PARTNERSHIP and TRUSR BAR EXAM

Partnership

(2009 Bar Question)
TRUE or FALSE. An oral partnership is valid.

SUGGESTED ANSWER:
TRUE. Partnership is a consensual contract, hence, it is valid even though not in writing.

ANOTHER SUGGESTED ANSWER:
TRUE. An oral contract of partnership is valid even though not in writing. However, if it involves contribution of an immovable property or a real right, an oral contract of partnership is void. In such a case, the contract of partnership to be valid, must be in a public instrument (Art. 1771, NCC), and the inventory of said property signed by the parties must be attached to said public instrument (Art. 1773, NCC.).

ANOTHER SUGGESTED ANSWER:
TRUE. Partnership is a consensual contract, hence, it is valid even though not in writing. The oral contract of partnership is also valid even if an immovable property or real right is contributed thereto. While the law in such a case, requires the partnership to be in a public document, the law does not expressly declare the contract void if not executed in the required form (Article 1409[7], NCC). And there being nothing in the law from which it can be inferred that the said requirement is prohibitory or mandatory (Article 5, NCC), the said oral contract of partnership must also be valid. The interested party may simply require the contract to be made into a public document in order to comply with the required form (Article 1357, NCC). The purpose of the law in requiring a public document is simply to notify the public about the contribution.

(1994 Bar Question)

1. Can two corporations organize a general partnership under the Civil Code of the Philippines?
2. Can a corporation and an individual form a general partnership?

SUGGESTED ANSWER:

1.

a. No. A corporation is managed by its board of directors. If the corporation were to become a partner, co-partners would have the power to make the corporation party to transactions in an irregular manner since the partners are not agents subject to the control of the Board of Directors. But a corporation may enter into a Joint venture with another corporation as long as the nature of the venture is in line with the business authorized by its charter. (Thdson *& Co., Inc. v. Bolano,* 95 Phil. 106).

b. As a general rule a corporation may not form a general partnership with another corporation or an Individual because a corporation may not be bound by persons who are neither directors nor officers of the corporation.

   However, a corporation may form a general partnership with another corporation or an individual provided the following conditions are met:
   1) The Articles of Incorporation of the corporation expressly allows the corporation to enter into partnerships;
   2) The Articles of Partnership must provide that all partners will manage the partnership, and they shall be jointly and severally liable; and
   3) In case of a foreign corporation, it must be licensed to do business in the Philippines.

c. No. A corporation may not be a general partner because the principle of mutual agency in general partnership allowing the other general partner to bind the corporation will violate the corporation law principle that only the board of directors may bind the corporation.

2. No, for the same reasons given in the Answer to Number 2 above.

(1988 Bar Question)
Distinguish co-ownership from partnership.

SUGGESTED ANSWER:
Co-ownership is distinguished from an ordinary partnership in the following ways:

(1) As to creation: Whereas co-ownership may be created by law, contract, succession, fortuitous event, or occupancy, partnership is always created by contract.
(2) As to purpose: Whereas the purpose of co-ownership is the common enjoyment of the thing or right owned in common, the purpose of a partnership is to obtain profits.
(3) As to personality: Whereas a co-ownership has no juridical personality which is separate and distinct from that of the owners, a partnership has.
(4) As to duration: Whereas an agreement not to divide the community property for more than ten years is not allowed by law such an agreement would be perfectly valid in the case of partnerships. This is so, because under the law, there is no limitation upon the duration of partnerships.
(5) As to power of members: Whereas a co-owner has no power to represent the co-ownership unless there is an agreement to that effect, a partner has the power to represent the partnership, unless there is a stipulation to the contrary.
(6) As to effect of disposition of shares: If a co-owner transfers his share to a third person, the latter becomes automatically a co-owner, but if a partner transfers his share to a third person, the latter does not become a partner, unless agreed upon by all of the partners.
(7) As to division of profits: Whereas in co-ownership the division of the benefits and charges is fixed by law, in a partnership the division of profits arid losses may be subject to the agreement of the partners.
(8) As to effect of death: Whereas the death of a co-owner has no effect upon the existence of the co-ownership, the death of a partner shall result in. the dissolution of the partnership.

