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Re: 2003 Bar Examinations : BM 1222 : February 4, 2004 : Per Curiam : En Banc : Resolution 1 1

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Hit" go to the next document // after the last hit in the current document fAutoNextDoc = 0; nHit = 0; maxHits =
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((browser.indexOf("Microsoft") != -1) || (version >= 4)) simpleNav = 0; function old_gotoHit(where) {
window.location.hash = where; } function findLink(links, name) { if (links.namedItem) return
links.namedItem(name); for (i = 0; i 1) return; if (a.y) { // Netscape window.scrollTo(0, a.y); } else { // IE
window.scrollTo(0, a.offsetTop - a.offsetHeight + a.offsetParent.offsetTop); } var s =
document.body.createTextRange(); if (s != null) { s.moveToElementText(a); s.moveEnd("word"); s.select();
s.scrollIntoView(); } } function gotoNthHit(n) { nHit = n; if ((n > 1) && (n == maxHits)) gotoHit('hit_last'); else
if (n == 0) old_gotoHit('hit0'); else gotoHit('hit' + n); } function nextHit() { if (nHit 0) { gotoNthHit(nHit-1); } }
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Attorneys: Disbarment; Grave misconduct unbecoming a member of the Bar

EN BANC

[B.M. No. 1222. February 4, 2004]

Re: 2003 BAR EXAMINATIONS

RESOLUTION**PER CURIAM:**

On 22 September 2003, the day following the bar examination in Mercantile Law, Justice Jose C. Vitug, Chairman of the 2003 Bar Examinations Committee, was apprised of a rumored leakage in the examination on the subject. After making his own inquiries, Justice Vitug reported the matter to Chief Justice Hilario G. Davide, Jr., and to the other members of the Court, recommending that the bar examination on the subject be nullified and that an investigation be conducted forthwith. On 23 September 2003, the Court adopted the recommendation of Justice Vitug, and resolved to nullify the examination in Mercantile Law and to hold another examination on 04 October 2003 at eight o'clock in the evening (being the earliest available time and date) at the De La Salle University, Taft Avenue, Manila. The resolution was issued without prejudice to any action that the Court would further take on the matter.

Following the issuance of the resolution, the Court received numerous petitions and motions from the Philippine Association of Law Schools and various other groups and persons, expressing agreement to the nullification of the bar examinations in Mercantile Law but voicing strong reservations against the holding of another examination on

the subject. Several reasons were advanced by petitioners or movants, among these reasons being the physical, emotional and financial difficulties that would be encountered by the examinees, if another examination on the subject were to be held anew. Alternative proposals submitted to the Court included the spreading out of the weight of Mercantile Law among the remaining seven bar subjects, i.e., to determine and gauge the results of the examinations on the basis only of the performance of the examinees in the seven bar subjects. In a resolution, dated 29 September 2003, the Court, finding merit in the submissions, resolved to cancel the scheduled examination in Mercantile Law on 04 October 2003 and to allocate the fifteen percentage points among the seven bar examination subjects. In the same resolution, the Court further resolved to create a Committee composed of three retired members of the Court that would conduct a thorough investigation of the incident subject of the 23 September 2003 resolution.

In a resolution, dated 07 October 2003, the Court adopted the computation in the allocation of the fifteen percentage points for Mercantile Law among the remaining seven bar examination subjects, to wit:

Subject Original Adjusted Relative Adjusted

Percentage Percentage Weight Relative

Weight Weight Weight

Political and

International

Law 15% 17.647% 3 3.53%

Labor and

Social

Legislation 10% 11.765% 2 2.35%

Civil law 15% 17.647% 3 3.53%

Taxation 10% 11.765% 2 2.35%

Criminal law 10% 11.765% 2 2.35%

Remedial

Law 20% 23.529% 4 4.71%

Legal Ethics

and Practical

Exercises 5% 5.882% 1 1.18%

100% 20%

In another resolution, dated 14 October 2003, the Court designated the following retired Associate Justices of the Supreme Court to compose the Investigating Committee:

Chairman: Justice Carolina C. Griño-Aquino

Members: Justice Jose A.R. Melo

Justice Vicente V. Mendoza

The Investigating Committee was tasked to determine and identify the source of leakage, the parties responsible therefor or who might have benefited therefrom, recommend sanctions against all those found to have been responsible for, or who would have benefited from, the incident in question and to recommend measures to the Court to safeguard the integrity of the bar examinations.

