

**LABOR LAW AND SOCIAL LEGISLATION
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I. Fundamental Principles and Policies

A. Constitutional provisions

1. Article II, Secs. 9, 10, 11, 13, 14, 18, 20

Q: What is the foundation of the agrarian reform program under the 1987 Constitution? Who are the direct beneficiaries of the program?

SUGGESTED ANSWER:

The 1987 Constitution enunciates in Article II as one of the state policies that "(t)he State shall promote comprehensive rural development and agrarian reform."

In Article XII of the Constitution, in dealing with the national economy and patrimony, it is also stated that "(t)he State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, x x x"

Then in Article XIII of the Constitution, in dealing with social justice and human rights, there is this provision, among others: 'The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm-workers, who are landless, to own directly or collectively the lands they till or in the case of other farmworkers, to receive a just share of the fruits thereof. To this end. the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining the retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary landsharing."

Taken together, the above provisions could be considered as the foundation of the agrarian reform program.

Under the Comprehensive Agrarian Reform Law, the lands covered by the Comprehensive Agrarian Refonn Program shall be distributed as much as possible to landless residents of the same barangay. or in the absence thereof, landless residents of the same municipality in the following order of priority:

- a) agricultural lessees and share tenants;
- b) regular farm workers;
- c) seasonal farm workers;
- d) other farm workers;
- e) actual tillers or occupants of public lands;
- f) collectives or cooperatives of the above beneficiaries; and
- g) others directly working on the land.

The children of landowners, who are qualified to be awardees of not more than three (3) hectares, shall be given preference in the distribution of the land of their parents. Actual tenant-tillers in the landholding shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under the CARP.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the CARP.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under the CARL, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

2. Article III, Secs. 1, 4, 7, 8, 10, 16, 18(2)

Q: Distinguish Just compensation under the Comprehensive Agrarian Reform Law of 1988 from just compensation under the Bill of Rights? How it is determined under the former?

SUGGESTED ANSWER:

In the Bill of Rights, it is provided that private property shall not be taken for public use without just compensation.

In the provisions of the 1987 Constitution on agrarian reform, it is provided that in the just distribution of all agricultural lands, the same shall be subject, among others, to the payment of just compensation.

The concepts of just compensation in the Bill of Rights and in agrarian reform are similar in the sense that in both situations, the person who is deprived of his property should be given the fair and full equivalent value of the property that is taken from him. In both situations, ultimately, it is the courts which may determine ultimately just compensation.

Under the CARL, however, the Land Bank of the Philippines shall compensate the landowner in such amount as may agreed upon by the landowner and the Department of Agrarian Reform and the Land Bank of the Philippines.

Also, under the CARL, compensation could be in cash and in government financial instruments like Land Bank of the Philippines bonds. At the option of the landowner, the compensation may be in shares of stock in government owned and controlled corporations, or in tax credits. The Comprehensive Agrarian Reform Law provides that in determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use of income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing Institution on the said land shall be considered as additional factors to determine its valuation.

3. Article XIII, Secs. 1, 2, 3, 13, 14

Q: The constitution promotes the principle of shared responsibility between workers and employers, preferring the settlement of disputes through (2011 BAR)

- (A) compulsory arbitration.
- (B) collective bargaining.
- (C) voluntary modes, such as conciliation and mediation.
- (D) labor-management councils.

Q: Is there any distinction between labor legislation and social legislation?

SUGGESTED ANSWER:

Labor legislation is sometimes distinguished from social legislation by the former referring to labor statutes, like Labor Relations Law and Labor Standards, and the latter to Social Security Laws. Labor legislation focuses on the rights of the worker in the workplace. Social legislation is a broad term and may include not only laws that give social security protection, but also those that help the worker secure housing and basic necessities. The Comprehensive Agrarian Reform law could also be considered a social legislation.

ALTERNATIVE ANSWER:

Yes. Labor Legislation is limited in scope, and deals basically with the rights and duties of employees and employers. Social Legislation is more encompassing and includes such subjects as agrarian relations, housing and human settlement, protection of women and children, etc. All labor laws are social legislation, but not all social legislation is labor law.

Q: For labor, the Constitutionally adopted policy of promoting social justice in all phases of national development means (2011 BAR)

- (A) the nationalization of the tools of production.
- (B) the periodic examination of laws for the common good.
- (C) the humanization of laws and equalization of economic forces.
- (D) the revision of laws to generate greater employment.

Q: Clarito, an employee of Juan, was dismissed for allegedly stealing Juan's wristwatch. In the illegal dismissal case instituted by Clarito, the Labor Arbiter, citing Article 4 of the Labor

Code, ruled in favor of Clarito upon finding Juan's testimony doubtful. On appeal, the NLRC reversed the Labor Arbiter holding that Article 4 applies only when the doubt involves

"implementation and interpretation" of the Labor Code provisions. The NLRC explained that the doubt may not necessarily be resolved in favor of labor since this case involves the application of the Rules on Evidence, not the Labor Code. Is the NLRC correct? Reasons. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The NLRC is not correct. It is a well settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scale of justice must be tilted in favor of the latter. It is a time honored rule that in controversies between laborer and master, doubts necessarily arising from the evidence, or in the implementation of the agreement and writing should be resolved in favor of the laborer.

ANOTHER SUGGESTED ANSWER:

No, the NLRC is not correct. Art. 221 of the Labor Code read: "In any proceeding before the Commission....the rules of evidence prevailing in Courts of law....shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law and procedure, all in the interest of due process." The question of doubt is not important in this case.

Q: Which takes precedence in conflicts arising between employers' MANAGEMENT PREROGATIVE and the employees' right to security of tenure? Why?

