

COVERAGE  
LABOR LAW AND SOCIAL LEGISLATION

2015 BAR EXAMINATIONS

**I. Fundamental Principles and Policies**

**A. Constitutional provisions**

1. Article II, Secs. 9, 10, 11, 13, 14, 18, 20.
2. Article III, Secs. 1, 4, 7, 8, 10, 16, 18(2).
3. Article XIII, Secs. 1, 2, 3, 13, 14.

**Q: Which is not a constitutional right of the workers? (2012 Bar Question)**

- a. The right to engage in peaceful concerted activities;
- b. The right to enjoy security of tenure;
- c. The right to return on investment;
- d. The right to receive a living wage.

**SUGGESTED ANSWER:**

- c) The right to return on investment [Art. XIII, Sec. 3, Constitution]

**Q: Which of the following is correct with respect to the extent of the application of security of tenure? (2012 Bar Question)**

- a. It applies to managerial and to all rank-and-file employees if not yet regular, but not to management trainees;
- b. It applies to managerial and to all rank-and-file employees including those under probation;
- c. It applies to seasonal and project employees, if they are hired repeatedly;
- d. It applies to all kinds of employees except those employed on a part-time basis.

**SUGGESTED ANSWERS:**

- a. It applies to managerial and to all rank-and-file employees if not yet regular, but not to management trainees. [Management Trainee are not employees yet].
- b. It applies to managerial and to all rank-and-file employees including those under probation

**Q: Mr. Del Carmen, unsure if his foray into business (messengerial service catering purely to law firms) would succeed but intending to go long-term if he hurdles the first year, opted to open his operations with one-year contracts with two law firms although he also accepts messengerial service requests**

from other firms as their orders come. He started with one permanent secretary and six (6) messengers on a one-year, fixed-term, contract.

**Is the arrangement legal from the perspective of labor standards? (2013 Bar Questions)**

- (A) No, because the arrangement will circumvent worker's right to security of tenure.
- (B) No. If allowed, the arrangement will serve as starting point in weakening the security of tenure guarantee.
- (C) Yes, if the messengers are hired through a contractor.
- (D) Yes, because the business is temporary and the contracted undertaking is specific and time-bound.
- (E) No, because the fixed term provided is invalid.

**SUGGESTED ANSWER: (A)**

**SUGGESTED ALTERNATIVE ANSWER:**

- (E) Reason: The employer and employee must deal with each other on more or less equal terms.**

**Q: What is the quantum of evidence required in labor case? (2012 Bar Question)**

- a. The degree of proof which produces the conclusion that the employee is guilty of the offense charged in an unprejudiced mind;
- b. Such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion;
- c. That degree of proof which is greater in weight than the opposing party's evidence;
- d. Such evidence which must be highly and substantially more probable to be true than not which convinces the trier of facts of its factuality.

**SUGGESTED ANSWER:**

- b) Such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. [Tancirco vs. GSIS, G.R. No. 132916, Nov. 16, 2001]

- B. Civil Code**
  - 1. Article 19**
  - 2. Article 1700**
  - 3. Article 1702**
- C. Labor Code**
  - 1. Article 3**
  - 2. Article 4**
  - 3. Article 166**

4. Article 211
5. Article 212
6. Article 255
7. Article 277

## II. Recruitment and Placement

A. Rocket Corporation is a domestic corporation registered with the SEC, with 30% of its authorized capital stock owned by foreigners and 70% of its authorized capital stock owned by Filipinos. Is Rocket Corporation allowed to engage in the recruitment and placement of workers, locally and overseas? Briefly state the basis for your answer. (2015 Bar Question)

B. When does the recruitment of workers become an act of economic sabotage? (2015 Bar Question)

### **SUGGESTED ANSWER:**

A. No. Article 27 of the Labor Code mandates that pertinently, for a Corporation to validly engage in recruitment and placement of workers, locally and overseas, at least seventy-five percent (75%) of its authorized and voting capital stock must be owned and controlled by Filipino citizens. Since only 70% of its authorized capital stock is owned by Filipinos, it consequently cannot validly engage in recruitment and placement of workers, locally and overseas.

B. Under Section 6(m) of RA 8042, illegal recruitment is considered economic sabotage if it is committed by a syndicate or is large scale in scope. It is syndicated illegal recruitment if the illegal recruitment is carried out by three (3) or more conspirators; and it is large scale in scope when it is committed against three (3) more persons, individually or as a group.

### **A. Recruitment of local and migrant workers**

**Q: The State shall allow the deployment of overseas Filipino Workers only in countries where the rights of Filipino migrant workers are protected. Which of the following is not a guarantee, on the part of the receiving country, for the protection of the rights of OFW's? (2012 Bar Question)**

- a. It has existing labor and social laws protecting the rights of migrant workers;
- b. It promotes and facilitates re-integration of migrants into the national mainstream;
- c. It is a signatory and/or ratifier of multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- d. It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino workers.

### **SUGGESTED ANSWER:**

- b. It promotes and facilitates re-integration of migrants into the national mainstream. [Sec. 4 of RA 8042 as amended by Sec. 3 of RA 10022]

**1. Illegal recruitment (Sec. 5, R.A. No. 10022)**

- a) License vs. authority
- b) Essential elements of illegal recruitment
- c) Simple illegal recruitment
- d) Illegal recruitment in large scale
- e) Illegal recruitment as economic sabotage
- f) Illegal recruitment vs. estafa
- g) Liabilities
- (i) Local recruitment agency

**Q: Which phrase is the most accurate to complete the statement – A private employment agency is any person or entity engaged in the recruitment and placement of workers; (2012 Bar Question)**

- a. For a fee, which is charged directly from the workers.
- b. For a fee, which is charged directly from employers.
- c. For a fee, which is charged directly or indirectly from workers, employers or both.
- d. For a fee, which is charged from workers or employers, which covers both local and overseas employment.

**SUGGESTED ANSWER:**

- c) For a fee, which is charged directly or indirectly from workers, employers or both [Art. 13 (c), Labor Code]

- (ii) Foreign employer
- (a) Theory of imputed knowledge
- (iii) Solidary liability

**Q: What is the nature of the liabilities of the local recruitment agency and its foreign principal? (2012 Bar Question)**

- a. The local agency is jointly liable with the foreign principal; severance of relations between the local agent and the foreign principal dissolves the liability of the local agent recruiter;
- b. Local agency is solidarily liable with the foreign principal; severance of relations between the local agent and the foreign principal dissolves the liability of the foreign principal, only;
- c. Local agency is solidarily liable with the foreign principal; severance of relations between the local agent and foreign principal does not affect the liability of the foreign principal;

- d. Local agency is jointly liable with the foreign principal; severance of the relations between the local agent and the foreign principal does not affect the liability of the local recruiter.

**SUGGESTED ANSWER:**

- a) Local agency is solidarily liable with the foreign principal; severance of relations between the local agent and foreign principal does not affect the liability of the foreign principal, [Section 10, second paragraph, RA 8042]

**h) Pre-termination of contract of migrant worker**

**Q: Peter worked for a Norwegian cargo vessel. He worked as a deckhand, whose primary duty was to assist in cleaning the ship. He signed a five-year contract starting in 2009. In 2011, Peter's employers began treating him differently. He was often maltreated and his salary was not released on time. These were frequently protested to by Peter. Apparently exasperated by his frequent protestations, Peter's employer, a once top official in China, suddenly told him that his services would be terminated as soon as the vessel arrived at the next port, in Indonesia. Peter had enough money to go back home, and immediately upon arriving, he filed a money claim with the NLRC against his former employer's local agent. Will Peter's case prosper? (2012 Bar Question)**

- a. Yes, he is entitled to full reimbursement of his placement fee, with interest at 12% per annum, plus salary for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired portion, whichever is higher.
- b. Yes, he is entitled to full reimbursement of his placement fee, with interest at 12% per annum, plus his salary for the unexpired portion of his employment contract for three (3) months for every year of the unexpired portion, whichever is less;
- c. Yes, he is entitled to his salaries for the unexpired portion of his employment contract, plus full reimbursement of his placement fee with interest at 12% per annum;
- d. Yes, he is entitled to his salaries for three (3) months for every year of the unexpired portion of his unemployment contract, plus full reimbursement of his placement fee with interest at 12% per annum.

**SUGGESTED ANSWER:**

- a) Yes, he is entitled to his salaries for the unexpired portion of his employment contract, plus full reimbursement of his placement fee with interest at 12% per annum [Serrano vs. Gallant Maritime, G.R. No. 167614, March 24, 2009]

**2. Direct hiring**

**B. Regulation and enforcement**

**1. Suspension or cancellation of license or authority (Art. 35, Labor Code)**

**Q: The power suspend or cancel a license to recruit employees is vested on: (2012 Bar Question)**

- a. The Secretary of Labor and Employment;
- b. The POEA Administrator;
- c. A and B concurrently;
- d. Neither of them.

**SUGGESTED ANSWER:**

- a. The POEA Administrator [POEA Rules on Overseas land-based employment {2002}].

**SUGGESTED ALTERNATIVE ANSWERS:**

- a. The Secretary of Labor and Employment;
- b. The POEA Administrator.
- c. A and B concurrently: [Transaction Overseas Corp. vs. Sec. of Labor, G.R. NO. 109583, Sept. 5, 1997]

- 2. **Regulatory and visitorial powers of the DOLE secretary**
- 3. **Remittance of foreign exchange earnings**
- 4. **Prohibited activities**

**III. Labor Standards**

**A. Hours of work**

- 1. **Coverage/Exclusions (Art. 82, Labor Code)**

**Q: The following are excluded from the coverage of Title I, Book II of Labor Code of the Philippines (Conditions of Employment) except: (2012 Bar Question)**

- a) Field personnel;
- b) Supervisors;
- c) Managers;
- d) Employees of government-owned and controlled corporations.

**SUGGESTED ANSWER:**

- (b) Supervisors [Art. 82, Labor Code]

**Q: Which of the following is not compensable as hours worked? (2012 Bar Question)**

- a. Travel away from home;
- b. Travel from home to work;
- c. Working while on call;
- d. Travel that is all in a day's work.

**SUGGESTED ANSWERS:**

- a) Travel away from home. [Art. 84, Labor Code]
- b) Travel from home to work.

**2. Normal hours of work**

**a) Compressed work week**

**3. Meal break**

**4. Waiting time**

**5. Overtime work, overtime pay**

**Q: Work may be performed beyond eight (8) hours a day provided that: (2012 Bar Question)**

- a) Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 30% thereof;
- b) Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 30% thereof;
- c) Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 20% thereof;
- d) None of the above.

**SUGGESTED ANSWER:**

- (a) Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least (25% thereof. [Art. 87, Labor Code]

**Q: The provisions of the Labor Code on the Working Conditions and Rest Periods of employees are inapplicable to the following employees, except: (2012 Bar Question)**

- a. A supervisor in a fast food chain;
- b. A family driver;
- c. A laborer without any fixed salary, but receiving a compensation depending upon the result of his work;
- d. A contractual employee.

**SUGGESTED ANSWER:**

- d. A contractual employee.

**Q: The following are instances where an employer can require an employee to work overtime, except: (2012 Bar Question)**

- a. In case of actual impending emergencies caused by serious accident, fire,. Flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of live property, or imminent danger to public safety;

- b. When the country is at war or when other national or local emergency has been declared by the national assembly or the chief executive;
- c. When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to employer or some other cause of similar nature;
- d. Where the completion or continuation of the work started before the eight hour is necessary to prevent serious obstruction or prejudice to the business or operation of the employer.

**SUGGESTED ANSWERS:**

- (a) In case of actual impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of live property, or imminent danger to public safety;
- (b) When the country is at war or when other national or local emergency has been declared by the national assembly or the chief executive;
- (c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to employer or some other cause of similar nature;
- (d) Where the completion or continuation of the work started before the eight hour is necessary to prevent serious obstruction or prejudice to the business or operation of the employer.

**Q: May the employer and employee stipulate that the latter's regular or basic salary already includes the overtime pay, such that when the employee actually works overtime he cannot claim overtime pay? (2012 Bar Question)**

- a) Yes, provided there is a clear written agreement knowingly and freely entered into by the employee;
- b) Yes, provided the mathematical result shows that agreed legal wage rate and the overtime pay. Computed separately, are equal to or higher than the separate amounts legally due;
- c) No, the employer and employee cannot stipulate that the latter's regular or basic salary already includes the overtime pay;
- d) A and B

**SUGGESTED ANSWER:**

- (a) No, the employer and employee cannot stipulate that the latter's regular or basic salary includes the overtime pay. [Art. 87, Labor Code]

**SUGGESTED ALTERNATIVE ANSWER:**

- (b) Yes, provided the mathematical results shows that the agreed legal wage rate and the overtime pay, computed separately, are equal to or higher than the separate amounts legally due.

**Q: LKG Garments Inc. makes baby clothes for export. As part of its measures to meet its orders, LKG requires its employees to work beyond eight (8) hours everyday, from Monday to Saturday. It pays its employees an additional 35% of their regular hourly wage for work rendered in excess of eight (8) hours per day. Because of additional orders, LKG now requires two (2) shifts of workers with both shifts working beyond eight (8) hours but only up to a maximum of four (4) hours. Carding is an employee who used to render up to six (6) hours of overtime work before the change in schedule. He complains that the change adversely affected him because now he can only earn up to a maximum of four (4) hours worth of overtime pay. Does Carding have a cause of action against the company? (2015 Bar Question)**

**SUGGESTED ANSWER:**

NO. A change in work schedule is a management prerogative of LKG. Thus, Carding has no cause of action against LKG if, as a result of its change to two (2) shifts, he now can only expect a maximum of four (4) hours overtime work. Besides, Art. 97 of the Labor Code does not guarantee Carding a certain number of hours of overtime work. In *Manila Jockey Employees' Union v. Manila Jockey Club* (517 SCRA 707), the Supreme Court held that the basis of overtime claim is an employee's having been "permitted to work". Otherwise, as in this case, such is not demandable.

6. **Night work (R.A. No. 10151), Night shift differential**
7. **Part-time work**
8. **Contract for piece work (see Civil Code)**

**B. Wages**

**Q: A wage order may be reviewed on appeal by the National Wages and Productivity Commission under these grounds, except: (2012 Bar Question)**

- a. Grave abuse of discretion;
- b. Non-conformity with prescribed procedure;
- c. Questions of law;
- d. Gross under or over-valuation.

**SUGGESTED ANSWER:**

- d) Gross under or over-valuation

**Q: The following are exempt from the rules on minimum wages, except: (2012 Bar Question)**

- a. Household or domestic helpers;
- b. Homeworkers engaged in needle work;
- c. Workers' in duly registered establishment in the cottage industry;
- d. Workers in the duly registered cooperative.

**SUGGESTED ANSWER:**

- b) Workers in the duly registered cooperative. [Sec. 3 (d), Rule VII, Book III of Omnibus Rules requires recommendations of Bureau of Cooperative Development and approval of DOLE Secretary – matters that are not in the suggested answer]

**Q: Benito is the owner of an eponymous clothing brand that is a top seller. He employs a number of male and female models who wear Benito's clothes in promotional shoots and videos. His deal with the models is that Benito will pay them with 3 sets of free clothes per week. Is this arrangement allowed? (2015 Bar Question)**

**SUGGESTED ANSWER:**

No. the arrangement is not allowed.

The models are Benito's employees. As such, their services require compensation in legal tender (Art. 102, Labor Code). The three sets of clothes, regardless of value, are in kind; hence, the former's compensation is not in the form prescribed by law.

**ANOTHER SUGGESTED ANSWER:**

**Under Article 102 of the Labor Code, wages of an employee are to be paid only in legal tender, even when expressly requested by the employee. Hence, no lawful deal in this regard can be entered into by and between Benito and his models.**

**SUGGESTED ALTERNATIVE ANSWER:**

The models are not employees. Therefore, Art. 102 of the Labor Code applies. The payment does not have to be in legal tender.

But even if they are employees, the wage arrangement between Benito and the models is allowed by Art. 97(f) of the Labor Code which defines wage as the remuneration or earning paid to an employee, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered. It includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging or other facilities customarily furnished by the employer to the employee.

1. **Wage vs. salary**
2. **Minimum wage defined, Minimum wage setting**
3. **Minimum wage of workers paid by results**
  - a) **Workers paid by results**
  - b) **Apprentices**

**Q: What is not a prerequisites for a valid apprenticeship agreement? (2012 Bar Question)**

- a. Qualifications of an apprentice are met;
- b. A duly executed and signed apprenticeship agreement;
- c. The apprenticeship program is approved by the Secretary of Labor;
- d. Included in the list of apprenticeable occupation of TESDA.

**SUGGESTED ANSWER:**

- c) The apprenticeship program is approved by the Secretary of Labor. [Sec 18, RA 7796 – The apprenticeship Program of DOLE shall be transferred to TESDA which shall implement and administer said program].

**c) Learners**

**Q: Which is a characteristic of the learner? (2012 Bar Question)**

- a. A person is hired as a trainee in an industrial occupation;
- b. Hired in a highly technical industry;
- c. Three (3) months practical on-the-job training with theoretical instruction;
- d. At least 14 years old.

**SUGGESTED ANSWER:**

- a) A person is hired as a trainee in an industrial occupation. [Art. 73, Labor Code]

**d) Persons with disability**

**Q: According to Article 78 of the Labor Code, a handicapped worker is one whose earning capacity is impaired by the following, except: (2012 Bar Question)**

- a. Age;
- b. Physical Deficiency;
- c. Mental Deficiency;
- d. Psychological Deficiency.

**SUGGESTED ANSWER:**

- d) Psychological Deficiency [Art. 78, Labor Code]

**4. Commissions**

**5. Deductions from wages**

**Q: Corporation X is owned by L's family. L is the President. M, L's wife, occasionally gives loans to employees of Corporation X. It was customary that loan payments were paid to M by directly deducting from the employees' monthly salary. Is this practice of directly deducting payments of debts from the employee's wages allowed? (2012 Bar Question)**

- a) Yes, because where the employee is indebted to the employer, it is sanctioned by the law on compensation under Article 1706 of the Civil Code;
- b) Yes, because it has already become customary such that no express authorization is required;
- c) No, because an employee's payment of obligation to a third person is deductible from the employee's wages if the deduction is authorized in writing;
- d) No, because Article 116 of the Labor Code absolutely prohibits the withholding of wages and kickbacks. Article 116 provides for no exception.

**SUGGESTED ANSWER:**

- d) No, because Article 116 of the Labor Code absolutely prohibits the withholding of wages and kickbacks. Article 116 provides for no exception.

**SUGGESTED ALTERNATIVE ANSWER:**

- b) Yes....sanctioned by the law on company under Art. 1706

**Q: Which of the following is not a valid wage deduction? (2012 Bar Question)**

- a. Where the worker was insured with his consent by the employer, and the deduction is allowed to recompense the employer for the amount paid by him as the premium of the insurance.
- b. When the wage is subject of execution or attachment, but only for debts incurred for food, shelter, clothing and medical attendance;
- c. Payment for lost or damaged equipment provided the deduction does not exceed 25% of the employee's salary for a week;
- d. Union dues.