On 15 January 2004, the Investigating Committee submitted its report and recommendation to the Court, herein reproduced in full; thus -

“In the morning of September 21, 2003, the third Sunday of the 2003 bar examinations, the examination in commercial law was held in De la Salle University on Taft Avenue, Manila, the venue of the bar examinations since 1995. The next day, the newspapers carried news of an alleged leakage in the said examination.[1]

“Upon hearing the news and making preliminary inquiries of his own, Justice Jose C. Vitug, chairman of the 2003 Bar Examinations Committee, reported the matter to the Chief Justice and recommended that the examination in mercantile law be cancelled and that a formal investigation of the leakage be undertaken.

“Acting on the report and recommendation of Justice Vitug, the Court, in a resolution dated September 23, 2003, nullified the examination in mercantile law and resolved to hold another examination in that subject on Saturday, October 4, 2003 at eight o'clock in the evening (being the earliest available time and date) at the same venue. However, because numerous petitions, protests, and motions for reconsideration were filed against the retaking of the examination in mercantile law, the Court cancelled the holding of such examination. On the recommendation of the Office of the Bar Confidant, the Court instead decided to allocate the fifteen (15) percentage points for mercantile law among the seven (7) other bar examination subjects (Resolution dated October 7, 2003).

“In a Resolution dated September 29, 2003, the Supreme Court created an Investigating Committee composed of three (3) retired Members of the Court to conduct an investigation of the leakage and to submit its findings and recommendations on or before December 15, 2003.

“The Court designated the following retired Associate Justices of the Supreme Court to compose the Committee:

Chairman: Justice CAROLINA GRIÑO-AQUINO

Members: Justice JOSE A. R. MELO

Justice VICENTE V. MENDOZA

“The Investigating Committee was directed to determine and identify the source of the leakage, the parties responsible therefor and those who benefited therefrom, and to recommend measures to safeguard the integrity of the bar examinations.

“The investigation commenced on October 21, 2003 and continued up to November 7, 2003. The following witnesses appeared and testified at the investigation:

1. Associate Justice Jose C. Vitug, chairman of the 2003 Bar Examinations Committee;
2. Atty. Marlo Magdoza-Malagar, law clerk in the office of Justice Vitug
3. Atty. Marcial O. T. Balgos, examiner in mercantile law;
4. Cheryl Palma, private secretary of Atty. Balgos;
5. Atty. Danilo De Guzman, assistant lawyer in the firm of Balgos & Perez;

6. Atty. Enrico G. Velasco, managing partner of Balgos & Perez;
7. Eduardo J. F. Abella, reviewer in commercial law at the Lex Review Center;
8. Silvestre T. Atienza, office manager of Balgos & Perez;
9. Reynita Villasis, private secretary of Atty. De Guzman;
10. Ronan Garvida, fraternity brother of Atty. De Guzman;
11. Ronald F. Collado, most illustrious brother of the Beta Sigma Lambda Fraternity;
12. Jovito M. Salonga, Asst. Division Chief of Systems Development for Judicial Application, MISO;

The Committee held nine (9) meetings - six times to conduct the investigation and three times to deliberate on its report.

“ASSOCIATE JUSTICE JOSE C. VITUG, chairman of the Bar Examinations Committee, testified that on Monday morning, September 22, 2003, the day after the Bar examination in mercantile or commercial law, upon arriving in his office in the Supreme Court, his secretary,[2] Rose Kawada, informed him that one of the law clerks, Atty. Marlo Magdoza-Malagar, told her that a friend of hers named Ma. Cecilia Delgado-Carbajosa, a bar examinee from Xavier University in Cagayan de Oro City, who was staying at the Garden Plaza Hotel in Paco, confided to her that something was wrong with the examination in mercantile law, because previous to the examination, i.e., on Saturday afternoon, the eve of the examination, she received a copy of the test questions in that subject. She did not pay attention to the test questions because no answers were provided, and she was hard-pressed to finish her review of that subject, using other available bar review materials, of which there were plenty coming from various bar review centers.

“However, upon perusing the questions after the examinations, Cecilia noticed that many of them were the same questions that were asked in the just-concluded-examination.

“Justice Vitug requested Marlo to invite her friend to his office in the Supreme Court, but Carbajosa declined the invitation. So, Justice Vitug suggested that Marlo and Rose invite Carbajosa to meet them at Robinson’s Place, Ermita. She agreed to do that.

“Cecilia Carbajosa arrived at Robinson’s Place at the appointed time and showed the test questions to Rose and Marlo. Rose obtained a xerox copy of the leaked questions and compared them with the bar questions in mercantile law. On the back of the pages, she wrote, in her own hand, the differences she noted between the leaked questions and the bar examination questions.