SUGGESTED ANSWER:

The employee's right to security of tenure takes precedence over the employer's management prerogative. Thus, an employer's management prerogative includes the right to terminate the services of an employee but this management prerogative is limited by the Labor Code which provides that the employer can terminate an employee only for a just cause or when authorized by law. This limitation on management prerogative is because no less than the Constitution recognizes and guarantees an employee's right to security of tenure. (Art. 279. Labor Code: Art. XIII, Sec. 3. Constitution)

Q: Enumerate at least four (4) policies enshrined in Section 3, Article XIII of the Constitution that are not covered by Article 3 of the Labor Code on declaration of basic policy. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Four (4) policies enshrined in Section 3, Article XIII of the 1987 Constitution which are not covered by Article 3 of the Labor Code on declaration of basic policy are:

1. All workers shall have the right to peaceful concerted activities, including the right to strike in accordance with law.
2. They shall be entitled to a living wage.
3. They shall participate in policy and decision making processes affecting their rights and benefits as may be provided by law.
4. The state shall promote the principle of shared responsibility between workers and employers.

Q: In her State of the Nation Address, the President stressed the need to provide an investor-friendly business environment so that the country can compete in the global economy that now suffers from a crisis bordering on recession. Responding to the call, Congress passed two innovative legislative measures, namely: (1) a law abolishing the security of tenure clause in the Labor Code; and (2) a law allowing contractualization in all areas needed in the employer's business operations. However, to soften the impact of these new measures, the law requires that all employers shall obtain mandatory unemployment insurance coverage for all their employees.

The constitutionality of the two (2) laws is challenged in court. As judge, how will you rule? (5%) (2009 Bar Question)

SUGGESTED ANSWER:

The first innovative measure, on abolition of the security of tenure clause in the Labor Code, is unconstitutional as it goes against the entitlement of workers to security of tenure under Section 3, Article XIII of the 1987 Constitution.

The second innovative measure, on a law allowing contractualization in all areas needed in the employer's business operations, is legal. Article 106 of the Labor Code already allows the Secretary of Labor and Employment not to make appropriate distinction between labor-only and job contracting. This means that the Secretary may decide, through implementing regulation, not to prohibit labor-only contracting, which is an arrangement where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.

Hence, it would be legal for Congress to do away with the prohibition on labor-only contracting and allow contractualization in all areas needed in the employer's business operations. Assuming, of course, that contractual workers are guaranteed their security of tenure.

Q: Deeds of release, waivers and quitclaims are always valid and binding. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

FALSE. Deeds of release, waivers and quitclaims are not always valid and binding. An agreement is valid and binding only if: (a) the parties understand the terms and conditions of their settlement; (b) it was entered into freely and voluntarily by them; and (c) it is contrary to law, morals, and public policy.

ALTERNATIVE ANSWER:

FALSE. Not all deeds of release, waivers and quitclaims are valid and binding. The Supreme Court, in *Periquet v. NLRC* (186 SCRA 724 [1990]) and affirmed in *Solgu Corporation v. Court of Appeals* (514 SCRA 522 [2007]), provided the following guideposts in determining the validity of such release, waivers and quitclaims:

“Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.”

Q: Because of continuing financial constraints, XYZ, Inc. gave its employees the option to voluntarily resign from the company. A was one of those who availed of the option. On October 5, 2007, he was paid separation benefits equivalent to seven (7) months pay for his six (6) years and seven (7) months of service with the company and he executed a waiver and quitclaim. A week later, A filed against XYZ, Inc. a complaint for illegal dismissal. While he admitted that he was not forced to

sign the quitclaim, he contended that he agreed to tender his voluntary resignation on the belief that XYZ, Inc. was closing down its business. XYZ, Inc., however continued its business under a different company name, he claimed.

Rule on whether the quitclaim executed by A (Gabriel) is valid or not. Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The quitclaim executed by A is valid and binding.

Generally, deeds of release, waiver or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy. However, where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking (Francisco Soriano, Jr. v. NLRB, et al., 530 SCRA 526 [2007]).

A elected to voluntarily resign, and accepted a credible and reasonable separation benefits package. In exchange, A executed a waiver and quitclaim.

A's resignation could not have possibly been vitiated by any fraud or misrepresentation on the part of XYZ, Inc. The company offered its voluntary resignation package because of continuing financial constraints, and not preliminary to closure of business. A's belief is not the kind of proof required that will show he was defrauded, his consent vitiated, and therefore the termination of his employment illegal.

ALTERNATIVE ANSWER:

The quitclaim is invalid. The signing of the quitclaim was based on a wrong premise, and the employer was deceitful by not divulging full information. The subsequent re-opening of the business under another name is an indication of bad faith and fraud.

Q: What are the requisites of a valid quitclaim? (2016)

SUGGESTED ANSWER:

The requisites of a valid quitclaim are:

1. A fixed amount as full and final compromise settlement;
2. The benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount;
3. A statement that the employer has clearly explained to the employees

in English, Filipino, or in the dialect known to the employees and that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law, and

4. A statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat, violence, intimidation, or undue influence exerted on their person.

It is advisable that the stipulations be made in English and Tagalog or in the dialect known to the employees. There should be two (2) witnesses to the execution of the quitclaim who must also sign the quitclaim. The document should be subscribed and sworn to under oath preferably before any administering official of the Department of Labor and Employment or its regional office, the Bureau of Labor Relations, the NLRC or a labor attache in a foreign country. Such official shall assist the parties regarding the execution of the quitclaim and waiver (*Edi-Staffbuilders International, Inc., v. NLRC, G.R. No. 145587, 26 October 2007*).

Q: The Independence Bank of the Philippines (IBP) is the mortgage creditor of San Juan Trading Company (SJTC). For failure of SJTC to pay its obligations, IBP foreclosed the former's mortgaged properties and in the bidding acquired the properties as the highest bidder. SJTC's workers, whose claims for separation pay, unpaid wages and other benefits could not be satisfied, filed an action against IBP to enforce their claims, contending that they enjoyed preference in respect of separation pay, wages and other benefits due them prior to the cessation of SJTC's operations.

