

SYLLABUS FOR THE 2012 BAR EXAMINATIONS

REMEDIAL LAW

I. General Principles

- A. Concept of remedial law
- B. Substantive law as distinguished from remedial law
- C. Rule-making power of the Supreme Court
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 - 4. Courts of original and appellate jurisdiction
 - 5. Courts of general and special jurisdiction
 - 6. Constitutional and statutory courts
 - 7. Courts of law and equity
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 - 7. Objections to jurisdiction over the subject matter
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 - b) Effect of failure to serve written interrogatories
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 - b) Powers of the commissioner
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 - c) When the case not fully adjudicated
 - d) Affidavits and attachments
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 - (ii) Petition for review
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 - e) Issues to be raised on appeal
 - f) Period of appeal
 - g) Perfection of appeal
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 - i) Appeal from judgments or final orders of the RTC
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 - k) Appeal from judgments or final orders of the CTA
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 - c) Issuance and contents of order of attachment; affidavit and bond
 - d) Rule on prior or contemporaneous service of summons
 - e) Manner of attaching real and personal property; when property attached is claimed by third person
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 - b) Requisites
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 - h) In relation to R.A. 8975, ban on issuance of TRO or writ of injunction in cases involving government infrastructure projects
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 - a) Cases when receiver may be appointed
 - b) Requisites
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 - d) General powers of a receiver

- e) Two kinds of bonds
- f) Termination of receivership
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 - b) Requisites of action for declaratory relief
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 - d) Conversion to ordinary action
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- 6. Review of judgments and final orders or resolution of the Comelec and COA
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 - b) Distinction in the application of Rule 65 to judgments of the Comelec and COA and the application of Rule 65 to other tribunals, persons and officers
- 7. Certiorari, prohibition and mandamus
 - a) Definitions and distinctions
 - (i) Certiorari distinguished from appeal by certiorari
 - (ii) Prohibition and mandamus distinguished from injunction
 - b) Requisites
 - c) When petition for certiorari, prohibition and mandamus is proper
 - d) Injunctive relief
 - e) Exceptions to filing of motion for reconsideration before filing petition
 - f) Reliefs petitioner is entitled to
 - g) Actions/omissions of MTC/RTC in election cases
 - h) When and where to file petition
 - i) Effects of filing of an unmeritorious petition
- 8. Quo warranto
 - a) Distinguish from quo warranto in the omnibus election code
 - b) When government commence an action against individuals
 - c) When individual may commence an action
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- e) Rights of a person adjudged entitled to public office
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 - b) Two stages in every action for expropriation
 - c) When plaintiff can immediately enter into possession of the real property, in relation to R.A. 8974
 - d) New system of immediate payment of initial just compensation
 - e) Defenses and objections
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 - g) Ascertainment of just compensation
 - h) Appointment of commissioners; commissioner's report; court action upon commissioner's report
 - i) Rights of plaintiff upon judgment and payment
 - j) Effect of recording of judgment
- 10. Foreclosure of real estate mortgage
 - a) Judgment on foreclosure for payment or sale
 - b) Sale of mortgaged property; effect
 - c) Disposition of proceeds of sale
 - d) Deficiency judgment
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 - e) Judicial foreclosure versus extrajudicial foreclosure
 - f) Equity of redemption versus right of redemption
- 11. Partition
 - a) Who may file complaint; who should be made defendants
 - b) Matters to allege in the complaint for partition
 - c) Two stages in every action for partition
 - d) Order of partition and partition by agreement
 - e) Partition by commissioners; appointment of commissioners, commissioner's report; court action upon commissioner's report
 - f) Judgment and its effects
 - g) Partition of personal property
 - h) Prescription of action
- 12. Forcible entry and unlawful detainer
 - a) Definitions and distinction
 - b) Distinguished from *accion publiciana* and *accion reivindicatoria*
 - c) How to determine jurisdiction in *accion publiciana* and *accion reivindicatoria*
 - d) Who may institute the action and when; against whom the action may be maintained
 - e) Pleadings allowed
 - f) Action on the complaint
 - g) When demand is necessary
 - h) Preliminary injunction and preliminary mandatory injunction
 - i) Resolving defense of ownership
 - j) How to stay the immediate execution of judgment
 - k) Summary procedure, prohibited pleadings
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- a) Kinds of contempt
- b) Purpose and nature of each
- c) Remedy against direct contempt; penalty
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- e) How contempt proceedings are commenced
- f) Acts deemed punishable as indirect contempt
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 2. Venue in judicial settlement of estate
 3. Extent of jurisdiction of probate court
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- B. Summary settlement of estates
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- C. Production and probate of will
 1. Nature of probate proceeding
 2. Who may petition for probate; persons entitled to notice

- D. Allowance or disallowance of will
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 2. Grounds for disallowing a will
 3. Reprobate
 - a) Requisites before a will proved abroad will be allowed in the Philippines
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- E. Letters testamentary and of administration
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 2. Order of preference
 3. Opposition to issuance of letters testamentary; simultaneous filing of petition for administration
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- F. Claims against the estate
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2. Statute of non-claims
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1. Actions that may be brought against executors and administrators
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2. Project of partition
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2. Domestic Adoption Act
 - a) Effects of adoption
 - b) Instances when adoption may be rescinded
 - c) Effects of rescission of adoption
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N. Writ of Amparo (A.M. No. 07-9-12-SC)

