

EN BANC

[B.M. No. 1222, February 04, 2004]

RE: 2003 BAR EXAMINATIONS**R E S O L U T I O N****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 Percentage Weight	Adjusted Percentage Weight	Relative Weight	Adjusted Relative 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%	<u>5.882%</u>	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).