Will the action of the workers against IBP prosper? Explain. Suggested Answer:

The action of the workers against IBP will not prosper. It is true that the Labor Code provides: In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claim shall be paid in full before claims of the government and other creditors may be paid. But, here, the mortgaged property is no longer owned by SJTC. The first preference of the workers can only be enforced against the judgement debtor, meaning SJTC, and not against IBC who now owns the mortgaged property which has been fore-closed. (*Development Bank of the Philippines vs. Minister of Labor and Employment, et al. G.R. No. 75801, March 20, 1991*)

Q: XYZ Company filed a petition for bankruptcy before a Regional Trial Court. Among the list of creditors are the Philippine National Bank (PNB), various suppliers, the Bureau of Internal Revenue (BIR) for payment of back taxes and the Union in representation of the employees for unpaid wages, leaves and bonuses.

- a. With regards to the other creditors, particularly the PNB and BIR, what is the

standing of the employees claims?

- b. **Would it make any difference if there is no judicial declaration of bankruptcy?**

SUGGESTED ANSWER:

- a. In Republic v. Peralta, the claims of the Government, like the taxes that should be paid to the BIR, should first be paid before the money claims of the workers. But if, the question is now resolved under Rep. Act No. 6715, it is now provided that “unpaid wages and monetary claims (of workers) shall be paid in full before the claims of the Government and the other creditors may be paid.
- b. If there is no judicial declaration of bankruptcy, the claim of the Union in representation of the employees for unpaid wages, leaves and bonuses will be given preference after there is a finding by a Labor Arbiter, hearing the case as a money claim, that an employer is bankrupt.

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)

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]

C. Labor Code

2. Article 4

Q: Procopio was dismissed from employment for stealing his co-employee Raul's watch. Procopio filed a complaint for illegal dismissal. The Labor Arbiter ruled in Procopio's favor on the ground that Raul's testimony was doubtful, and, therefore, the doubt should be resolved in favor of Procopio. On appeal, the NLRC reversed the ruling because Article 4 of the *Labor Code* - which states that all doubts in the interpretation and implementation of the provisions of the *Labor Code*, including the implementing rules and regulations, shall be resolved in favor of labor - applied only when the doubt involved the "implementation and interpretation" of the *Labor Code*; hence, the doubt, which involved the application of the rules on evidence, not the *Labor Code*, could not necessarily be resolved in favor of Procopio. Was the reversal correct? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

The reversal is not correct. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreement and writings, should be resolved in the former's favor (*Lepanto Consolidated Mining Company v. Dumapis*, G.R. No. 163210, August 13, 2008, 562 SCRA 103). There appears to be serious doubts in the evidence on record as to the factual basis of the charges against Procopio. These doubts should be resolved in his favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor (*Asuncion v. NLRC*, G.R. No. 129329, July 31, 2001, 362 SCRA 56).

ALTERNATIVE ANSWER:

The reversal is not correct. Article 227 (221) of the Labor Code clearly provides that "the rules of evidence prevailing in courts of law shall not be controlling" in any proceeding before the NLRC or the Labor Arbiters. Moreover, the NLRC/Labor Arbiters are mandated to use every and all reasonable means to ascertain the facts speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.

Q: In what manner do the labor laws show its solicitous compassionate policy towards the working man? Explain your answer.

SUGGESTED ANSWER:

Labor laws show solicitous compassionate policy towards the working man by providing that all doubts in the implementation and interpretation of labor laws including its

implementing rules and regulations shall be resolved in favor of labor. Thus, among others, the Constitution recognizes that workers are entitled to security of tenure, humane conditions of work and a living wage. Labor laws should be liberally interpreted to ensure that the above rights are given to workers. Many times, an employee commits an offense that is a valid ground for disciplinary action but law and jurisprudence do not automatically provide for the termination of the guilty employee because termination may be too harsh a penalty, his employment may, more often than not be the sole source of his means of livelihood. (Art. 4, Labor Code; Art. XIII. Sec. 3. Constitution)

6. Article 255

Q: What, if any, is the basis under the Constitution for adopting it? (2007 Bar Question)

SUGGESTED ANSWER:

Art. XIII, Sec. 3 of the Constitution guarantees labor their right to participate in decision and policy-making processes affecting their rights, duties and welfare.

FIRST ALTERNATIVE ANSWER:

The adoption of codetermination is based on the police power of the state and the constitutional mandate to the State “to promote, the principle of shared responsibility between the workers and the employers.” The Constitution expressly provides that: “It shall guarantee the rights of all workers to xxx collective bargaining and negotiations, xxx. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.” (Art. XIII, Sec. 3, 1987 Constitution)

Q: What is tripartism? What is the binding effect of an agreement entered into in a tripartite conference?

SUGGESTED ANSWER:

Tripartism in labor relations is the policy of the State enunciated in the Labor Code (in Art. 275) which is implemented by consulting with representatives of workers and employers in the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with priorities in economic and social development.

The codes of principles adopted at tripartite conferences are voluntary. They do not have a legal binding effect on workers and employers. But because these codes are considered

and adopted by representatives of workers and employers, they are likely to be complied with voluntarily by workers and employers.

ALTERNATIVE ANSWER:

Should not bind unions and employers' organizations that were not represented in the tripartite conference because they were not parties or signatories to any agreement arrived at in the conference.

