consent by the other partners to admit him as a partner.*

71. These statements are presented to you:
- A partner, being a co-owner of specific partnership property, has an equal right to possess such property for other than the partnership purpose.
  - A partner's right in specific partnership property is subject to legal support.
- In your evaluation of the foregoing statements:
- Both statements are true.
  - Only statement I is true.

- c. Only statement II is true.
- d. Both statements are false.

*Both statements are false because they are the opposite statements stated Article 1811. It was stated that each partner has equal right to possess and use specific partnership property for partnership purposes. However, they cannot use it for any other purposes (such as for their personal use or for the use of other person/entity other than the partnership wherein NO actual benefit will be received by the partnership) unless other partners consented thereto.*

*Further, the said article states that a partner's right in specific partnership property is not subject to legal support under Article 291. It means that the partnership property cannot be used in order to give support to the dependents of an individual partner.*

*Note: Although the said article states that specific partnership property cannot be attached or be subject of legal support by the individual partner's creditors, the same is only applicable as long as the property is still owned by the partners. This is considering that the debt was owned by the individual partners and NOT by the partnership and taking into consideration that the partnership has a personality separate and distinct from each of the partners.*

*However, any amount which the partner is entitled to receive from the partnership can be subject to attachment and support considering that the same is already the property of the individual partners. Thus, in case of distribution of profits, the profits to which each of the partners are entitled to receive can be attached by the partners' respective creditors since the same is no longer the property of the partnership.*

*Furthermore, said prohibition is only applicable if the person making the attachment of partnership property is the creditor of INDIVIDUAL PARTNERS. The prohibition in Article 1811 is NOT applicable in case the person/entity attaching the partnership property is the creditor of the partnership itself.*

72. These statements are presented to you:

- I. A partner's right in specific partnership property may be attached by his separate creditors.
- II. A partner's right in specific partnership property may be assigned by him for his separate debts.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only statement I is true.
- d. Only statement II is true

*Both statements are false because it opposes the statement under Article 1811. A partner's right in specific partnership property is not subject to attachment or execution by the personal, creditor of the partner. A partner's right in specific partnership property is also not assignable. This is considering that the partnership properties are owned by the partnership and NOT by the individual partners.*

73. These statements are presented to you:

- I. If the court issues a charging order on a partner's interest in the partnership obtained by the separate creditor of such partner, such separate creditor enjoys preferential right over partnership creditors on such interest charged.
- II. When such interest is charged, the same may be redeemed with separate property of any one or more of the partners, or with partnership property, by any one or more of the partners, with the consent of all the partners with interest are not so charged or sold.

In your evaluation of the foregoing statements:

- a. Only statement I is true.
- b. Only statement II is true.
- c. Both statements are true.
- d. Both statements are false.

*The creditors of the partnership has the preferential rights over the individual creditors of the individual partners. The separate creditors cannot enjoy preferential rights over the partnership creditors on interest charged issued by the court since it would prejudice the preferred rights of the partnership creditors under the Article 1827. This is considering that what the creditors of the individual partners can charge from the partnership are those **WHICH THE INDIVIDUAL PARTNERS ARE ENTITLED TO RECEIVE AFTER ALL THE CLAIMS OF THE PARTNERSHIP CREDITORS have been satisfied**. In short, said creditors of the individual partners can only receive something if there are remaining amount/properties to which an individual partners will still be entitled after the payment to all creditors of the partnership. Thus a separate partner's judgment creditor will receive payment only after partnership liabilities have been satisfied.*

74. Zander and Friends is a partnership composed of partners Arthur, Bernard, Charles and Dennis, all friends of Zander. Although not a partner, Zander offered to have his name included in the firm name to help his friends starts their business. Zander is known in the business community as the nickname of Alexander Cruz, and has many businesses bearing his nickname such as Zander Forwarders', Inc., Zander Realty Corporation, Zander Foods Corporation, and Zander Enterprises. During its first three years of operations, Zander and Friends incurred liabilities which were more than its assets. In such as case, may the creditors go after the separate assets of Alexander Cruz after the partnership assets have been exhausted?

- a. No, because Alexander Cruz is not in reality a partner.
- b. Yes, because Alexander Cruz is entitled to all rights and is subject to all liabilities of a partner.
- c. Yes, because Alexander Cruz is subject to all liabilities, but is not entitled to the rights of a partner.
- d. No, because Alexander Cruz did not invest in the capital of the partnership.

*Since Alexander, as a third person, allows his name to be included in the firm name he is subjected to the liability of a partner but he does not have the rights of a partner. Therefore, having no separate identity with the partnership his separate assets may be subject as payment to the creditors.*

75. These statements are presented to you:

- I. An industrial partner cannot be held liable by partnership creditors after the partnership assets have been exhausted because the law exempts him from sharing in the losses of the partnership.
- II. A stipulation exempting a capitalist partner from liability to third persons shall be valid among the partners, but void as to third persons.

In your evaluation of the foregoing statements:

- a. Statement I is true; Statement II is false.
- b. Statement I is false; Statement II is true.**
- c. Both statements are true.
- d. Both statements are false.

*Statement I is true as since Article 1816 states that, all partners, including industrial partners shall be liable pro rata with all their property and after all the partnership assets have been exhausted for the contracts which may be entered into in the name and for the account of the partnership under its signature and by a person authorized to act for the partnership.*

*However, the industrial partner will have the right to collect from the capitalist partners the amount which he may have paid since, being merely an industrial partner, he is NOT liable to share on the losses of the partnership.*

76. BRAVO Enterprises is a partnership owned by Bettina who invested P20, 000.00; Rowena, P40, 000.00; Armida, P10, 000.00; Violeta, P30, 000.00; and Olivia, who contributed her services. The partners have stipulated that Bettina shall be exempt from obligations to third persons. After three years of losses, the business had liabilities of P90, 000.00, while its assets dwindled to P50, 000.00. In the payment of the liabilities, the assets of the partnership will first be exhausted, and thereafter:

- a. The unpaid liabilities of P40, 000.00 will be paid equally by all the partners from their separate assets at P8, 000.00 each with no right to reimbursement.
- b. The unpaid liabilities of P40, 000.00 will be paid equally by all the partners from their separate assets at P8,000.00 each with a right to reimbursement on the part of Bettina, who was exempted from liability to third persons by agreement, and Olivia, who is an industrial partner who must not share in the losses.**
- c. The unpaid liabilities of P40,000.00 will be paid equally by Rowena, Armida, Violeta, and Olivia at P10,000.00 each with no right to reimbursement on the part of Olivia.
- d. The unpaid liabilities of P40,000.00 will be paid equally by Bettina, Rowena, Armida and Violeta at P10,000.00 each with no right to reimbursement on the part of Bettina.