**SUGGESTED ANSWER:**

- c) Payment for lost or damaged equipment provided the deduction does not exceed 25% of the employee's salary for a week. [Implementing Rules Book III, Rule VIII, Section 11: 20% of employee's salary in a week, not 25%]

6. Non-diminution of benefits

**Q: R was employed as an instructor of Cruz College located in Santiago City, Isabela. Pursuant to a stipulation in R's employment contract that the college has the prerogative to assign R in any of its branches or tie-up schools as the necessity demands, the college proposed to transfer hi to Ilagan, a nearby town. R filed a complaint alleging constructive dismissal since his re-assignment will entail an indirect reduction of his salary or diminution of pay considering that additional allowance will not be given to cover for board and lodging expenses. R, however, failed to prove that allowances were given in similar instances in the past. Is R's contention that he will suffer constructive dismissal in view of the alleged diminution of benefit correct? (2012 Bar Question)**

- a. Yes, such transfer should require an automatic additional allowance; the non-granting of said allowance amounts to a diminution of benefit;
- b. No, R failed to present evidence that the college committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Hence, there is no violation of the rule against diminution of pay;
- c. No, R's re assignment did not amount to constructive dismissal because the college has the right to transfer R based on contractual stipulation;
- d. B and C.

**SUGGESTED ANSWER:**

- b) No, R failed to present evidence that the college committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Hence, there is no violation of the rule against diminution of pay.

**SUGGESTED ALTERNATIVE ANSWER:**

- c) No, R's re assignment did not amount to constructive dismissal because the college has the right to transfer R based on contractual stipulation [Management prerogative, Morales vs. Harbour Centre Port Terminal, Inc., G.R. No. 174208, January 25, 2012]

**Q: Lolong Law Firm (LLF), which employs around 50 lawyers and 100 regular staff, suffered losses for the first time in its history. The management informed its employees that it could no longer afford to provide them free lunch. Consequently, it announced that a nominal fee would henceforth be charged. Was LLF justified in withdrawing this benefit which it had unilaterally been providing to its employees? (2014 Bar Question)**

- (A) Yes, because it is suffering losses for the first time.
- (B) Yes, because this is a management prerogative which is not due to any legal or contractual obligation.
- (C) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code.
- (D) No, because it is a fringe benefit that has already ripened into a demandable right.

**SUGGESTED ANSWER:**

(C) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code.

**Q: Robert, an employee of ABC Company, is married to Wanda. One day, Wanda visited the company office with her three (3) emaciated minor children, and narrated to the Manager that Robert had been squandering his earnings on his mistress, leaving only a paltry sum for the support of their children. Wanda tearfully pleaded with the Manager to let her have one half of Robert's pay every payday to ensure that her children would at least have food on the table. To support her plea, Wanda presented a Kasulatan signed by Robert giving her one half of his salary, on the condition that she would not complain if he stayed with his mistress on weekends.**

**If you were the Manager, would you release one half of Robert's salary to Wanda? (2013 Bar Questions)**

(A) No, because an employer is prohibited from interfering with the freedom of its employees to dispose of their wages.

(B) Yes, because of Robert's signed authorization to give Wanda one half of his salary.

(C) No, because there is no written authorization for ABC Company to release Robert's salary to Wanda.

(D) Yes, because it is Robert's duty to financially support his minor children.

(E) No, because Robert's Kasulatan is based on an illegal consideration and is of doubtful legal validity.

**SUGGESTED ANSWER: (A)**

**A SUGGESTED ALTERNATIVE ANSWER: (C)**

**7. Facilities vs. supplements**

**Q: Gamma Company pays its regular employees P350.00 a day, and houses them in a dormitory inside its factory compound in Manila. Gamma Company also provides them with three full meals a day.**

**In the course of a routine inspection, a Department of Labor and Employment (DOLE) Inspector noted that the workers' pay is below the prescribed minimum wage of P426.00 plus P30.00 allowance, and thus required Gamma Company to pay wage differentials.**

**Gamma Company denies any liability, explaining that after the market value of the company-provided board and lodging are added to the employees' P350 cash daily wage, the employees' effective daily rate would be way above the minimum pay required by law. The company counsel further points out that the employees are aware that their food and lodging form part of their salary, and have long accepted the arrangement.**

**Is the company's position legally correct? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

No. The following requisites were not complied with:

- (a) proof that such facilities are customarily furnished by the trade
- (b) the provision of deductible facilities is voluntarily accepted by the employee
- (c) the facilities are charged at the fair and reasonable value. Mere availment is not sufficient to allow deduction from employee's wages. (Mayon Hotel & Restaurant v. Adarna, 485 SCRA 609 [2005])

**SUGGESTED ALTERNATIVE ANSWER:**

No. RULE 78, Section 4 provides that there must be a written authorization.

**8. Wage Distortion/Rectification**

**Q: Which is not a procedural requirement for the correction of wage distortion in an unorganized establishment? (2012 Bar Question)**

- a. Both employer and employee will attempt to correct the distortion;
- b. Settlement of the dispute through National Conciliation and Mediation Board (NCMB);
- c. Settlement of the dispute through voluntary arbitration in case of failure to resolve dispute through CBA dispute mechanism;
- d. A and B.

**SUGGESTED ANSWER:**

- d. Settlement of the dispute through voluntary arbitration in case of failure to resolve dispute through CBA dispute mechanism. [Art. 124, Labor Code]

**Q: In what instances do labor arbiters have jurisdiction over wage distortion cases? (2012 Bar Question)**

- a. When jurisdiction is invoked by the employer and employees in organized establishments;
- b. When the case is unresolved by Grievance Committee;
- c. After the panel of voluntarily arbitrators has made a decision and the same is contested by either party;
- d. In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMM.

**SUGGESTED ANSWER:**

- c) In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMB. [Art. 124, Labor Code]

**9. Divisor to determine daily rate**

**C. Rest Periods**

- 1. Weekly rest day
- 2. Emergency rest day work

**D. Holiday pay/Premium pay**

- 1. Coverage, exclusions

**Q: Z owns and operates a carinderia. His regular employees are his wife, his two (2) children, the family maid, a cook, two (2) waiters, a dishwasher and a janitor. The family driver occasionally works for him during store hours to make deliveries. On April 09, the dishwasher did not report for work. The employer did not give his pay for that day is the employer correct? (2012 Bar Question)**

- a) No, because employees have a right to receive their regular daily wage during regular holidays;
- b) Yes, because April 09 is not a regular holiday;
- c) Yes, because of the principle of “a fair day’s wage for a fair day’s work”;
- d) Yes, because he employs less than ten (10) employees.

**SUGGESTED ANSWER:**

- (a) No legal employees have a right to receive their regular daily wage during regular holiday [Art. 94, Labor Code, and a carinderia is not in the category of an excluded or service establishment].

**SUGGESTED ALTERNATIVE ANSWER:**

- (c) Yes, because he employs less than ten (10) employees [i.e. if we are to consider a carinderia as a retail or service establishment].

**Q: Which of the following is not a regular holiday? (2012 Bar Question)**

- a. New Year’s Eve;
- b. Eidil Fitr;
- c. Father’s Day;
- d. Independence Day.

**SUGGESTED ANSWER:**

- c) Father’s Day [Art. 94 (c), Labor Code]

- 2. Teachers, piece workers, takay, seasonal workers, seafarers

**E. Leaves**

**1. Service Incentive Leave**

**Q: Which type of employee is entitled to a service incentive leave? (2012 Bar Question)**

- a. Managerial employees;
- b. Field personnel;
- c. Government workers;
- d. Part-time workers.

**SUGGESTED ANSWER:**

- d) Part-time workers [Art. 82, Labor Code]

**Q: The members of the administrative staff of Zeta, a construction company, enjoy ten (10) days of vacation leave with pay and ten (10) days of sick leave with pay, annually. The workers' union, Bukluran, demands that Zeta grant its workers service incentive leave of five (5) days in compliance with the Labor Code.**

**Is the union demand meritorious? (2013 Bar Questions)**

- (A) Yes, because non-compliance with the law will result in the diminution of employee benefits.
- (B) Yes, because service incentive leave is a benefit expressly provided under and required by the Labor Code.
- (C) No, because Zeta already complies with the law.
- (D) No, because service incentive leave is a Labor Code benefit that does not apply in the construction industry.
- (E) Yes, because Labor Code benefits are separate from those voluntarily granted by the company.

**SUGGESTED ANSWER:**

**(C) Basis: Article 95 of the Labor Code. The employee is already given vacation leave of 10 days. This is deemed compliance with the requirement of service incentive leave under the law.**

**2. Maternity Leave**

**3. Paternity Leave**

**Q: Because of the stress in caring for her four (4) growing children, Tammy suffered a miscarriage late in her pregnancy and had to undergo an operation. In the course of the operation, her obstetrician**

further discovered a suspicious-looking mass that required the subsequent removal of her uterus (hysterectomy). After surgery, her physician advised Tammy to be on full bed rest for six (6) weeks. Meanwhile, the biopsy of the sample tissue taken from the mass in Tammy's uterus showed a beginning malignancy that required an immediate series of chemotherapy once a week for four (4) weeks.

(A) xxxxxxxxxxxx

**(B) What can Roger-Tammy's 2nd husband and the father of her two (2) younger children -claim as benefits under the circumstances? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

Under RA 8187 or the Paternity Leave Act of 1996, Roger can claim paternity leave of seven (7) days with full pay if he is lawfully married to Tammy and cohabiting with her at the time of the miscarriage.

**Q: H files for a seven-day paternity leave for the purpose of lending support for his wife, W, who suffered a miscarriage through intentional abortion. W also filed for maternity leave for five weeks. H and W are legally married but the latter is with her parents, which is a few blocks away from H's house. Which of the following statements is the most accurate? (2012 Bar Question)**

- a. Paternity leave shall be denied because it does not cover aborted babies;
- b. Paternity leave shall be denied because W is with her parents;
- c. Maternity leave shall be denied because it does not cover aborted babies;
- d. Maternity leave shall be denied because grant of paternity leave bars claim for maternity leave.

**SUGGESTED ANSWER:**

- b) Paternity leave shall be denied because W is with her parents [RA 8187, Section 2]

- 4. Parental Leave (R.A. No. 8972)
- 5. Leave for Victims of Violence against Women and Children (R.A. No. 9262)
- 6. Special leave benefit for women

**Q: Because of the stress in caring for her four (4) growing children, Tammy suffered a miscarriage late in her pregnancy and had to undergo an operation. In the course of the operation, her obstetrician further discovered a suspicious-looking mass that required the subsequent removal of her uterus (hysterectomy). After surgery, her physician advised Tammy to be on full bed rest for six (6) weeks. Meanwhile, the biopsy of the sample tissue taken from the mass in Tammy's uterus showed a beginning malignancy that required an immediate series of chemotherapy once a week for four (4) weeks.**

**(A) What benefits can Tammy claim under existing social legislation? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

Assuming she is employed, Tammy is entitled to a special leave benefit of two months with full pay (Gynecological Leave) pursuant to RA 9710 or the Magna Carta of Women. She can also claim Sickness Leave Benefit in accordance with the SSS Law.

**F. Service Charge**

**Q: Ricardo operated a successful Makati seafood restaurant patronized by a large clientele base for its superb cuisine and impeccable service. Ricardo charged its clients a 10% service charge and distributed 85% of the collection equally among its rank-and-file employees, 10% among managerial employees, and 5% as reserve for losses and break ages. Because of the huge volume of sales, the employees received sizeable shares in the collected service charges.**

**As part of his business development efforts, Ricardo opened a branch in Cebu where he maintained the same practice in the collection and distribution of service charges. The Cebu branch, however, did not attract the forecasted clientele; hence, the Cebu employees received lesser service charge benefits than those enjoyed by the Makati-based employees. As a result, the Cebu branch employees demanded equalization of benefits and filed a case with the NLRC for discrimination when Ricardo refused their demand.**

**XVI (I) Will the case prosper? (2013 Bar Questions)**

(A) Yes, because the employees are not receiving equal treatment in the distribution of service charge benefits.

(B) Yes, because the law provides that the 85% employees' share in the service charge collection should be equally divided among all the employees, in this case, among the Cebu and Makati employees alike.

(C) No, because the employees in Makati are not similarly situated as the Cebu employees with respect to cost of living and conditions of work.

(D) No, because the service charge benefit attaches to the outlet where service charges are earned and should be distributed exclusively among the employees providing service in the outlet.

(E) No, because the market and the clientele the two branches are serving, are different.

**SUGGESTED ANSWER: (D)**

**Q: In order to improve the Cebu service and sales, Ricardo decided to assign some of its Makati-based employees to Cebu to train Cebu employees and expose them to the Makati standard of service. A chef and three waiters were assigned to Cebu for the task. While in Cebu, the assigned personnel shared in the Cebu service charge collection and thus received service charge benefits lesser than what they were receiving in Makati.**

**If you were the lawyer for the assigned personnel, what would you advise them to do? (2013 Bar Questions)**

(A) I would advise them to file a complaint for unlawful diminution of service charge benefits and for payment of differentials.

(B) I would advise them to file a complaint for illegal transfer because work in Cebu is highly prejudicial to them in terms of convenience and service charge benefits.

(C) I would advise them to file a complaint for discrimination in the grant of service charge benefits.

(D) I would advise them to accept their Cebu training assignment as an exercise of the company's management prerogative.

(E) I would advise them to demand the continuation of their Makati-based benefits and to file a complaint under (B) above if the demand is not heeded.

**SUGGESTED ANSWER: (A)**

**G. Thirteenth Month Pay**

**Q: Who among the following is not entitled to 13<sup>th</sup> month pay? (2012 Bar Question)**

- a. Stephanle, a probationary employee of a cooperative bank who rendered six (6) months of service during the calendar year before filing her resignation;
- b. Rafael, the Secretary of a Senator;
- c. Selina, a cook employed by and who lives with an old maid and who also tends the sari-sari store of the latter;
- d. Roger, a house gardener who is required to report to work only thrice a week.

**SUGGESTED ANSWER:**

- a) Rafael, the secretary of a Senator [Section 3 (b), Dec. 22, 1975, Rules and Regulations Implementing PD 851]

**H. Separation Pay**

**Q: Lizzy Lu is a sales associate for Luna Properties. The latter is looking to retrench Lizzy and five other sales associates due to financial losses. Aside from a basic monthly salary, Lizzy and her colleagues receive commissions on the sales they make as well as cost of living and representation allowances. In computing Lizzy's separation pay, Luna Properties should consider her: (2014 Bar Question)**

- (A) monthly salary only
- (B) monthly salary plus sales commissions
- (C) monthly salary plus sales commissions, plus cost of living allowance

- (D) monthly salary plus sales commissions, plus cost of living allowance and representation allowance

**SUGGESTED ANSWER:**

- (D) monthly salary plus sales commissions, plus cost of living allowance and representation allowance (Songco v. NLRC, G.R. No. L-50999, March 23, 1990).

**Q: Hector, a topnotch Human Resource Specialist who had worked in multinational firms both in the Philippines and overseas, was recruited by ABC Corp., because of his impressive credentials. In the course of Hector's employment, the company management frequently did not follow his recommendations and he felt offended by this constant rebuff.**

**Thus, he toyed with the idea of resigning and of asking for the same separation pay that ABC earlier granted to two (2) department heads when they left the company.**

**To obtain a legal opinion regarding his options, Hector sent an email to ABC's retained counsel, requesting for advice on whether the grant by the company of separation pay to his resigned colleagues has already ripened into a company practice, and whether he can similarly avail of this benefit if he resigns from his job.**

**As the company's retained legal counsel, how will you respond to Hector? (2013 Bar Questions)**

- (A) I would advise him to write management directly and inquire about the benefits he can expect if he resigns.
- (B) I would advise him that the previous grant of separation pay to his colleagues cannot be considered a company practice because several other employees had resigned and were not given separation pay.
- (C) I would advise him to ask for separation pay, not on account of company practice, but on the basis of discrimination as he is similarly situated as the two resigned department heads who were paid their separation pay.
- (D) I would not give him any legal advice because he is not my client.
- (E) I would maintain that his question involves a policy matter beyond the competence of a legal counsel to give.

**SUGGESTED ANSWER: (D)**

**SUGGESTED ALTERNATIVE ANSWER: (A)**

**I. Retirement Pay**

**After thirty (30) years of service, Beta Company compulsorily retired Albert at age 65 pursuant to the company's Retirement Plan. Albert was duly paid his full retirement benefits of one (1) month pay for every year of service under the Plan. Thereafter, out of compassion, the company allowed Albert to**

continue working and paid him his old monthly salary rate, but without the allowances that he used to enjoy.

After five (5) years under this arrangement, the company finally severed all employment relations with Albert; he was declared fully retired in a fitting ceremony but the company did not give him any further retirement benefits. Albert thought this treatment unfair as he had rendered full service at his usual hours in the past five (5) years. Thus, he filed a complaint for the allowances that were not paid to him, and for retirement benefits for his additional five (5) working years, based either on the company's Retirement Plan or the Retirement Pay Law, whichever is applicable.

**(A) After Albert's retirement at age 65, should he be considered a regular employee entitled to all his previous salaries and benefits when the company allowed him to continue working? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

He would be considered a contractual employee, not a regular employee. His salaries and benefits will be in accordance with the stipulations of the contract he signed with the company.

The present case is similar to a case decided by the Supreme Court (Januaría Rivera v. United Laboratories, G.R. No. 155639 [2009]) where the Court held that the company, in employing a retired employee whose knowledge, experience and expertise the company recognized, as an employee or as a consultant, is not an illegality; on the contrary, it is a recognized practice in this country.

**(B) Is he entitled to additional retirement benefits for the additional service he rendered after age 65? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

No. He cannot be compulsorily retired twice in the same company.

**Q: At age 65 and after 20 years of sewing work at home on a piece rate basis for PQR Garments, a manufacturer-exporter to Hongkong, Aling Nena decided it was time to retire and to just take it easy.**

**Is she entitled to retirement pay from PQR? (2013 Bar Questions)**

(A) Yes, but only to one month pay.

(B) No, because she was not a regular employee.

(C) Yes, at the same rate as regular employees.

(D) No, because retirement pay is deemed included in her contracted per piece pay.

(E) No, because homeworkers are not entitled to retirement pay.

**SUGGESTED ANSWER: (C)**

**a. Eligibility**

**Q: How many years of service is the underground mine employees required to have rendered in order to be entitled to retirement benefits? (2012 Bar Question)**

- a. 5;
- b. 10;
- c. 15;
- d. 20.