II. Recruitment and Placement

A. Recruitment of local and migrant workers

Q: On December 12, 2008, A signed a contract to be part of the crew of ABC Cruises, Inc. through its Philippine manning agency XYZ. Under the standard employment contract of the Philippine Overseas Employment Administration (POEA), his employment was to commence upon his actual departure from the port in the point of hire, Manila, from where he would take a flight to the USA to join the cruise ship "MS Carnegie". However, more than three months after A secured his exit clearance from the POEA for his supposed departure on January 15, 2009, XYZ still had not deployed him for no valid reason. Is A entitled to relief? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

YES. Even if no departure took place, the contract of employment has already been perfected which creates certain rights and obligations, the breach of which may give rise to a cause of action against the erring party:

- (1) A can file a complaint for Recruitment Violation for XYZ's failure to deploy him within the prescribed period without any valid reason, a ground for the imposition of administrative sanctions against XYZ under Section 2, Rule I, Part V of the 2003 POEA Rules on Employment of Seafarers.
- (2) At the same time, A can file a case for illegal recruitment under Section 6(L) of Rep. Act No. 8042 (cf: Section 11 Rule I, Part V of the 2003 POEA Rules on Employment of Seafarers)
- (3) A may likewise file a complaint for breach of contract, and claim damages therefore before the NLRC, despite absence of employer-employee relationship. Section 10 of Rep. Act No. 8042 conferred jurisdiction on the Labor Arbiter not only on claims arising out of EER, but also by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. (*Santiago vs. CF Sharp Crew Management*, 527 SCRA 165 [2007]).

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]

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]

Q: Which of the following is an essential element of illegal recruitment? (2011 BAR QUESTION)

- (A) The recruiter demands and gets money from the recruit but issues no receipt.
- (B) The recruiter gives the impression that he is able to send the recruit abroad.
- (C) The recruiter has insufficient capital and has no fixed address.
- (D) The recruiter has no authority to recruit.

a) License vs. authority

Q: Marino Palpak, Eddie Angeles and Jose Berdugo advertised in the Manila Bulletin the following information: "20 Teachers wanted for Egypt. Apply at No. 123 Langit. Manila."

Salvacion Inocente applied and was made to pay minimal fees to cover administrative expenses and the cost of her passport and visa. For one reason or another, Salvacion did not get the job and filed a complaint with the POEA. Marino, Eddie and Jose admitted having no license or authority but claimed that they are not covered by the Labor Code since they are not engaged in the recruitment and placement for profit and, at any rate, only one prospective worker was involved.

May Marino, Eddie and Jose be prosecuted? If so, for what specific offense/s?

SUGGESTED ANSWER:

Marino Eddie and Jose can be prosecuted. Recruitment and placement by persons without a license or authority constitute illegal activities. Marino, Eddie and Jose were engaged in recruitment and placement when they advertised that 20 teachers were wanted to Egypt. Advertising for employment is one of the acts considered as recruitment and placement in the Labor Code.

That they were not engaged in recruitment and placement for profit does not mean that the conditions for a person to engage in recruitment and placement found in the Labor Code are not applicable to them. The Code applies to any recruitment or placement, whether for profit or not.

The fact that only one prospective worker was involved does not mean that they were not engaged in recruitment or placement. They were. The reference in the Code that any person who offers employment to "two or more persons" as being engaged in recruitment and placement does not mean that there must be at least two persons involved. This reference is merely evidentiary.

They may be prosecuted for these specific offenses:

They already charged fees even if they have not yet obtained employment for the applicant.

Q: Which of the following conditions justifies a licensed employment agency to charge and collect fees for employment assistance? (2011 BAR QUESTION)

- (A) The recruit has submitted his credentials to the employment agency.
- (B) The POEA has approved the agency's charges and fees.
- (C) The agency's principal has interviewed the applicant for the job.
- (D) The worker has obtained employment through the agency's efforts.

b) Illegal recruitment in large scale

c) Illegal recruitment as economic sabotage

Q:

- A. When is illegal recruitment considered a crime of economic sabotage? Explain briefly. (3%)**
- B. Is a corporation, seventy percent (70%) of the authorized and voting capital of which is owned and controlled by Filipino citizens, allowed to engage in the recruitment and placement of workers, locally or overseas? Explain briefly. (2%)**

SUGGESTED ANSWER:

A. According to Art. 28 of the Labor Code, illegal recruitment is considered a crime of economic sabotage when committed by a syndicate or in large scale.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme which is an act of illegal recruitment.

Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

B. No. A corporation, seventy percent (70%) of the authorized and voting capital stock of which is owned and controlled by Filipino citizens cannot be permitted to participate in the recruitment and placement of workers, locally or overseas, because Art 27 of the Labor Code requires at least seventy-five percent (75%).

Q:

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.

d) Liabilities

Q: A was approached for possible overseas deployment to Dubai by X, an interviewer of job applicants for Alpha Personnel Services, Inc., an overseas recruitment agency. X required A to submit certain documents (passport, NBI clearance, medical certificate) and to pay P25,000 as processing fee. Upon payment of the said amount to the agency cashier, A was advised to wait for his visa. After five months, A visited the office of Alpha Personnel Services, Inc. during which X told him that he could no longer be deployed for employment abroad. A was informed by the Philippine Overseas Employment Administration (POEA) that while Alpha Personnel Services, Inc. was a licensed agency, X was not registered as its employee, contrary to POEA Rules and Regulations. Under POEA Rules and Regulations, the obligation to register personnel with the POEA belongs to the officers of a recruitment agency. (2010 Bar Question)

A. May X be held criminally liable for illegal recruitment? Explain. (2%)

SUGGESTED ANSWER:

NO. X performed his work with the knowledge that he works for a licensed recruitment agency. He is in no position to know that the officers of said recruitment agency failed to register him as its personnel (*People v. Chowdury*, 325 SCRA 572 [2000] J. The fault not being attributable to him, he may be considered to have apparent authority to represent Alpha on recruitment for overseas employment.