Rights and Obligations of Partners Among Themselves

(2012 Bar Question))
A partner cannot demand the return of his share (contribution) during the existence of a partnership. Do you agree? Explain your answer.

SUGGESTED ANSWER:
Yes, he is not entitled to the return of his contribution to the capital of the partnership, but only to the net profits from the partnership business during the life of the partnership period. If he is a limited partner, however, he may ask for the return of his contributions as provided in Art 1856 and 1857, Civil Code.

(2010 Bar Question)
A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to gamer considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

Who are liable for the settlement of the partnership's obligations? Explain?

SUGGESTED ANSWER:
The two remaining partners, A and B, are liable. When any partner dies and the business is continued without any settlement of accounts as between him or his estate, the surviving partners are held liable for continuing the business despite the death of C *(Articles 1841, 1785, par. 2, and 1833 of the New Civil Code).*

(2001 Bar Question)
Joe and Rudy formed a partnership to operate a car repair shop in Quezon City. Joe provided the capital while Rudy contributed his labor and industry. On one side of their shop, Joe opened and operated a coffee shop, while on the other side, Rudy put up a car accessories store. May they engage in such separate businesses? Why?

SUGGESTED ANSWER:
Joe, the capitalist partner, may engage in the restaurant business because it is not the same kind of business the partnership is engaged in. On the other hand, Rudy may not engage in any other business unless their partnership expressly permits him to do so because as an industrial partner he has to devote his full time to the business of the partnership (Art. 1789, CC).

(1998 Bar Question)
Dielle, Karlo and Una are general partners in a merchandising firm. Having contributed equal amounts to the capital, they also agree on equal distribution of whatever net profit is realized per fiscal period. After two years of operation, however, Una conveys her whole interest in the partnership to Justine, without the knowledge and consent of Dielle and Kaflo.

1. Is the partnership dissolved?
2. What are the rights of Justine, if any, should she desire to participate in the management of the partnership and in the distribution of a net profit of P360.000.00 which was realized after her purchase of Una's interest?

SUGGESTED ANSWER:
1. No, a conveyance by a partner of his whole interest in a partnership does not of itself dissolve the partnership in the absence of an agreement. (Art. 1813, Civil Code)
2. Justine cannot interfere or participate in the management or administration of the partnership business or affairs. She may, however, receive the net profits to which Una would have otherwise been entitled. In this case, P120,000 (Art. 1813, Civil Code)

(1992 Bar Question)
W, X, Y and Z organized a general partnership with W and X as industrial partners and Y and Z as capitalist partners. Y contributed P50.000.00 and Z contributed P20.000.00 to the common fund. By a unanimous vote of the partners, W and X were appointed managing partners, without any specification of their respective powers and duties.

A applied for the position of Secretary and B applied for the position of Accountant of the partnership.
The hiring of A was decided upon by W and X, but was opposed by Y and Z.

The hiring of B was decided upon by W and Z, but was opposed by X and Y.

Who of the applicants should be hired by the partnership? Explain and give your reasons.

SUGGESTED ANSWER:
A should be hired as Secretary. The decision for the hiring of A prevails because it is an act of administration which can be performed by the duly appointed managing partners, W and X.

B cannot be hired, because in case of a tie in the decision of the managing partner, the deadlock must be decided by the partners owning the controlling interest. In this case, the opposition of X and Y prevails because Y owns the controlling interest (Art. 1801, Civil Code).