“Rose and Marlo delivered the copy of the leaked questions to Justice Vitug who compared them with the bar examination questions in mercantile law. He found the leaked questions to be the exact same questions which the examiner in mercantile law, Attorney Marcial O. T. Balgos, had prepared and submitted to him as chairman of the Bar Examinations Committee. However, not all of those questions were asked in the bar examination. According to Justice Vitug, only 75% of the final bar questions were questions prepared by Atty. Balgos; 25% prepared by Justice Vitug himself, were included in the final bar examination. The questions prepared by Justice Vitug were not among the leaked test questions.

“Apart from the published news stories about the leakage, Chief Justice Hilario G. Davide, Jr. and Justice Vitug received, by telephone and mail, reports of the leakage from Dean Mariano F. Magsalin, Jr. of the Arellano Law Foundation (Exh. H) and a certain Dale Philip R. De los Reyes (Exh. B -B-3), attaching copies of the leaked questions and the fax transmittal sheet showing that the source of the questions was Danny De Guzman who faxed

them to Ronan Garvida on September 17, 2003, four days before the examination in mercantile law on September 21, 2003 (Exh. B-1).

“ATTORNEY MARLO MAGDOZA-MALAGAR was subpoenaed by the Committee. She identified the copy of the leaked questions that came from Cecilia Carbajosa (Exh. A). She testified that, according to Carbajosa, the latter received the test questions from one of her co-bar reviewees staying, like her, at the Garden Plaza Hotel in Paco, and also enrolled in the review classes at the Lex Review Center at the corner of P. Faura Street and Roxas Boulevard, Ermita. She did not pay for the hand-out because the Lex Review Center gives them away for free to its bar reviewees.

“ATTORNEY MARCIAL O. T. BALGOS, 71 years of age, senior partner in the law firm of BALGOS AND PEREZ with offices in Rm. 1009 West Tektite Tower, Exchange Road, Ortigas Center, Pasig City, testified that in November 2002, Justice Jose C. Vitug, as chair of the Committee on the 2003 Bar Examinations, invited him to be the examiner in commercial law. He accepted the assignment and almost immediately began the preparation of test questions on the subject. Using his personal computer in the law office, he prepared for three consecutive days, three (3) sets of test questions which covered the entire subject of Mercantile Law (pp. 3-5, tsn, Oct. 24, 2003). As he did not know how to prepare the questionnaire in final form, he asked his private secretary, Cheryl Palma, to format the questions (p. 13, tsn, Oct. 24, 2003). And, as he did not know how to print the questionnaire, he likewise asked Cheryl Palma to make a print-out (Id., pp. 14-15). All of this was done inside his office with only him and his secretary there. His secretary printed only one copy (Id., p. 15). He then placed the printed copy of the test questions, consisting of three sets, in an envelope which he sealed, and called up Justice Vitug to inform him that he was bringing the questions to the latter’s office that afternoon. However, as Justice Vitug was leaving his office shortly, he advised Atty. Balgos to give the sealed envelope to his confidential assistant who had been instructed to keep it. When Atty. Balgos arrived in the office of Justice Vitug, he was met by Justice Vitug’s confidential assistant to whom he entrusted the sealed envelope containing the test questions (pp. 19-26, tsn, Oct. 24, 2003).

“Atty. Balgos admitted that he does not know how to operate a computer except to type on it. He does not know how to open and close his own computer which has a password for that purpose. In fact, he did not know, as he still does, the password. It is his secretary, Cheryl Palma, who opened and closed his computer for him (p. 45, tsn, Oct. 24, 2003).

“Atty. Balgos testified that he did not devise the password himself. It was Cheryl Palma who devised it (Id., p. 71).

“His computer is exclusively for his own use. It is located inside his room which is locked when he is not in the office. He comes to the office every other day only.

“He thought that his computer was safely insulated from third parties, and that he alone had access to it. He was surprised to discover, when reports of the bar leakage broke out, that his computer was in fact interconnected with the computers of his nine (9) assistant attorneys (tsn, pp. 30,45). As a matter of fact, the employees - Jovito M. Salonga and Benjamin R. Katly - of the Court’s Management Information Systems Office (MISO) who, upon the request of Atty. Balgos, were directed by the Investigating Committee to inspect the computer system in his office, reported that there were 16, not 9, computers connected to each other via Local Area Network (LAN) and one (1) stand-alone computer connected to the internet (Exh. M). Atty. Balgos’ law partner, former Justice Secretary Hernando Perez, also had a computer, but Perez took it away when he became the Secretary of Justice.