<i>Names of the Partners</i>	<i>Payment to Creditors</i>	<i>Actual Share on the Payment*</i>	<i>Over(Under) Payment</i>
<i>Bettina</i>	<i>P8,000.00</i>	<i>none</i>	<i>P8,000.00</i>
<i>Rowena</i>	<i>P8,000.00</i>	<i>P20,000.00</i>	<i>(P12,000.00)</i>
<i>Armida</i>	<i>P8,000.00</i>	<i>P5,000.00</i>	<i>P3,000.00</i>
<i>Violeta</i>	<i>P8,000.00</i>	<i>P15,000.00</i>	<i>(P7,000.00)</i>
<i>Olivia</i>	<i>P8,000.00</i>	<i>none</i>	<i>P8,000.00</i>

*\*on the basis of their capital contribution*

Rowena and Violeta should pay P12,000.00 and P7,000.00 respectively, to cover up the overpayment of Armida and to reimburse the payment of Bettina and Olivia

77. ACME Enterprises is owned by partners Alonso, Cortes, Malvar, and Elnora. Alonso contributed P50, 000.00; Cortes, P30,000.00; and Malvar, P20,000.00. Elnora, the managing partner, contributed his services. The partners stipulated that Alonso shall be exempt from obligations to third persons. The firm incurred obligations of P70,000.00 which it cannot pay as it has assets of P40,000.00 only. After the exhaustion of the partnership assets and the payment by the partners from their separate property of the partnership debts and settlement among themselves, how much ultimately is the share of each partner in the remaining liability of P30,000.00?
- Alonso, P15, 000.00; Cortes, P9, 000.00; Malvar, P6, 000.00; Elnora, none.
  - Alonso, P10, 000.00; Cortes, P10, 000.00; Malvar, P12, 000.00; Elnora, none.
  - Alonso, none; Cortes, P18, 000.00; Malvar, P12, 000.00; Elnora, none
  - Alonso, P7, 500.00; Cortes, P7, 500.00; Malvar, P7, 500.00; Elnora, P7, 500.00.

Names of the Partners	Payment to Creditors	Actual Share on the Payment*	Over(Under) Payment
Alonso	P7,500.00	None	P7,500.00
Cortes	P7,500.00	P18,000.00	(P10,500.00)
Malvar	P7,500.00	P12,000.00	(P4,500.00)
Elnora	P7,500.00	None	P7,500.00

\* on the basis of their capital contribution

The stipulation that Alonzo will be exempt from share of losses will be binding only between the partners. As stated in Article 1816, "All partners, including industrial ones, shall be liable pro rata with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership." Any agreement to the contrary is NOT valid or binding as against third persons BUT binding between the partners.

On the other hand, as between the partners, Elnora shall NOT share for any loss because she is an industrial partner. As such, she can ask for reimbursement for whatever she will be made liable to pay to a third person. However, being an industrial partner will not exempt her from being pro rate liable to third person as a partner of the partnership.

Since Alonso and Elnora has the right to reimburse their payment, Cortes and Malvar ultimately has a share of P18,000.00 and P12,000.00 respectively on the partnership's liability.

78. Canuto, Ambrosio, Romualdo, and Egmidio are partners in CARE Company, whose business is trading of herbal products. Canuto contributed P60,000.00, Ambrosio,P30,000.00, Romualdo,P20,000.00 and Egmidio,P10,000.00. The partners failed to agree on who shall manage the partnership.
- Canuto shall be the manager because he owns the controlling interest.
  - Canuto and Ambrosio will be the managers because they own the controlling interest and there should be at least two managers who can discuss and decide for the partnership.
  - All the partners will be considered the managers or agents of the partnership.

- d. No one among the partners can manage the partnership because it is void when the partners failed to designate the manager.

*According to Article 1818, every partner is an agent of the partnership for the purpose of its business. Therefore, no matter how significant the contribution made by a partner or vice versa, it entitles him to act as an agent for the partnership unless otherwise there is a stipulation on who will act for the partnership.*

79. Refer to no. 78. Assume that Canuto was designated as manager. No other partner was given an authority to act for the partnership. Which of the following transactions entered into in behalf of the CARE Company will not be binding on it?
- a. The sale by Canuto of herbal products.
  - b. The purchase by Canuto of herbal products.
  - c. The purchase of a delivery van by Ambrosio. The seller was not aware that Ambrosio had no authority to purchase a van for the partnership.
  - d. The sale of herbal products by Romualdo. The buyer had no knowledge that Romualdo was not authorized to sell for CARE.

*The purchase of van by Ambrosio for CARE Company will not be binding upon the partnership because Ambrosio was not authorized to transact such business and the act is not for apparently carrying on in the usual way of the partnership business. Whether or not the seller was aware of Ambrosio's lack of authority is of no importance. This is in accordance with Art. 1818 which provides that "Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority".*

*On the other hand, although Romualdo is not authorized by the partnership, his act is valid and binding upon the partnership because his act was APPARENTLY for the carrying of the usual way of partnership business and that the buyer was NOT aware of the want of authority by Romualdo.*

*Note: If the buyer knows the want of authority of Romualdo, the said transaction will NOT be binding upon the partnership although it was apparently for the purpose of the business of the partnership.*

80. PRISM Company is owned by partners Palermo, Redondo, Interno, Sarenas, and Melendez. Melendez is the manager of the company whose business is importation and trading of optical equipment. During the year, the partners authorized Palermo to buy a delivery van for the partnership. No other authority was given to the other partners. The following are transactions entered into by the partners for the year:
- I. Importation of optical equipment by Melendez.
  - II. Sale of optical equipment by Redondo to ABC Visions Company whose owner, Antonio B. Carlos, was not aware that Redondo has no authority.
  - III. Purchase of a delivery van by Interno from RT Motors whose owner, Ricardo Torres, was not aware that Interno had no authority.

IV. Purchase of a delivery van by Palermo.

Which of the above transactions are binding on PRISM Company?

- a. I and II.
- b. I and IV.
- c. I, II and IV.
- d. I, III and IV.