B. May the officers having control, management or direction of Alpha Personnel Services, Inc. be held criminally liable for illegal recruitment? Explain. (3%)

SUGGESTED ANSWER:

Yes. Alpha, being a licensed recruitment agency, still has obligations to A for processing his papers for overseas employment. Under Section 6(m) of Rep. Act No. 8042, failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault, amounts to illegal recruitment.

Q: A was recruited to work abroad by Speedy Recruitment Agency as a technician for a Saudi Arabian construction firm, with a monthly salary of \$650.00. When she got to the construction site, the employer compelled her to sign another contract

that referred her to another employer for a salary of \$350.00. She worked for the second employer and was paid \$350.00 until her two-year contract expired. Upon her return to the Philippines, she filed a case against the agency and the two employers. May the agency validly raise the defense that it was not privy to the transfer of A to the second employer? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

NO. Speedy's obligation to A is joint and several with the principal employer (Sec. 10, Rep. Act No. 8042).

The liability of the principal/employer and the recruitment/placement agency for any and all claims for money claims shall be joint and several, which undertaking shall form part of A's employment contract, and condition precedent for its approval. This liability shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of said contract (Sec. 10, Rep. Act No. 8042).

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:

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]

e) Pre-termination of contract of migrant worker

Q: (2017 Bar Question)

A. Andrew Manning Agency (AMA) recruited Feliciano for employment by Invictus Shipping, its foreign principal. Meantime, AMA and Invictus Shipping terminated their agency agreement. Upon his repatriation following his premature termination, Feliciano claimed from AMA and Invictus Shipping the payment of his salaries and benefits for the unserved portion of the contract. AMA denied liability on the ground that it no longer had an agency agreement with Invictus Shipping. Is AMA correct? Explain your answer. (3%)

SUGGESTED ANSWER:

AMA is not correct. The liability of the principal/employer and the recruitment/placement agency is joint and several. Such liability shall -continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract (Section 10, Rep. Act No. 8042, as amended by Section 7 of Rep. Act No. 10022).

The fact that AMA and its foreign principal have already terminated their agency agreement does not relieve the former of its liability, because the obligations covenanted in the agency agreement between the local agent and its foreign principal are not coterminous with the term of such agreement so that if either or both Of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to said recruitment agreement; otherwise, this will render nugatory the very purpose which the law governing the employment of workers for foreign jobs abroad was enacted (Catan v. NLRC, G.R. No. 77279, April 15, 1988, 160 SCRA 691).

B. As a rule, direct hiring of migrant workers is not allowed. What are the exceptions? Explain your answer. (2.5%)

SUGGESTED ANSWER:

The exceptions are: direct hiring by members of the diplomatic organizations, international organizations, heads of state and government officials with the rank of at least deputy minister, and such other employers as may be allowed by the Secretary of Labor (Book I, Title I, Chapter I, Article 18, Labor Code). The reasons for the ban on direct hiring are:

a) A worker hired directly by a foreign employer without government intervention may not be assured of the best possible terms and conditions of employment.

b) A foreign employer must also be protected. Without government intervention, a foreign employer may be entering into a contract with a Filipino who is not qualified to do the job.

c) The mandatory requirement for remittance to the Philippines of a portion of the worker's foreign exchange earnings can easily be evaded by the worker.

C. Phil, a resident alien, sought employment in the Philippines. The employer, noticing that Phil was a foreigner, demanded that he first secures an employment permit from the DOLE. Is the employer correct? Explain your answer. (2.5%)

SUGGESTED ANSWER:

No, the employer is not correct. Only non-resident aliens seeking admission to the Philippines are required to obtain an employment permit from the Department of Labor and Employment (Article 40, Labor Code).

ALTERNATIVE ANSWER:

The employer is not correct. Under DOLE Department Order No. 75-06, resident foreign nationals are exempted from securing an employment permit.

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]

Q: Celia, an OFW that Moonshine Agency recruited and deployed, died in Syria, her place of work. Her death was not work-related, it appearing that she had been murdered. Insisting that she committed suicide, the employer and the agency took no action to ascertain the cause of death and treated the matter as a “closed case.” The worker's family sued both the employer and the agency for moral and exemplary damages. May such damages be awarded? (2011 BAR QUESTIONS)

- (A) Yes, the agency and the employer’s uncaring attitude makes them liable for such damages.
(B) Yes, but only the principal is liable for such damages since the agency had nothing to do with Celia’s death.
(C) No, since her death is not at all work-related.
(D) No, since her death is not attributable to any act of the agency or the employer.

Q: Philworld, a POEA-licensed agency, recruited and deployed Mike with its principal, Delta Construction Company in Dubai for a 2-year project job. After he had worked for a year, Delta and Philworld terminated for unknown reason their agency agreement. Delta stopped paying Mike's salary. When Mike returned to the Philippines, he sued both Philworld and Delta for unpaid salary and damages. May Philworld, the agency, be held liable? (2011 BAR QUESTIONS)

- (A) No, since Philworld, the recruitment agency, is not the employer liable for unpaid wages.
(B) Yes, since the agency is equally liable with the foreign principal despite the termination of their contract between them.
(C) Yes, since the law makes the agency liable for the principal’s malicious refusal to pay Mike’s salary.
(D) No, since Mike did not get paid only after Delta and Philworld terminated their contract.

Q: When a recruitment agency fails to deploy a recruit without valid reason and without the recruit's fault, the agency is obligated to

- (A) reimburse the recruit's documentary and processing expenses.
(B) reimburse the recruit’s expenses with 6% interest.
(C) pay the recruit damages equivalent to one year’s salary.
(D) find another employer and deploy the recruit within 12 months.