**SUGGESTED ANSWER:**

- a) 5 [Section 2.1, 0005-04-1998, Rules Prescribing the Retirement Age for Underground Mine Employees, May 9, 1998]

**b. Amount**

**c. Retirement benefits of workers paid by results**

**d. Retirement benefits of part-time workers**

**e. Taxability**

**J. Women Workers**

**a. Provisions against discrimination**

**b. Stipulation against marriage**

**c. Prohibited acts**

**d. Anti-Sexual Harassment Act (R.A. No. 7877)**

**K. Employment of Minors (Labor Code and R.A. No. 7678, R.A. No. 9231)**

**Q: Iya, 15 years old, signed up to model a clothing brand. She worked from 9am to 4 pm on weekdays and 1pm to 6pm on Saturdays for two (2) weeks. She was issued a child working permit under RA 9231. Which of the following statements is the most accurate? (2012 Bar Question)**

- a. Working permit for Iya's employment is not required because the job is not hazardous;
- b. Her work period exceeds the required working hours for children aged 15 years old;
- c. TO require a 15-year old to work without obtaining the requisite working permit is a form of child labor;
- d. Iya, who was engaged in a work that is not child labor, is a working child.

**SUGGESTED ANSWER:**

- e) Iya, who was engaged in a work that is not child labor, is a working child [Sec. 12-A, 8 hours but not beyond 40 hours].

**Q: In what situation is an employer permitted to employ a minor? (2012 Bar Question)**

- a. 16-year old child actor as a cast member in soap opera working 8 hours a day, 6 days a week;
- b. A 17-year old in deep sea-fishing;
- c. A 17-year old construction worker;
- d. A 17-year old assistant cook in a family restaurant.

**SUGGESTED ANSWER:**

- d. A 17-year old assistant cook in a family restaurant [Sec. 12, RA 7610, as amended by Sec. 2, RA 9231, Dec. 19, 2003]

**L. Househelpers (Labor Code as amended by R.A. No. 7655, An Act Increasing the Minimum Wage of Househelpers; see also – Household Service under the Civil Code)**

**Q: Soledad, a widowed school teacher, takes under her wing one of her students, Kiko, 13 years old, who was abandoned by his parents and has to do odd jobs in order to study. She allows Kiko to live in her house, provides him with clean clothes, food, and a daily allowance of 200 pesos. In exchange, Kiko does routine housework, consisting of cleaning the house and doing errands for Soledad. One day, a representative of the DOLE and the DSWD came to Soledad's house and charged her with violating the law that prohibits work by minors. Soledad objects and offers as a defense that she was not requiring Kiko to work as the chores were not hazardous. Further, she did not give him chores regularly but only intermittently as the need may arise. Is Soledad's defense meritorious? (2015 Bar Question)**

**SUGGESTED ANSWER:**

Soledad's defense is meritorious. Sec. 4(d) of the Kasambahay Law (RA 10361) provides that the term "Domestic Worker" shall not include children who are under foster family arrangement, and are provided access to education and given an allowance incidental to education, i.e. "baon", transportation, school projects and school activities.

**Q: Which of the following statements is the most accurate? (2012 Bar Question)**

- a. Domestic helpers with monthly income of at least P3,000.00 are compulsory members of the SSS Law;
- b. House helpers with monthly income of at least P2,000.00 are compulsory members of the SSS Law;
- c. Domestic helpers, 55 years of age and who worked for at least five (5) years, are covered by the Retirement Pay Law under optional retirement, in the absence of a CBA;
- d. Domestic helpers in the personnel service of another are not entitled to 13<sup>th</sup> month pay.

**SUGGESTED ANSWER:**

- d) Domestic helpers in the personnel service of another are not entitled to 13<sup>th</sup> month pay.

**Q: What is the nature of employment of househelpers? (2012 Bar Question)**

- a. Seasonal;
- b. Fixed-term;
- c. Regular;
- d. Probationary.

**SUGGESTED ANSWER:**

- a) Fixed-Term [Not to exceed 2 years but “renewable for such periods as may be agreed upon by the parties” [Art. 242, Labor Code]

**Q: Linda was employed by Sectarian University (SU) to cook for the members of a religious order who teach and live inside the campus. While performing her assigned task, Linda accidentally burned herself. Because of the extent of her injuries, she went on medical leave. Meanwhile, SU engaged a replacement cook. Linda filed a complaint for illegal dismissal, but her employer SU contended that Linda was not a regular employee but a domestic househelp. Decide. (2014 Bar Question)**

**SUGGESTED ANSWER:**

The employer's argument that Linda was not a regular employee has no merit. The definition of domestic servant or househelper contemplates one who is employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. The Supreme Court already held that the mere fact that the househelper is working in relation to or in connection with its business warrants the conclusion that such househelper or domestic servant is and should be considered as a regular employee. (*Apex Mining Co., Inc. v. NLRC*, G.R. No. 94951, April 22, 1991). Here, Linda was hired not to minister to the personal comfort and enjoyment of her employer's family but to attend to other employees who teach and live inside the campus.

**SUGGESTED ALTERNATIVE ANSWER:**

The complaint for illegal dismissal should be dismissed. There was no showing that in hiring the replacement cook, SU severed its employer-employee relationship with Linda. In illegal dismissal cases, an employee must first establish, by substantial evidence, the fact of dismissal before shifting to the employer the burden of proving the validity of such dismissal. (*Grand Asian Shipping Lines, Inc., Eduardo*

P. Francisco and William How v. Wilfred Galvez, et al., G.R. No. 178184, January 29, 2014). Here, Linda's dismissal was not clearly established.

**M. Employment of Homeworkers**

**N. Apprentices and Learners**

**O. Persons with disability (R.A. No. 7277, as amended by R.A. No. 9442)**

**a. Definition**

**b. Rights of persons with disability**

**Q: Which of the following is not a privilege of a person with disability under the Magna Carta for disabled persons? (2012 Bar Question)**

- a. At least 20% discount on purchase of medicines in all drugstores;
- b. Free transportation in public railways;
- c. Educational assistance in public and private schools through scholarship grants;
- d. A and C.

**SUGGESTED ANSWERS:**

- a) At least 20% discount on purchase of medicines in all drugstores [Magna Carta of PWDs]
- b) Free transportation in public railways.
- c) Prohibition on discrimination against persons with disability
- d) Incentives for employers

**Q: The minimum wage prescribed by law for persons with disability is \_\_\_\_\_. (2013 Bar Questions)**

(A) 50% of the applicable minimum wage

(B) 75% of the applicable minimum wage

(C) 100% of the applicable minimum wage

(D) the wage that the parties agree upon, depending on the capability of the disabled.

(E) the wage that the parties agree upon, depending on the capability of the disabled, but not less than 50% of the applicable minimum wage

**SUGGESTED ANSWER: (B)**

Note: This is the general rule. As an exception, if the employee is qualified to work and the disability has nothing to do with the work, the employee is entitled to 100%.

**Q: What is the financial incentive, if any, granted by law to SPQ Garments whose cutters and sewers in its garments-for-export operations are 80% staffed by deaf and deaf-mute workers? (2013 Bar Questions)**

(A) Additional deduction from its gross income equivalent to 25% of amount paid as salaries to persons with disability.

(B) Additional deduction from its gross income equivalent to 50% of the direct costs of the construction of facilities for the use of persons with disability.

(C) Additional deduction from its net taxable income equivalent to 5% of its total payroll

(D) Exemption from real property tax for one (1) year of the property where facilities for persons with disability have been constructed.

(E) The annual deduction under (A), plus a one-time deduction under (B).

**SUGGESTED ANSWER: (A)**

**Basis: Magna Carta for Disabled Persons.**

#### **IV. Termination of Employment**

##### **A. Employer-employee relationship**

**Q: Employees-employer relationship exist under the following, except: (2012 Bar Question)**

- a. Jean, a guest relations officer in a nightclub and Joe the nightclub owner;
- b. Atty. Sin Cruz, who works part-time as the resident in-house lawyer of X Corporation;
- c. Paul, who works as registered agent on commission basis in an insurance company.
- d. Jack and Jill, who work in X Company, an unregistered Association.

**SUGGESTED ANSWER:**

- c) Paul, who works as registered agent on commission basis in an insurance company. [Great Pacific Life Assurance Corp. vs. Judico, G.R. No. 73887, Dec. 21, 1989].

**Q: Lina has been working as a steward with a Miami, U.S.A.-based Loyal Cruise Lines for the past 15 years. She was recruited by a local manning agency, Macapagal Shipping, and was made to sign a 10-month employment contract everytime she left for Miami. Macapagal Shipping paid for Lina's round-trip travel expenses from Manila to Miami. Because of a food poisoning incident which happened during her last cruise assignment, Lina was not re-hired. Lina claims she has been illegally terminated**

**and seeks separation pay. If you were the Labor Arbiter handling the case, how would you decide? (2014 Bar Question)**

**SUGGESTED ANSWER:**

I will dismiss Lina's complaint. Lina is a contractual employee and the length of her employment is determined by the contracts she entered into. Here, her employment was terminated at the the expiration of the contract (*Millares, et al. v. NLRC*, 385 SCRA 306, 318 [2002]).

**Q: Ador is a student working on his master's degree in horticulture. To make ends meet, he takes on jobs to come up with flower arrangements for friends. His neighbor, Nico, is about to get married to Lucia and needs a floral arranger. Ador offers his services and Nico agrees. They shake hands on it, agreeing that Nico will pay Ador :P20,000.00 for his services but that Ador will take care of everything. As Ador sets about to decorate the venue, Nico changes all of Ador's plans and ends up designing the arrangements himself with Ador simply executing Nico's instructions.**

- (a) Is there an employer-employee relationship between Nico and Ador? (2015 Bar Question)
- (b) Will Nico need to register Ador with the Social Security System (SSS)? (2015 Bar Question)

**SUGGESTED ANSWER:**

(a) Yes. With Ador's simply executing Nico's instruction, Nico, who now has control over Ador's work, has become the employer of Ador. In *Royale Homes Marketing Corp. v. Fidel Alcantara* (G.R. No. 195190, July 28, 2014) the Supreme Court held that control is the most important determinant of employer-employee relationship.

(b) Yes, as under Section 9 of the Social Security Law (Art. 1161 as amended), coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers.

**ANOTHER SUGGESTED ANSWER:**

- (b) If Ador is a purely casual employee:

No. Casual employees are not subject to the compulsory coverage of the SSS by express provision of law. (Section 8(5) (3), RA 1161, as amended)

**SUGGESTED ALTERNATIVE ANSWER:**

(a) There is no employer-employee relationship. The case at hand pertains to a civil law arrangement. There is no business undertaken by Lucia; what the parties have is a contract for a specific service.

**1. Four-fold test**

**Q: The most important factor in determining the existence of an employer-employee relationship is the: (2012 Bar Question)**

- a. Power to control the method by which employees are hired and selected;
- b. Power to control the manner by which employees are transferred from one job site to another;
- c. Power to control the results achieved by giving guidelines to the employees;
- d. Power to control the results to be achieved and the employee's method of achieving the task.

**SUGGESTED ANSWER:**

- d. Power to control the results to be achieved and the employee's method of achieving the task [Abante vs. La Madrid Bearing Part Corp., 430 SCRA 368 (2004)]

**Q: Don Luis, a widower, lived alone in a house with a large garden. One day, he noticed that the plants in his garden needed trimming. He remembered that Lando, a 17-year old out-of-school youth, had contacted him in church the other day looking for work. He contacted Lando who immediately attended to Don Luis's garden and finished the job in three days. (2014 Bar Question)**

**(A) Is there an employer-employee relationship between Don Luis and Lando?**

**SUGGESTED ANSWER:**

Yes. All the elements of employer-employee relationship are present, viz:

- 1. the selection and engagement of the employee;
- 2. the power of dismissal;
- 3. the payment of wages; and
- 4. the power to control the employee's conduct.

There was also no showing that Lando has his own tools, or equipment so as to qualify him as an independent contractor.

**SUGGESTED ALTERNATIVE ANSWER:**

None. Lando is an independent contractor for Don Luis does not exercise control over Lando's means and method in tending to the former's garden.

**(B) Does Don Luis need to register Lando with the Social Security System (SSS)?**

**SUGGESTED ANSWER:**

Yes. Coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age .

**SUGGESTED ALTERNATIVE ANSWER:**

No. Lando is not an employee of Don Luis. What the parties have is a contract for a piece of work which, while allowed by Article 1713 of the Civil Code, does not make Lando an employee under the Labor Code and Social Security Act.

**2. Kinds of employment**

**Q: For ten (10) separate but consecutive yearly contracts, Cesar has been deployed as an able-bodied seaman by Meritt Shipping, through its local agent, Ace Maritime Services (agency), in accordance with the 2000 Philippine Overseas Employment Administration Standard Employment Contract (2000 POEA-SEC). Cesar's employment was also covered by a CBA between the union, AMOSI.JP, and Meritt Shipping. Both the 2000 POEA-SEC and the CBA commonly provide the same mode and procedures for claiming disability benefits. Cesar's last contract (for nine months) expired on July 15, 2013.**

**Cesar disembarked from the vessel M/V Seven Seas on July 16, 2013 as a seaman on "finished contract". He immediately reported to the agency and complained that he had been experiencing spells of dizziness, nausea, general weakness, and difficulty in breathing. The agency referred him to Dr. Sales, a cardio-pulmonary specialist, who examined and treated him; advised him to take a complete rest for a while; gave him medications; and declared him fit to resume work as a seaman.**

**After a month, Cesar went back to the agency to ask for re-deployment. The agency rejected his application. Cesar responded by demanding total disability benefits based on the ailments that he developed and suffered while on board Meritt Shipping vessels. The claim was based on the certification of his physician (internist Dr. Reyes) that he could no longer undertake sea duties because of the hypertension and diabetes that afflicted him while serving on Meritt Shipping vessels in the last 10 years. Rejected once again, Cesar filed a complaint for illegal dismissal and the payment of total permanent disability benefits against the agency and its principal.**

**Assume that you are the Labor Arbiter deciding the case. Identify the facts and issues you would consider material in resolving the illegal dismissal and disability complaint. Explain your choices and their materiality, and resolve the case. (2013 Bar Questions)**

**SUGGESTED ANSWER:**

1. Does the Labor Arbiter have jurisdiction to decide the case?
2. Did Cesar submit to a post-employment examination within 3 days upon his return? This is a

mandatory requirement; otherwise, Cesar will forfeit his right to claim benefits.

3. Is Dr. Sales the company-designated physician? The company-designated physician is the one who initially determines compensability.
4. Was Cesar assessed by Dr. Sales (if he is the company physician) within 120 days?
5. If the 120 days was exceeded and no declaration was made as to Cesar's disability, was this extended to 240 days because Cesar required further medical treatment?
6. Was the 240 days exceeded and still no final decision was reached as to Cesar's disability? If so, Cesar is deemed entitled to permanent total disability benefits.
7. If the company's physician and Cesar's physician cannot agree, was a third physician designated to determine the true nature and extent of the disability. The third physician's finding under the law is final and conclusive.
8. In the matter of the complaint for illegal dismissal: There is none because Cesar disembarked on a "finished contract".
9. Seafarers are contractual employees, for a fixed term, governed by the contract they sign; exception to Article 280 (now Article 286) of the Labor Code. Hence, the complaint for illegal dismissal will not prosper.

**a. Probationary**

**Q: Aleta Quiros was a faculty member at BM Institute, a private educational institution. She was hired on a year-to-year basis under the probationary employment period provision of the Manual of Regulations for Private Schools. The terms and conditions of her engagement were defined under her renewable yearly contract.**

**For reasons of its own, BM Institute no longer wanted to continue with Aleta's teaching services. Thus, after the contract for her second year expired, BM Institute advised Aleta that her contract would no longer be renewed. This advice prompted Aleta to file a complaint for illegal dismissal against BM Institute.**

**Will the complaint prosper? (2013 Bar Questions)**

(A) Yes, because no just or authorized cause existed for the termination of her probationary employment.

(B) Yes, because under the Labor Code, Aleta became a regular employee after 6 months and she may now only be dismissed for cause.

(C) No, because there was no dismissal to speak of. Her employment was automatically terminated upon the expiration of her year-to-year fixed term employment.

(D) No, because BM Institute may dismiss its faculty members at will in the exercise of its academic freedom.

(E) No, because Aleta was still on probationary employment.

**SUGGESTED ANSWER:**

**(A) (Yolanda Mercado v. AMA Computer College, G.R. No. 183572 [2010])**

**b. Regular**

**Q: The workers worked as cargadors at the warehouse and ricemills of farm A for several years. As cargadors, they loaded, unloaded and piled sacks of rice from the warehouse to the cargo trucks for delivery to different places. They were paid by Farm A on a piece-rate basis. Are the workers considered regular employee? (2012 Bar Question)**

- a) Yes, because Farm A paid wages directly to these workers without the intervention of any third party independent contractor;
- b) Yes, their work is directly related, necessary and vital to the operations of the farm;
- c) No, because Farm A did not have the power to control the workers with respect to the means and methods by which the work is to be accomplished;
- d) A and B

**SUGGESTED ANSWERS:**

- (a) Yes, because Farm A paid wages directly to these workers without the intervention of any third party independent contractor;
- (b) Yes, their work is directly related, necessary and vital to the operations of the farm.

**Q: Mr. Ortanez has been in the building construction business for several years. He asks you, as his new labor counsel, for the rules he must observe in considering regular employment in the construction industry.**

**You clarify that an employee, project or non-project, will acquire regular status if \_\_\_\_\_. (2013 Bar Questions)**

- (A) he has been continuously employed for more than one year
- (B) his contract of employment has been repeatedly renewed, from project to project, for several years
- (C) he performs work necessary and desirable to the business, without a fixed period and without reference to any specific project or undertaking
- (D) he has lived up to the company's regularization standards
- (E) All of the above.

**SUGGESTED ANSWER: (C)**

Note: *With all due respect to the examiner, the questions is ambiguous since it mentions, project or non-project. This is confusing since the criteria in the determination of regular status for project and non-project employees are different.*

**Q: Don Don is hired as a contractual employee of CALLHELP, a call center. His contract is expressly for a term of 4 months. Don Don is hired for 3 straight contracts of 4 months each but at 2-week intervals between contracts. After the third contract ended, Don Don is told that he will no longer be given another contract because of "poor performance." Don Don files a suit for "regularization" and for illegal dismissal, claiming that he is a regular employee of CALLHELP and that he was dismissed without cause. You are the Labor Arbiter. How would you decide the case? (2015 Bar Question)**

**SUGGESTED ANSWER:**

As Labor Arbiter, I will decide the case in favor of Don Don. Given the nature of Don Don's work, which consist of activities usually or desirable in the usual business of CALLHELP, Don Don should be considered a regular employee.

CALLHELP's termination of Don Don's service in the guise of "poor performance" is not valid. Whether for a probationary or regular employee, the requisites of dismissal on that ground do not appear to have been complied with by the employer here.