*Transaction I is binding since Melendez is the manager of the partnership, hence every act done by him for the partnership is binding to PRISM Co.*

*Transaction II is binding since ABC Visions Co. is not aware that Redondo has no authority and the act is for apparently carrying on in the usual way of the business of the partnership.*

*Transaction IV is binding since Palermo is given the authority to do so.*

81. GREAT Enterprises Company, a partnership dealing in computer software, is composed of Grace, Rose, Elma, Aida, and Trina. Grace, Rose, Elam and Aida contributed P10,000.00, P20,000.00, P30,000.00, P40,000.00, respectively; while Trina who is a computer expert, contributed her services and manages the partnership. The partners have no profit and loss sharing agreement. Based on the foregoing facts, the following statements are presented to you:

- I. Trina may engage in the auto supply business without the consent of the capitalist partners since it is a business that is of a kind different from the partnership business.
- II. If Grace sells computer software to Blesilda, a third person, the sale will be binding on the partnership as long as Blesilda was not aware of the lack of authority of Grace.
- III. In case of profits, Trina will be given an equitable share thereof, and the balance will be divided among Grace, Rose, Elma, and Aida equally, since they have no profit sharing agreement.

In your evaluation of the foregoing facts and statements:

- a. I and II are false.
- b. I and III are false.
- c. II and III are false.
- d. All are false.

*Statement I is false since Trina, being an industrial partner, should allocate her time fully on the GREAT Enterprises Co. since her service is her only contribution, whether or not the business is different from the partnership's business, such business will not be allowed. If aside from her service, Trina also contributed capital to the partnership, she could have engaged in the said business.*

*Statement III is false. Although it is true that Trina will be given an equitable share as an industrial partner, the remaining shall be shared by the other partners in accordance to the ratio of their capital contribution. This is the effect of the lack of agreement between the parties as to the profit sharing.*

*Note: It can also be argued that Statement II is also FALSE. Since there is no appointed manager of the partnership, all partners can act as managers. As such, Grace is authorized to sell computer software. No need for the third party to become aware of the absence of the*

*authority of the said partner SINCE SHE IS IN FACT AUTHORIZED TO ACT ON BEHALF OF THE PARTNERSHIP.*

82. Which of the following is an act that is not for apparently carrying on in the usual way the business of the partnership?
- a. Assigning the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.
  - b. Entering into a compromise concerning a partnership claim or liability.
  - c. Renouncing a claim of the partnership.
  - d. All of the foregoing.

*The stated choices are included in the acts that the partners are not authorized to do so that is stipulated in the Article 1818 which states that:*

*“Except when authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:*

- (1) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;*
- (2) Dispose of the good-will of the business;*
- (3) Do any other act which would make it impossible to carry on the ordinary business of a partnership;*
- (4) Confess a judgment;*
- (5) Enter into a compromise concerning a partnership claim or liability;*
- (6) Submit a partnership claim or liability to arbitration;*
- (7) Renounce a claim of the partnership.”*

83. A parcel of land in the name of Comptech Company, a partnership engaged in the sale and service of computers, was sold by A, one of the partners, in the name of Comptech Company, without express authority, to X, who was not aware of A's lack of authority.
- a. The conveyance by A to X passed the title to the parcel of land to X.
  - b. Comptech Company cannot recover the parcel of land from X.
  - c. Both (a) and (b) are incorrect.
  - d. The conveyance by A to X passed only the equitable interest in the property to X.

*For a sale of a real property on behalf of the partnership to be valid, the sale must be made by: a) a partner who is authorized by the partnership to make the sale; b) by the Managing Partner; and c) by any partner PROVIDED THAT THE ACT IS APPARENTLY MADE FOR THE BUSINESS OF THE PARTNERSHIP. Since the sale is NOT apparently made for the business of the partnership (since the business of the partnership is selling and servicing of*

computers and NOT selling of land), the sale does NOT bind the partnership and the partnership can recover the property.

**Note: The only time that the partnership can no longer recover the property is if the title property has already been transferred to the name of the buyer and the buyer has transferred/sold it to a third person who was in good faith.**

84. Refer to the facts in the preceding number, except that A sold the parcel of land in his own name without express authority to X who was not aware of A's lack of authority.
- The conveyance by A to X passed the title to the parcel of land to X.
  - The conveyance by A to X passed the equitable interest in the parcel of land to X.
  - Both (a) and (b) are correct.
  - Neither (a) nor (b) is correct.**

*Neither the title nor the equitable interest in the parcel of land entitles X since the act is not for apparently carrying on in the usual way of business of the company.*

*Note: If the act is apparently made to carry the usual course of business of the partnership (ex. If the partnership is engaged in buy and sell of lands), the answer would have been B. It will transfer the equitable interest on the property. Only the equitable interest would have been transferred in the said case because A sold the property using his own name (i.e. in the Deed of Sale, instead of putting the partnership as the seller, he put himself as the one who was selling the property).*

85. The following statements concerning notice and knowledge of a partner:
- Notice to any partner.
  - Knowledge of a partner acting on a particular matter obtained by him while already a partner.
  - Knowledge of a partner not acting on the particular matter obtained by him before he became a partner.
- Which of the above notice/knowledge is also notice to or knowledge of the partnership?
- I and II.
  - I and III.
  - II and III.**
  - I, II and III.

*As noted on Article 1821, " Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of fraud on the partnership, committed by or with the consent of that partner"*

86. Berroya is a partner in Excellent Company. Before he became a partner, he acquired knowledge about the credit reputation of Termulo who had strings of collection cases against him. Later, Termulo bought goods on credit from Excellent Company through Acton, the partner authorized to act on the particular matter. During all the time that the transaction was being conducted with Termulo, Berroya never relayed the knowledge that he had about Termulo to Acton although he could have done so. Later, Excellent

Company could not collect Termulo's account. Was the knowledge of Berroya on Termulo's credit reputation also knowledge of the partnership?

- a. Yes, because he could and should have relayed the information to Acton.
- b. Yes, because he remembered the information.
- c. No, because he was not the partner acting on the particular matter.
- d. Yes, because the knowledge of any partner on any matter affecting the partnership is knowledge of the partnership.

*As stated in Article 1821, knowledge of a partner not acting on a particular matter, whether or not obtained by him before he became a partner, operate as knowledge of the partnership, PROVIDED that the said partner could have reasonably relayed the same to the acting partner.*

*In the instant case, Berroya, although not the acting partner, has the duty to relay his knowledge to Termulo, the acting partner. He also had numerous opportunity to do it. As such, even if he failed to relay it to the acting partner, the knowledge of Berroya operated as the knowledge of the partnership.*

87. The following sources of obligations are presented to you:

- I. Liability arising from torts (quasi-delicts) and crimes for the individual acts of the partners.
- II. Liability for contractual obligation of the partnership.