(1989 Bar Question)
"X" used his savings from his salaries amounting to a little more than P2,000 as capital in establishing a restaurant. "Y" gave the amount of P4,000 to "X" as "financial assistance" with the understanding that "Y" would be entitled to 22% of the annual profits derived from the operation of the restaurant. After the lapse of 22 years, "Y" filed a case demanding his share in the said profits. "X" denied that there was a partnership and raised the issue of prescription as "Y" did not assert his rights anytime within ten (10) years from the start

of the operation of the restaurant. Is “Y” a partner of “X” in the business? Why? What is the nature of the right to demand one’s share in the profits of a partnership? Does this right prescribe?

SUGGESTED ANSWER:
Yes, because there is an agreement to contribute to a common fund and an intent to divide profits. It is founded upon an express trust. It is imprescriptible unless repudiated.

ALTERNATIVE ANSWER:
No, “Y” is not a partner because the amount is extended in the form of a financial assistance arid therefore it is a loan, and the mere sharing of profits does not establish a partnership. The right is founded upon a contract of loan whereby the borrower is bound to pay principal and interest like all ordinary obligations. Yes, his right prescribes in six or ten years depending upon whether the contract is oral or written.

Obligations of Partnership/Partners to Third Persons

(2010 Bar Question)
A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to gamer considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

What are the creditors’ recourse/s? Explain.

SUGGESTED ANSWER:
Creditors can file the appropriate actions, for instance, an action for the collection of sum of money against the “partnership at will” and if there are no sufficient funds, the creditors may go after the private properties of Aand B *(Article 1816,New Civil Code).* Creditors may also sue the estate of C. The estate is not excused from the liabilities of the partnership even if C is dead already but only up to the time that he remained a partner (Article 1829, 1835, par. 2; NCC, *Testate Estate of Mota v. Serra,* 47 Phil. 464 [1925]). However, the liability of C’s individual property shall be subject first to the payment of his separate debts *(Article 1835,New Civil* Code).

(1993 Bar Question)
A, B and C formed a partnership for the purpose of contracting with the Government in the construction of one of its bridges. On June 30, 1992, after completion of the project, the bridge was turned over by the partners to the Government. On August 30, 1992, D. a supplier of materials used in the project sued A for collection of the indebtedness to him. A moved to dismiss the complaint against him on the ground that it was the ABC partnership that is liable for the debt. D replied that ABC partnership was dissolved upon completion of the project for which purpose the partnership was formed. Will you dismiss the complaint against B if you were the judge?

SUGGESTED ANSWER:
As Judge. I would not dismiss the complaint against A because A is still liable as a general partner for his pro rata share of 1/3 (Art. 1816, C. C.). Dissolution of a partnership caused by the termination of the particular undertaking specified in the agreement does not extinguish obligations, which must be liquidated during the “winding up" of the partnership affairs (Articles 1829 and 1830, par. 1-a, Civil Code).

Dissolution

(2010 Bar Question)
A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to gamer considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

A. Who are liable for the settlement of the partnership's obligations? Explain?
B. What are the creditors' recourse/s? Explain.

SUGGESTED ANSWER:
A. The two remaining partners, A and B, are liable. When any partner dies and the business is continued without any settlement of accounts as between him or his estate, the surviving partners are held liable for continuing the business despite the death of C *(Articles 1841, 1785, par. 2, and 1833 of the New Civil Code).*

B. Creditors can file the appropriate actions, for instance, an action for the collection of sum of money against the "partnership at will" and if there are no sufficient funds, the creditors may go after the private properties of A and B *(Article 1816, New Civil Code).* Creditors may also sue the estate of C. The estate is not excused from the liabilities of the partnership even if C is dead already but only up to the time that he remained a partner (Article 1829, 1835, par. 2; NCC, *Testate Estate of Mota v. Serra,* 47 Phil. 464 [1925]). However, the liability of C's individual property shall be subject first to the payment of his separate debts *(Article 1835, New Civil* Code).

(1997 Bar Question)
Stating briefly the thesis to support your answer to each of the following cases, will the death – of a partner terminate the partnership?

SUGGESTED ANSWER:
Yes. The death of a partner will terminate the partnership, by express provision of par. 5, Art. 1830 of the Civil Code.