- c. **Project employment**
- d. **Seasonal**
- e. **Casual**
- f. **Fixed-term**

**Q: Lucy was one of approximately 500 call center agents at Hambergis, Inc. She was hired as a contractual employee four years ago. Her contracts would be for a duration of five (5) months at a time, usually after a one-month interval. Her re-hiring was contingent on her performance for the immediately preceding contract. Six (6) months after the expiration of her last contract, Lucy went to Hambergis personnel department to inquire why she was not yet being recalled to work. She was told that her performance during her last contract was "below average." Lucy seeks your legal advice about her chances of getting her job back. What will your advice be? (2014 Bar Question)**

**SUGGESTED ANSWER:**

Lucy cannot get her job back. She is a fixed-term employee and as such, her employment terminates upon the expiration of her contract. (*Rowell Industrial Corporation v. Court of Appeals*, 517 SCRA 691 [2007]).

**SUGGESTED ALTERNATIVE ANSWER:**

I will advise Lucy that she can get her job back if she files a case for illegal dismissal where, as a general rule, the twin reliefs of backwages and reinstatement are available. In the instant case, Lucy is a

regular employee because the employment contracts of five (5) months at a time, for four (4) years are obviously intended to circumvent an employee's security of tenure, and are therefore void. As a regular employee, Lucy may only be dismissed from service based on just and authorized causes enumerated under the Labor Code, and after observance of procedural due process prescribed under said law. (Magsalin, et al. v. NOWM, G.R. No. 148492, May 9, 2003).

### **3. Job contracting**

#### **a. Articles 106 to 109 of the Labor Code**

**Q: K is a legitimate contractor hired by G for six (6) months. On the third month, G remitted to K the salaries and wages of the employees. However, K absconded with the money leaving the employees unpaid. The disgruntled employees demanded from G the payment of their salaries. Is G liable? (2012 Bar Question)**

- a. No, because G has already remitted the employees' salaries to K, validly excusing G from liability.
- b. Yes, because he is jointly and solidarily liable for whatever monetary claims the employees may have against K;
- c. Yes, because of the principle of "a fair day's wage for a fair day's work";
- d. B and C.

#### **SUGGESTED ANSWER:**

- a) Yes, because he is jointly and severally liable for whatever monetary claims the employees may have against K; [Art. 106, Labor Code]

#### **SUGGESTED ALTERNATIVE ANSWER:**

- b) Yes, because he is jointly and severally liable for whatever monetary claims the employees may have against K.
- c) Yes, because of the principle of "a fair day's wage for a fair day's work".

**Q: Is the contractor a necessary party in a case where labor contracting is the main issue and labor-only contracting is found to exist? (2012 Bar Question)**

- a. Yes, the contractor is necessary in the full determination of the case as he is the purported employer of the worker;
- b. Yes, no full remedy can be granted and executed without impleading the purported contractor;
- c. No, the contractor becomes a mere agent of the employer-principal in labor contracting;
- d. No, the contractor has no standing in a labor contracting case.

**SUGGESTED ANSWERS:**

- a. Yes, the contractor is necessary in the full determination of the case as he is the purported employer of the worker.
- b. Yes, no full remedy can be granted and executed without impleading the purported contractor.

**Q: Which is a characteristic of a labor-only contractor? (2012 Bar Question)**

- a. Carries an independent business different from the employer's;
- b. The principal's liability extends to all rights, duties and liabilities under labor standards laws including the right to self-organization;
- c. No employer-employee relationship;
- d. Has sufficient substantial capital or investment in machinery, tools or equipment directly or intended to be related to the job contracted.

**SUGGESTED ANSWER:**

- e) No employer-employee relationship [Art. 106, Labor Code]

**Q: What is not an element of legitimate contracting? (2012 Bar Question)**

- a. The contract calls for the performance of a specific job, work or service;
- b. It is stipulated that the performance of a specific job, work or service must be within a definite predetermined period;
- c. The performance of a specific job, work or service has to be completed either within or outside the premises of the principal;
- d. The principal has control over the performance of a specific job, work or service.

**SUGGESTED ANSWER:**

- f) The principal has control over the performance of a specific job, work or service. [Art. 106, Labor Code]

**Q: With respect to legitimate independent contracting, an employer or one who engages the services of a bona fide independent contractor is – (2012 Bar Question)**

- a. An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor not only for unpaid wages but also for all the rightful claims of the employees under the Labor Code;
- b. Treated as direct employer of his contractor's employees in all instances; he becomes subsidiarily liable with the contractor in the event the latter fails to pay the employee's wages and for violation of labor standards laws;

- c. An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor only in the even the latter fails to pay the employees' wages and for violation of labor standard laws;
- d. Treated as direct employer of his contractor's employees in all instances; the principal becomes solidarily with the contractor not only for unpaid wages but also for all the rightful claims of the employees under th Labor Code.

**SUGGESTED ANSWER:**

- c) An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor only in the even the latter fails to pay the employees' wages and for violation of labor standard laws. [Arts. 107 and 109, Labor Code]

**Q: *Linis Manpower, Inc. (LMI)* had provided janitorial services to the Philippine Overseas Employment Administration (*POEA*) since March 2009. Its service contract was renewed every three months. However, in the bidding held in June 2012, LMI was disqualified and excluded. In 2013, six janitors of LMI formerly assigned at POEA filed a complaint for underpayment of wages. Both LMI and POEA were impleaded as respondents. Should POEA, a government agency subject to budgetary appropriations from Congress, be held liable solidarily with LMI for the payment of salary differentials due to the complainant? Cite the legal basis of your answer. (2014 Bar Question)**

**SUGGESTED ANSWER:**

Yes, but only to the extent of work performed under the contract. The second paragraph of Article 106 of the Labor Code provide

Art. 106. *Contractor or subcontractor.* – xxx

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him. Xxx

The fact that POEA is a government agency is of no moment. In *U.S.A v. Ruiz* (G.R. No. L-35645, May 22, 1985), the Supreme Court ruled that the State may be sued if the contract it entered into is pursuant to its proprietary functions.

**Q: *Luningning Foods* engaged the services of *Lamitan Manpower, Inc.*, a *bona fide* independent contractor, to provide “tasters” that will check on food quality. Subsequently, these “tasters” joined the union of rank-and-file employees of *Luningning* and demanded that they be made regular employees of the latter as they are performing functions necessary and desirable to operate the company's business. *Luningning* rejected the demand for regularization. On behalf of the “tasters”, the union then filed a notice of strike with the Department of Labor and Employment (*DOLE*). In response, *Luningning* sought a restraining order from the Regional Trial Court (*RTC*) arguing that the**

**DOLE does not have jurisdiction over the case since it does not have an employer-employee relationship with the employees of an independent contractor. If you were the RTC judge, would you issue a restraining order against the union? (2014 Bar Question)**

**SUGGESTED ANSWER:**

Yes. There is no labor dispute in the instant case. Since Lamitan Manpower is a *bona fide* independent contractor, there is no employee-employer relationship between the Luningning and the tasters.

**SUGGESTED ALTERNATIVE ANSWER:**

No. Article 254 of the Labor Code is clear that no temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as provided in Article 218 and 264 of the same Code.

**Q: Constant Builders, an independent contractor, was charged with illegal dismissal and non-payment of wages and benefits of ten dismissed employees. The complainants impleaded as co-respondent Able Company, Constant Builder's principal in the construction of Able's office building. The complaint demanded that Constant and Able be held solidarily liable for the payment of their backwages, separation pay, and all their unpaid wages and benefits.**

**If the Labor Arbiter rules in favor of the complainants, choose the statement that best describes the extent of the liabilities of Constant and Able. (2013 Bar Questions)**

(A) Constant and Able should be held solidarily liable for the unpaid wages and benefits, as well as backwages and separation pay, based on Article 109 of the Labor Code which provides that "every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code."

(B) Constant and Able should be held solidarily liable for the unpaid wages and benefits, and should order Constant, as the workers' direct employer, to be solely liable for the backwages and separation pay.

(C) Constant and Able should be held solidarily liable for the unpaid wages and benefits and the backwages since these pertain to labor standard benefits for which the employer and contractor are liable under the law, while Constant alone – as the actual employer - should be ordered to pay the separation pay.

(D) Constant and Able should be held solidarily liable for the unpaid wages and benefits, and Constant should be held liable for their backwages and separation pay unless Able is shown to have participated with malice or bad faith in the workers' dismissal, in which case both should be held solidarily liable.

(E) The above statements are all inaccurate.

**SUGGESTED ANSWER: (A)**

**Q: Star Crafts is a lantern maker based in Pampanga. It supplies Christmas lanterns to stores in Luzon, Metro Manila, and parts of Visayas, with the months of August to November being the busiest months. Its factory employs a workforce of 2,000 workers who make different lanterns daily for the whole year. Because of increased demand, Star Crafts entered into a contractual arrangement with People Plus, a service contractor, to supply the former with 100 workers for only 4 months, August to November, at a rate different from what they pay their regular employees. The contract with People Plus stipulates that all equipment and raw materials will be supplied by Star Crafts with the express condition that the workers cannot take any of the designs home and must complete their tasks within the premises of Star Crafts.**

**Is there an employer-employee relationship between Star Crafts and the 100 workers from People Plus? Explain. (2015 Bar Question)**

**SUGGESTED ANSWER:**

Yes. People Plus is a labor-only-contractor because it is not substantially capitalized. Neither does it carry on an independent business in which it uses its own investment in the form of tools, equipment, machineries or work premises. Hence, it is just an agent or recruiter of workers who perform work directly related to the trade of Star Crafts. Since both the essential element and the conforming element of labor-only contracting are present, Star Crafts becomes the employer of the supplied worker.

As principal, Star Crafts will always be an employer in relation to the workers supplied by its contractor. Its status as employer is either direct or indirect depending on whether the contractor is legitimate or not. Thus even if People Plus were a legitimate job contractor, still Star Crafts will be treated as a statutory employer for purposes of paying the workers' unpaid wages and benefits.

- b. Department Order No. 18-A**
- c. Department Circular No. 01-12**
- d. Effects of Labor-Only Contracting**
- e. Trilateral relationship in job contracting**

**B. Dismissal from employment**

**Q: Rico has a temper and, in his work as Division Manager of Matatag Insurance, frequently loses his temper with his staff. One day, he physically assaults his staff member by slapping him. The staff member sues him for physical injuries. Matatag Insurance decides to terminate Rico, after notice and hearing, on the ground of loss of trust and confidence. Rico claims that he is entitled to the**

**presumption of innocence because he has not yet been convicted. Comment on Matatag's action in relation to Rico's argument. (2015 Bar Question)**

**SUGGESTED ANSWER:**

Matatag Insurance does not have to await the result of the criminal case before exercising its prerogative to dismiss. Dismissal is not affected by a criminal case. Under the Three-fold Liability Rule, a single act may result in three liabilities, two of which are criminal and administrative. To establish them, the evidence of the crime must amount to proof beyond reasonable doubt; whereas, the evidence of the ground for dismissal is substantial evidence only. In this regard, the company has some basis already for withholding the trust it has reposed on its manager. Hence, Rico's conviction need not precede the employee's dismissal.

**Q: Under current jurisprudence, when the dismissal is for a just or authorized cause but due process is not observed, the dismissal is said to be: (2012 Bar Question)**

- a. Void for denial of due process; hence, the employee should be reinstated;
- b. Void for lack of due process, the employee should be paid full backwages;
- c. Valid, for the dismissal is with just/authorized cause, but the employer shall be liable for nominal damages;
- d. Valid, even if due process is not observed, hence reinstatement should not be ordered.

**SUGGESTED ANSWER:**

- a. Valid, for the dismissal is with just/authorized cause, but the employer shall be liable for nominal damages. [Agabon vs. NLRC, G.R. No. 158693, November 17, 2004]

**Q: Lionel, an American citizen whose parents migrated to the U.S. from the Philippines, was hired by JP Morgan in New York as a call center specialist. Hearing about the phenomenal growth of the call center industry in his parents' native land, Lionel sought and was granted a transfer as a call center manager for JP Morgan's operations in Taguig City. Lionel's employment contract did not specify a period for his stay in the Philippines. After three years of working in the Philippines, Lionel was advised that he was being recalled to New York and being promoted to the position of director of international call center operations. However, because of certain "family reasons," Lionel advised the company of his preference to stay in the Philippines. He was dismissed by the company. Lionel now seeks your legal advice on: (2014 Bar Question)**

**SUGGESTED ANSWER:**

- (A) whether he has a cause of action**

Lionel has a cause of action; he was illegally dismissed. Dismissal due to an employee's refusal of a promotion is not within the sphere of management prerogative. There is no law that compels an employee to accept promotion (*Dosch v. NLRC, et al.*, G.R. No. L-51182, July 5, 1983).

**(B) whether he can file a case in the Philippines**

Yes. Since this is a case of illegal dismissal, the Labor Arbiters have jurisdiction over the same (Art. 217 (a) (2), Labor Code). Under the 2011 NLRC Rules of Procedure, all cases which Labor Arbiters have authority to hear and decide, may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant or petitioner (Rule IV, Section 1).

**(C) what are his chances of winning**

He has a big chance of winning. An employee cannot be promoted without his consent, even if the same is merely a result of a transfer, and an employee's refusal to accept promotion cannot be considered as insubordination or willful disobedience of a lawful order of the employer. In this case, JP Morgan cannot dismiss Lionel due to the latter's refusal to accept the promotion (*Norkis Trading Co., Inc. v. Gnilo*, 544 SCRA 279 [2008]).

**SUGGESTED ALTERNATIVE ANSWER:**

His chances of winning is NIL because the objection to the transfer was grounded solely on personal "family reasons" that will be caused to him because of the transfer. (*OSS Security v. NLRC*, 325 SCRA 157 [2000]); *Phil. Industrial Security Agency Corp. v. Dapiton*, 320 SCRA 124 [1999]).

**1. Just Causes**

**Q: For misconduct or improper behavior to be a just cause for dismissal, the following guidelines must be met, except: (2012 Bar Question)**

- a) It must be serious;
- b) It must relate to the performance of the employee's duties;
- c) It should not be used as a subterfuge for causes which are improper, illegal or unjustified;
- d) It must show that the employee has become unfit to continue working for the employer.

**SUGGESTED ANSWER:**

- (c) It should not be used as a subterfuge for causes which are improper, illegal or unjustified [Solid Development Corp. Workers Association vs. Solid Development Corp., 530 SCRA 132 (2007)].

**Q: The Supreme Court categorically declared that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for cause other than: (2012 Bar Question)**

- a. Serious Misconduct;
- b. Gross and habitual neglect of duties;
- c. Willfull disobedience to lawful orders;
- d. Fraud or willful breach of trust.

**SUGGESTED ANSWER:**

- b) Serious Misconduct [Tirazona vs. PET, Inc., 576 SCRA 625]

But Apacible (G.R. No. 178903, May 30, 2011) disallows separation pay for employees who are dismissed under any of 4 grounds in Art. 282, thus NO CORRECT ANSWER.

**Q: Luisa was hired as a secretary by the Asian Development Bank (ADB) in Manila. Luisa's first boss was a Japanese national whom she got along with. But after two years, the latter was replaced by an arrogant Indian national who did not believe her work output was in accordance with international standards. One day, Luisa submitted a draft report filled with typographical errors to her boss. The latter scolded her, but Luisa verbally fought back. The Indian boss decided to terminate her services right then and there. Luisa filed a case for illegal dismissal with the Labor Arbiter claiming arbitrariness and denial of due process. If you were the Labor Arbiter, how would you decide the case? (2014 Bar Question)**

**SUGGESTED ANSWER:**

I will dismiss the case. ADB enjoys immunity from suit (*DFA vs. NLRC*, G.R. No. 113191, September 18, 1996).

**SUGGESTED ALTERNATIVE ANSWER:**

I will decide in favor of Luisa, by granting nominal damages. To clarify, however, Luisa's dismissal is not illegal, for it has been held that failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency, as in this case, may constitute just cause for dismissal. (*Illuminada, Buiser, et. al. v. Leogardo, Jr.*, 131 SCRA 151 (1969)) Nonetheless, the employer's failure to comply with the procedure prescribed by law in terminating the services of the employee warrants the payment of nominal damages of Php30,000.00, in accordance with the Supreme Court's ruling in the case of *Agabon v. NLRC* (G.R. No. 158693, November 17, 2004).

**Q: Lanz was a strict and unpopular Vice-President for Sales of Lobinsons Land. One day, Lanz shouted invectives against Lee, a poor performing sales associate, calling him, among others, a “brown monkey.” Hurt, Lee decided to file a criminal complaint for grave defamation against Lanz. The prosecutor found probable cause and filed an information in court. Lobinsons decided to terminate Lanz for committing a potential crime and other illegal acts prejudicial to business. Can Lanz be legally terminated by the company on these grounds? (2014 Bar Question)**

**SUGGESTED ANSWER:**

No. The grounds relied upon by Lobinsons are not just causes for dismissal under the Labor Code. Defamation is not a crime against person which is a ground to dismiss under Article 282, now Article 295, (d) of the Labor Code.

**Q: Jose and Erica, former sweethearts, both worked as sales representatives for Magna, a multinational firm engaged in the manufacture and sale of pharmaceutical products. Although the couple had already broken off their relationship, Jose continued to have special feelings for Erica. One afternoon, Jose chanced upon Erica riding in the car of Paolo, a co-employee and Erica's ardent suitor; the two were on their way back to the office from a sales call on Silver Drug, a major drug retailer. In a fit of extreme jealousy, Jose rammed Paolo's car, causing severe injuries to Paolo and Erica. Jose's flare up also caused heavy damage to the two company-owned cars they were driving.**

**(A) As lawyer for Magna, advise the company on whether just and valid grounds exist to dismiss Jose. (2013 Bar Questions)**

**SUGGESTED ANSWER:**

Jose can be dismissed for serious misconduct, violation of company rules and regulations, and commission of a crime against the employer's representatives.

Article 282 of the Labor Code provides that an employer may terminate an employment for any serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representatives in connection with his work.

Misconduct involves “the transgression of some established and definite rule of action, forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.” For misconduct to be serious and therefore a valid ground for dismissal, it must be:

1. of grave and aggravated character and not merely trivial or unimportant and
2. connected with the work of the employee.

**SUGGESTED ALTERNATIVE ANSWER:**

Article 282(e) of the Labor Code talks of other analogous causes or those which are susceptible of comparison to another in general or in specific detail as a cause for termination of employment.

In one case, the Court considered theft committed against a co-employee as a case analogous to serious misconduct, for which penalty of dismissal from service may be meted out to the erring employee. (Cosmos Bottling Corp. v. Fermin, G.R. No. 193676/194303 [2012]). Similarly, Jose's offense perpetrated against his co-employees, Erica and Paolo, can be considered as a case analogous to serious misconduct.

**(B) Assuming this time that Magna dismissed Jose from employment for cause and you are the lawyer of Jose, how would you argue the position that Jose's dismissal was illegal? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

The offense committed by Jose did not relate to the performance of his duties.

For misconduct or improper behavior to be a just cause for dismissal, it (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.