“The nine (9) assistant attorneys with computers, connected to Attorney Balgos’ computer, are:

1. Zorayda Zosobrado (she resigned in July 2003)
2. Claravel Javier
3. Rolynne Torio
4. Mark Warner Rosal
5. Charlynn Subia
6. Danilo De Guzman (resigned on October 22, 2003 [Exh. D])
7. Enrico G. Velasco, managing partner
8. Concepcion De los Santos
9. Pamela June Jalandoni

“Upon learning from Justice Vitug of the leakage of the bar questions prepared by him in mercantile law, Atty. Balgos immediately called together and questioned his office staff. He interrogated all of them except Atty. Danilo De Guzman who was absent then. All of them professed to know nothing about the bar leakage.

“He questioned Silvestre Atienza, the office manager, Atienza is only a second year law student at MLQU. But he is an expert in installing and operating computers. It was he and/or his brother Gregorio who interconnected the computers in the law office, including Attorney Balgos’ computer, without the latter’s knowledge and permission.

“Atienza admitted to Attorney Balgos that he participated in the bar operations or ‘bar ops’ of the Beta Sigma Lambda law fraternity of which he is a member, but he clarified that his participation consisted only of bringing food to the MLQU bar examinees (Tsn, pp. 46-47, Oct. 24, 2003).

“The next day, Attorney Balgos questioned Attorney Danilo De Guzman, also a member of the Beta Sigma Lambda fraternity, FEU chapter. De Guzman admitted to him that he downloaded the test questions from Attorney Balgos’ computer and faxed a copy to a fraternity brother. Attorney Balgos was convinced that De Guzman was the source of the leakage of his test questions in mercantile law (Tsn, p. 52, Oct. 24, 2003).

“Attorney Balgos prepared a COMPARISON (Exh. E) of the juxtaposed final bar questions and his proposed test questions, with marginal markings made by Justice Vicente V. Mendoza (Ret.), indicating whether the questions are similar: (S); or different: (D), together with the percentage points corresponding to each question. On the basis of this comparative table and Atty. Balgos’ indications as to which questions were the same or different from those given in the final questionnaire, Justice Mendoza computed the credit points contained in the proposed leaked questions. The proposed questions constituted 82% of the final bar questions. Attached to this Report as Annex A is the comparative table and the computation of credit points marked as Exh. E-1.

“CHERYL PALMA, 34 years old, private secretary of Attorney Balgos for the past six years, testified that she did not type the test questions. She admitted, however, that it was she who formatted the questions and printed one copy as directed by her employer. She confirmed Atty. Balgos’ testimony regarding her participation in the operation of his personal computer. She disclosed that what appears in Atty. Balgos’ computer can be seen in the neighborhood network if the other computers are open and not in use; that Silvestre Atienza of the accounting section, can access Atty. Balgos’ computer when the latter is open and not in use.

“ATTORNEY ENRICO VELASCO, managing partner of the firm, testified that on October 16, 2003, he sent De Guzman a memo (Exh. C) giving him ‘72 hours to explain in writing why you should not be terminated for

causing the Firm an undeserved condemnation and dishonor because of the leakage aforesaid.'

"On October 22, 2003, De Guzman handed in his resignation 'effective immediately.' He explained that:

'Causing the firm, its partners and members to suffer from undeserved condemnation and humiliation is not only farthest from, but totally out of, my mind. It is just unfortunate that the incident subject matter of your memorandum occurred. Rest assured, though, that I have never been part of any deliberate scheme to malign the good reputation and integrity of the firm, its partners and members.' (Exh. D)

"DANILO DE GUZMAN testified that he joined Balgos & Perez in April 2000. He obtained his LLB degree from FEU in 1998. As a student, he was an awardee for academic excellence. He passed the 1998 bar examinations with a grade of 86.4%. In FEU, he joined the Beta Sigma Lambda law fraternity which has chapters in MLQU, UE and MSU (Mindanao State University). As a member of the fraternity, he was active during bar examinations and participated in the fraternity's 'bar ops.'

"He testified that sometime in May 2003, when he was exploring Atty. Balgos' computer, (which he often did without the owner's knowledge or permission), to download materials which he thought might be useful to save for future use, he found and downloaded the test questions in mercantile law consisting of 12 pages. He allegedly thought they were quizzers for a book that Atty. Balgos might be preparing. He saved them in his hard disk.

"He thought of faxing the test questions to one of his fraternity 'brods,' a certain Ronan Garvida who, De Guzman thought, was taking the 2003 bar examinations. Garvida is also a law graduate from FEU. He had taken the 2002 bar examinations, but did not pass.

"On September 17, 2003, four days before the mercantile law bar examination, De Guzman faxed a copy of the 12-page-test questions (Exhs. I, I-1, I-2, I-3) to Garvida because earlier he was informed by Garvida that he was retaking the bar examinations. He advised Garvida to share the questions with other 'Betan' examinees. He allegedly did not charge anything for the test questions. Later, after the examination was over, Garvida 'texted' (sent a text message on his cell phone) him (De Guzman), that he did not take the bar examination.