(1995 Bar Question)
Pauline, Patricia and Priscilla formed a business partnership for the purpose of engaging in neon advertising for a term of five (5) years. Pauline subsequently assigned to Philip her interest in the partnership. When Patricia and Priscilla learned of the assignment, they decided to dissolve the partnership before the expiration of its term as they had an unproductive business relationship with Philip in the past. On the other hand, unaware of the move of Patricia and Priscilla but sensing their negative reaction to his acquisition of Pauline's interest, Philip simultaneously petitioned for the dissolution of the partnership.

1. Is the dissolution done by Patricia and Priscilla without the consent of Pauline or Philip valid? Explain.
2. Does Philip have any right to petition for the dissolution of the partnership before the expiration of its specified term? Explain.

SUGGESTED ANSWER:
1. Under Art. 1830 (1) (c) of the NCC, the dissolution by Patricia and Priscilla is valid and did not violate the contract of partnership even though Pauline and Philip did not consent thereto. The consent of Pauline is not necessary because she had already assigned her interest to Philip, The consent of Philip is not also necessary because the assignment to him of Pauline's interest did not make him a partner, under Art. 1813 of the NCC.

ALTERNATIVE ANSWER:
Interpreting Art. 1830 (1) (c) to mean that if one of the partners had assigned his interest on the partnership to another the remaining partners may not dissolve the partnership, the dissolution by Patricia and Priscilla without the consent of Pauline or Philip is not valid.

2. No, Philip has no right to petition for dissolution because he does not have the standing of a partner (Art. 1813 NCC).

(1993 Bar Question)
A, B and C formed a partnership for the purpose of contracting with the Government in the construction of one of its bridges. On June 30, 1992, after completion of the project, the bridge was turned over by the partners to the Government. On August 30, 1992, D. a supplier of materials used in the project sued A for collection of the indebtedness to him. A moved to dismiss the

complaint against him on the ground that it was the ABC partnership that is liable for the debt. D replied that ABC partnership was dissolved upon completion of the project for which purpose the partnership was formed. Will you dismiss the complaint against B if you were the judge?

SUGGESTED ANSWER:
As Judge. I would not dismiss the complaint against A because A is still liable as a general partner for his pro rata share of 1/3 (Art. 1816, C. C.). Dissolution of a partnership caused by the termination of the particular undertaking specified in the agreement does not extinguish obligations, which must be liquidated during the “winding up" of the partnership affairs (Articles 1829 and 1830, par. 1-a, Civil Code).

(1987 Bar Question)
Tomas, Rene and Jose entered into a partnership under the firm name “Manila Lumber.” Subsequently, upon mutual agreement, Tomas withdrew from the partnership and the partnership was dissolved. However, the remaining partners, Rene and Jose, did not terminate the business of “Manila Lumber.” Instead of winding up the business of the partnership and liquidating its assets, Rene and Jose continued the business in the name of “Manila Lumber” apparently without objection from Tomas. The withdrawal of Tomas from the partnership was not published in the newspapers.

Could Tomas be held liable for any obligation or indebtedness Rene and Jose might incur while doing business in the name of “Manila Lumber” after his withdrawal from the partnership? Explain.

SUGGESTED ANSWER:
Yes. Tomas can be held liable under the doctrine of *estoppel.* But as regards the parties among themselves, only Rene and Jose are liable. Tomas cannot be held liable since there was no proper notification or publication.

In the event that Tomas is made to pay the liability to third person, he has the right to seek reimbursement from Rene and Jose (Articles 1837 to 1840; Goquiolay vs. Sycip, 9 SCRA 663).

Limited Partnership

(1994 Bar Question)
Can a husband and wife form a limited partnership to engage in real estate business, with the wife being a limited partner?

SUGGESTED ANSWER:

a) Yes. The Civil Code prohibits a husband and wife from constituting a universal partnership. Since a limited partnership is not a universal partnership, a husband and wife may validly form one.

b) Yes. While spouses cannot enter into a universal partnership, they can enter into a limited partnership or be members thereof (CIR *v. Suter, et* al., 27 SCRA 152).