2. Direct Hiring

Q: TRUE or FALSE. As a general rule, direct hiring of Overseas Filipino Workers (OFWs) is not allowed. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

TRUE. Art. 15 of the Labor Code provides that no employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Department of Labor and Employment (DOLE) except direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the DOLE.

Another exemption is "Name Hire," which refers to a worker who is able to secure an overseas employment opportunity with an employer without the assistance or participation of any agency.

B. Regulation and enforcement

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

Q: Which of the following acts is NOT part of the regulatory and visitorial power of the Secretary of Labor and Employment over recruitment and placement agencies? The power to (2011 BAR QUESTION)

- (A) order arrest of an illegal recruiter
- (B) inspect premises, books and records
- (C) cancel license or authority to recruit
- (D) garnish recruiter's bond

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:

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

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. Remittance of foreign exchange earnings

3. Prohibited activities

III. Labor Standards

Q: What is the requirement in order that a compromise agreement involving labor standards cases be considered duly executed?

SUGGESTED ANSWER:

For a compromise agreement involving labor standards cases to be considered duly executed, such compromise agreement should be voluntarily agreed upon by the parties with the assistance of the Bureau of Labor Relations or the regional office of the Department of Labor and Employment. (Art. 227, Labor Code)

Q: Of the four definitions below, which one does NOT fit the definition of “solo parent” under the Solo Parents Welfare Act? (2011 BAR QUESTION)

- (A) Solo parenthood while the other parent serves sentence for at least one year.
- (B) A woman who gives birth as a result of rape.
- (C) Solo parenthood due to death of spouse.
- (D) Solo parenthood where the spouse left for abroad and fails to give support for more than a year.

A. Hours of work

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

Q: Lito Kuiangkuiang and Bong Urongsulong are employed as truck drivers of Line Movers. Inc. Usually, Lito is required by the personnel manager to just stay at the head office after office hours because he could be called to drive the trucks. While at the head office, Lito merely waits in the manager’s reception room. On the other hand, Bong is allowed to go home after office hours but is required to keep his cellular phone on so that he could be contacted whenever his services as driver becomes necessary.

Would the hours that Lito and Bong are on call be considered compensable working hours?

SUGGESTED ANSWER:

The hours of Lito and Bong while on call can be considered compensable hours. The applicable rule is: "An employee who is required to remain on call in the employer's premises or so close thereto that he cannot use the time effectively and gainfully for his own purpose shall be considered as working while on call. An employee who is not required to leave word at his home or with company officials where he may be reached is not working while on call." Here, Bong is required to stay at the office after office hours so he could be called to drive the trucks of the Company. As for Bong, he is required to keep his cellular phone so that he could be contacted whenever his services as driver as needed. Thus, the waiting time of Lito and Bong should be considered are compensable hours.

Note: It could be argued that in the case of Bong who is not required to stay in the office but is allowed to go home, if he is not actually asked by cellular phone to report to the office to drive a car, he can use his time effectively and gainfully to his own purpose, thus, the time that he is at home may mean that there are not compensable hours.

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.

Q: Pol requested Obet, a union officer and concurrently chairman of the company's Labor-Management Council, to appeal to the company for a recomputation of Pol's overtime pay. After 5 p.m., his usual knock-off time, Obet spent two hours at the Personnel Office, reconciling the differing computations of Pol's overtime. Are those two hours compensable? (2011 BAR QUESTION)

- (A) Yes, because Obet performed work within the company premises.

- (B) No, since Obet's action has nothing to do with his regular work assignment.
- (C) No, because the matter could have been resolved in the labor-management council of which he is the chairman.
- (D) Yes, because the time he spent on grievance meetings is considered hours worked.

2. Normal hours of work

Q: Percival was a mechanic of Pacific Airlines. He enjoyed a meal break of one hour. However, during meal breaks, he was required to be on stand-by for emergency work. During emergencies, he was made to forego his meals or to hurry up eating. He demanded payment of overtime for work done during his meal periods. Is Percival correct? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

Percival is correct. Under Article 85 of the Labor Code and Book III, Rule I, Section 7 of the Rules, it shall be the duty of every employer to give his employees not less than sixty (60) minutes time-off for their regular meals. But where during the meal break, the workers are required to stand by "for emergency work, such period is considered overtime (Pan American World Airways System (Phil.) v. Pan American Employees Association, G.R. No. L-16275, February 23, 1961, 1 SCRA 527).

ALTERNATIVE ANSWER:

Percival is correct. All the time during which an employee is required to be on duty or to be at the employer's premises or to be at a prescribed work place, and all time during which an employee suffered or permitted to work is considered compensable hours. Given that Percival's meal break was not one of complete rest, as he did not the freedom to devote such period for his personal needs, the same should be considered as compensable hours of work.

Q: The meal time (lunch break) for the dining crew in Glorious Restaurant is either from 10 a.m. to 11 a.m. or from 1:30 p.m. to 2:30 p.m., with pay. But the management wants to change the mealtime to 11: a.m. to 12 noon or 12:30 p.m. to 1:30 p.m., without pay. Will the change be legal? (2011 BAR QUESTION)

- (A) Yes, absent an agreement to the contrary, the management determines work hours and, by law, meal break is without pay.
- (B) No, because lunchbreak regardless of time should be with pay.
- (C) Yes, the management has control of its operations.
- (D) No, because existing practice cannot be discontinued unilaterally.

a) Compressed work week

Q: Under what conditions may a "compressed work week" schedule be legally authorized as an exception to the "eight-hour a day" requirement under the Labor Code? (4%)

State your answers and your reasons therefor. (2005 Bar Question)

SUGGESTED ANSWER:

A "compressed work week" schedule may be authorized under the following conditions:

- 1) The employee voluntarily agrees to it.
- 2) There is no diminution in their weekly or monthly take home pay or fringe benefits.
- 3) The benefits are more than or at least commensurate or equal to what is due the employees without the compressed work week.
- 4) Overtime pay will be due and demandable when they are required to work on those days which should have ceased to be working days because of the compressed work week schedule.
- 5) No strenuous physical exertion or that they are given adequate rest periods.
- 6) It must be for a temporary duration as determined by the Department of Labor.