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6. Effects of failure to file return
7. Omnibus waiver rule
8. Procedure for hearing
9. Institution of separate action
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11. Consolidation
12. Interim reliefs available to petitioner and respondent
13. Quantum of proof in application for issuance of writ of amparo

O. Writ of Habeas Data (A.M. No. 08-1-16-SC)

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2. Availability of writ
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10. Institution of separate action
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P. Change of name

1. Differences under Rule 103, R.A. 9048 and Rule 108
2. Grounds for change of name

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1. Purpose of the rule
2. Who may file; when to file

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V. Criminal Procedure

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3. Jurisdiction of criminal courts
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B. Prosecution of offenses

1. Criminal actions, how instituted
2. Who may file them, crimes that cannot be prosecuted de officio
3. Criminal actions, when enjoined
4. Control of prosecution
5. Sufficiency of complaint or information
6. Designation of offense
7. Cause of the accusation
8. Duplicity of the offense; exception
9. Amendment or substitution of complaint or information
10. Venue of criminal actions
11. Intervention of offended party

C. Prosecution of civil action

1. Rule on implied institution of civil action with criminal action
2. When civil action may proceed independently
3. When separate civil action is suspended
4. Effect of the death of accused or convict on civil action
5. Prejudicial question
6. Rule on filing fees in civil action deemed instituted with the criminal action

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2. Purposes of preliminary investigation
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4. Resolution of investigation prosecutor
5. Review
6. When warrant of arrest may issue
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8. Remedies of accused if there was no preliminary investigation
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1. Arrest, how made
2. Arrest without warrant, when lawful
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 - a) By officer with warrant
 - b) By officer without warrant
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5. Determination of probable cause for issuance of warrant of arrest
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F. Bail

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5. Guidelines in fixing amount of bail
6. Bail when not required
7. Increase or reduction of bail
8. Forfeiture and cancellation of bail
9. Application not a bar to objections in illegal arrest, lack of or irregular preliminary investigation
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G. Rights of the accused

1. Rights of accused at the trial
2. Rights of persons under custodial investigation

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4. Non-appearance during pre-trial
5. Pre-trial order
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2. Requisite before trial can be suspended on account of absence of witness
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1. Requisites of a judgment
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1. Grounds for new trial
2. Grounds for reconsideration
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2. Where to appeal
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O. Search and seizure

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6. Particularity of place to be searched and things to be seized
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 - a) Search incidental to lawful arrest
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 - c) Search of moving vehicle
 - d) Check points; body checks in airport
 - e) Plain view situation
 - f) Stop and frisk situation
 - g) Enforcement of custom laws
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2. Kinds of provisional remedies

VI. Evidence

A. General principles

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5. Factum probans versus factum probandum
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 - b) Relevance of evidence and collateral matters
 - c) Multiple admissibility
 - d) Conditional admissibility
 - e) Curative admissibility
 - f) Direct and circumstantial evidence
 - g) Positive and negative evidence
 - h) Competent and credible evidence
7. Burden of proof and burden of evidence
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 - a) Conclusive presumptions
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10. Quantum of evidence (weight and sufficiency of evidence)
 - a) Proof beyond reasonable doubt
 - b) Preponderance of evidence
 - c) Substantial evidence
 - d) Clear and convincing evidence

B. Judicial notice and judicial admissions

1. What need not be proved
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 - a) Mandatory

- b) Discretionary
 - 3. Judicial admissions
 - a) Effect of judicial admissions
 - b) How judicial admissions may be contradicted
 - 4. Judicial notice of foreign laws, law of nations and municipal ordinance
- C. Object (real) evidence
- 1. Nature of object evidence
 - 2. Requisites for admissibility
 - 3. Categories of object evidence
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 - 5. View of an object or scene
 - 6. Chain of custody in relation to Section 21 of the Comprehensive Dangerous Drugs Act of 2002
 - 7. Rule on DNA Evidence (A.M. No. 06-11-5-SC)
 - a) Meaning of DNA
 - b) Applicable for DNA testing order
 - c) Post-conviction DNA testing; remedy
 - d) Assessment of probative value of DNA evidence and admissibility
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 - 3. Best Evidence Rule
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 - 4. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)
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 - b) Probative value of electronic documents or evidentiary weight; method of proof
 - c) Authentication of electronic documents and electronic signatures
 - d) Electronic documents and the hearsay rule
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 - 5. Parol Evidence Rule
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 - b) When parol evidence can be introduced
 - c) Distinctions between the best evidence rule and parol evidence rule
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 - a) Meaning of authentication
 - b) Public and private documents
 - c) When a private writing requires authentication; proof of a private writing
 - d) When evidence of authenticity of a private writing is not required (ancient documents)
 - e) How to prove genuineness of a handwriting
 - f) Public documents as evidence; proof of official record