On the basis of the forgoing guidelines, it can be concluded that Paolo was not guilty of serious misconduct: Paolo was not performing official work at the time of the incident. (Lagrosas v. Bristol Myers Squibb, G.R. No. 168637/170684 [2008])

Additionally, there was no compliance with the rudimentary requirements of due process.

**2. Authorized Causes**

**Q: Bugoy, an employee with only six (6) months of service, was dismissed due to redundancy. He is, under Art. 283 of the Labor Code, entitled to a separation pay of: (2012 Bar Question)**

- a. One (1) month pay;
- b. One (1) year pay. Art. 283 of the Labor Code being explicit that "a fraction of at least six (6) months shall be considered one (1) whole year;
- c. Six (6) months pay;
- d. One (1) year and six (6) months pay, as Art. 4 of the Labor Code mandated that "(a)ll doubts in the implementation and interpretation of this Code xxx shall be resolved in favor of labor".

**SUGGESTED ANSWER:**

- b. One (1) month pay [Art. 283, Labor Code]

**Q: Luisa Court is a popular chain of motels. It employs over 30 chambermaids who, among others, help clean and maintain the rooms. These chambermaids are part of the union rank-and-file**

employees which has an existing collective bargaining agreement (CBA) with the company. While the CBA was in force, Luisa Court decided to abolish the position of chambermaids and outsource the cleaning of the rooms to *Malinis Janitorial Services*, a *bona fide* independent contractor which has invested in substantial equipment and sufficient manpower. The chambermaids filed a case of illegal dismissal against Luisa Court. In response, the company argued that the decision to outsource resulted from the new management's directive to streamline operations and save on costs. If you were the Labor Arbiter assigned to the case, how would you decide? (2014 Bar Question)

**SUGGESTED ANSWER:**

I will decide in favor of Luisa Court, provided that all the requisites for a valid retrenchment under the Labor Code are satisfied. It is management prerogative to farm out any of its activities (BPI Employees Union-Davao City-FUBU (BPIEU-Davao City-FUBU) v. Bank of the Philippine Islands, et al., G.R. No. 174912, July 23, 2013).

**SUGGESTED ALTERNATIVE ANSWER:**

I will decide in favor of the chambermaids. Article 248 (c) of the Labor Code considers as unfair labor practice on the part of Luisa Court its "contradicting out the services or functions being performed by union members". Luisa Court's abolition and act of outsourcing the chambermaids' position are clearly acts of illegal dismissal.

**Q: After vainly struggling to stay financially afloat for a year, LMN Corp. finally gave up and closed down its operations after its major creditors filed a petition for LMN's insolvency and liquidation.**

**In this situation, LMN's employees are entitled to \_\_\_\_\_ as separation pay. (2013 Bar Questions)**

- (A) one-half month pay for every year of service
- (B) one month pay for every year of service
- (C) one-half month pay
- (D) one month pay
- (E) no separation pay at all

**SUGGESTED ANSWER:**

**(E) See: Article 283 (now Article 289) of the Labor Code. (*North Davao Mining Corp v. NLRC, G.R. No. 112546 [1996]*)**

**3. Due Process**

- a) Twin-notice requirement
- b) Hearing; meaning of opportunity to be heard

**Q: The Company lawyer sent a memo to the employee informing him of the specific charges against him and giving him an opportunity to explain his side. In a subsequent letter, the employees was informed that, on the basis of the results of the investigation conducted, his written explanation, the written explanation of other employees as well as the audit report, the management has decided to terminate his employment. The employee contended that his termination was illegal for lack of procedural due process. Is the employee's contention correct? (2012 Bar Question)**

- a) No, the employee's written explanation and written explanation of the other employees were sufficient basis for the employer to terminate his employment;
- b) Yes, because the employer did not abide by the two-notice rule;
- c) Yes, because he was not properly afforded the chance to explain his side in a conference;
- d) No, because he was not properly notice of the cause of dismissal afforded him ample opportunity to be heard and defend himself, and the written notice of the decision to terminate him which states the reasons therefore, complies with the two-notice rule.

**SUGGESTED ANSWER:**

- d) No, because he was not properly notice of the cause of dismissal afforded him ample opportunity to be heard and defend himself, and the written notice of the decision to terminate him which states the reasons therefore, complies with the two-notice rule.

**Q: Which of the following is not a procedural due process requirement in the termination of an employee for just cause? (2012 Bar Question)**

- a. A written notice to the employee specifying the grounds for his termination;
- b. A written notice to the DOLE at least thirty (30) days before the effectivity of termination;
- c. A written notice to the employee stating that upon consideration of the circumstances, grounds have been established to justify his termination;
- d. An opportunity for the employee to present his evidence.

**SUGGESTED ANSWER:**

- b. A written notice to the DOLE at least thirty (30) days before the effectivity of termination.
- c. **Reliefs for Illegal Dismissal**
- 1. **Reinstatement**

**Q: Despite a reinstatement order, an employer may choose not to reinstate an employee if: (2014 Bar Question)**

- (A) there is a strained employer-employee relationship
- (B) the position of the employee no longer exists
- (C) the employer's business has been closed
- (D) the employee does not wish to be reinstated.

**SUGGESTED ANSWER:**

- (D) the employee does not wish to be reinstated (*DUP Sound Phils. v. CA*, G.R. No. 168317, Nov. 21, 2011).

**a. Pending appeal (Art. 223, Labor Code)**

**Q: The decision of the Labor Arbiter in a labor dispute case is: (2012 Bar Question)**

- a. Immediately executory;
- b. Requires a writ of execution;
- c. Is immediately executory insofar as the reinstatement of the employee is concerned;
- d. Is stayed by the appeal of the employer and posting of appeal bond.

**SUGGESTED ANSWER:**

- c) Is immediately executory insofar as the reinstatement of the employee is concerned.  
[Art. 223, Labor Code]

**b. Separation pay in lieu of reinstatement**

**2. Backwages**

- a. Computation
- b. Limited backwages

**D. Preventive Suspension**

**Q: Karina Santos is a famous news anchor appearing nightly in the country's most watched newscast. She is surprised, after one newscast, to receive a notice of hearing before the station's Vice-President for Human Resources and calls the VP immediately to ask what was wrong. Karina is told over the phone that one of her crew filed a complaint against her for verbal abuse and that management is duty bound to investigate and give her a chance to air her side. Karina objects and denies that she had ever verbally assaulted her crew. The VP then informed her that pending the investigation she will be placed on a 30-day preventive suspension without pay and that she will not be allowed to appear in the newscast during this time.**

**Is the preventive suspension of Karina valid? Discuss the reasons for your answer. (2015 Bar Question)**

**SUGGESTED ANSWER:**

No. The preventive suspension of Karina is not valid.

The employer may place an employee under preventive suspension if his/her continued employment would pose a serious and imminent threat to the life or property of the employer or of his/her co-employees. These requirements are not present here.

#### **E. Constructive Dismissal**

**Q: An accidental fire gutted the JKL factory in Caloocan. JKL decided to suspend operations and requested its employees to stop reporting for work. After six (6) months, JKL resumed operations but hired a new set of employees. The old set of employees filed a case for illegal dismissal. If you were the Labor Arbiter, how would you decide the case? (2014 Bar Question)**

#### **SUGGESTED ANSWER:**

I will rule in favor of the employees. JKL factory merely suspended its operations as a result of the fire that gutted its factory. Article 286 of the Labor Code states that an employer may *bona fide* suspend the operation of its business for a period not exceeding six (6) months. In such a case, there would be no termination of the employment of the employees, but only a temporary displacement. Since, the suspension of work lasted more than six months, there is now constructive dismissal (*Sebuguero v. NLRC*, 245 SCRA 532 [1995]).

#### **V. Management Prerogative**

**Bobby, who was assigned as company branch accountant in Tarlac where his family also lives, was dismissed by Theta Company after anomalies in the company's accounts were discovered in the branch Bobby filed a complaint and was ordered reinstated with full backwages after the Labor Arbiter found that he had been denied due process because no investigation actually took place.**

**Theta Company appealed to the National Labor Relations Commission (NLRC) and at the same time wrote Bobby, advising him to report to the main company office in Makati where he would be reinstated pending appeal Bobby refused to comply with his new assignment because Makati is very far from Tarlac and he cannot bring his family to live with him due to the higher cost of living in Makati.**

**(A) Is Bobby's reinstatement pending appeal legally correct? (2013 Bar Questions)**

#### **SUGGESTED ANSWER:**

No. It is not really correct. The transfer of an employee ordinarily lies within the ambit of management prerogatives but like other rights, there are limits thereto. This managerial prerogative to transfer

personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Thus, the transfer of Bobby from Tarlac to Makati must be done in good faith, and it must not be unreasonable, inconvenient or prejudicial to the employee. For another, the reinstatement of Bobby ought to be to his former position, much akin to return to work order, i.e. to restore the status quo in the work place. (*Composite Enterprises v. Capamaroso*, 529 SCRA 470 [2007]).

**SUGGESTED ALTERNATIVE ANSWER:**

No. Under Article 223 of the Labor Code, the reinstatement order of the Labor Arbiter which is immediately executory even pending appeal, should pertain to restoration to status quo ante.

**(B) Advise Bobby on the best course of action to take under the circumstances. (2013 Bar Questions)**

**SUGGESTED ANSWER:**

The best course of action for Bobby to take under the circumstances is to allege constructive dismissal in the same case, and pray for separation pay in lieu of reinstatement.

**A. Discipline**

**B. Transfer of employees**

**Q: Din Din is a single mother with one child. She is employed as a sales executive at a prominent supermarket. She and her child live in Quezon City and her residence and workplace are a 15-minute drive apart. One day, Din Din is informed by her boss that she is being promoted to a managerial position but she is now being transferred to the Visayas. Din Din does not want to uproot her family and refuses the offer. Her boss is so humiliated by Din Din's refusal of the offer that she gives Din Din successive unsatisfactory evaluations that result in Din Din being removed from the supermarket.**

**Din Din approaches you, as counsel, for legal advice. What would you advise her? (2015 Bar Question)**

**SUGGESTED ANSWER:**

I will advise Din Din to sue her boss and the supermarket for illegal dismissal. Din Din cannot be compelled to accept the promotion. Her unsatisfactory evaluations as well as her boss' insistence that she should agree to the intended transfer to Visayas are badges of an abuse of management prerogative. In *Pfizer Inc. v. Velasco* (645 SCRA 135), the Supreme Court held that the managerial prerogative to transfer personnel must be exercised without abuse of discretion, bearing in mind the basic elements of justice and fair play. Hence, Din Din's dismissal is illegal.

**C. Productivity standard**

**D. Grant of bonus**

**Q: Lito was anticipating the bonus he would receive for 2013. Aside from the 13<sup>th</sup> month pay, the company has been awarding him and his other co-employees a two to three months bonus for the last 10 years. However, because of poor over-all sales performance for the year, the company unilaterally decided to pay only a one month bonus in 2013. Is Lito's employer legally allowed to reduce the bonus? (2014 Bar Question)**

**SUGGESTED ANSWER:**

Yes. A bonus is an act of generosity granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. The granting of a bonus is a management prerogative, something given in addition to what is ordinarily received by or strictly due the recipient. Thus, a bonus is not a demandable and enforceable obligation, except when it is made part of the wage, salary or compensation of the employee. It may, therefore, be withdrawn, unless they have been made a part of the wage or salary or compensation of the employees, a matter which is not in the facts of the case (*American Wire and Cable Daily Rated Employees Union v. American Wire and Cable Co., Inc. and the Court of Appeals*, G.R. No. 155059, April 29, 2005).

**SUGGESTED ALTERNATIVE ANSWER:**

No. Having been enjoyed for the last 10 years, the granting of the bonus has ripened into a company practice or policy which can no longer be peremptorily withdrawn. Art. 100 of the Labor Code prohibits the diminution or elimination by the employer of the employees' existing benefits.

**Q: Far East Bank (FEB) is one of the leading banks in the country. Its compensation and bonus packages are top of the industry. For the last 6 years, FEB had been providing the following bonuses across-the-board to all its employees:**

- (a) 13th month pay;**
- (b) 14th to 18th month pay;**
- (c) Christmas basket worth P6,000;**
- (d) Gift check worth P4,000; and**
- (e) Productivity-based incentive ranging from a 20o/o to 40% increase in gross monthly salary for all employees who would receive an evaluation of "Excellent" for 3 straight quarters in the same year.**

**Because of its poor performance over-all, FEB decided to cut back on the bonuses this year and limited itself to the following:**

- (a) 13th month pay;**
- (b) 14th month pay;**
- (c) Christmas basket worth P4,000; and**

**(d) Gift check worth P2,000**

**Katrina, an employee of FEB, who had gotten a rating of "Excellent" for the last 3 quarters was looking forward to the bonuses plus the productivity incentive bonus. After learning that FEB had modified the bonus scheme, she objected. Is Katrina's objection justified? Explain. (2015 Bar Question)**

**SUGGESTED ANSWER:**

Katrina's objection is justified.

Having enjoyed the across-the-board bonuses, Katrina has earned a vested right. Hence, none of them can be withheld or reduced. In the problem, the company has not proven its alleged losses to be substantial. Permitting reduction of pay at the slightest indication of losses is contrary to the policy of the State to afford full protection to labor and promote full employment. (*Linton Commercial Co. v. Hellera*, 535 SCRA 434)

As to the withheld productivity-based bonuses, Katrina is deemed to have earned them because of her excellent performance ratings for three quarters. On this basis, they cannot be withheld without violating the Principle of Non-Diminution of Benefits.

Moreover, it is evident from the facts of the case that what was withdrawn by FEB was a productivity bonus. Protected by RA 6791 which mandates that the monetary value of the productivity improvement be shared with the employees, the "productivity-based incentive" scheme of FEB cannot just be withdrawn without the consent of its affected employees.

**E. Change of working hours**

**Q: Inter-Garments Co. manufactures garments for export and requires its employees to render overtime work ranging from two to three hours a day to meet its clients' deadlines. Since 2009, it has been paying its employees on overtime an additional 35% of their hourly rate for work rendered in excess of their regular eight working hours.**

**Due to the slowdown of its export business in 2012, Inter-Garments had to reduce its overtime work; at the same time, it adjusted the overtime rates so that those who worked overtime were only paid an additional 25% instead of the previous 35%. To replace the workers' overtime rate loss, the company granted a one-time 5% across-the-board wage increase.**

**Vigilant Union, the rank-and-file bargaining agent, charged the company with Unfair Labor Practice on the ground that (1) no consultations had been made on who would render overtime work; and (2) the unilateral overtime pay rate reduction is a violation of Article 100 (entitled Prohibition Against Elimination or Diminution of Benefits) of the Labor Code.**

## **Is the union position meritorious? (2013 Bar Questions)**

### **SUGGESTED ANSWER:**

The allegation of ULP by the Union is not meritorious. The selection as to who would render overtime work is a management prerogative.

However, the charge of the Union on the diminution of benefits (violation of Article 100 of the Labor Code) appears to be meritorious. Since three (3) years have already lapsed, the overtime rate of 35% has ripened into practice and policy, and cannot anymore be removed. (Sevilla Trading v. Semana, 428 SCRA 239 [2004]) This is deliberate, consistent and practiced over a long period of time.

**F. Rules on Marriage between employees of competitor-employers**

**G. Post-employment ban**

## **VI. Social Welfare Legislation (P.D. 626)**

**A. SSS Law (R.A. No. 8282)**

**1. Coverage**

**Q: Which of the following is not considered an employer by the terms of the Social Security Act? (2012 Bar Question)**

- a. A self employed person;
- b. The government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the government;
- c. A natural persons, domestic or foreign, who carries on in undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment;
- d. A foreign corporation.

### **SUGGESTED ANSWER:**

- b) The government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the government. [Sec. 8 (c), RA 8282]

**2. Exclusions from coverage**

**3. Benefits**

**Q: Jennifer, a receptionist at Company X, is covered by the SSS. She was pregnant with her fourth child when she slipped in the bathroom of her home and had a miscarriage. Meanwhile, Company X**

**neglected to remit the required contributions to the SSS. Jennifer claims maternity leave benefits and sickness benefits. Which of these two may she claim? (2012 Bar Question)**

- a. None of them;
- b. Either one of them;
- c. Only maternity leave benefits;
- d. Only sickness benefits.

**SUGGESTED ANSWER:**

- b) Only maternity leave benefits [Sec. 14-A (c), RA 1161 (SSS Law) as amended by RA 8282]

**Q: Luisa is an unwed mother with 3 children from different fathers. In 2004, she became a member of the Social Security System (SSS). That same year, she suffered a miscarriage of a baby out of wedlock from the father of her third child. She wants to claim maternity benefits under the SSS Act. Is she entitled to claim? (2015 Bar Question)**

**SUGGESTED ANSWER:**

Yes.

Provided Luisa has reported to her employer her pregnancy and date of expected delivery and paid at least three monthly contributions during the 12-month period immediately preceding her miscarriage then she is entitled to maternity benefits up to four deliveries. As to the fact that she got pregnant outside wedlock, as in her past three pregnancies, this will not bar her claim because the SSS is non-discriminatory.

**4. Beneficiaries**

**B. GSIS Law (R.A. No. 8291)**

- 1. Coverage
- 2. Exclusions from coverage
- 3. Benefits
- 4. Beneficiaries

**C. Limited Portability Law (R.A. No. 7699)**

**Q: Luisito has been working with Lima Land for 20 years. Wanting to work in the public sector, Luisito applied with and was offered a job at Livecor. Before accepting the offer, he wanted to consult you whether the payments that he and Lima Land had made to the Social Security System (SSS) can be transferred or credited to the Government Service Insurance System (GSIS). What would you advise? (2014 Bar Question)**

**SUGGESTED ANSWER:**

Yes. Under RA 7699, otherwise known as the Portability Law, one may combine his years of

service in the private sector represented by his contributions to the Social Security System (SSS) with his government service and contributions to the GSIS. The contributions shall be totalized for purposes of old-age, disability, survivorship and other benefits in case the covered member does not qualify for such benefits in either or both Systems without totalization.

**D. Employee's compensation – coverage and when compensable**

**Q: Under employee's compensation, the so-called "Theory of Increased Risks" is irrelevant when: (2012 Bar Question)**

- a. There is a need to categorize a disability as permanent and total;
- b. It is not clear as to how an injury was sustained;
- c. The ailment or sickness is not classified as an occupational disease;
- d. There is a prima facie finding that the employee had willful intention to hurt himself.

**SUGGESTED ANSWER:**

- c) The ailment or sickness is not classified as an occupational disease [Jebsens Maritime, Inc., Dec. 14, 2011; Juala vs. ECC, G.R. No. 57623, March 29, 1984]

**Q: Which of the following injuries/death is not compensable? (2012 Bar Question)**

- a. Injuries sustained by a technician while at a field trip initiated by the Union and sponsored by the Company;
- b. Injuries received by a janitor at a Union election meeting;
- c. Death of a bank teller because of a bank robbery;
- d. Death of a professor who was hit by a van on his way home from work.

**SUGGESTED ANSWER:**

- c) Injuries received by a janitor at a Union election meeting.