"Besides Garvida, De Guzman faxed the mercantile law bar questions to another fraternity brother named Arlan (surname unknown), through Reynita (Nanette) Villasis, his secretary (Tsn, pp. 20-28, Oct. 29, 2003). But he himself faxed the questions to still another 'brod' named Erwin Tan who had helped him during the 'bar ops' in 1998 when he (De Guzman) took the bar examinations (Id., p. 28). He obtained the cell phone numbers of Arlan and Erwin Tan from Gabby Tanpiengco whom he informed by text message, that they were 'guide questions,' not tips, in the mercantile law examination.

"When he was confronted by Attorney Velasco on Wednesday after the examination, (news of the leakage was already in all the newspapers), De Guzman admitted to Attorney Velasco that he faxed the questions to his fraternity brothers, but he did not reveal where he got the test questions.

"De Guzman received a text message from Erwin Tan acknowledging that he received the test questions. However, Erwin informed him that the questions were 'kalat na kalat' (all over the place) even if he did not share them with others (Tsn, pp. 54-55, Oct. 29, 2003).

"De Guzman also contacted Garvida who informed him that he gave copies of the test questions to Betans Randy Iñigo and James Bugain.

"Arlan also 'texted' De Guzman that almost all the questions were asked in the examination. Erwin Tan commented that many of the leaked questions were asked in the examination, 'pero hindi exacto; mi binago' (they were not exactly the same; there were some changes).

“De Guzman tried to text Garvida, but he received no response.

“De Guzman disclosed that he learned how to operate a computer from Silvestre Atienza, the office manager, and through self-study, by asking those who are knowledgeable on computers. He has been using computers since 1997, and he bought his own computer in 2001, a Pentium 3, which he uses at home.

“REYNITA VILLASIS, the 36-year-old legal secretary of Attorney De Guzman, submitted her affidavit (Exh. F) and orally affirmed her participation in the reproduction and transmittal by fax of the leaked test questions in mercantile law to Ronan Garvida and Arlan, as testified by De Guzman.

“RONAN GARVIDA, appeared before the Investigating Committee in compliance with the subpoena that was issued to him. Garvida graduated from FEU College of Law in 2000. He is about 32 years of age. While still a student in 1998, he was afflicted with multiple sclerosis or MS, a disease of the nervous system that attacks the nerve sheaths of the brain and spinal cord. It is a chronic disabling disease although it may have periods of remission. It causes its victim to walk with erratic, stiff and staggering gait; the hands and fingers may tremble in performing simple actions; the eyesight can be impaired, and speech may be slow and slurred (p. 737, Vol. 2, Reader’s Digest Medical Encyclopedia, 1971 Ed., compiled by Benjamin F. Miller, M.D.). All these symptoms were present when Garvida testified before the Committee on November 6, 2003 to answer its questions regarding his involvement in the leakage of the examiner’s test questions in mercantile law.

“Garvida testified that when he was a freshman at FEU, he became a member of the Beta Sigma Lambda fraternity where he met and was befriended by Attorney De Guzman who was his senior by one and a half years. Although they had been out of touch since he went home to the province on account of the recurrence of his illness, De Guzman was able [to] get this cell phone number from his compadre, Atty. Joseph Pajara. De Guzman told Garvida that he was faxing him ‘possible questions in the bar examination in mercantile law.’ Because the test questions had no answers, De Guzman stressed that they were not ‘tips’ but only ‘possible test questions.’

“Garvida had intended to take the 2003 bar examinations. He enrolled in the Consortium Review Center in FEU, paying P10,000.00 as enrollment fee. However, on his way to the Supreme Court to file his application to take the bar examination, he suffered pains in his wrist - symptoms that his MS had recurred. His physician advised him to go to the National Orthopedic Hospital in Quezon City for treatment. This he did.

“He gave up his plan to take the 2003 bar examinations. Nevertheless, he continued to attend the review classes at the Consortium Review Center because he did not want to waste completely the P10,000-enrollment fee that he paid for the review course (‘Nahihinayang ako’). That was presumably why De Guzman thought that Garvida was taking the bar exams and sent him a copy of the test questions in mercantile law.

“Upon receipt of the test questions, Garvida faxed a copy to his ‘brod’ Randy Iñigo who was reviewing at the Consortium Review Center. Randy photocopied them for distribution to other fraternity brods. Some of the brods doubted the usefulness of the test questions, but Randy who has a high regard for De Guzman, believed that the questions were ‘tips.’ Garvida did not fax the questions to any other person than Randy Iñigo. He allegedly did not sell the questions to Randy. ‘I could not do that to a brod,’ he explained.

