

### Question 7.c.

- **Article 342-bis of the Civil Code:** *“when the conduct of the partner or other cohabitee causes serious harm to the physical or moral integrity or freedom of the other partner or cohabitee, the court, if the act does not constitute a crime prosecutable ex officio, upon application by a party, may adopt by decree one or more of the measures referred to in Article 342-ter”.*
- **Article 342-ter of the Civil Code:** *“In the decree referred to in Article 342 bis, the judge shall order the spouse or cohabitant, who has engaged in the prejudicial conduct, to cease the same conduct and shall order the removal from the family home of the spouse or cohabitant who has engaged in the prejudicial conduct, also prescribing, where necessary, that he or she shall not approach the places habitually frequented by the petitioner, and in particular the place of work, the home [43] of the family of origin, or the home of other close relatives [74 ff. ] or other persons and in the vicinity of the places of education of the couple's children, unless the latter must attend the same places due to work requirements. The judge may also order, where necessary, the intervention of local social services or a family mediation center, as well as associations whose statutory purpose is to support and shelter women and minors or other abused and battered persons; the periodic payment of an allowance to cohabiting persons who, as a result of the measures referred to in the first paragraph, remain deprived of adequate means, fixing the manner and terms of payment(2) and prescribing, where appropriate, that the sum be paid directly to the person entitled by the employer of the obligor, deducting it from the salary [2099; 545 c. P.C.] to the same. By the same decree the judge, in the cases referred to in the preceding paragraphs, shall determine the duration of the protection order, which shall run from the day of its execution. This may not exceed six months and may be extended, upon application of a party, only if there are serious reasons for the time strictly necessary. By the same decree the judge shall determine the manner of implementation. Where difficulties or disputes arise with respect to implementation, the same judge shall by decree provide for the most appropriate measures for implementation, including the assistance of the public force and the health officer”.*
- **Article 282-bis** *“Injunction to stay away from the family home” of the criminal procedure code (“1. By means of the decision ordering the injunction to stay away, the court shall order the accused to leave the family home immediately or not to return therein, and not to enter without the authorisation of the proceeding court. Should authorisation be granted, it may allow specific types of visit. 2. If it is necessary to guarantee the safety of the victim or his next of kin, the court may also order the accused to stay away from the places regularly attended by the victim, particularly the workplace, the home of his parents or next of kin, unless attending those places is necessary for working reasons. In such case, the court shall order the related modalities of attendance and impose any restrictions. 3. Upon request of the Public Prosecutor,*

*the court may also order the periodic payment of a cheque in favour of the cohabitantes who, due to the ordered precautionary measure, remain without adequate financial resources. The court shall determine the amount of the cheque considering the circumstances and income of the liable person and shall set the payment modalities and deadlines. If necessary, the court may order that the cheque be paid directly to the beneficiary by the employer of the liable person, deducting the amount from his pay. The payment order shall have the effect of an enforceable decision. 4. The decisions referred to in paragraphs 2 and 3 may also be taken after the decision referred to in paragraph 1 has been issued, provided that it has not been revoked or lost effectiveness. Even if they are taken afterwards, they shall lose their effectiveness if the decision referred to in paragraph 1 is revoked or loses effectiveness. The decision referred to in paragraph 3 shall also cease to be effective if it is in favour of the spouse or children and the order provided for in Article 708 of the Code of Civil Procedure or any other decision of the civil court on the economic and property relations between the spouses or the maintenance of children are issued. 5. The decision referred to in paragraph 3 may be modified if the conditions of the liable person or the beneficiary change and shall be revoked if cohabitation is restored. 6. The measure may also be ordered independently of the penalty limits provided for in Article 280, also by means of the control procedures provided for in Article 275-bis, if prosecution involves any of the crimes provided for in Articles 570, 571, 582, exclusively as regards the cases subject to prosecution of the Public Prosecutor's motion or aggravated cases, 600, 600bis, 600-ter, 600-quater, 600-septies. 1, 600-septies. 2, 601, 602, 609-bis, 609-ter, 609-quater, 609-quinquies, 609-octies and 612, paragraph 2, of the Criminal Code, committed against the next of kin or the cohabitee”);*

- **Article 282-ter** “Prohibition on approaching places frequented by the offended person” of the criminal procedure code (“1. In the order ordering the prohibition of approach, the judge shall order the defendant not to approach specific places habitually frequented by the offended person or to maintain a specific distance from such places or from the offended person, also ordering the application of the special methods of control provided for in Article 275 bis. 2. If there are additional protection needs, the judge may order the defendant not to approach certain places habitually frequented by close relatives of the offended person or by persons cohabiting with the offended person or otherwise linked by affectionate relationship or to maintain a determined distance from such places or persons. 3. The judge may also prohibit the defendant from communicating, by any means, with the persons referred to in paragraphs 1 and 2. 4. When the attendance of the places referred to in paragraphs 1 and 2 is necessary for business reasons or for housing needs, the judge shall prescribe the relevant modalities and may impose limitations”).
- **Article 384-bis** “Urgent injunction to stay away from the family home” of the criminal procedure code (“1. After receiving an authorisation by the Public Prosecutor, either in writing or orally and confirmed in writing or electronically, criminal police officials and officers are entitled to issue the urgent injunction to stay away from the family

*home and the places habitually attended by the victim, against anyone caught while committing any of the crimes provided for in Article 282-bis, paragraph 6, if there are well-founded reasons to believe that such crimes may be repeated and may pose a serious risk for the victim's life or psychophysical integrity. The criminal police shall fulfil, without delay, the obligations of information provided for in Article 11 of Decree-Law No 11 of 23 February 2009, converted, with amendments, by Law No 38 of 23 April 2009, as amended. 2. The provisions of Articles 385 and following of this Title shall apply, provided they are compatible. The provisions referred to in Article 381, paragraph 3, shall be observed. The oral statement of a complaint shall be mentioned in the record of the activities related to the injunction to stay away").*