The liability of the partners and the partnership are:

- a. I- solidary (partners and partnership); II- joint (partners)
- b. I- joint (partners); II- solidary (partners and partnership)
- c. Solidary (partners and partnership) for both I and II.
- d. Joint (partners) for both I and II.

*In accordance to Article 1824, all partners are liable solidarily with the partnership for everything chargeable to the partnership under Article 1822 which provides that "Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act"*

*Partners are merely pro rata liable for the contractual obligations of the partnership. As such, each partner cannot be made to pay in excess of his liability under the law.*

88. DOW Enterprises is a partnership composed of Damortiz, Ortega, and Wenceslao. Damortiz was driving the firm's van beyond the speed limit to deliver some goods to customer when it hit and damaged the car of Campos.

- a. DOW Enterprises and the three partners may be held solidarily liable by Campos for damages.
- b. Only Damortiz may be held liable by Campos for damages because of the former's negligence for driving beyond the speed limit.
- c. Only DOW Enterprises may be held liable by Campos because the damage was sustained by Campos while Damortiz was performing an act in the course of business.
- d. Only DOW Enterprises and Damortiz may be held solidarily liable by Campos.

*Under Article 1824 in relation with 1822, loss or injury caused to a third person or any penalty is incurred by reason of negligence of any partner acting in the ordinary course of business, the partnership shall be solidarily liable with all the partners.*

**Note:** *The partner must act in the ordinary course of business so that the other partner can be made liable. If the partner was not acting in the ordinary course of business and the act was without the consent of the other partners, neither the partnership nor the other partners will be liable. The liability in that case will be for the SOLE account of the erring partner.*

89. Nathan, Edgar, Albert and Trevor are partners in NEAT Dry Cleaning Company. Nathan used in a party he attended a coat brought to the shop by Custodio, a customer, for dry cleaning. The coat was accidentally stained with food during the party that Nathan attended. Whom may Custodio hold liable?

- a. **Nathan only.**
- b. All the partners jointly.
- c. All the partners and partnership solidarily.
- d. Neither the partners nor the partnership because the stain cause on the coat was due to a fortuitous event.

*Only Nathan will be liable since his act of bringing the same to the party is not for the ordinary course of business of the partnership.*

90. Which of the following is a partnership by estoppel?

- a. When a person represents himself, or consents to another representing him to anyone, as a partner in an existing partnership, and all the partners gave their consent to such misrepresentation.
- b. When a person represents himself, or consents to another representing him to anyone, as a partner in an existing partnership, and not all the partners gave their consent to such misrepresentation.
- c. When a person represents himself as a partner in a non-existing partnership.
- d. **All of the foregoing.**

*All of the foregoing is considered as partnership by estoppel since it falls under the kinds of partnership by estoppel stated in Article 1825 which states that “When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such persons to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public.”*

*In short, if by representation of a person, a third person was made to believe that there is a partnership or several persons are partners, partnership by estoppels exist.*

*Note: A partnership by estoppels can only be considered as such to the persons who believed the existence of the partnership or believed that several persons are actually partners with each other. As to other persons or entity who have no dealing with them, they cannot be considered as partners. Neither can it be considered that partnership by estoppels exist.*

91. A, B and C are partners in X Enterprises. They want to obtain a loan from Z, but Z does not know any of them, so they asked D, who is known to Z, to represent himself as a partner in X Enterprises. Z, believing that D is a partner in X enterprises, thus grants the loan of P90,000.00 to X Enterprises. Later, however, X Enterprises is unable to pay the loan as its assets amount only to P60,000.00. In payment of the loan:
- The assets of X Enterprises shall first be exhausted. Thereafter, A, B and C may be held liable by Z from their separate assets at P10,000.00 each.
  - The assets of X Enterprises shall first be exhausted. Thereafter, A, B, C and D may be held liable by Z from their separate assets at P7,500.00 each.
  - A, B, C and D shall share in the payment of P90,000.00 from their separate assets at P22,500.00 each.
  - A, B and C shall share in the payment of P90,000.00 from their separate assets at P30,000.00 each.

*This is so because a partnership by estoppel is created between the actual partners and D. As such, as to Z, D will be considered as member of the partnership and D will be liable as if he is an actual member of the partnership.*

*However, as in ordinary partnership, the assets of the partnership shall be used first to pay the debt. After the exhaustion of the partnership properties, A, B, C, and D shall be liable with their separate properties.*

92. Refer to the preceding number. Assume that only A and B gave consent to the misrepresentation made by D. Suppose that later on the loan obligation could not be paid. Against whom may Z proceed?
- Against the partnership for its assets of P60,000.00. Thereafter, Z can go after A and B for P15,000.00 each for the balance of P30,000.00.
  - Against the partnership for its assets of P60,000.00. Thereafter, Z can go after A, B and D at P10,000.00 each for the balance of P30,000.00.
  - Against A, B and D at P30,000.00 each for the whole amount of liability of P90,000.00.
  - Against the partnership for its assets of P60,000.00. Thereafter, Z can go after A, B, C and D at P7,500.00 each for the balance of P30,000.00 since the partnership and C have also been benefited by the loan.

*Since A and B are the only partners who consented the misrepresentation of D they are the only partners who made a partnership by estoppel therefore the three of them shall be held jointly liable with their separate properties.*

*Note: The foregoing Answer is only true IF A and B are NOT authorized to bind the partnership in contracting the said loan. If either A or B is authorized, the partnership are still liable to pay for the debt. This is considering that there is an actual partnership and that the loan was made for the benefit of the said partnership. In that case, A, B, C and D will still be liable pro rata.*

93. Which of the following statement is true?
- Partnership creditors shall be preferred to those of each partner as regards the partnership property regardless of the amounts of claims.

- b. Partnership creditors shall be preferred to those of each partner as regards the partnership property if the partnership debt is more than the amount of claims of the separate creditors of the partners.
- c. The separate creditors of a partner shall be preferred to those of partnership creditors as regards the partnership property if the former obtained an order of attachment and public sale of the share of the debtor partner.
- d. The separate creditors of a partner shall be preferred to those of partnership creditors as regards the partnership property if the former's claims are more than the amount of the claim of partnership creditors.

