

COVERAGE
REMEDIAL LAW
2013 BAR EXAMINATIONS

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 - 5.8.1. Arraignment and plea, how made
 - 5.8.2. When should plea of not guilty be entered
 - 5.8.3. When may accused enter a plea of guilty to a lesser offense
 - 5.8.4. Accused pleads guilty to capital offense, what the court should do
 - 5.8.5. Searching inquiry
 - 5.8.6. Improvident plea
 - 5.8.7. Grounds for suspension of arraignment
- 5.9. Motion to quash
 - 5.9.1. Grounds
 - 5.9.2. Distinguish from demurrer to evidence
 - 5.9.3. Effects of sustaining the motion to quash
 - 5.9.4. Exception to the rule that sustaining the motion is not a bar to another prosecution
 - 5.9.5. Double jeopardy
 - 5.9.6. Provisional dismissal
- 5.10. Pre-trial
 - 5.10.1. Matters to be considered during pre-trial
 - 5.10.2. What the court should do when prosecution and offended party agree to the plea offered by the accused
 - 5.10.3. Pre-trial agreement

- 5.10.4. Non-appearance during pre-trial
- 5.10.5. Pre-trial order
- 5.10.6. Referral of some cases for court annexed mediation and judicial dispute resolution

5.11. Trial

- 5.11.1. Instances when presence of accused is required by law
- 5.11.2. Requisite before trial can be suspended on account of absence of witness
- 5.11.3. Trial *in absentia*
- 5.11.4. Remedy when accused is not brought to trial within the prescribed period
- 5.11.5. Requisites for discharge of accused to become a state witness
- 5.11.6. Effects of discharge of accused as state witness
- 5.11.7. Demurrer to evidence

5.12. Judgment

- 5.12.1. Requisites of a judgment
- 5.12.2. Contents of judgment
- 5.12.3. Promulgation of judgment; instances of promulgation of judgment *in absentia*
- 5.12.4. When does judgment become final (four instances)

5.13. New trial or reconsideration

- 5.13.1. Grounds for new trial
- 5.13.2. Grounds for reconsideration
- 5.13.3. Requisites before a new trial may be granted on ground of newly discovered evidence
- 5.13.4. Effects of granting a new trial or reconsideration
- 5.13.5. Application of *Neypes* doctrine in criminal cases

5.14. Appeal

- 5.14.1. Effect of an appeal
- 5.14.2. Where to appeal
- 5.14.3. How appeal taken
- 5.14.4. Effect of appeal by any of several accused
- 5.14.5. Grounds for dismissal of appeal

5.15. Search and seizure

- 5.15.1. Nature of search warrant
- 5.15.2. Distinguish from warrant of arrest
- 5.15.3. Application for search warrant, where filed
- 5.15.4. Probable cause
- 5.15.5. Personal examination by judge of the applicant and witnesses
- 5.15.6. Particularity of place to be searched and things to be seized
- 5.15.7. Personal property to be seized
- 5.15.8. Exceptions to search warrant requirement
 - a) Search incidental to lawful arrest
 - b) Consented search
 - 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
- h) Remedies from unlawful search and seizure

5.16. Provisional remedies

5.16.1. Nature

5.16.2. Kinds of provisional remedies

6. Evidence

6.1. General principles

6.1.1. Concept of evidence

6.1.2. Scope of the Rules on Evidence

6.1.3. Evidence in civil cases versus evidence in criminal cases

6.1.4. Proof versus evidence

6.1.5. *Factum probans* versus *factum probandum*

6.1.6. Admissibility of evidence

- a) Requisites for admissibility of evidence
- 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

6.1.7. Burden of proof and burden of evidence

6.1.8. Presumptions

- a) Conclusive presumptions
- b) Disputable presumptions

6.1.9. Liberal construction of the rules of evidence

6.1.10. 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

6.2. Judicial notice and judicial admissions

6.2.1. What need not be proved

6.2.2. Matters of judicial notice

- a) Mandatory
- b) Discretionary

6.2.3. Judicial admissions

- a) Effect of judicial admissions
- b) How judicial admissions may be contradicted

6.2.4. Judicial notice of foreign laws, law of nations and municipal ordinance

- 6.3. Object (real) evidence
 - 6.3.1. Nature of object evidence
 - 6.3.2. Requisites for admissibility
 - 6.3.3. Categories of object evidence
 - 6.3.4. Demonstrative evidence
 - 6.3.5. View of an object or scene
 - 6.3.6. Chain of custody in relation to Section 21 of the Comprehensive Dangerous Drugs Act of 2002
 - 6.3.7. 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
 - e) Rules on evaluation of reliability of the DNA testing methodology
- 6.4. Documentary evidence
 - 6.4.1. Meaning of documentary evidence
 - 6.4.2. Requisites for admissibility
 - 6.4.3. Best Evidence Rule
 - a) Meaning of the rule
 - b) When applicable
 - c) Meaning of original
 - d) Requisites for introduction of secondary evidence
 - 6.4.4. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)
 - a) Scope; coverage; meaning of electronic evidence; electronic data message
 - b) Probative value of electronic documents or evidentiary weight; method of proof
 - c) Authentication of electronic documents and electronic signatures
 - d) Electronic documents *vis-a-vis* the hearsay rule
 - e) Audio, photographic, video and ephemeral evidence
 - 6.4.5. *Parol* Evidence Rule
 - a) Application of the *parol* evidence rule
 - b) When *parol* evidence can be introduced
 - c) Distinctions between the best evidence rule and *parol* evidence rule
 - 6.4.6. Authentication and proof of documents
 - 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