**Q: Luis, a PNP officer, was off duty and resting at home when he heard a scuffle outside his house. He saw two of his neighbors fighting and he rushed out to pacify them. One of the neighbors shot Luis by mistake, which resulted in Luis's death. Marian, Luis's widow, filed a claim with the GSIS seeking death benefits. The GSIS denied the claim on the ground that the death of Luis was not service related as he was off duty when the incident happened. Is the GSIS correct? (2015 Bar Question)**

**SUGGESTED ANSWER:**

No.

The GSIS is not correct. Luis, a policeman, just like a soldier, is covered by the 24-Hour Duty Rule. He is deemed on round-the-clock duty unless on official leave, in which case his death outside performance of official peace-keeping mission will bar death claim. In this case, Luis was not on official leave and he died in the performance of a peace-keeping mission. Therefore, his death is compensable.

**Q: Victor was hired by a local manning agency as a seafarer cook on board a luxury vessel for an eight-month cruise. While on board, Victor complained of chronic coughing, intermittent fever, and joint pains. He was advised by the ship's doctor to take complete bed rest but was not given any other medication. His condition persisted but the degree varied from day to day. At the end of the cruise, Victor went home to Iloilo and there had himself examined. The examination revealed that he had tuberculosis.**

**(a) Victor sued for medical reimbursement, damages and attorney's fees, claiming that tuberculosis was a compensable illness. Do you agree with Victor? Why or why not? (2015 Bar Question)**

**(b) Due to his prolonged illness, Victor was unable to work for more than 120 days. Will this entitle him to claim total permanent disability benefits? (2015 Bar Question)**

**SUGGESTED ANSWER:**

(a) TB is listed under Sec. 32-A of the POEA-SEC as a work-related disease. It was also either contracted or aggravated during the effectivity of Victor's contract. Having shown its manifestations on board, Victor should have been medically repatriated for further examination and treatment in the

Philippines. This obligation was entirely omitted in bad faith by the company when it waited for his contract to expire on him before signing him off. On this basis, Victor is entitled to medical reimbursement, damages and attorney's fees.

(b) No. Victor's TB is work-related and it developed on board, thereby satisfying the twin requisites of compensability. However, despite his knowledge of his medical condition, he failed to report to his manning agent within three days from his arrival as required by Sec. 20-B(3) of the POEA-SEC. Since he already felt the manifestations of TB before his sign-off, he should have submitted to post-employment medical examination (*Jebsens Maritime Inc. v. Enrique Undag*, 662 SCRA 670). The effect of his omission is forfeiture by him of disability benefits (*Coastal Safeway Marine Services, Inc. v. Elmer T. Esguerra*, 655 SCRA 300). In effect, the 120-day rule has no application at all.

## **VII. Labor Relations Law**

### **A. Right to self-organization**

**Q: It is defined as any union or association of employees which exists in whole or in part for the purpose of collective bargaining with employers concerning terms and conditions of employment. (2012 Bar Question)**

- a. Bargaining representative;
- b. Labor organization;
- c. Legitimate labor organization;
- d. Federation.

#### **SUGGESTED ANSWER:**

- d) Labor Organization [ Art. 212(g), Labor Code]

**Q: Which of the following is a right and/or condition of membership in a labor organization? (2012 Bar Question)**

- a. No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;
- b. The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization;
- c. No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;
- d. All of the above.

#### **SUGGESTED ANSWER:**

- d. All of the above. [Art. 241, Labor Code]:
  - (a) No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed; [Art. 241 (a), Labor Code];
  - (b) The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization; [Art. 241 (b), Labor Code]
  - (c) No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any in any subversive activity. [Art. 241 (c) Labor Code]

**Q: At what particular point does a labor organization acquire a legal personality? (2012 Bar Question)**

- a. On the date the agreement to organize the union is signed by the majority of all its members;
- b. On the date the application for registration is duly filed with the Department of Labor;
- c. On the date appearing on the Certificate of Registration;
- d. On the date the Certificate of Registration is actually issued.

**SUGGESTED ANSWER:**

- d) On the date the Certificate of Registration is actually issued [Art. 234, Labor Code]

**Q: Which of the following groups does not enjoy the right to self-organization? (2014 Bar Question)**

- (A) those who work in a non-profit charitable institution
- (B) those who are paid on a piece-rate basis
- (C) those who work in a corporation with less than 10 employees
- (D) those who work as legal secretaries

**SUGGESTED ANSWER:**

- D. those who work as legal secretaries (*Tunay na Pagkakaisa v. Asia Brewery*, G.R. No. 162025, August 3, 2010]

**Q: Our Lady of Peace Catholic School Teachers and Employees Labor Union (OLPCS-TELU) is a legitimate labor organization composed of vice-principals, department heads, coordinators, teachers, and non-teaching personnel of Our Lady of Peace Catholic School (OLPCS).**

OLPCS-TELU subsequently filed a petition for certification election among the teaching and non-teaching personnel of OLPCS before the Bureau of Labor Relations (BLR) of the Department of Labor and Employment (DOLE). The Med-Arbiter subsequently granted the petition and ordered the conduct of a joint certification election for the teaching and non-teaching personnel of OLPCS.

**May OLPCS-TELU be considered a legitimate labor organization? (2014 Bar Question)**

**SUGGESTED ANSWER:**

Yes. The facts of the case concede that OLPCS-TELU "is a legitimate labor organization".

**1. Who may unionize for purposes of collective bargaining**

**Q: Philhealth is a government-owned and controlled corporation employing thousands of Filipinos. Because of the desire of the employees of Philhealth to obtain better terms and conditions of employment from the government, they formed the Philhealth Employees Association (PEA) and**

**demanded Philhealth to enter into negotiations with PEA regarding terms and conditions of employment which are not fixed by law. (2014 Bar Question)**

- (A) Are the employees of Philhealth allowed to self-organize and form PEA and thereafter demand Philhealth to enter into negotiations with PEA for better terms and conditions of employment?**

**SUGGESTED ANSWER:**

Yes. Employees of Philhealth are allowed to self-organize under Section 8, Article III and Section 3, Article XIII of the Constitution which recognize the rights of all workers to self-organization. They cannot demand, however, for better terms and conditions of employment for the same are fixed by law (Art. 244, Labor Code), besides, their salaries are standardized by Congress (Art. 276, Labor Code).

- (B) In case of unresolved grievances, can PEA resort to strikes, walkouts, and other temporary work stoppages to pressure the government to accede to their demands?**

**SUGGESTED ANSWER:**

No. Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. (*Blaquera vs. Alcala*, G.R. Nos. 109406, 110642, 111494, 112056, 119597, September 11, 1998).

**Q: What is the rule on the "equity of the incumbent"? (2015 Bar Question)**

**SUGGESTED ANSWER:**

The Equity of the Incumbent rule has it that all existing federations or national unions, possessing all qualifications of an LLO and none of the grounds for CR cancellation, shall continue to maintain their existing affiliates regardless of their location or industry to which they belong. In case of dissociation, affiliates are not required to observe the one union-one industry rule.

- a) Who cannot form, join or assist labor organizations**

**Q: George is an American who is working as a consultant for a local IT company. The company has a union and George wants to support the union. How far can George go in terms of his support for the union? (2015 Bar Question)**

**SUGGESTED ANSWER:**

George, as a general rule, is prohibited by Art. 270(a) of the Labor Code from giving any donation, grant or other form of assistance, in cash or in kind, directly or indirectly to the Union. He can give a support only upon prior permission from the Secretary of Labor relative to "Trade Union activities" as defined in said law.

George, in addition to his alien employment permit, must first prove that the country whereof he is a national recognizes the right of Filipinos working therein to organize. Under these conditions, he is allowed to support the existing union by joining it as to increase its membership.

## **2. Bargaining unit**

**Q: Samahang Tunay, a union of rank-and-file employees lost in a certification election at Solam Company and has become a minority union. The majority union now has a signed CBA with the company and the agreement contains a maintenance of membership clause.**

**What can Samahang Tunay still do within the company as a union considering that it still has members who continue to profess continued loyalty to it? (2013 Bar Questions)**

- (A) It can still represent these members in grievance committee meetings.
- (B) It can collect agency fees from its members within the bargaining unit.
- (C) It can still demand meetings with the company on company time.
- (D) As a legitimate labor organization, it can continue to represent its members on non-CBA-related matters.
- (E) None of the above.
- (F) All of the above.

### **SUGGESTED ANSWER:**

**(D) Basis: Article 248 (formerly Art. 242) of the Labor Code.**

- a) Test to determine the constituency of an appropriate bargaining unit
- b) Voluntary recognition
- (i) Requirements
- c) Certification election

**Q: The Pinagbuklod union filed a Petition for Certification Election, alleging that it was a legitimate labor organization of the rank-and-file employees of Delta Company. On Delta's motion, the Med Arbiter dismissed the Petition, based on the finding that Pinagbuklod was not a legitimate labor union and had no legal personality to file a Petition for Certification Election because its membership was a mixture of rank-and-file and supervisory employees.**

**Is the dismissal of the Petition for Certification Election by the Med-Arbiter proper? (2013 Bar Questions)**

(A) Yes, because Article 245 of the Labor Code prohibits supervisory employees from joining the union of he rank and file employees and provides that a union representing both rank and file and supervisory employees as members is not a legitimate labor organization.

(B) No, because the grounds for the dismissal of a petition for certification election do not include mixed membership in one umon.

(C) No, because a final order of cancellation of union registration is required before a petition for certification election may be dismissed on the ground of lack of legal personality of the umon.

(D) No, because Delta Company did not have the legal personality to participate in the certification election proceedings and to file a motion to dismiss based on the legitimacy status of the petitioning union.

**SUGGESTED ANSWER: (D)**

**Q: The following may file a Petition for Certification Election, except: (2012 Bar Question)**

- a. The employer;
- b. The legitimate labor organization;
- c. The Federation on behalf of the chapter;
- d. The Worker's Association.

**SUGGESTED ANSWER:**

- d) Workers' Association [Arts. 258 {employer}, 242, 256 (legitimate labor organization) and 257 (Federation which has issued a Charter Certificate) Labor Code]

**Q: The following are grounds to deny the Petition for Certification Election, except: (2012 Bar Question)**

- a. The petitioning union is illegitimate or improperly registered;
- b. Non-appearance for two consecutive schedules before the Med-Arbiter by petitioning union;
- c. The inclusion of members outside the bargaining unit;
- d. Filed within an existing election bar.

**SUGGESTED ANSWER:**

- c. The Inclusion of members outside the bargaining unit [Art. 245-A, Labor Code, as amended]

**Q: *Liwayway* Glass had 600 rank-and-file employees. Three rival unions A, B, and C – participated in the certification elections ordered by the Med-Arbitrator. 500 employees voted. The unions obtained the following votes: A-200; B-150; C-50; 90 employees voted “no union”; and 10 were segregated votes. Out of the segregated votes, four (4) were cast by probationary employees and six (6) were cast by dismissed employees whose respective cases are still on appeal. (2014 Bar Question)**

- (A) Should the votes of the probationary and dismissed employees be counted in the total votes cast for the purpose of determining the winning labor union?**

**SUGGESTED ANSWER:**

Yes. Rule IX, Section 5 of DOLE Department Order 40-03 provides that “[a]ll employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the issuance of the order granting the conduct of a certification election shall be eligible to vote. An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.”

- (B) Was there a valid election?**

**SUGGESTED ANSWER:**

Yes. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes (Article 256, now Article 266, of the Labor Code). In the instant case, 500 out of 600 rank-and-file employees voted.

- (C) Should Union A be declared the winner?**

**SUGGESTED ANSWER:**

No. The Labor Code provides that the Labor Union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit (Article 256, now Article 266, of the Labor Code). Here, the number of valid votes cast is 490; thus, the winning union should receive at least 246 votes. Union A only received 200 votes.

- (D) Suppose the election is declared invalid, which of the contending unions should represent the rank-and-file employees?**

**SUGGESTED ANSWER:**

None of them should represent the rank-and-file employees (Article 255, now Article 265, of the Labor Code).

**(E) Suppose that in the election, the unions obtained the following votes: A-250; B-150; C-50; 40 voted “no union”; and 10 were segregated votes. Should Union A be certified as the bargaining representative?**

**SUGGESTED ANSWER:**

Yes. The Labor Code provides that the Labor Union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit (Article 256, now Article 266, of the Labor Code). Here, the number of valid votes cast is 490. Thus, the winning union should receive at least 246 votes; Union A received 250 votes.

**Q: *Samahang* East Gate Enterprises (*SEGE*) is a labor organization composed of the rank-and-file employees of East Gate Enterprises (*EGE*), the leading manufacturer of all types of gloves and aprons.**

**EGE was later requested by SEGE to bargain collectively for better terms and conditions of employment of all the rank-and-file employees of EGE. Consequently, EGE filed a petition for certification election before the Bureau of Labor Relations (*BLR*).**

**During the proceedings, EGE insisted that it should participate in the certification process. EGE reasoned that since it was the one who filed the petition and considering that the employees concerned were its own rank-and-file employees, it should be allowed to take an active part in the certification process.**

**Is the contention of EGE proper? Explain. (2014 Bar Question)**

**SUGGESTED ANSWER:**

No. Under Article 258-A of the Labor Code, an employer is a mere bystander in certification elections, whether the petition for certification election is filed by said employer or a legitimate labor organization. The employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election.

- (i) In an unorganized establishment**
- (ii) In an organized establishment**
- d) Run-off election**
- (i) Requirements**
- e) Re-run election**
- f) Consent election**
- g) Affiliation and disaffiliation of the local union from the mother union**
- (i) Substitutionary doctrine**

- h) Union dues and special assessments**
- (i) Requirements for validity**
- i) Agency fees**
- (i) Requisites for assessment**

**B. Right to collective bargaining**

**Q: Which phrase most accurately completes the statement – Members of cooperatives: (2012 Bar Question)**

- a. Can invoke the right to collective bargaining because it is a fundamental right under the Constitution;
- b. Can invoke the right to collective bargaining because they are permitted by law;
- c. Cannot invoke the right to collective bargaining because each member is considered an owner;
- d. Cannot invoke the right to collective bargaining because they are expressly prohibited by law.

**SUGGESTED ANSWER:**

- b) Cannot invoke the right to collective bargaining because each member is considered an owner. [Benguet Electric Cooperative vs. Pura Ferrer-Calleja, G.R. No. 79025, Dec. 29, 1989]

**1. Duty to bargain collectively**

**a) When there is absence of a CBA**

**Q: Upon the expiration of the first three (3) years of their CBA, the union and the company commenced negotiations. The union demanded that the company continue to honor their 30-day union leave benefit under the CBA. The company refused on the ground that the CBA had already expired, and the union had already consumed their union leave under the CBA.**

**Who is correct? (2013 Bar Questions)**

(A) The company is correct because the CBA has expired; hence it is no longer bound to provide union leave.

(B) The company is correct because the union has already consumed the allotted union leave under the expired CBA.

(C) The union is correct because it is still the bargaining representative for the next two (2) years.

(D) The union is correct because union leaves are part of the economic terms that continue to govern until new terms are agreed upon.

(E) They are both wrong.

**SUGGESTED ANSWER: (B)**

**SUGGESTED ALTERNATIVE ANSWER:**

**(D) Basis: Article 259 (formerly Article 253) of the Labor Code.**

**b) When there is a CBA**

**2. Collective Bargaining Agreement (CBA)**

**a) Mandatory provisions of CBA**

**(i) Grievance procedure**

**(ii) Voluntary arbitration**

**Q: A. XYZ Company and Mr. AB, a terminated employee who also happens to be the President of XYZ Employees Union, agree in writing to submit Mr. AB's illegal dismissal case to voluntary arbitration. Is this agreement a valid one? (2015 Bar Question)**

**B. XYZ Company and XYZ Employees Union (XYZEU) reach a deadlock in their negotiation for a new collective bargaining agreement (CBA). XYZEU files a notice of strike; XYZ Company proposes to XYZEU that the deadlock be submitted instead to voluntary arbitration. If you are counsel for XYZEU, what advice would you give the union as to the: (1) propriety of the request of XYZ Company, and (2) the relative advantages/disadvantages between voluntary arbitration and compulsory arbitration? (2015 Bar Question)**

**SUGGESTED ANSWER:**

The agreement is valid because the preferred mode of settling labor disputes is through voluntary modes, like voluntary arbitration. The agreement is consistent with Sec. 3, Art. XIII of the Constitution. Moreover, Art. 262 of the Labor Code authorizes a voluntary arbitrator to hear and decide by agreement of the parties, all other labor disputes.

(1) As counsel, I will advise the union to accede to the request of the company. Besides being the constitutionally preferred mode of dispute settlement, voluntary arbitration is less adversarial and more expeditious.

(2) The advantages of voluntary arbitration are:

(a) the parties' dispute is heard and resolved by a person whom both parties have chosen as their judge; hence, likely to be impartial.

(b) if both parties are willing to submit their dispute, the decision is final and binding on them in general by reason of their submission agreement; and

(c) in the event of a challenge, the decision is elevated to the CA and then to the SC, i.e., less one layer of appeal because the NLRC is out of the way.

The disadvantages of voluntary arbitration are:

(a) in case of appeal by the employer to the CA, the monetary award will not be secured with an appeal bond which Rule 43 of the Rules of Court does not require; and

(b) in case of enforcement of judgment, the Voluntary Arbitrator has no sheriff to enforce it.

The advantages of compulsory arbitration are:

(a) subject to pre-litigation mediation, a case can be initiated through the filing of a verified complaint by a union member, unlike in voluntary arbitration where the Voluntary Arbitrator acquires jurisdiction primarily through a submission agreement. In a case where the company is unwilling, the EBR (and only the EBR) may serve a notice to arbitrate; hence, a union member may be left out in the process if the EBR does not serve that notice;

(b) a monetary award is secured with the employer's appeal bond; and;

(c) there is a system of restitution in compulsory arbitration.

The disadvantages of compulsory arbitration are:

(a) State interference with the affairs of labor and management is maximized, disregarding the inter-party nature of the relationship; and

(b) The system of appeals entails a longer process.

**Q: This process refers to the submission of the dispute to an impartial person for determination of the basis of the evidence and arguments of the parties. The awards id enforceable to the disputants. (2012 Bar Question)**

- a. Arbitration;
- b. Mediation;
- c. Conciliation;
- d. Reconciliation.