“In view of the fact that one of the copies of the leaked test questions (Exh. H) bore on the left margin a rubber stamp composed of the Greek initials ‘BEA-MLQU,’ indicating that the source of that copy was the Beta Sigma Lambda chapter at MLQU, the Committee subpoenaed Ronald Collado, the Most Illustrious Brother of the Beta Sigma Lambda fraternity of MLQU.

“RONALD COLLADO is a senior law student at the MLQU. He admitted that his fraternity conducted ‘Bar Ops’ for the 2003 bar exams. Bar Ops are the biggest activity of the fraternity every year. They start as soon as

new officers of the fraternity are elected in June, and they continue until the bar examinations are over. The bar operations consist of soliciting funds from alumni brods and friends to be spent in reproducing bar review materials for the use of their ‘barristers’ (bar candidates) in the various review centers, providing meals for their ‘brod’-barristers on examination days; and to rent a ‘bar site’ or place near De la Salle University where the examinees and the frat members can convene and take their meals during the break time. The Betans’ bar site for the 2003 bar examinations was located on Leon Guinto Street, Malate. On September 19 and 21, before [the] start of the examination, Collado’s fraternity distributed bar review materials for the mercantile law examination to the examinees who came to the bar site. The test questions (Exh. H) were received by Collado from a brod, Alan Guiapal, who had received them from Randy Iñigo.

“Collado caused 30 copies of the test questions to be printed with the logo and initials of the fraternity (BEA-MLQU) for distribution to the 30 MLQU examinees taking the bar exams. Because of time constraints, frat members were unable to answer the test questions despite the clamor for answers, so, they were given out ‘as is’ - without answers.

“DEAN EDUARDO J. F. ABELLA of the Jose Rizal University law school in Mandaluyong City, was the reviewer in Mercantile Law and Practical Exercises at the Lex Review Center which is operated by the Lex Review & Seminars Inc., of which Dean Abella is one of the incorporators. He learned about the leakage of test questions in mercantile law when he was delivering the pre-week lecture on Legal Forms at the Arellano University. The leaked questions were shown to him by his secretary, Jenylyn Domingo, after the mercantile law exam. He missed the Saturday lecture in mercantile law because he was suffering from a touch of flu. He gave his last lecture on the subject on Wednesday or Thursday before the exam. He denied having bought or obtained and distributed the leaked test questions in Mercantile Law to the bar reviewees in the Lex Review Center.

“FINDINGS

“The Committee finds that the leaked test questions in Mercantile Law were the questions which the examiner, Attorney Marcial O. T. Balgos, had prepared and submitted to Justice Jose C. Vitug, as chairman of the 2003 Bar Examinations Committee. The questions constituted 82% of the questions asked in the examination in Mercantile Law in the morning of September 21, 2003, Sunday, in some cases with slight changes which were not substantial and in other cases exactly as proposed by Atty. Balgos. Hence, any bar examinee who was able to get hold of the leaked questions before the mercantile law examination and answered them correctly, would have been assured of passing the examination with at least a grade of 82%!

“The circumstance that the leaked test questions consisted entirely of test questions prepared by Atty. Balgos, proves conclusively that the leakage originated from his office, not from the Office of Justice Vitug, the Bar Examinations Chairman.

“Atty. Balgos claimed that the leaked test questions were prepared by him on his computer. Without any doubt, the source of the leaked test questions was Atty. Balgos’ computer. The culprit who stole or downloaded them from Atty. Balgos’ computer without the latter’s knowledge and consent, and who faxed them to other persons, was Atty. Balgos’ legal assistant, Attorney Danilo De Guzman, who voluntarily confessed the deed to the Investigating Committee. De Guzman revealed that he faxed the test questions, with the help of his secretary Reynita Villasis, to his fraternity ‘brods,’ namely, Ronan Garvida, Arlan (whose surname he could not recall), and Erwin Tan.

“In turn, Ronan Garvida faxed the test questions to Betans Randy Iñigo and James Bugain.

“Randy Iñigo passed a copy or copies of the same questions to another Betan, Alan Guiapal, who gave a copy to

the MLQU-Beta Sigma [Lambda's] Most Illustrious Brother, Ronald F. Collado, who ordered the printing and distribution of 30 copies to the MLQU's 30 bar candidates.

"Attorney Danilo De Guzman's act of downloading Attorney Balgos' test questions in mercantile law from the latter's computer, without his knowledge and permission, was a criminal act of larceny. It was theft of intellectual property; the test questions were intellectual property of Attorney Balgos, being the product of his intellect and legal knowledge.