*This is in accordance to the stipulation of Article 1827 about the preferential right of partnership's creditors which states that "The creditors of the partnership shall be preferred to those of each partner as regards the partnership property. Without prejudice to this right, the private creditors of each partner may ask the attachment and public sale of the share of the latter in the partnership assets".*

94. It refers to the change in the relation of the partners caused by a partner ceasing to be associated in the carrying on the business.
- a. Winding up
  - b. Liquidation
  - c. Termination
  - d. **Dissolution**

*This is stated in Article 1828.*

95. Which of the following losses of properties will not cause the dissolution of the partnership?
- a. Loss before delivery to the partnership of property wherein only the use of which was contributed by the partner who owned it.
  - b. Loss after its delivery to the partnership of property only the use of which was contributed by the partner who owned it.
  - c. Loss before its delivery to the partnership of property which a partner had promised to contribute to the partnership.
  - d. **Loss after its delivery to the partnership of property which a partner had promised to contribute to the partnership.**

*If the loss happens after the delivery of the property to the partnership, the partnership is not dissolved provided that the delivery is for the purpose of transferring the ownership of the property to the partnership. In that case, the partnership having acquired ownership upon delivery bears the loss.*

*However, if the delivery is only for the use of the partnership, the loss of the said property will cause the dissolution of the partnership.*

*This is in accordance with Article 1830 (4) which states that dissolution is caused "When a specific thing which a partner had promised to contribute to the partnership, perishes before the delivery; in any case by the loss of the thing, when the partner who contributed it having reserved the ownership thereof, has only transferred to the partnership the use or enjoyment of the same; but the*

*partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof”*

96. Which of the following will not cause the automatic dissolution of a general partnership?
- a.  Insolvency of the partnership
  - b.  Insanity of a partner
  - c.  Civil interdiction of a partner
  - d.  Termination of the definite term of the partnership

*Article 1830 enumerated the grounds for the AUTOMATIC DISSOLUTION of the partnership. It means that in the grounds stated therein, the partnership will be automatically dissolved even without a court order. Included in the enumeration therein is A, C and D. The following are the grounds for automatic dissolution as stated in Article 1830:*

*Art. 1830. Dissolution is caused:*

*(1) Without violation of the agreement between the partners:*

- (a) By the termination of the definite term or particular undertaking specified in the agreement;*
  - (b) By the express will of any partner, who must act in good faith, when no definite term or particular is specified;*
  - (c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;*
  - (d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;*
- (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this article, by the express will of any partner at any time;*
- (3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;*
- (4) When a specific thing which a partner had promised to contribute to the partnership, perishes before the delivery; in any case by the loss of the thing, when the partner who contributed it having reserved the ownership thereof, has only transferred to the partnership the use or enjoyment of the same; but the partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof;*
- (5) By the death of any partner;*
- (6) By the insolvency of any partner or of the partnership;*

(7) *By the civil interdiction of any partner;*

(8) *By decree of court under the following article.*

*On the other hand, Article 1831 provides for the dissolution of the partnership UPON APPLICATION AND DECREE by the court. The ground stated therein will NOT automatically dissolve the partnership. There is still a need for petition for dissolution and actual court order dissolving the partnership before the partnership can be considered dissolved on those grounds. Insanity of a partner are one of those grounds enumerated therein. The following are the grounds for dissolution under Article 1831, thus:*

*Art. 1831. On application by or for a partner the court shall decree a dissolution whenever:*

*(1) A partner has been declared insane in any judicial proceeding or is shown to be of unsound mind;*

*(2) A partner becomes in any other way incapable of performing his part of the partnership contract;*

*(3) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;*

*(4) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;*

*(5) The business of the partnership can only be carried on at a loss;*

*(6) Other circumstances render a dissolution equitable.*

*On the application of the purchaser of a partner's interest under Article 1813 or 1814:*

*(1) After the termination of the specified term or particular undertaking;*

*(2) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. (n)*

97. Three of the following may be used as a ground for the filling of a petition by a partner for the dissolution of a partnership by court decree, while one automatically results in its automatic dissolution. Which one refers to the latter?

- a. incapacity of a partner to perform his part of the partnership contract
- b. partner's conduct affects prejudicially the carrying on of the partnership business
- c. the partnership business cannot be carried on except at a loss

**d. insolvency of a partner**

*Article 1831 provides that a partner may seek judicial dissolution of the partnership through court decree on the following grounds: (1) insanity of a partner; (2) incapacity of a partner to perform his part of the partnership contract; (3) partner's conduct affecting prejudicially the carrying on of the business; (4) willful or persistent breach of the partnership agreement by a partner; (5) the partnership cannot be carried on except at a loss; and, (6) other circumstances rendering a dissolution equitable. Based on the topics mentioned earlier, the insolvency of a partner cannot be used as a ground for the dissolution of the partnership through court decree, but instead it would result in the automatic dissolution of the partnership.*

98. Who may file the petition for the dissolution of a partnership?
- the partners themselves
  - the purchaser of a partner's interest
  - either (a) or (b)**
  - any person, whether or not he has an interest in the partnership

*According to the law, dissolution can be filed by any partner or the purchaser of a partner's interest. Therefore, either (a) or (b) may file the petition for the partnership dissolution.*

99. The following acts of partners after the dissolution of the partnership are presented to you:
- Acts to wind up partnership affairs
  - Acts to complete transactions begun before dissolution
  - New transactions entered into by the managing partner who was not aware that the partnership had been dissolved because of the death of a general partner

Which of the following acts are binding on the partnership?

- I and II
- I and III
- II and III
- I, II, and III**

*Dissolution terminates all authority of any partner to act for the partnership, except for the acts in winding up partnership affairs, acts in completing the transactions begun before dissolution, and if the causes of dissolution are the act of a partner and, insolvency or death of a partner, provided that the acting partner had no knowledge of such dissolution.*

100. In which of the following cases is a partner's authority to act after dissolution terminated among the partners although the acting partner had no notice of the cause of dissolution?
- When the partnership is dissolved by reason of the expiration of its term**
  - When the partnership is dissolved because of the insolvency of a general partner
  - When the partnership is dissolved because of the death of a general partner
  - When the partnership is dissolved because of the resignation of a general partner

*If the cause of the dissolution is the expiration of term or by a court decree, notice or knowledge of the acting partner of the cause of dissolution is deemed immaterial. Therefore,*

*among the cases mentioned, a partner's authority to act after dissolution is already terminated when the partnership is dissolved by the reason of the expiration of its term.*

101. In which of the following cases is the partnership not bound by any act of a partner after dissolution?
- Where the partnership is dissolved because it is unlawful to carry on the business
  - Where the acting partner has become insolvent
  - Where the acting partner has no authority to wind up partnership affairs
  - All of the above**