**SUGGESTED ANSWER:**

- c) Arbitration

**Q: The parties to a labor dispute can validly submit to voluntary arbitration \_\_\_\_\_. (2013 Bar Questions)**

- (A) any disputed issue they may agree to voluntarily arbitrate
- (B) only matters that do not fall within the exclusive jurisdiction of the Labor Arbiter
- (C) any disputed issue but only after conciliation at the National Conciliation and Mediation Board fails
- (D) any disputed issue provided that the Labor Arbiter has not assumed jurisdiction over the case on compulsory arbitration
- (E) only matters relating to the interpretation or implementation of a collective bargaining agreement

**SUGGESTED ANSWER:**

**A. Basis: Article 262 (now Article 268) of the Labor Code. The Voluntary Arbitrator, upon agreement of the parties, can assume jurisdiction over the dispute.**

- (iii) No strike-no lockout clause**
- (iv) Labor management council**
- b) Duration**
  - (i) For economic provisions**
  - (ii) For non-economic provisions**
- (iii) Freedom period P. Union Security**
  - a) Union security clauses; closed shop, union shop, maintenance of membership shop, etc.**

**Q: The Collective Bargaining Agreement (CBA) between Libra Films and its union, Libra Films Employees' Union (LFEU), contains the following standard clauses:**

- 1. Maintenance of membership;**
- 2. Check off for union dues and agency fees; and**
- 3. No strike, no lock-out.**

**While Libra Films and LFEU are in re-negotiations for an extension of the CBA, LFEU discovers that some of its members have resigned from the union, citing their constitutional right to organize (which includes the right NOT to organize). LFEU demands that Libra Films institute administrative proceedings to terminate those union members who resigned in violation of the CBA's maintenance of membership clause. Libra Films refuses, citing its obligation to remain a neutral party. As a result, LFEU declares a strike and after filing a notice of strike and taking a strike vote, goes on strike. The union claims that Libra Films grossly violated the terms of the CBA and engaged in unfair labor practice.**

- (a) xxxxxxxx**
- (b) Distinguish between a "closed shop" clause and a "maintenance of membership" clause. (2015 Bar Question)**
- (c) Distinguish between "union dues" and "agency fees." (2015 Bar Question)**

**SUGGESTED ANSWERS:**

(b) In a "closed shop" clause, all employees are required to be members of the union at the time of hiring. They too must remain members of good standing during the period of employment as a condition of continued employment. Maintenance of membership clause, on the other hand, requires all employees who are union members at the time of the execution of the CBA to maintain their membership of good standing, as a condition of continued employment.

(c) Union dues are union funds paid by union members, normally through check-off by the employer on the basis of an individual written authorization duly signed by the employees pursuant to Art. 241 (o) of the Labor Code. Agency fee, on the other hand, is a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent. Art. 248(e) of the Labor Code mandates that only non-union members who accept the benefits under the CBA may be assessed agency fees. Their check-off authorization is not required.

- b) Check-off; union dues, agency fees**

**Q: Pablo works as a driver at the National Tire Company (NTC). He is a member of the Malayang Samahan ng Manggagawa sa NTC, the exclusive rank-and-file collective bargaining representative in the company. The union has a CBA with NTC which contains a union security and a check-off clause. The union security clause contains a maintenance of membership provision that requires all members of the bargaining unit to maintain their membership in good standing with the union during the term of the CBA under pain of dismissal. The check-off clause on the other hand authorizes the company to deduct from union members' salaries defined amounts of union dues and other fees. Pablo refused to issue an authorization to the company for the check-off of his dues, maintaining that he will personally remit his dues to the union.**

**(A) Would the NTC management commit unfair labor practice if it desists from checking off Pablo's union dues for lack of individual authorization from Pablo? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

No. Under Article 9481, violation of the Collective Bargaining Agreement, to be an unfair labor practice, must be gross in character. It must be a flagrant and malicious refusal to comply with the economic provisions of the CBA.

**SUGGESTED ALTERNATIVE ANSWER:**

No. Check-offs in the truth impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by management at the instance of the union and for its benefit, in order to facilitate the collection of dues necessary for the latter's life and sustenance. But the obligation to pay union dues and agency fees obviously devolves not upon the employer, but the individual employee. It is a personal obligation not demandable from the employer upon default or refusal of the employee to consent to a check-off. The only obligation of the employer under a check-off is to effect the deductions and remit the collections to the union. (Holy Cross of Davao College v. Joaquin, G.R. No. 110007 [1996])

**(B) Can the union charge Pablo with disloyalty for refusing to allow the check off of his union dues and, on this basis, ask the company to dismiss him from employment? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

No. The "check-off clause" in the CBA will not suffice. The law prohibits interference with the disposition of one's salary. The law requires "individual written authorization" to deduct union dues from Pablo's salaries. For as long as he pays union dues, Pablo cannot be terminated from employment under the union security clause. As a matter of fact, filing a complaint against the union before the Department of Labor for forcible deduction from salaries does not constitute acts of disloyalty against the union. (Tolentino v. Angeles, 52 O.G. 4262)

**4. Unfair Labor Practice in collective bargaining**

**a) Bargaining in bad faith**

- b) Refusal to bargain
- c) Individual bargaining
- d) Blue sky bargaining
- e) Surface bargaining

**5. Unfair Labor Practice (ULP)**

- a) Nature of ULP
- b) ULP of employers

**Q: Which of the following is not true in unfair labor practices committed by an employer? (2012 Bar Question)**

- a. Unfair labor practices cannot be committed unless the union has been performed and registered;
- b. The commission of unfair labor practice requires an employer-employee relationship;
- c. The offense of unfair labor practice prescribes in one (1) year;
- d. The list of unfair labor practices is exclusive.

**SUGGESTED ANSWER:**

- c. Unfair labor practices cannot be committed unless the union has been performed and registered. [Art. 247 Labor Code]

**Q: The following are unfair labor practice of employers, except: (2012 Bar Question)**

- a. Interrogating its employees in connection with their membership in the union or their union activities which hampers their exercise of free choice;
- b. The grant of profit-sharing benefits to managers, supervisors and all rank-and-file employees not covered by the CBA;
- c. The cessation of a company's operations shortly after the organization of a labor union and the resumption of business barely a month after;
- d. Withdrawal by the employer of holiday pay benefits stipulated under a supplementary agreement with the union.

**SUGGESTED ANSWER:**

- b) The grant of profit-sharing benefits to managers, supervisors and all rank-and-file employees not covered by the CBA [Art. 248, Labor Code]

**Q: The Collective Bargaining Agreement (CBA) between Libra Films and its union, Libra Films Employees' Union (LFEU), contains the following standard clauses:**

- 1. Maintenance of membership;**
- 2. Check off for union dues and agency fees; and**

**3. No strike, no lock-out.**

While Libra Films and LFEU are in re-negotiations for an extension of the CBA, LFEU discovers that some of its members have resigned from the union, citing their constitutional right to organize (which includes the right NOT to organize). LFEU demands that Libra Films institute administrative proceedings to terminate those union members who resigned in violation of the CBA's maintenance of membership clause. Libra Films refuses, citing its obligation to remain a neutral party. As a result, LFEU declares a strike and after filing a notice of strike and taking a strike vote, goes on strike. The union claims that Libra Films grossly violated the terms of the CBA and engaged in unfair labor practice.

(a) Are LFEU's claims correct? Explain. (2015 Bar Question)

(b) xxxxxxxx

(c) xxxxxxxx

**SUGGESTED ANSWERS:**

(a) LFEU's claim that Libra Films committed ULP based on its violation of the CBA is not correct. For violation of a CBA to constitute ULP, the violation must be violation of its economic provisions. Moreover, said violation must be gross and flagrant. Based on the allegation of the union, what was violated was the maintenance of membership clause which was a political or representational provision; hence, no ULP was committed. (BPI Employees Union-Davao City v. BPI, 702 SCRA 42).

**c) ULP of labor organizations**

**Q: When there is no recognized collective bargaining agent, can a legitimate labor organization validly declare a strike against the employer? (2013 Bar Questions)**

(A) Yes, because the right to strike is guaranteed by the Constitution and cannot be denied to any group of employees.

(B) No, because only an exclusive bargaining agent may declare a strike against the employer.

(C) Yes, because the right to strike is a basic human right that the country's international agreements and the International Labor Organization recognize.

(D) Yes, but only in case of unfair labor practice.

(E) No, in the absence of a recognized bargaining agent, the workers' recourse is to file a case before the Department of Labor and Employment.

**SUGGESTED ANSWER:**

**(D) Basis: Article 263(c) (now Article 269 (c)) of the Labor Code.**

**C. Right to peaceful concerted activities**

- 1. Forms of concerted activities**
- 2. Who may declare a strike or lockout?**
- 3. Requisites for a valid strike**

**Q: Which of the following is not a valid reason for a strike? (2012 Bar Question)**

- a. There is a bargaining deadlock;
- b. There is a prevailing intra-union dispute;
- c. The company engaged in unfair labor practice;
- d. There is a flagrant violation of CBA's economic provisions.

**SUGGESTED ANSWER:**

- b) There is a prevailing intra-union dispute [Art. 263(b), Labor Code].

**Q: Union X staged a strike in front of Company B because of a CBA deadlock. During the strike, Company hired replacement workers. Upon resuming their employment, the strikers found that Company B obliged to reinstate the returning workers? (2012 Bar Question)**

- a. No, because the strike caused work stoppage;
- b. No, because it is a valid exercise of management prerogative;
- c. Yes, because workers who go on strike do not lose their employment status;
- d. Yes, because workers are entitled to such retention every time during a valid strike.

**SUGGESTED ANSWER:**

- d) Yes, because workers are entitled to such retention every time during a valid strike.

**SUGGESTED ALTERNATIVE ANSWER:**

- e) Yes, because workers who go on strike do not lose their employment status [Art. 264(a), last par., Labor Code].

**Q: In response to Company X's unfair labor practices, a union officer instructed its members to stop working and walk out of the company premises. After three (3) hours, they voluntarily returned to work. Was there a strike and was it a valid activity? (2012 Bar Question)**

- a. Yes, it was a strike; it was a valid activity;
- b. Yes, it was a strike; No, it was not a valid activity;
- c. No, it was not a strike; yes, it was a valid activity;
- d. No, it was not a strike; no, it was not a valid activity.

**SUGGESTED ANSWER:**

- c) Yes, it was a strike; no, it was not a valid activity [Airline Pilots Association of the Phils. vs. CIR, 76 SCRA 274; and First City Interlinks Transportation vs. Roldan Confessor, 272 SCRA 124]

**Q: As a result of a bargaining deadlock between Lazo Corporation and Lazo Employees Union, the latter staged a strike. During the strike, several employees committed illegal acts. Eventually, its members informed the company of their intention to return to work. (2014 Bar Question)**

- (A) Can Lazo Corporation refuse to admit the strikers?**

**SUGGESTED ANSWER:**

No. The Commission of illegal acts during a strike does not automatically bring about loss of employment status. Due process must be observed by the employer before any dismissal can be made. {*Stanford Marketing Corp. v. Julian*, 423 SCRA 633 (2004)}.

- (B) Assuming the company admits the strikers, can it later on dismiss those employees who committed illegal acts?**

**SUGGESTED ANSWER:**

No. The employer may be considered as having waived its right to dismiss employees who committed illegal acts during the strike (*Reformist Union of R.B. Liner v. NLRC*, 266 SCRA 713 (1997)).

- (C) If due to prolonged strike, Lazo Corporation hired replacements, can it refuse to admit the replaced strikers?**

**SUGGESTED ANSWER:**

No. Sec. 3, Art. XIII of the Constitution guarantees workers the right to strike in accordance with law, and prolonged strike is not prohibited by law. With Art. 212 (o) defining strike as “any temporary stoppage of work as a result of an industrial or labor dispute, it is the prerogative of strikers to cut short or prolong a strike. By striking, the employees have not abandoned their employment. Rather, they have only ceased temporarily from rendering work. The striking employees have not lost their right to go back to their positions, because the declaration of a strike is not a renunciation of their employment, much less their employee-employer relationship.

**SUGGESTED ALTERNATIVE ANSWER:**

No. As a general rule, replacements take their employment as conditional, *i.e.*, subject to the rights of strikers to return to work.

However, since this is an economic strike, the strikers are entitled to reinstatement only in case Lazo Corporation has not yet hired permanent replacements (*Consolidated Labor Association v. Marsman & Co.*, 11 SCRA 589 [1964]).

**Q: The procedural requirements of a valid strike include: (2014 Bar Question)**

- (A) a claim of either unfair labor practice or deadlock in collective bargaining
- (B) notice of strike filed at least 15 days before a ULP-grounded strike or at least 30 days prior to the deadlock in a bargaining-grounded strike
- (C) majority of the union membership must have voted to stage the strike with notice thereon furnished to the National Conciliation and Mediation Board (*NCMB*) at least 24 hours before the strike vote is taken
- (D) strike vote results must be furnished to the NCMB at least seven (7) days before the intended strike

**SUGGESTED ANSWER:**

- (B) notice of strike filed at least 15 days before a ULP-grounded strike or at least 30 days prior to the deadlock in a bargaining-grounded strike (Art. 263 (c), Labor Code).

**SUGGESTED ALTERNATIVE ANSWER:**

- (C) majority of the union membership must have voted to stage the strike with notice thereon furnished to the National Conciliation and Mediation Board (*NCMB*) at least 24 hours before the strike vote is taken (Art. 263 (f), Labor Code).
  
- (C) strike vote results must be furnished to the NCMB at least seven (7) days before the intended strike (Art. 263 (f), Labor Code).

**Q: The Alliance of Independent Labor Unions (AILU) is a legitimate labor federation which represents a majority of the appropriate bargaining unit at the Lumens Brewery (LB). While negotiations were ongoing for a renewal of the collective bargaining agreement (CBA), LB handed down a decision in a disciplinary case that was pending which resulted in the termination of the AILU's treasurer and two other members for cause. AILU protested the decision, claiming that LB acted in bad faith and asked that LB reconsider. LB refused to reconsider. AILU then walked out of the negotiation and declared a strike without a notice of strike or a vote. AILU members locked in the LB management panel by barricading the doors and possible exits (including windows and fire escapes). LB requested the DOLE to assume jurisdiction over the dispute and to certify it for compulsory arbitration.**

**The Secretary of Labor declined to assume jurisdiction, finding that the dispute was not one that involved national interest. LB then proceeds to terminate all of the members of the bargaining**

agent on the ground that it was unlawful to: (1) barricade the management panel in the building, and (2) participate in an illegal strike.

(a) Was AILU justified in declaring a strike without a strike vote and a notice of strike? Why or why not? (2015 Bar Question)

(b) Was the Secretary of Labor correct in declining to assume jurisdiction over the dispute? (2015 Bar Question)

(c) Was LB justified in terminating all those who were members of AILU on the two grounds cited? (2015 Bar Question)

#### **SUGGESTED ANSWERS:**

(a) No. Firstly, a Notice of Strike is always required by Art. 263(c) of the Labor Code before a strike may be staged – be it grounded on bargaining deadlock or unfair Labor Practice. Secondly, the Supreme Court already held in *Sukothai* that while AILU may not exhaust the 15-day cooling-off period in case of dismissal from employment of its officers who were duly elected in accordance with the Union constitution and by-laws and the dismissal constitutes union busting and a threat to AILU's existence, still, Art. 263 (f) requires that a strike vote be undertaken through a secret ballot and approved by a majority of the total union membership in the bargaining unit. Devoid of a notice of strike and a strike vote, AILU's strike is therefore illegal.

(b) The refusal of the Secretary to assume jurisdiction is valid. Par. (g) of Art. 263 (old) of the Labor Code leaves it to his sound discretion to determine if national interest is involved. Assumption power is full and complete. It is also plenary and discretionary (*Philtranco Service Enterprises, Inc. v. Philtranco Workers Union-AGLO*, G.R. No. 180962, February 26, 2014). Thus, if in his opinion national interest is not involved, then the company cannot insist that he assume jurisdiction.

(c) If dismissal is based on illegal strike:

The company has to file a complaint for illegal strike first. Once the strike is declared by final judgment to be illegal, it can dismiss the union officers. As to members, their dismissal must be based on their having committed illegalities on the occasion of their illegal strike. Since the company prematurely and indiscriminately dismissed the AILU members then their dismissal is illegal.

If dismissal is based on the unlawful acts of barricading to lock the AILU members:

Yes. Article 264 (a) of the Labor Code authorizes the employer to declare the loss of employment status of "ANY WORKER" or union officer who knowingly participates in the commission of illegal acts during a strike.

4. Requisites for a valid lockout
5. Requisites for lawful picketing
6. Assumption of jurisdiction by the DOLE Secretary or Certification of the labor dispute to the NLRC for compulsory arbitration
7. Nature of assumption order or certification order
8. Effect of defiance of assumption or certification orders

9. **Illegal strike**
  - a) **Liability of union officers**
  - b) **Liability of ordinary workers**
  - c) **Liability of employer**
  - d) **Waiver of illegality of strike**
10. **Injunctions**
  - a) **Requisites for labor injunctions**
  - b) **“Innocent bystander rule”**

## **VIII. Procedure and Jurisdiction**

### **A. Labor Arbiter**

#### **1. Jurisdiction**

#### **Q: Is a termination dispute a grievable issue? (2012 Bar Question)**

- a. Yes, if the dismissal arose out of the interpretation or implementation of the CBA;
- b. No, once there’s actual termination, the issue is cognizable by a Labor Arbiter;
- c. Yes, it is in the interest of the parties that the dispute be resolved on the establishment level;
- d. No, a voluntary arbitrator must take cognizance once termination is made effective.

#### **SUGGESTED ANSWER:**

- d) No, once there’s actual termination, the issue is cognizable by a Labor Arbiter [Art. 217 (a), Labor Code; San Miguel Corporation vs. NLRC, G.R. No. 108001, March 15, 1996]

#### **Q: The jurisdiction of the National Labor Relations Commission does not include: (2014 Bar Question)**

- (A) exclusive appellate jurisdiction over all cases decided by the Labor Arbiter
- (B) exclusive appellate jurisdiction over all cases decided by Regional Directors or hearing officers involving the recovery of wages and other monetary claims and benefits arising from employer-employee relations where the aggregate money claim of each does not exceed five thousand pesos (Php5,000)
- (C) original jurisdiction to act as a compulsory arbitration body over labor disputes certified to it by the Regional Directors
- (D) power to issue a labor injunction

#### **SUGGESTED ANSWER:**

(C) original jurisdiction to act as a compulsory arbitration body over labor disputes certified to it by the Regional Directors (Art. 129, Labor Code).

**Q: Lincoln was in the business of trading broadcast equipment used by television and radio networks. He employed Lionel as his agent. Subsequently, Lincoln set up Liberty Communications to formally engage in the same business. He requested Lionel to be one of the incorporators and assigned to him 100 Liberty shares. Lionel was also given the title Assistant Vice-President for Sales and Head of Technical Coordination. After several months, there were allegations that Lionel was engaged in “under the table dealings” and received “confidential commissions” from Liberty’s clients and suppliers. He was, therefore, charged with serious misconduct and willful breach of trust, and was given 48 hours to present his explanation on the charges. Lionel was unable to comply with the 48-hour deadline and was subsequently barred from entering company premises. Lionel then filed a complaint with the Labor Arbiter claiming constructive dismissal. Among others, the company sought the dismissal of the complaint alleging that the case involved an intra-corporate controversy which was within the jurisdiction of the Regional Trial Court (RTC).**

**If you were the Labor Arbiter assigned to the case, how would you rule on the company’s motion to dismiss? (2014 Bar Question)**

**SUGGESTED ANSWER:**

I will deny the motion to dismiss. "Corporate officers" in the context of Presidential Decree No. 902-A are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code enumerates three specific officers that in law are considered as corporate officers – the president, secretary and the treasurer. Lincoln is not one of them. There is likewise no showing that his position as Assistant Vice-President is a corporate officer in the company's by-laws. The Labor Arbiter therefore, has jurisdiction over the case (Art. 217 (a) (2), Labor Code).