"Besides theft, De Guzman also committed an unlawful infraction of Attorney Balgos' right to privacy of communication, and to security of his papers and effects against unauthorized search and seizure - rights zealously protected by the Bill of Rights of our Constitution (Sections 2 and 3, Article III, 1987 Constitution).

"He transgressed the very first canon of the lawyers' Code of Professional Responsibility which provides that '[a] lawyer shall uphold the Constitution, obey the laws of the land, and promote respect for law and legal processes.'

"By transmitting and distributing the stolen test questions to some members of the Beta Sigma Lambda Fraternity, possibly for pecuniary profit and to given them undue advantage over the other examiners in the mercantile law examination, De Guzman abetted cheating or dishonesty by his fraternity brothers in the examination, which is violative of Rule 1.01 of Canon 1, as well as Canon 7 of the Code of Professional Responsibility for members of the Bar, which provide:

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct

Canon 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

"De Guzman was guilty of grave misconduct unbecoming a member of the Bar. He violated the law instead of promoting respect for it and degraded the noble profession of law instead of upholding its dignity and integrity. His actuations impaired public respect for the Court, and damaged the integrity of the bar examinations as the final measure of a law graduate's academic preparedness to embark upon the practice of law.

However, the Investigating Committee does not believe that De Guzman was solely responsible for the leakage of Atty. Balgos' proposed test questions in the mercantile law examination. The Committee does not believe that he acted alone, or did not have the assistance and cooperation of other persons, such as:

"Cheryl Palma, Atty. Balgos' private secretary, who, according to Atty. Balgos himself, was the only person who knew the password, who could open and close his computer; and who had the key to his office where his computer was kept. Since a computer may not be accessed or downloaded unless it is opened, someone must have opened Atty. Balgos' computer in order for De Guzman to retrieve the test questions stored therein.

"Silvestre Atienza, also a fraternity 'brod' of De Guzman, who was responsible for interconnecting Atty. Balgos' computer with the other computers outside Atty. Balgos' room or office, and who was the only other person, besides Cheryl Palma, who knew the password of Atty. Balgos' computer.

"The following persons who received from De Guzman, and distributed copies of the leaked test questions, appear to have conspired with him to steal and profit from the sale of the test questions. They could not have been motivated solely by a desire to help the fraternity, for the leakage was widespread ('kalat na kalat') according to Erwin Tan. The possible co-conspirators were:

Ronan Garvida,

Arlan,

Erwin Tan,

Randy Iñigo,

Ronald Collado, and

Allan Guiapal

“The Committee does not believe that De Guzman recklessly broke the law and risked his job and future as a lawyer, out of love for the Beta Sigma Lambda fraternity. There must have been an ulterior material consideration for his breaking the law and tearing the shroud of secrecy that, he very well knows, covers the bar examinations.

“On the other hand, the Committee finds that the theft of the test questions from Atty. Balgos’ computer could have been avoided if Atty. Balgos had exercised due diligence in safeguarding the secrecy of the test questions which he prepared. As the computer is a powerful modern machine which he admittedly is not fairly familiar with, he should not have trusted it to deep secret the test questions that he stored in its hard disk. He admittedly did not know the password of his computer. He relied on his secretary to use the password to open and close his computer. He kept his computer in a room to which other persons had access. Unfamiliar with the use of the machine whose potential for mischief he could not have been totally unaware of, he should have avoided its use for so sensitive an undertaking as typing the questions in the bar examination. After all he knew how to use the typewriter in the use of which he is quite proficient. Atty. Balgos should therefore have prepared the test questions in his trusty typewriter, in the privacy of his home, (instead of his law office), where they would have been safe from the prying eyes of secretaries and assistant attorneys. Atty. Balgos’ negligence in the preparation and safekeeping of his proposed test questions for the bar examination in mercantile law, was not the proximate cause of the ‘bar leakage;’ it was, in fact, the root cause. For, if he had taken those simple precautions to protect the secrecy of his papers, nobody could have stolen them and copied and circulated them. The integrity of the bar examinations would not have been sullied by the scandal. He admitted that ‘Mali siguro ako, but that was what happened’ (43 tsn, Oct. 24, 2003).

“RECOMMENDATION

“This Honorable court in the case of *Burbe v. Magulta*, A.C. No. 5713, June 10, 2002, 383 SCRA 276, pronounced the following reminder for lawyers: ‘Members of the bar must do nothing that may tend to lessen in any degree the confidence of the public in the fidelity, the honesty and integrity of the profession.’ In another case, it likewise intoned: ‘We cannot overstress the duty of a lawyer to at all times uphold the integrity and dignity of the legal profession. He can do this by faithfully performing his duties to society, to the bar, to the courts, and to his clients.’ (*Reyes v. Javier*, A.C. No. 5574, February 2, 2002, 375 SCRA 538). It goes without saying that a lawyer who violates this precept of the profession by committing a gross misconduct which dishonors and diminishes the public’s respect for the legal profession, should be disciplined.