*Article 1834 enumerates the instances when the act of a partner after dissolution does not bind the partnership, thus: (1) where the partnership is dissolved because it is unlawful to carry on the business; (2) where the acting partner is insolvent; (3) where the partner had no authority to wind up partnership affairs; and, (4) where a partner's authority is already terminated among the partners. Therefore, all of the case above cannot bind the partnership after its dissolution for any act of a partner.*

102. A partnership is dissolved by reason of the death of a partner. The dissolution of the partnership was published in a newspaper of general circulation. PC, a previous creditor, and NC, a new creditor, both transacted new business with the partnership after dissolution, but neither of them read the publication of the firm's dissolution nor learned of it in some other way. Who is deemed to have knowledge of the dissolution of the partnership?
- PC only
  - NC only**
  - Both PC and NC
  - Neither PC nor NC because neither one has come to learn of the dissolution of the partnership

*Since PC is a previous creditor of the partnership and having no knowledge of the dissolution, he must be entitled to a special attention; hence, he must be specially notified of the dissolution. The mere publication of the dissolution is not a notice to him. Without the presence of a special notification from the partnership, PC would have assumed that the partnership still continues to exist. On the other hand, NC, a new creditor and also having no knowledge of the dissolution, shall not be entitled to any special attention; hence, the mere publication of the dissolution is a constructive notice to NC although he had not read it. The fact that the partnership had published their dissolution on a newspaper, they would have assumed that NC knows that the partnership is now dissolved. Therefore, NC is deemed to have knowledge of the dissolution of the partnership.*

*The foregoing is based on Article 1834 which provides that:*

*Article 1834. After dissolution, a partner can bind the partnership, except as provided in the third paragraph of this article:*

- (1) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;*

*(2) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:*

*(a) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or*

*(b) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.*

*NOTE: In case the creditor fall under par 2(a) of Article 1834 (when the creditor has a prior dealing/s with the partnership), the partners will NOT be liable up to the extent of their personal property in case the partnership will become insolvent IF such partner had been, prior to dissolution: (1) Unknown as a partner to the person with whom the contract is made; or (2) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.*

103. BLOCK Enterprises is a partnership engaged in the business of construction with Baldoz, Lopez, Olandez, Crisol and Kintanar as partners. Baldoz is the manager. After 5 years of operations, Kintanar resigned from the partnership. The dissolution was published in a newspaper of general circulation. Nonetheless, Baldoz, despite having knowledge of the dissolution of the partnership by reason of Kintanar's withdrawal, still entered into the following transactions:
- I. Purchase of cement on credit from Ramos Cement Company, a sole proprietorship whose owner, Jose Ramos, was not aware of the dissolution of the partnership and had not read the publication. Ramos Cement Company had been a creditor of BLOCK for the past four years.
  - II. Purchase of steel on credit from Sanchez Steel Works, a sole proprietorship whose owner, Alberto Sanchez, was not aware of the dissolution of the partnership and had not read the publication. Sanchez was dealing for the first time with BLOCK.

Which of the above transactions are binding on BLOCK?

- a. Both I and II
- b. Neither I nor II
- c. I only
- d. II only

*Ramos Cement Company, having no knowledge regarding the dissolution of the partnership and being the creditor of BLOCK for the past four years, must be given a special notification regarding the dissolution. The mere publication of the dissolution in a newspaper is not considered as a notice to him. Therefore, BLOCK is still liable by the action made by Baldoz. On the other hand, Sanchez Steel Works, dealing for the first time with BLOCK, shall not be entitled to any special notification of the dissolution. The publication of the dissolution in a newspaper shall be considered as a constructive to Sanchez Steel Works whether he had not read it. Therefore, the partnership would have assumed that Sanchez Steel Works would have known regarding the dissolution. Thus, not making the partnership liable to Sanchez Steel Works.*

104. Refer to No. 103. The authority of Baldoz to act for the partnership is:
- Terminated among the partners but not terminated with respect to both Ramos and Sanchez
  - Terminated among the partners but not terminated with respect to Ramos
  - Terminated among the partners but not terminated with respect to Sanchez
  - Terminated among the partners as well as to Ramos and Sanchez

*Since Baldoz have the knowledge of the dissolution due to Kintanar's withdrawal, his authority is deemed to be terminated among the partners but he is still liable with Ramos Cement Company. Ramos Cement Company cannot go after the partnership's assets.*

105. Cortez, Rodriguez, Untalan, Morales, Burgos and Samonte were partners of CRUMBS Company, a bakeshop, with Morales as manager, who was also given the authority to wind up partnership affairs in case of the dissolution of the firm. On August 5, 2008, Samonte resigned from the firm by giving a written notice to all the partners. The dissolution of the firm by reason of the resignation of Samonte was published in the Manila Bulletin. Thereafter, for the rest of August, Morales entered into the following transactions in behalf of the company:

- The sale of 5 of the company's 6 delivery vans to pay the liabilities of the partnership.
- The delivery of 100 loaves of bread to HiWaySupermart for August, the last delivery in a 3-month contract between CRUMBS and HiWay.
- The purchase of flour on credit from Prudencio Corrales, proprietor of Prudence Company, who has been the supplier of CRUMBS for the past 5 years. Corrales did not read the publication of the dissolution and had no notice or knowledge of the firm's dissolution.
- The purchase on credit of baking ingredients from Norberto Cancio, a proprietor of North Creamery, who was transacting for the first time with CRUMBS. Cancio did not read the publication of the dissolution and had no notice or knowledge of the firm's dissolution.

Based on the foregoing, which of the transactions will be binding on CRUMBS?

- I, II and III
- II, III and IV
- I, II and IV
- I, III and IV

*Since Morales was given the authority to wind up partnership affairs in case of dissolution, the sale of 5 delivery vans to pay the partnership's liabilities is still binding to CRUMBS Company. This is considering that the fact that the sale was made in order to pay the liabilities of the partnership shows that it was made in winding-up the affairs of the partnership.*

*On the other hand, the delivery of 100 loaves of bread to HiWaySupermart was an act to complete the transactions already begun before the dissolution, is still considered as a binding transaction for the partnership.*

*With Respect to Prudencio Corrales, since he has no knowledge regarding the dissolution of the partnership and had been a supplier of CRUMBS for the past 5 years, without special notice given, the partnership will still be liable to him.*

*On the contrary, Norberto Cancio, dealing for the first time with CRUMBS and having no knowledge regarding the dissolution although it is published in the Manila Bulletin, there is no need for special notification and CRUMBS would have assumed that Norberto Cancio already knows the dissolution of the partnership. The publication of the notice of dissolution constitute constructive notice to him.*