3. Overtime work, overtime pay

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x

[d] A waiver of the right to claim overtime pay is contrary to law. (2009 Bar Question)

SUGGESTED ANSWER:

True. As a general rule, overtime compensation cannot be waived, whether expressly or impliedly; and stipulation to the contrary is against the law. (Pampanga Sugar Dev. Co., Inc. v. CIR, 114 SCRA 725 [1982].) An exception would be the adoption of a compressed work week on voluntary basis, subject to the guidelines of Department Order No. 02, Series of 2004.

Q: In a scenario like typhoon Ondoy, who may be required by the employer to work overtime when necessary to prevent loss of life or property? (2011 BAR QUESTION)

- (A) Health personnel
- (B) Employees with first aid training
- (C) Security and safety personnel
- (D) Any employee

Q: Socorro is a clerk-typist in the Hospicio de San Jose, a charitable institution dependent for its existence on contributions and donations from well-wishers. She renders work eleven (11) hours a day but has not been given overtime pay since her place of work is a charitable institution. Is Socorro entitled to overtime pay? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. Socorro is entitled to overtime compensation. She does not fall under any of the exceptions to the coverage of Art. 82, under the provisions of Hours of Work. The Labor Code is equally applicable to non-profit institutions. A covered employee who works beyond eight (8) hours is entitled to overtime compensation.

Q: Danilo Flores applied for the position of driver in the motorpool of Gold Company, a multinational corporation. Danilo was informed that he would frequently be working overtime as he would have to drive for the company's executives even beyond the ordinary eight-hour work day. He was provided with a contract of employment wherein he would be paid a monthly rate equivalent to 35 times his daily wage, regular sick and vacation leaves. 5 day-leave with pay every month and time off with pay when the company's executives using the cars do not need Danilo's service for more than eight hours a day, in lieu of overtime.

Are the above provisions of the contract of employment in conformity with, or violative of, the law?

SUGGESTED ANSWER:

Except for the provision that Danilo shall have time off with pay when the company's executives using the cars do not need Danilo's service for more than eight hours a day, in lieu of overtime, the provisions of the contract of employment of Danilo are not violative of any labor law because they instead improve upon the present provisions of pertinent labor laws.

Thus, the monthly rate equivalent to 35 times the daily wage may be sufficient to include overtime pay.

There is no labor law requiring the payment of sick and vacation leaves except the provision for a five-day service incentive leave in the Labor Code.

The 5-day-leave with pay every month has no counterpart in Labor Law and is very generous.

As for the provision in Danilo's contract of employment that he shall receive time off with pay in lieu of overtime, this violates the provision of the Labor Code which states that undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employer to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required by the Labor Code.

Q: Pedro Sisid is a seaman who was employed in 1990 by Kuhol Ocean Transport. In May 1993, he was discharged and correspondingly paid vacation pay, terminal pay and overtime pay for the number of hours he actually rendered service in excess of his eight (8) working hours a day. Pedro Sisid, however, is dissatisfied with his overtime pay contending that he is on board the vessel 24 hours a day. or even beyond his eight (8) working hours which circumstance renders him on call whenever his service is needed. Therefore, he insists that he be paid 16 hours a day by way of overtime. Is the contention of seaman Pedro Sisid tenable? Why?

SUGGESTED ANSWER:

No. The contention of seaman Sisid is not tenable.

The fact that he is on board the vessel 24 hours a day does not mean that beyond his eight working hours, he could be also considered as working because he is on call, and thus, is entitled to overtime pay. Because he is a seaman, this circumstance means he is on board his vessel while at sea. But he is not thereby on call as to be entitled to overtime pay because when it is not his working time, he can, if he chooses to do so, use said non-working time effectively and gainfully for his own purpose.

ALTERNATIVE ANSWER:

No, there being a record of actual overtime services rendered. An estimated period of overtime is valid as a basis for payment of overtime, only in a case where overtime services are actually being rendered regularly but no record of the hours were kept.

Q: A manufacturing company operates on a 6-day workweek. It employs 200 workers whose regular workday is 8 hours. On May 1, 1990, the company and Union "M", the employees; bargaining agent, agreed that the workday be 7 hours from Monday to Wednesday and 9 hours from Thursday to Saturday. The agreement was ratified by all the employees. In 1991

Union "M" lost its majority status and Union "P" was certified as bargaining representative. Union "P" filed a claim against the Company for unpaid overtime pay of the 200 employees from May 1, 1990 when they started working 9 hours per

day, 3 days a week. Invoking the 1990 agreement, the Company moved to dismiss the claim of Union "P".

Decide with reasons.

SUGGESTED ANSWER:

The claim of Union "P" is valid. The Labor Code is very clear: Undertime work on any particular day shall not be offset by overtime work on any other day. (Article 88, Labor Code)

The right arising from the above provision, meaning, entitlement to overtime pay for one hour for working 9 hours per day, 3 days a week. (Article 87, Labor Code) cannot be considered as waived by a CBA even if the CBA is ratified by the employees concerned. The waiver in this instance is against the law, morals, and public policy. The law must prevail over the CBA.

Q: Ping Gabo is the Chief Engineer of the National Publishing Corp. with a monthly salary of P3,000.00. He works over eight (8) hours daily from Monday to Saturday. In May, June and July 1991, he rendered, each month, ten (10) hours beyond his regular work schedule.

Is he entitled to overtime pay and holiday pay? Why?