**Q: Mario comes from a family of coffee bean growers. Deciding to incorporate his fledgling coffee venture, he invites his best friend, Carlo, to join him. Carlo is hesitant because he does not have money to invest but Mario suggests a scheme where Carlo can be the Chief Marketing Agent of the company, earning a salary and commissions. Carlo agrees and the venture is formed. After one year, the business is so successful that they were able to declare dividends. Mario is so happy with Carlo's work that he assigns 100 shares of stock to Carlo as part of the latter's bonus.**

**Much later on, it is discovered that Carlo had engaged in unethical conduct which caused embarrassment to the company. Mario is forced to terminate Carlo but he does so without giving Carlo the opportunity to explain.**

**Carlo filed a case against Mario and the company for illegal dismissal. Mario objected on the ground that the Labor Arbiter had no jurisdiction over the case as it would properly be considered as**

an intra-corporate controversy cognizable by the RTC. Further, Mario claimed that because Carlo's dismissal was a corporate act, he cannot be held personally liable.

(a) As the Labor Arbiter assigned to this case, how would you resolve the jurisdiction question. (2015 Bar Question)

(b) What is the rule on personal liability of corporate officers for a corporate act declared to be unlawful? (2015 Bar Question)

**SUGGESTED ANSWER:**

(a) The Labor Arbiter has jurisdiction over Carlo's illegal dismissal complaint as he was hired by Mario on a "salary and commission" basis. In *Grepalife v. Judico* (180 SCRA 445) it was held that a worker who is paid on a salary plus commission basis is an employee. While regular courts have jurisdiction over Mario's corporate act of severing ties with Carlo, the Labor Arbiter, pursuant to Art. 217 A-(2) of the Labor Code, has jurisdiction over Carlo's illegal dismissal complaint.

(b) Corporate officers are not, as a general rule, personally liable for the corporate acts they performed in behalf of the corporation they represent. They are, however, personally liable for their corporate acts if they acted with malice or bad faith (*Girly Ico v. Systems Technology Institute, Inc.*, G.R. No. 185100, July 9, 2014).

**SUGGESTED ALTERNATIVE ANSWER:**

(a) Carlo is party to a joint-venture. Hence, he is not related to Mario as an employee. As a business organization, the affairs of that joint-venture are not governed by Labor Law, except in relation to its employees. Any issue arising from that affair, therefore, must be brought to the RTC. Thus, the NLRC has no jurisdiction because the matter did not arise from employer-employee relationship and the issue between the disputants is not resolvable solely through the application of Labor Law.

a) versus Regional Director

**Q: A neighbor's gardener comes to you and asks for help because his employer withheld his salary for two (2) months amounting to P4,000.00. Where will you advise him to file his complaint? (2012 Bar Question)**

- a. Labor arbiter;
- b. DOLE Regional Director;
- c. Conciliator/Mediator;
- d. MTC Judge.

**SUGGESTED ANSWER:**

- c) DOLE Regional Director [Art. 129, Labor Code]

**Q: Who has jurisdiction over a money claim instituted by an overseas Filipino workers? (2012 Bar Question)**

- a. Labor Arbiter;
- b. National Labor Relations Commissions;
- c. Labor Arbiter concurrently with the regular courts;
- d. National Labor Relations Commission concurrently with the regular courts.

**SUGGESTED ANSWER:**

- b) Labor Arbiter [Sec. 10, Art. 8042]

**2. Reinstatement pending appeal**

**3. Requirements to perfect appeal to NLRC**

**Q: The appeal to the NLRC may be entertained only on any of the following grounds, except: (2012 Bar Question)**

- a. If there is a prima facie evidence of abuse of discretion on the part of the Labor Arbiter
- b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- c. If made purely on questions of fact and law;
- d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

**SUGGESTED ANSWER:**

- b) If made purely on question of fact and law. [Art. 223, Labor Code]

**Cris filed a complaint for illegal dismissal against Baker Company. The Labor Arbiter dismissed the complaint but awarded Cris financial assistance. Only the company appealed from the Labor Arbiter's ruling. It confined its appeal solely to the question of whether financial assistance could be awarded. The NLRC, instead of ruling solely on the appealed issue, fully reversed the Labor Arbiter's decision; it found Baker Company liable for illegal dismissal and ordered the payment of separation pay and full backwages.**

**Through a petition for certiorari under Rule 65 of the Rules of Court, Baker Company challenged the validity of the NLRC ruling. It argued that the NLRC acted with grave abuse of discretion when it ruled on the illegal dismissal issue, when the only issue brought on appeal was the legal propriety of the financial assistance award.**

**Cris countered that under Article 218(c) of the Labor Code, the NLRC has the authority to "correct, amend, or waive any error, defect or irregularity whether in substance or in form" in the exercise of its appellate jurisdiction.**

**Decide the case. (2013 Bar Questions)**

**SUGGESTED ANSWER:**

The review power of the NLRC in perfected appeals is limited only to those issues raised on appeal. Hence, it is grave abuse of discretion for the NLRC to resolve issues not raised on appeal. (United Placement International v. NLRC, 221 SCRA 445 [1993])

**SUGGESTED ALTERNATIVE ANSWER:**

In the exercise of its jurisdiction, the NLRC is empowered to determine even issues not raised on appeal in order to fully settle the issues surrounding the case. [See: Art. 218(c), now Art. 224 (c)].

**B. National Labor Relations Commission (NLRC)**

**Q: Non-lawyers can appear before the Labor Arbiter if: (2014 Bar Question)**

- (A) they represent themselves
- (B) they are properly authorized to represent their legitimate labor organization or member thereof
- (C) they are duly-accredited members of the legal aid office recognized by the DOJ or IBP
- (D) they appear in cases involving an amount of less than Php5,000

**SUGGESTED ANSWER:**

- A. They represent themselves (Art. 222, Labor Code; Rule III, Section 6, 2011 NLRC Rules of Procedure).

**1. Jurisdiction**

**Q: Philippine News Network (PNN) engages the services of Anya, a prominent news anchor from a rival station, National News Network (NNN). NNN objects to the transfer of Anya claiming that she is barred from working in a competing company for a period of three years from the expiration of her contract. Anya proceeds to sign with PNN which then asks her to anchor their nightly newscast. NNN sues Anya and PNN before the National Labor Relations Commission (NLRC), asking for a labor injunction. Anya and PNN object claiming that it is a matter cognizable by a regular court and not the NLRC.**

**(a) Is NNN's remedy correct? Why or why not? (2015 Bar Question)**

**(b) What are the grounds for a labor injunction to issue? (2015 Bar Question)**

**(c) Distinguish the jurisdiction of a Labor Arbiter from that of the NLRC. (2015 Bar Question)**

**SUGGESTED ANSWER:**

(a) The NLRC has no jurisdiction.

As to PNN, there is no employer-employee relationship between itself and NNN; hence, the NLRC cannot hear and resolve their dispute (Reasonable Causal Connection Rule). As to Anya, the injunctive power of the NLRC is ancillary in nature; hence, it requires a principal case, which is absent. Besides, the dispute between her and PNN is not resolvable solely through the application of the Labor Code, other labor statutes, CBA or employment contract. (Reference to Labor Law Rule)

(b) The NLRC may issue an injunctive writ to enjoin an illegal activity under Art. 264 (old) of the Labor Code; as an ancillary remedy to avoid irreparable injury to the rights of a party in an ordinary labor dispute pursuant to Rule X, 2011 NLRC Rules of Procedure, as amended; and to correct the Labor Arbiter's grave abuse of discretion pursuant to Rule XII of the 2011 NLRC Rules of Procedure, as amended.

Moreover, for labor injunction to issue, it must be proven under Art. 218 (e). Labor Code:

- i. That the prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained;
- ii. That substantial and irreparable injury to the complainant's property will follow;
- iii. That greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- iv. That complainant has no adequate remedy at law; and
- v. That public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection

(c) As to jurisdiction, the LA can hear and resolve cases under Art. 217 (old) of the Labor Code, money claims under Sec. 7 of R.A. 10022; and referred wage distortion disputes in unorganized establishments, as well as the enforcement of compromise agreements pursuant to the 2011 NLRC Rules of Procedure, as amended. On the other hand, the NLRC reviews decisions rendered by the LA; decisions or orders rendered by the RD under Art. 129 of the Labor Code; and conducts compulsory arbitration in certified cases.

As to the power to issue a labor injunction, the NLRC can issue an injunctive writ. On the other hand, the Labor Arbiter cannot issue an injunctive writ.

**2. Effect of NLRC reversal of Labor Arbiter's order of reinstatement**

**3. Remedies**

**4. Certified cases**

**C. Bureau of Labor Relations – Med-Arbiters**

**1. Jurisdiction (original and appellate)**

**Q: Which of the following is cognizable by the Bureau of Labor Relations Med-Arbiters? (2012 Bar Question)**

- a. Unfair labor practice for violation of the CBA filed by the Workers Union of Company X against Company X;
- b. Claim for back wages filed by overseas contract worker Xena against her Saudi Arabian employer;

- c. Contest for the position of MG Union President brought by Ka Joe, the losing candidate in the recent union elections;
- d. G contesting his removal as Chief Executive Officer of Company Z.

**SUGGESTED ANSWER:**

- c. Contest for the position of MG Union President brought by Ka Joe, the losing candidate in the recent union elections. [Art. 226, Labor Code]

**D. National Conciliation and Mediation Board**

- 1. Nature of proceedings
- 2. Conciliation vs. Mediation
- 3. Preventive mediation

**E. DOLE Regional Directors**

- 1. Jurisdiction

**Q: Kevin, an employee of House of Sports, filed a complaint with the DOLE requesting the investigation and inspection of the said establishment for labor law violations such as underpayment of wages, non payment of 13<sup>th</sup> month pay, non payment of rest day pay, overtime day, holiday pay, and service incentive leave pay. House of Sports alleges that DOLES has no jurisdiction over the employees' claims where the aggregate amount of the claims of each employee exceeds P5,000.00, whether or not accompanied with a claim for reinstatement. Is the argument of House of Sports tenable? (2012 Bar Question)**

- a. Yes, Article 129 of the Labor Code shall apply, and thus, the Labor Arbiter has jurisdiction;
- b. No, Article 128(b) of the Labor Code shall apply, and thus, the DOLE Regional Director has jurisdiction;
- c. Yes, if the claim exceeds P5,000.00, the DOLE Secretary loses jurisdiction;
- d. No, a voluntarily arbitrator has jurisdiction because the matter involved is a grievable issue.

**SUGGESTED ANSWER:**

- c) No, Article 128(b) of the Labor Code shall apply, and thus, the DOLE Regional Director has jurisdiction. [Art. 128 (b), Labor Code]

**F. DOLE Secretary**

- 1. Visitorial and enforcement powers

**Q: Kevin, an employee of House of Sports, filed a complaint with the DOLE requesting the investigation and inspection of the said establishment for labor law violations such as underpayment**

of wages, non payment of 13<sup>th</sup> month pay, non payment of rest day pay, overtime day, holiday pay, and service incentive leave pay. House of Sports alleges that DOLES has no jurisdiction over the employees' claims where the aggregate amount of the claims of each employee exceeds P5,000.00, whether or not accompanied with a claim for reinstatement. Is the argument of House of Sports tenable? (2012 Bar Question)

- a. Yes, Article 129 of the Labor Code shall apply, and thus, the Labor Arbiter has jurisdiction;
- b. No, Article 128(b) of the Labor Code shall apply, and thus, the DOLE Regional Director has jurisdiction;
- c. Yes, if the claim exceeds P5,000.00, the DOLE Secretary loses jurisdiction;
- d. No, a voluntarily arbitrator has jurisdiction because the matter involved is a grievable issue.

**SUGGESTED ANSWER:**

- d) No, Article 128(b) of the Labor Code shall apply, and thus, the DOLE Regional Director has jurisdiction. [Art. 128 (b), Labor Code]

**Q: The Regional Director or his representative may be divested of his enforcement and visitorial powers under the exception clause of Article 128 of the Labor Code and, resultantly, jurisdiction may be vested on the labor arbiter when three (3) elements are present. Which of the following is not one of the three (3) elements? (2012 Bar Question)**

- a. Employer contests the findings of the labor regulations officers and raises issues thereon;
- b. In order to resolve any issues raised, there is a need to examine evidentiary matters;
- c. The issues raised should have been verifiable during the inspection;
- d. The evidentiary matters are not verifiable in the normal course of inspection.

**SUGGESTED ANSWER:**

- d) The issues raised should have been verifiable during the inspection. [SSK Parts Corporation vs. Camas, 181 SCRA 675 (1990); Art. 128 (b), Labor Code]

2. **Power to suspend/effects of termination**
3. **Assumption of jurisdiction**

**Q: Philippine Electric Company is engaged in electric power generation and distribution. It is a unionized company with Kilusang Makatao as the union representing its rank-and-file employees. During the negotiations for their expired collective bargaining agreement (CBA), the parties duly served their proposals and counter-proposals on one another. The parties, however, failed to discuss the merits of their proposals and counter-proposals in any formal negotiation meeting because their talks already bogged down on the negotiation ground rules, i.e., on the question of how they would conduct their negotiations, particularly on whether to consider retirement as a negotiable issue.**

**Because of the continued impasse, the union went on strike. The Secretary of Labor and Employment**

immediately assumed jurisdiction over the dispute to avert widespread electric power interruption in the country. After extensive discussions and the filing of position papers (before the National Conciliation and Mediation Board and before the Secretary himself) on the validity of the union's strike and on the wage and other economic issues (including the retirement issue), the DOLE Secretary ruled on the validity of the strike and on the disputed CBA issues, and ordered the parties to execute a CBA based on his rulings.

**Did the Secretary of Labor exceed his jurisdiction when he proceeded to rule on the parties' CBA positions even though the parties did not fully negotiate on their own? (2013 Bar Questions)**

**SUGGESTED ANSWER:**

No. The power of the Secretary of Labor under Article 263(g) is plenary. He can rule on all issues, questions or controversies arising from the labor dispute, including the legality of the strike, even those over which the Labor Arbiter has exclusive jurisdiction. (Bagong Pagkakaisa ng mga Manggagawa sa Triumph International v. Secretary, G.R. Nos. 167401 and 167407, July 5, 2010)

**Q: *Liwanag* Corporation is engaged in the power generation business. A stalemate was reached during the collective bargaining negotiations between its management and the union. After following all the requisites provided by law, the union decided to stage a strike. The management sought the assistance of the Secretary of Labor and Employment, who assumed jurisdiction over the strike and issued a return-to-work order. The union defied the latter and continued the strike. Without providing any notice, *Liwanag* Corporation declared everyone who participated in the strike as having lost their employment. (2014 Bar Question)**

**(A) Was *Liwanag* Corporation's action valid?**

**SUGGESTED ANSWER:**

Yes. A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes an illegal act committed in the course of a strike. It rendered the strike illegal. The Union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act (*Union of Filipro Employees v. Nestle Philippines, Inc.*, 192 SCRA 369 [1993] ). Such kind of dismissal under Article 264 can immediately be resorted to as an exercise of management prerogative (*Biflex v. Filflex Industrial*, 511 SCRA 247 [2006]).

**SUGGESTED ALTERNATIVE ANSWER:**

No. *Liwanag* Corporation cannot outrightly declare the defiant strikers to have lost their employment status. "(A)s in other termination cases", the strikers are entitled to due process protection under Article 277 (b) of the Labor Code. Nothing in Article 264 of the Code authorizes immediate dismissal of those who commit illegal acts during a strike (*Stanford Marketing Corp. v. Julian*, 423 SCRA 633 (2004); *Suico v. NLRC*, 513 SCRA 325 [2007]).

- (B) If, before the DOLE Secretary assumed jurisdiction, the striking union members communicated in writing their desire to return to work, which offer *Liwanag* Corporation refused to accept, what remedy, if any, does the union have?

**SUGGESTED ANSWER:**

File a case for illegal dismissal [Art. 217 (a) (2), Labor Code].

4. Appellate jurisdiction
5. Voluntary arbitration powers
  
- G. Grievance Machinery and Voluntary Arbitration
  1. Subject matter of grievance
  2. Voluntary Arbitrator
    - a) Jurisdiction
    - b) Procedure
    - c) Remedies
  
- H. Court of Appeals
  1. Rule 65, Rules of Court

**Q: J refused to comply with the deployment assignment with K, a manning agency. K filed a complaint against him for breach of contract before the Philippine Overseas Employment Administration (POEA). The POEA penalized J with one (1) year suspension from overseas deployment. On appeal, the suspension was reduced to six (6) months by the Secretary of Labor. Is the remedy of appeal still available to J and where should he file his appeal? (2012 Bar Question)**

- a. Yes, he can file an appeal before the Court of Appeals via a Petition for Certiorari under Rule 65;
- b. Yes, he can file an appeal before the Supreme Court via a petition for certiorari under Rule 65;
- c. Yes, he can file an appeal before the Office of the President since this is administrative case;
- d. Yes, he can file an appeal before the National Labor Relations Commission because there is an employer-employee relationship.

**SUGGESTED ANSWER:**

- a. Yes, he can file an appeal before the Court of Appeals via a Petition for Certiorari under Rule 65 [NFL vs. Laguesma]
  
- I. Supreme Court
  1. Rule 45, Rules of Court

**J. Prescription of actions**

**Q: What is the prescriptive period of all criminal offenses penalized under the Labor Code and the Rules implementing the Labor Code?**

- a. 3 years;
- b. 4 years;
- c. 5 years;
- d. 10 years.

**SUGGESTED ANSWER:**

- c) 3 years [Art. 290, Labor Code]

**Q: Chito was illegally dismissed by DEF Corp. effective at the close of business hours of December 29, 2009.**

**IV (1). He can file a complaint for illegal dismissal without any legal bar within \_\_\_\_\_. (2013 Bar Questions)**

- (A) three (3) years
- (B) four (4) years
- (C) five (5) years
- (D) six (6) years
- (E) ten (10) years

**SUGGESTED ANSWER:**

**(B) Basis: Article 1146 of the Civil Code.**

**IV(2). If he has money claims against DEF Corp., he can make the claim without any legal bar within \_\_\_\_\_. (2013 Bar Questions)**

- (A) three (3) years
- (B) four (4) years
- (C) five (5) years
- (D) six (6) years
- (E) ten (10) years

**SUGGESTED ANSWER:**

**(A) Basis: Article 297 (formerly 291) of the Labor Code.**