2011-2014 Bar Questions

2014 Bar Question

Timothy executed a Memorandum of Agreement (MOA) with Kristopher setting up a business venture covering three (3) fastfood stores known as "Hungry Toppings" that will be established at Mall Uno, Mall Dos, and Mall Tres.

The pertinent provisions of the MOA provides:

> 1. Timothy shall be considered a partner with thirty percent (30%) share in all of the stores to be set up by Kristopher;
>
> 2. The proceeds of the business, after deducting expenses, shall be used to pay the principal amount of

P500,000.00 and the interest therein which is to be computed based on the bank rate, representing the bank loan secured by Timothy;

3. The net profits, if any, after deducting the expenses and payments of the principal and interest shall be divided as follows: seventy percent (70%) for Kristopher and thirty percent (30%) for Timothy;

4. Kristopher shall have a free hand in running the business without any interference from Timothy, his agents, representatives, or assigns , and should such interference happen, Kristopher has the right to buy back the share of Timothy less the amounts already paid on the principal and to dissolve the MOA; and

5. Kristopher shall submit his monthly sales report in connection with the business to Timothy.

What is the contractual relationship between Timothy and Kristopher?

SUGGESTED ANSWER:
The contractual relationship between Timothy and Kristopher is that of partnership. Article 1767 of the Civil Code provides that under a contract of partnership, two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themsleves. Moreover, article 1769 of the Civil Code states in part that receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, provided that the said profits were not received in payment for debt, as wages, annuity, interest on a loan, or as consideration for a sale. In this case, the MOA between Timothy and Kristopher stipulated that they shall share in the profits of the business 30-70. The contributions of the partners include a bank loan obtained by Timothy and industry in the form of managing the properties by Kristopher. Thus, the requisites for establishing a contract of partnership are complied with.

(2013 Bar Questions)
In 2005, L, M, N, 0 and P formed a partnership. L, M and N were capitalist partners who contributed P500,000 each, while 0, a limited partner, contributed P1 , 000,000. P joined as an industrial partner, contributing only his services. The Articles of Partnership, registered with the Securities and Exchange Commission, designated L and 0 as managing partners; L was liable only to the extent of his capital contribution; and P was not liable for losses.

In 2006, the partnership earned a net profit of P800,000. In the same year, P engaged in a different business with the consent of all the partners. However, in 2007, the partnership incurred a net loss of P500,000. In 2008,the partners dissolved the partnership. The proceeds of the sale of partnership assets were insufficient to settle its obligation. After liquidation, the partnership had an unpaid liability ofP300,000.

(l) Assuming that the just and equitable share of the industrial partner, P, in the profit in 2006 amounted to P1 00,000, how much is the share of 0, a limited partner, in the P800,000 net profit?
(A) P160,000.
(B) P175,000.
(C) P280,000.
(D) P200,000.
(E) None of the above.

SUGGESTED ANSWER:
(C) P280,000. First, deduct the share of P from the profits. P800,000 less P100,000 is P700,000. Next, get the share of O by following the proportion that the shares of L, M, N, O is 1:1:1:2, respectively.

(II) In 2007, how much is the share of 0, a limited partner, in the net loss of P500,000?
(A) P 0.
(B) P1 00,000.
(C) P125,000.
(D) P200,000.
(E) None of the above.

SUGGESTED ANSWER:
(D) P200,000 A limited partner shall not become liable a s 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 (Art 1948, Civil Code). In the absence of stipulation as to profits and losses, the share of each partner in the losses shall be proportionate to what he may have contributed (Art 1797).

(III) Can the partnership creditors hold L, 0 and Pliable after all the assets of the partnership are exhausted?