“After careful deliberation, the Investigating Committee recommends that:

“1. Attorney Danilo De Guzman be **DISBARRED** for he had shown that he is morally unfit to continue as a member of the legal profession, for grave dishonesty, lack of integrity, and criminal behavior. In addition, he should make a written **PUBLIC APOLOGY** and pay **DAMAGES** to the Supreme Court for involving it in another ‘bar scandal,’ causing the cancellation of the mercantile law examination, and wreaking havoc upon the image of this institution.

“2. Attorney Marcial O. T. Balgos should be **REPRIMANDED** by the Court and likewise be required to make a

written APOLOGY to the Court for the public scandal he brought upon it as a result of his negligence and lack of due care in preparing and safeguarding his proposed test questions in mercantile law. As the Court had to cancel the Mercantile Law examination on account of the 'leakage' of Attorney Balgos' test questions, which comprised 82% of the bar questions in that examination, Atty. Balgos is not entitled to receive any honorarium as examiner for that subject.

"3. FURTHER INVESTIGATION of Danilo De Guzman, Cheryl Palma, Silvestre Atienza, Ronan Garvida, Arlan, Erwin Tan, Randy Iñigo, James Bugain, Ronald Collado and Allan Guiapal by the National Bureau of Investigation and the Philippine National Police, with a view to their criminal prosecution as probable co-conspirators in the theft and leakage of the test questions in mercantile law.

"With regard to recommending measures to safeguard the integrity of the bar examinations and prevent a repetition of future leakage in the said examinations, inasmuch as this matter is at present under study by the Court's Committee on Legal Education and Bar Matters, as an aspect of proposals for bar reforms, the Investigating Committee believes it would be well-advised to refrain from including in this report what may turn out to be duplicative, if not contrary, recommendations on the matter."[3]

The Court adopts the report, including with some modifications the recommendation, of the Investigating Committee. The Court, certainly will not countenance any act or conduct that can impair not only the integrity of the Bar Examinations but the trust reposed on the Court.

The Court also takes note that Mr. Jovito M. Salonga and Mr. Benjamin R. Katly, two of its employees assigned to the Management Information Systems Office (MISO), who were tasked by the Investigating Committee to inspect the computer system in the office of Atty. Balgos, found that the Court's Computer-Assisted Legal Research (CALR) database[4] was installed in the computer used by Atty. Balgos. Mr. Salonga and Mr. Katly reported that the system, which was developed by the MISO, was intended for the exclusive use of the Court. The installation thereof to any external computer would be unauthorized without the permission of the Court. Atty. Velasco informed the two Court employees that the CALR database was installed by Atty. De Guzman on the computer being used by Atty. Balgos. The matter would also need further investigation to determine how Atty. De Guzman was able to obtain a copy of the Court's CALR database.

WHEREFORE, the Court, acting on the recommendations of the Investigating Committee, hereby resolves to -

- (1) DISBAR Atty. DANILO DE GUZMAN from the practice of law effective upon his receipt of this RESOLUTION;
- (2) REPRIMAND Atty. MARCIAL O.T. BALGOS and DISENTITLE him from receiving any honorarium as an Examiner in Mercantile Law;
- (3) Direct the National Bureau of Investigation (a) to undertake further investigation of Danilo De Guzman, Cheryl Palma, Silvestre Atienza, Ronan Garvida, Erwin Tan, Randy Iñigo, James Bugain, Ronald Collado and Allan Guiapal with a view to determining their participation and respective accountabilities in the bar examination leakage and to conduct an investigation on how Danilo De Guzman was able to secure a copy of the Supreme Court's CALR database.

Let a copy of this Resolution be made part of the records of Danilo De Guzman in the Office of the Bar Confidant, Supreme Court of the Philippines, and copies to be furnished the Integrated Bar of the Philippines and circulated by the Office of the Court Administrator to all courts.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., concur.

Azcuna, J., on official leave.

Tinga, J., No part. Close to family of one of the parties involved in bar scandal.

[1] The leakage was reported on the newspapers on Tuesday, 23 September 2003.

[2] A Law clerk in his office, Atty. Rosalinda E. Beltran-Kawada.

[3] Report of the Investigating Committee on the Leakage of the Examiner's Bar Examination Questions in Mercantile Law.

[4] The CALR database contains Supreme Court decisions from May 1996 to May 2002. It also has a proprietary search engine.

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