*Therefore, only statements I, II and III will be binding on the partnership.*

106. FORT Enterprises is a partnership engaged in the construction business with Flores, Orlina, Rubio and Tallo as partners. Flores was appointed manager. On August 31, 2008, the five year term of the partnership expired thereby resulting in its automatic dissolution. On September 5, 2008, Flores, without knowledge of the expiration of the firm's term, purchased on credit gravel and sand worth P50,000.00 from Palanza, a creditor who had granted charge sales to FORT before August 31, 2008. Palanza was not aware of the expiration of the term of the partnership.
- a. The authority of Flores was not terminated among the partners and with respect to Palanza
  - b. The authority of Flores was not terminated among the partners but terminated with respect to Palanza
  - c. The authority of Flores was terminated among the partners and with respect to Palanza
  - d. The authority of Flores was terminated among the partners but not with respect to Palanza

*In this case, the cause of the partnership's dissolution is the expiration of term, hence, notice or knowledge of the acting partner is immaterial. Such notices or knowledge is only material if the dissolution was caused by an act, death or insolvency of a partner. If the cause of the dissolution is other than by act, death or insolvency, the authority of a partner to bind the OTHER PARTNERS is terminated. It means that the other partners will not be liable to the extent of their personal properties for any liabilities of the partnership entered by a partner after the said dissolution.*

*However, the partnership can still be liable as to a third person who has no knowledge or notice of the dissolution in accordance with the previous discussion (See discussions in Items 102 up to 105).*

*Therefore, the authority of Flores to act for the partnership is deemed terminated among the partners but not to Palanza to whom the partnership has a previous dealing. Palanza must have been previously notified or has previous knowledge of the dissolution before so that the partnership cannot incur liability to Palanza.*

*In case the partnership cannot pay its obligation with Palanza, only Flores will be liable to Palanza. The other partners will NOT be liable to the extent of their personal properties.*

107. D, E and F are partners in DEF Company each one contributing P100,000.00 and with F as managing partner. On April 1, 2009, D died. The following day, F, unaware of the death of D contracted a debt of P180,000.00 to C, a previous creditor of the

partnership who also did not know of D's death. Assuming that the remaining assets of the partnership amounted to P120,000.00, C can collect P120,000.00 from DEF Company and:

- a. P60,000.00 from E or P60,000.00 from F
- b. P30,000.00 from E and P30,000.00 from F
- c. P20,000.00 from the estate of D, P20,000.00 from E, and P20,000.00 from F
- d. P60,000.00 from F alone because he contracted the debt after the partnership has been dissolved

*Since, both the managing partner and the third person acted in good faith and without knowing the dissolution of the partnership. the transaction shall be considered valid between the partnership and the third person. Further, the partners will be liable to the extent of their respective personal properties.*

108. These statements are presented to you:

- I. When the business of the partnership after dissolution is continued, the retiring partner or the representative of the deceased partner enjoys preferential right as regards the claim of the retired or deceased partner's interest in the dissolved partnership over the creditors of the dissolved partnership.
- II. The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall of itself make the individual properties of the deceased partner liable for any debts contracted by such person or partnership.

In your evaluation of the foregoing statements:

- a. Both statements are true.
- b. Both statements are false.
- c. Only Statement I is true.
- d. Only Statement II is true.

*Article 1840 states that when the business of a partnership after dissolution is continued, the creditors of the dissolved partnership enjoys preferential right over the separate creditors of the retiring or deceased partner or the representative of the deceased partner as regards their claim of the retired or deceased partner's interest in the dissolved partnership over the creditors of the dissolved partnership.*

*Furthermore, the use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual properties of the deceased partner liable for any debts contracted by such person or partnership.*

*Therefore, both statements are false.*

109. The following statements are presented to you:

- I. A limited partnership is one composed of at least one limited partner and at least one general partner.
- II. A limited partner may contribute money or property but not services.
- III. The death of a limited partner dissolves the partnership.

In your evaluation of the foregoing statements:

- a. I and II are true
- b. I and III are true
- c. II and III are true
- d. All are true

*A limited partnership is one formed by two or more persons having as members at least one general partner and at least one limited partner (Article 1843). Moreover, a limited partner may contribute cash or other property, but not services (Article 1845).*

*The death of a limited partner will not automatically dissolve the partnership since the estate of the said Limited partner will be substituted as the limited partner in accordance with Article 1861 which provides, thus:*

*“On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of setting his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.*

*The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.”*

*Therefore, only statements I and II are true.*

110. John, Edward and Thomas are partners in JET Company. John is a general partner, Edward a limited partner, and Thomas, a general-limited partner. The partnership has liabilities of P70,000.00 and assets of P40,000.00. In the payment of liabilities:
- a. The assets of the partnership amounting to P40,000.00 shall first be exhausted. Thereafter, John and Thomas shall pay from their separate assets the balance at P15,000.00 each to the creditors.
  - b. The assets of the partnership amounting to P40,000.00 shall first be exhausted. Thereafter, John and Thomas shall pay from their separate assets the balance at P15,000.00 each to the creditors but Thomas can recover the amount of P15,000.00 from John.
  - c. The assets of the partnership amounting to P40,000.00 shall first be exhausted. Thereafter, the three partners shall pay from their separate assets the balance at P10,000.00 each to the creditors, but Edward and Thomas can recover P10,000.00 each from John.
  - d. John and Thomas will pay the liabilities from their separate assets. Thereafter, Thomas can recover P35,000.00 from John.

*A general partner in a limited partnership shall be subject to all the restrictions and liabilities of a partner in a general partnership. Thus, he can be held liable to the extent of his separate property after partnership assets have been exhausted. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. A general-limited partner shall be subject to all the restrictions of a general partner. However, in respect to his contribution, he shall have the rights against other members of the partnership which he would have had if he were not also a general partner.*

*Therefore, partnership's assets amounting to P40,000.00 shall first be exhausted. John, being the general partner, and Thomas, being the general-limited partner would be liable for P15,000.00 each, but Thomas can recover what he has paid from the general partner, John.*

111. A limited partner is liable as a general partner:
- I. If he is also a general partner.
  - II. If he participates in the management of the partnership.
  - III. If he allows his surname to be included in the partnership name.