(A) Yes. The stipulation exempting P from losses is valid only among the partners. L is liable because the agreement limiting his liability to his capital contribution is not valid insofar as the creditors are concerned. Having taken part in the management of the partnership, 0 is liable as capitalist partner.
(B) No. P is not liable because there is a valid stipulation exempting him from losses. Since the other partners allowed him to engage in an outside business activity, the stipulation absolving P from liability is valid. For 0, it is basic that a limited partner is liable only up to the extent of his capital contribution.
(C) Yes. The stipulations exempting P and L from losses are not binding upon the creditors. 0 is likewise liable because the partnership was not formed in accordance with the requirements of a limited partnership.
(D) No. The Civil Code allows the partners to stipulate that a partner shall not be liable for losses. The registration of the Articles of Partnership embodying such stipulations serves as constructive notice to the partnership creditors.
(E) None of the above is completely accurate.

SUGGESTED ANSWER:
(E) None of the above is completely accurate.

2011 Bar Questions
The liability of the partners, including industrial partners for partnership contracts entered into in its name and for its account, when all partnership assets have been exhausted is

(A) Pro-rata.

(B) Joint.

(C) Solidary.

(D) Voluntary.

Janice and Jennifer are sisters. Janice sued Jennifer and Laura, Jennifer’s business partner for recovery of property with damages. The complaint did not allege that Janice exerted earnest efforts to come to a compromise with the defendants and that such efforts failed. The judge dismissed the complaint outright for failure to comply with a condition precedent. Is the dismissal in order?

(A) No, since Laura is a stranger to the sisters, Janice has no moral obligation to settle with her.

(B) Yes, since court should promote amicable settlement among relatives.

(C) Yes, since members of the same family, as parties to the suit, are required to exert earnest efforts to settle their disputes before coming to court.

(D) No, the family council, which would ordinarily mediate the dispute, has been eliminated under the Family Code.

Trust

Distinguish between express trust and implied trust (1993).

Answer:
Express trust and implied trust may be distinguished from each other in the following ways:

(1) Our New Civil Code defines an express trust as one created by the intention of the trustor or of the parties, and an implied trust as one that comes into being by operation of law.
(2) Express trusts are those created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. On the other hand, implied trusts are those which, without being expressed, are deducible from the nature of the transaction by operation of law as matters of equity, in dependently of the particular intention of the parties.
(3) Thus, if the intention to establish a trust is clear, the trust is express; if the intent to establish a trust is to be taken from circumstances or other matters indicative of such intent, then the trust is implied. (Cuayong v. Cuayong, 21 SCRA 1192).
(4) No express trust concerning an immovable or any interest therein may be proved by parol evidence (Art.1443, NCC.), while the existence of an implied trust may be proved by parol evidence
(5) Laches and prescription do not constitute a bar to enforce an express trust, at least while the trustee does not openly repudiate the trust, and make known such repudiation to the beneficiary, while laches and prescription may constitute a bar to enforce an implied trust, and no repudiation is required unless there is concealment of the facts giving rise to the trust. (Fabian v. Fabian, 21 SCRA 213).

Express Trust; Prescription (1997)
On 01 January 1980, Redentor and Remedies entered into an agreement by virtue of which the former was to register a parcel of land in the name of Remedies under the explicit covenant to reconvey the land to Remigio, son of Redentor, upon the son's graduation from college. In 1981, the land was registered in the name of Remedies.

Redentor died a year later or in 1982. In March 1983, Remigio graduated from college. In February 1992, Remigio accidentally found a copy of the document so constituting Remedies as the trustee of the land. In May 1994, Remigio filed a case against Remedies for the reconveyance of the land to him. Remedies, in her answer, averred that the action already prescribed. How should the matter be decided?

SUGGESTED ANSWER:
The matter should be decided in favor of Remigio (trustee) because the action has not prescribed. The case at bar involves an express trust which does not prescribe as long as they have not been repudiated by the trustee (Diaz vs. Gorricho. 103 Phil, 261).