- g) Attestation of a copy
- h) Public record of a public document
- i) Proof of lack of record
- j) How a judicial record is impeached
- k) Proof of notarial documents
- l) How to explain alterations in a document
- m) Documentary evidence in an unofficial language

E. Testimonial evidence

1. Qualifications of a witness
2. Competency versus credibility of a witness
3. Disqualifications of witnesses
 - a) Disqualification by reason of mental capacity or immaturity
 - b) Disqualification by reason of marriage
 - c) Disqualification by reason of death or insanity of adverse party
 - d) Disqualification by reason of privileged communications
 - (i) Husband and wife
 - (ii) Attorney and client
 - (iii) Physician and patient
 - (iv) Priest and penitent
 - (v) Public officers
 - (vi) Parental and filial privilege rule
4. Examination of a witness
 - a) Rights and obligations of a witness
 - b) Order in the examination of an individual witness
 - (i) Direct examination
 - (ii) Cross examination
 - (iii) Re-direct examination
 - (iv) Re-cross examination
 - (v) Recalling the witness
 - c) Leading and misleading questions
 - d) Methods of impeachment of adverse party's witness
 - e) How the witness is impeached by evidence of inconsistent statements (laying the predicate)
 - f) Evidence of the good character of a witness
5. Admissions and confessions
 - a) *Res inter alios acta* rule
 - b) Admission by a party
 - c) Admission by a third party
 - d) Admission by a co-partner or agent
 - e) Admission by a conspirator
 - f) Admission by privies
 - g) Admission by silence
 - h) Confessions
 - i) Similar acts as evidence
6. Hearsay Rule
 - a) Meaning of hearsay

- b) Reason for exclusion of hearsay evidence
 - c) Exceptions to the hearsay rule
 - (i) Dying declaration
 - (ii) Declaration against interest
 - (iii) Act or declaration about pedigree
 - (iv) Family reputation or tradition regarding pedigree
 - (v) Common reputation
 - (vi) Part of the res gestae
 - (vii) Entries in the course of business
 - (viii) Entries in official records
 - (ix) Commercial lists and the like
 - (x) Learned treatises
 - (xi) Testimony or deposition at a former trial
 - 7. Opinion rule
 - a) Opinion of expert witness
 - b) Opinion of ordinary witness
 - 8. Character evidence
 - a) Criminal cases
 - b) Civil cases
 - 9. Rule on Examination of a Child witness (A.M. No. 004-07-SC)
 - a) Applicability of the rule
 - b) Meaning of "child witness"
 - c) Competency of a child witness
 - d) Examination of a child witness
 - e) Live-link TV testimony of a child witness
 - f) Videotaped deposition of a child witness
 - g) Hearsay exception in child abuse cases
 - h) Sexual abuse shield rule
 - i) Protective orders
- F. Offer and objection
- 1. Offer of evidence
 - 2. When to make an offer
 - 3. Objection
 - 4. Repetition of an objection
 - 5. Ruling
 - 6. Striking out of an answer
 - 7. Tender of excluded evidence

G. Supreme Court rulings as of January 31, 2012

VII. Revised Rules on Summary Procedure

- A. Cases covered by the rule
- B. Effect of failure to answer

C. Preliminary conference and appearances of parties

VIII. Katarungang Pambarangay

- A. Cases covered
- B. Subject matter for amicable settlement
- C. Venue
- D. When parties may directly go to court
- E. Execution
- F. Repudiation

IX. Rule of Procedure for Small Claims Cases (A.M. No. 08-8-7-SC)

- A. Scope and applicability of the rule
- B. Commencement of small claims action; response
- C. Prohibited pleadings and motions
- D. Appearances
- E. Hearing; duty of the judge
- F. Finality of judgment

X. Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC)

- A. Scope and applicability of the rule
- B. Civil procedure
 1. Prohibition against temporary restraining order and preliminary injunction
 2. Pre-trial conference; consent decree
 3. Prohibited pleadings and motions
 4. Temporary environmental protection order (TEPO)
 5. Judgment and execution; reliefs in a citizen's suit
 6. Permanent environmental protection order; writ of continuing mandamus
 7. Strategic lawsuit against public participation

C. Special proceedings

1. Writ of Kalikasan
2. Prohibited pleadings and motions
3. Discovery measures
4. Writ of continuing mandamus

D. Criminal procedure

1. Who may file
2. Institution of criminal and civil action
3. Arrest without warrant, when valid
4. Procedure in the custody and disposition of seized items
5. Bail
6. Arraignment and plea
7. Pre-trial
8. Subsidiary liabilities

E. Evidence

1. Precautionary principle
2. Documentary evidence

INCLUDE: Pertinent Supreme Court decisions promulgated as of January 31, 2012.

IMPORTANT NOTE: This bar coverage description is not intended and should not be used by law schools as a syllabus or course outline in the covered subjects. It has been drawn up for the limited purpose of ensuring that candidates reviewing for the bar examinations are guided on what basic and minimum amounts of laws, doctrines, and principles they need to know and be able to use correctly before they can be licensed to practice law. More is required for excellent and distinguished work as members of the Bar.