6.5. Testimonial evidence

- 6.5.1. Qualifications of a witness
- 6.5.2. Competency versus credibility of a witness
- 6.5.3. Disqualifications of witnesses
 - a) By reason of mental capacity or immaturity
 - b) By reason of marriage
 - c) By reason of death or insanity of adverse party
 - d) By reason of privileged communications
- 6.5.4. 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
 - g) Judicial Affidavit Rule (A.M. No. 12-8-8-SC)
- 6.5.5. 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
- 6.5.6. 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
- 6.5.7. Opinion rule
 - a) Opinion of expert witness
 - b) Opinion of ordinary witness
- 6.5.8. Character evidence
 - a) Criminal cases
 - b) Civil cases
- 6.5.9. 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

- 6.6. Offer and objection
 - 6.6.1. Offer of evidence
 - 6.6.2. When to make an offer
 - 6.6.3. Objection
 - 6.6.4. Repetition of an objection
 - 6.6.5. Ruling
 - 6.6.6. Striking out of an answer
 - 6.6.7. Tender of excluded evidence

7. Revised Rules on Summary Procedure

- 7.1. Cases covered by the rule
- 7.2. Effect of failure to answer
- 7.3. Preliminary conference and appearances of parties

8. Katarungang Pambarangay Law (P.D. No. 1508; R.A. 7610, as amended)

- 8.1. Cases covered
- 8.2. Subject matter for amicable settlement
- 8.3. Venue
- 8.4. When parties may directly go to court
- 8.5. Execution
- 8.6. Repudiation

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

- 9.1. Scope and applicability of the rule

- 9.2. Commencement of small claims action; response
- 9.3. Prohibited pleadings and motions
- 9.4. Appearances
- 9.5. Hearing; duty of the judge
- 9.6. Finality of judgment

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

- 10.1. Scope and applicability of the rule
- 10.2. Civil procedure
 - 10.2.1. Prohibition against temporary restraining order and preliminary injunction
 - 10.2.2. Pre-trial conference; consent decree
 - 10.2.3. Prohibited pleadings and motions
 - 10.2.4. Temporary Environmental Protection Order (TEPO)
 - 10.2.5. Judgment and execution; reliefs in a citizen's suit
 - 10.2.6. Permanent Environmental Protection Order; writ of continuing *mandamus*
 - 10.2.7. Strategic lawsuit against public participation
- 10.3. Special proceedings
 - 10.3.1. Writ of *Kalikasan*
 - 10.3.2. Prohibited pleadings and motions
 - 10.3.3. Discovery measures
 - 10.3.4. Writ of continuing *mandamus*
- 10.4. Criminal procedure
 - 10.4.1. Who may file
 - 10.4.2. Institution of criminal and civil action
 - 10.4.3. Arrest without warrant, when valid
 - 10.4.4. Procedure in the custody and disposition of seized items
 - 10.4.5. Bail
 - 10.4.6. Arraignment and plea
 - 10.4.7. Pre-trial
 - 10.4.8. Subsidiary liabilities
- 10.5. Evidence
 - 10.5.1. Precautionary principle
 - 10.5.2. Documentary evidence

11. Judicial Affidavit Rule (A.M. No. 12-8-8-SC)

- 11.1. Scope and where applicable
- 11.2 Contents and Procedure
- 11.3 Application to criminal actions
- 11.4 Effect of non-compliance
- 11.5 Effect on other rules

12. Efficient Use of Paper Rule (A.M. No. 11-9-4-SC)

IMPORTANT NOTES:

1. This listing of covered topics is not intended and should not be used by the law schools as a course outline. This was drawn up for the limited purpose of ensuring that Bar candidates are guided on the coverage of the 2013 Bar Examinations. Listings whose subject matters run across several Bar Subjects shall be deemed to include only the subject matters specific to the given Bar Subject. For example, "Impeachment" is generally a topic under Political Law but is listed also under Legal and Judicial Ethics for the ethical components of this Bar Subject. Note that there may be specific identification of the covering Bar Subject where a topic may be common to several Bar Subjects. For example, "Independent Civil Actions" mentioned in the Civil Code shall be included as a topic in Remedial Law rather than in Civil Law. Note also that many special laws, rules or specific topics, otherwise covered by the different examinable Bar Subjects, have been omitted or are expressly excluded from the coverage of the 2013 Bar Examinations.
2. The appreciation of the fact situations in, and the answers to, some questions in *every* Bar Subject may require the consideration of underlying ethical rules and values.
3. All Supreme Court decisions - pertinent to a given Bar subject and its listed topics, and promulgated up to **January 31, 2013** - are examinable materials within the coverage of the 2013 Bar Examinations.