Implied Trust (1998)
Juan and his sister Juana inherited from their mother two parcels of farmland with exactly the same areas. For convenience, the Torrens certificates of title covering both lots were placed in Juan's name alone. In 1996, Juan sold to an innocent purchaser one parcel in its entirety without the knowledge and consent of Juana, and wrongfully kept for himself the entire price paid.
1. What rights of action, if any, does Juana have against and/or the buyer?
2. Since the two lots have the same area, suppose Juana flies a complaint to have herself declared sole owner of the entire remaining second lot, contending that her brother had forfeited his share thereof by wrongfully disposing of her undivided share in the first lot. Will the suit prosper?

SUGGESTED ANSWER:
1. When, for convenience, the Torrens title to the two parcels of land were placed in Joan's name alone, there was created an implied trust (a resulting trust) for the benefit of Juana with Juan as trustee of one-half undivided or ideal portion of each of the two lots. Therefore, Juana can file an action for damages against Joan for having fraudulently sold one of the two parcels which he partly held in trust for Juana's benefit. Juana may claim actual or compensatory damage for the loss of her share in the land; moral damages for the mental anguish, anxiety, moral shock and wounded feelings she had suffered; exemplary damage by way of example for the common good, and attorney's fees.

Juana has no cause of action against the buyer who acquired the land for value and in good faith, relying on the transfer certificate of title showing that Juan is the registered owner of the land.

ANOTHER ANSWER:
1. Under Article 476 of the Civil Code, Juana can file an action for quieting of title as there is a cloud in the title to the subject real property. Second, Juana can also file an action for damages against Juan, because the settled rule is that the proper recourse of the true owner of the property who was prejudiced and fraudulently dispossessed of the same is to bring an action for damages against those who caused or employed the same. Third, since Juana had the right to her share in the property by way of inheritance, she can demand the partition of the thing owned in common, under Article 494 of the Civil Code, and ask that the title to the remaining property be declared as exclusively hers.

However, since the farmland was sold to an innocent purchaser for value, then Juana has no cause of action against the buyer consistent with the established rule that the rights of an innocent purchaser for value must be respected and protected notwithstanding the fraud employed by the seller in securing his title. (Eduarte vs. CA, 253 SCRA 391)

ADDITIONAL ANSWER:
1. Juana has the right of action to recover (a) her one half share in the proceeds of the sale with legal interest thereof, and (b) such damages as she may be able to prove as having been suffered by her, which may include actual or compensatory damages as well as moral and exemplary damages due to the breach of trust and bad faith (Imperial vs. CA, 259 SCRA 65). Of course, if the buyer knew of the co-ownership over the lot he was buying, Juana can seek (c) reconvenyance of her one-half share instead but she must implead the buyer as co-defendant and allege his bad faith in purchasing the entire lot. Finally, consistent with the ruling in Imperial us. CA. Juana may seek instead (d) a declaration that she is now the sole owner of the entire remaining lot on the theory that Juan has forfeited his one-half share therein.

ADDITIONAL ANSWER:
1. Juana can file an action for damages against Juan for having fraudulently sold one of the two parcels which he partly held in trust for Juana's benefit. Juana may claim actual or compensatory damage for the loss of her share in the land; moral damages for the mental anguish, anxiety, moral shock and wounded feelings she had suffered; exemplary damage by way of example for the common good, and attorney's fees. Juana has no cause of action against the buyer who acquired the land for value and in good faith, relying on the transfer certificate showing that Juan is the registered owner of the land.

SUGGESTED ANSWER:
2. Juana's suit to have herself declared as sole owner of the entire remaining area will not prosper because while Juan's act in selling the other lot was wrongful. It did not have the legal effect of forfeiting his share in the remaining lot. However, Juana can file an action against Juan for partition or termination of the co-ownership with a prayer that the lot sold be adjudicated to Juan, and the remaining lot be adjudicated and reconveyed to her.

ANOTHER ANSWER:
2. The suit will prosper, applying the ruling in Imperial vs. CA cited above. Both law and equity authorize such result, said the Supreme Court.