The statement is true with respect to:

- a. I and II
- b. I and III
- c. II and III
- d. I, II and III

*A limited partner would also be liable if he is also a general partner (limited-general partner). A limited partner who knowingly allows his surname to be included in the firm name shall also be liable as a general partner to the partnership's creditors. Likewise, a limited partner shall be liable as a general partner if he takes part in the control of the business. Therefore, statements I, II and III are true.*

112. Libro Enterprises, Limited is a partnership engaged in the book store business, with Lydia, Indira, Blesilda, Romina and Oprah as partners. Lydia is the only limited partner contributing P200,000.00. Indira contributed her services by managing the firm, while Blesilda, Romina and Oprah contributed P50,000.00, P100,000.00, P150,000.00, respectively. The partners have a stipulation that Oprah shall not be liable for any obligations of the partnership because of the goodwill she brought to the business. Who among the partners may creditors go against for their separate property after the partnership assets have been exhausted?
- a. All of the partners
  - b. Blesilda and Romina only
  - c. Indira, Blesilda and Romina only
  - d. All of the partners, except Lydia

*The creditors cannot go against Lydia because as a rule, a limited partner shall not be liable as a general partner unless he allows the inclusion of his surname in the partnership name, or if he takes part in the control of the business.*

*Oprah cannot be considered as a limited partner because it is not stipulated in the partnership article. The stipulation that she will not be liable for any obligation of the partnership is NOT valid as to third person. However, it is valid as between the partners. As such, although Oprah is liable to the creditors of the partnership, she is entitled to reimbursements from the other partners of whatever amount that she will be made to pay.*

*Indira, although an Industrial Partner, is also liable to the creditors. However, she can also ask for reimbursement from the other partners of any amount that she will pay since an industrial partner shall not share in the loss.*

113. Without the written consent or the ratification by all the limited partners, a general partner or all the general partners, have no authority to perform any of the following acts, except to:
- a. Admit a person as a general partner.
  - b. Continue the business with partnership property on the death, retirement, insanity, civil interdiction or insolvency of a general partner.
  - c. Admit a person as a limited partner.
  - d. Continue the business with partnership property on the death, retirement, insanity, civil interdiction or insolvency of a limited partner.

*Without the written consent or the ratification by all the limited partners, a general partner or all the general partners, have no authority to perform any of the following acts: (1) do any act in contravention of the certificate; (2) do any act which would make it impossible to carry on the ordinary business of the partnership; (3) confess a judgment against the partnership; (4) possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose; (5) admit a person as a general partner; (6) admit a person as a limited partner, unless the right to do so is given in the certificate; and, (7) Continue the business with partnership property on the death, retirement, insanity, civil interdiction or insolvency of a general partner, unless the right to do so is in the certificate.*

*Therefore, a general partner has the authority continue the business with partnership property on the death, retirement, insanity, civil interdiction or insolvency of a limited partner, even without the consent of the limited partners.*

114. Which of the following rights of a general partner is/are also the rights of a limited partner?
- a. Right to inspect and copy partnership books at a reasonable hour
  - b. Right to have on demand true and full information of all things affecting the partnership
  - c. Right to have dissolution and winding up by decree of court
  - d. All of the foregoing

*Article 1851 enumerates the rights of a limited partner, such as the right to inspect and copy partnership books at a reasonable hour; the right to have on demand true and full information of all things affecting the partnership; and the right to have dissolution and winding up by decree of court.*

*Therefore, all of the foregoing statements above are also the rights of a limited partner.*

115. Which of the following rights is a limited partner entitled to?
- a. Grant a loan to the partnership
  - b. Transact business with the partnership
  - c. Either (a) or (b), or both (a) and (b)
  - d. Neither (a) nor (b) because a limited partner is prohibited from any business dealing with the partnership except as regards the return of his contribution or the payment of compensation to him by way of income

*A limited partner is entitled to loan money to the partnership as well as to transact business with partnership, as stated in article 1854. Therefore, both (a) and (b) are also the rights of a limited partner.*

116. These statements are presented to you:
- I. A limited partner cannot receive or hold as collateral security any partnership property
  - II. A limited partner cannot receive from general partner or the partnership any conveyance or release from liability, if partnership assets are not sufficient to discharge partnership liabilities to outside creditors.

In your evaluation of the foregoing statements:

- a. Both statements are true
- b. Both statements are false
- c. Only Statement I is true
- d. Only Statement II is true

*According to Article 1854, limited partners are prohibited on account of their claims against the partnership from receiving or holding as collateral security any partnership property. It is also not allowed to receive from general partner or the partnership any conveyance or release from liability, if partnership assets are not sufficient to discharge partnership liabilities to outside creditors.*

*The receiving of collateral security, or of conveyance, or release from liability in violation of this provision is a fraud on the partnership creditors who may seek the rescission of the transaction.*

117. Who between a limited partner and a general partner may receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the partnership assets?
- a. Both limited partner and general partner
  - b. Limited partner only
  - c. General partner only
  - d. Neither general partner nor limited partner

*One of the rights of a limited partner is to receive on account of resulting claims against the partnership, with general creditors, a pro rate share of the partnership assets. His receipt of the payment should not be prejudicial to partnership creditors. Therefore, only the limited partner has this right.*

118. Which of the following will not cause the automatic dissolution of a limited partnership?
- a. Insanity of a general partner
  - b. Civil interdiction of a limited partner
  - c. Death of a general partner
  - d. Insolvency of a general partner

*The retirement, death, insolvency, insanity, or civil interdiction of a general partner dissolves the partnership while the retirement, death, insolvency, insanity, or civil interdiction of a limited partner does not dissolve the partnership except when there is no more limited partner.*

119. If there are several limited partners, which of the following may be agreed upon by the members of the partnership?
- a. Priority of one or some of the limited partners over the other limited partners as to the return of their contributions
  - b. Priority of one or some of the limited partners over the other limited partners as to their compensation by way of income
  - c. Either (a) or (b), or both (a) and (b) or any other priority
  - d. None of the foregoing since any agreement as to any priority is void because the limited partners must have equal rights and privileges.

*If there are several limited partners, the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation, or as to any other matter. Therefore, both (a) and (b) may be agreed upon by the members of the partnership, in case of several limited partners.*

120. These statements are presented to you:
- I. As a rule, a limited partner is not a proper party to proceedings by or against a partnership
  - II. A limited partner may, however, be a proper party if the object of the proceeding is to enforce a limited partner's right against the partnership or a limited partner's liability to the partnership.
- In your evaluation of the foregoing statements:
- a. Both statements are true
  - b. Both statements are false
  - c. Only Statement I is true
  - d. Only Statement II is true

*As a general rule, a limited partner is not a proper party to proceedings by or against a partnership, however, a limited partner shall be a proper party if he is also a general partner, or where the object of the proceedings is to enforce a limited partner's right against the partnership or a limited partner's liability to the partnership.*