Strictly speaking, Juana's contention that her brother had forfeited his share in the second lot is incorrect. Even if the two lots have the same area, it does not follow that they have the same value. Since the sale of the first lot on the Torrens title in the name of Juan was valid, all that Juana may recover is the value of her undivided interest therein, plus damages. In addition, she can ask for partition or reconveyance of her undivided interest in the second lot, without prejudice to any agreement between them that in lieu of the payment of the value of Juana's share in the first lot and damages, the second lot be reconveyed to her.

ALTERNATIVE ANSWER:
2. The suit will not prosper, since Juan's wrongful act of pocketing the entire proceeds of the sale of the first lot is not a ground for divesting him of his rights as a co-owner of the second lot. Indeed, such wrongdoing by Juan does not constitute, for the benefit of Juana, any of the modes of acquiring ownership under Art. 712, Civil Code.

Trust; Implied Resulting Trust (1995)
In 1960, Maureen purchased two lots in a plush subdivision registering Lot 1 in her name and Lot 2 in the name of her brother Walter with the latter's consent. The idea was to circumvent a subdivision policy against the acquisition of more than one lot by one buyer. Maureen constructed a house on Lot 1 with an extension on Lot 2 to serve as a guest house. In 1987, Walter who had suffered serious business losses demanded that Maureen remove the extension house since the lot on which the extension was built was his property. In 1992, Maureen sued for the reconveyance to her of Lot 2 asserting that a resulting trust was created when she had the lot registered in Walter's name even if she paid the purchase price. Walter opposed the suit arguing that assuming the existence of a resulting trust the action of Maureen has already prescribed since ten years have already elapsed from the registration of the title in his name. Decide. Discuss fully.

SUGGESTED ANSWER:
This is a case of an implied resulting trust. If Walter claims to have acquired ownership of the land by prescription or if he anchors his defense on extinctive prescription, the ten year period must be reckoned from 1987 when he demanded that Maureen remove the extension house on Lot No. 2 because such demand amounts to an express repudiation of the trust and it was made known to Maureen. The action for reconveyance filed in 1992 is not yet barred by prescription. (Spouses Huang v. Court of Appeals, Sept. 13, 1994).

Trust De Son Tort (2007)
Explain the concept of trust de son tort (constructive trust) and give an example.

SUGGESTED ANSWER:
A constructive trust is a trust NOT created by any word or phrase, either expressly or impliedly, evincing a direct intention to create a trust, but is one that arises in order to satisfy the demands of justice. It does not come about by agreement or intention but mainly operation of law and construed as a trust against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold (Heirs of Lorenzo Yap v. CA, 371 Phil 523, 1991). The following are examples of constructive trust: 1. Art. 1456 NCC which provides: "If property is acquired through mistake or fraud, the person obtaining it is, by force of law considered a trustee of an implied trust for the benefit of the person for whom the property comes." 2. Art 1451 NCC which provides: "When land passes by succession through any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner." 3. Art 1454 NCC which provides: "If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor

toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him." 4. Art 1455 NCC which provides: "When any trustee, guardian or any person holding a fiduciary relationship uses trust funds for the purchase of property and causes conveyance to be made to him or to third person, a trust is established by operation of law in favor of the person to whom the funds belong."

2011-2014 Bar Questions

An action for reconveyance of a registered piece of land may be brought against the owner appearing on the title based on a claim that the latter merely holds such title in trust for the plaintiff. The action prescribes, however, within 10 years from the registration of the deed or the date of the issuance of the certificate of title of the property as long as the trust had not been repudiated. What is the exception to this 10-year prescriptive period?

(A) When the plaintiff had no notice of the deed or the issuance of the certificate of title.

(B) When the title holder concealed the matter from the plaintiff.

(C) When fortuitous circumstances prevented the plaintiff from filing the case sooner.

(D) <u>When the plaintiff is in possession of the property.</u>