SUGGESTED ANSWER:

The entitlement of Gabo to overtime pay and holiday pay is dependent on whether he is a managerial employee or not. If he is a managerial employee, he is not entitled to overtime pay and holiday pay. The Labor Code provides that the provisions that grant overtime pay and holiday pay shall not apply, among others, to managerial employees.

A managerial employee is defined by the Code as referring to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

Gabo, as Chief Engineer, appears to be a managerial employee. On the other hand, his monthly pay is rather low for a managerial employee. Despite his title, his duty may not consist of a management of department or of a subdivision thereof.

Q: After working from 10 a.m. to 5 p.m. on a Thursday as one of 5,000 employees in a beer factory, A hurried home to catch the early evening news and have dinner with his family. At around 10 p.m. of the same day, the plant manager called and ordered A to fill in for C who missed the second shift. (2010 Bar Question)

A. May A validly refuse the plant manager's directive? Explain. (2%)

SUGGESTED ANSWER:

YES. A may validly refuse to fill in for C. A may not be compelled to perform overtime work considering that the plant manager's directive is not for an emergency overtime work, as contemplated under Article 89 of the Labor Code.

B. Assuming that A was made to work from 11 p.m. on Thursday until 2 a.m. on Friday, may the company argue that, since he was two hours late in coming to work on Thursday morning, he should only be paid for work rendered from 1 a.m. to 2 a.m.? Explain. (3%)

SUGGESTED ANSWER:

NO. Undertime is not off-set by overtime (Art. 88, Labor Code).

Q: The Overseas Construction Company, a domestic corporation with a recruitment license, hired two thousand Filipino workers and assigned them to its construction project in Kuwait. They were given free housing, work clothing and food.

The master employment contract approved for them by the Philippine Overseas Employment Administration (POEA) stipulated that they were to work at the overseas jobsite for twelve (12) hours per day and that they were accordingly to be paid wages higher than the POEA-approved schedule of pay rates. The individual employment contracts also contained the same stipulations. And during the pre-departure briefings at the company's Mandaluyong plant site, the workers were told about these stipulations. By actual computation, the wages paid at the overseas jobsite were at least twenty-five percent (25%) more than the POEA-approved rates. Moreover, the record shows that the workers did not always render the full twelve (12) hours of work stipulated in the employment contract.

Back home after completing their one-year overseas assignment, the workers engaged your services as their lawyer to prosecute a complaint with the POEA for recovery of unpaid overtime work. What would your advice be?

SUGGESTED ANSWER:

Before I give an advise, I will first find the answer to this basic question: Were the workers actually paid for their overtime work when they received wages that were at least twenty-five percent (25%) more than the POEA-approved rates?

The answer is No if the 25% added to the POEA- approved rate (which we assume is a rate for a day of eight (8) hours work) is only 25% of such POEA-approved daily wage rate. This is because what should be paid to the workers for the four (4) hours that they work overtime in their twelve (12) hour day (a 12-hour work day is 4 hours in excess of

an 8-hour work day) should be 50% more of such POEA- approved rate. The four (4) hours of work is 50% of the normal weight (8) hours of work a day plus 25% of such additional 50% for purposes of paying the overtime rate.

There is also the night differential pay to take into account because a 12-hour shift will include working hours from 10:00 p.m. to 6:00 a.m. If the higher-than-the POEA- approved rate is computed as indicated above, I will advise the workers not to sue for they have already been paid for their overtime work.

If the higher-than-the-POEA-approved rates is not, however, computed as indicated above, the fact that the POEA-approved the contracts and that the workers agreed to the rates they receive will not be a bar to a complaint for unpaid overtime pay, the right to which cannot be waived.

ANOTHER SUGGESTED ANSWER:

The rate approved by the POEA has built-in overtime pay. Thus, there is no basis for the claim for 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:

- c) 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.

4. Night work (R.A. No. 10151), Night shift differential

Q: As a tireman in a gasoline station, open twenty four (24) hours a day 'with only five (5) employees, Goma worked from 10:00 P.M. until 7:00 A.M. of the following day. He claims he is entitled to night shift differential. Is he correct? Explain briefly. (3%)

SUGGESTED ANSWER:

Yes. Under Art. 86 of the Labor Code, night shift differential shall be paid to every employee for work performed between 10:00 o'clock in the evening to six o'clock in the morning.

Therefore, Goma Is entitled to night shift differential for work performed from 10:00 pm until 6:00 am of the day following, but not from 6:00 am to 7:00 am of the same day.

The Omnibus Rules Implementing the Labor Code (In Book III, Rule II dealing with night shift differential) provides that its provisions on night shift differential shall NOT apply to employees of "retail and service establishments regularly employing not more than five (5) workers". Because of this provision, Goma is not entitled to night shift differential because the gasoline station where he works has only five employees.

Q: Republic Drug Co. has 1,000 employees, including 50 managerial personnel, 90 supervisors and 150 sale representatives. The regular workday in the Company is from 8:00 a.m. to 5:00 p.m. The sales representatives register their presence with the timekeeper at 8:00 A.M. every day before they go to their respective sales territories. They are paid a basic salary plus commission. Sixty of the sales representatives are members of the Republic Salesmen Union which sent to the Company a set of bargaining proposals, including a demand for payment of overtime pay of the sales representatives for working beyond 5:00 P.M. everyday. The Company refused to consider the bargaining proposals and rejected the demand for overtime pay for the reason that the sales representatives are not entitled thereto. The Union filed an unfair labor practice case against the Company for refusal to bargain, and after complying with the legal requirements declared a strike.

a) **Was the Company legally justified in rejecting the Union's demand for overtime pay? Reason.**

SUGGESTED ANSWER:

The Company was legally justified.

Under the Labor Code, (in Article 82). "field personnel" are among those classes of workers who are not entitled to overtime pay, and the phrase "field personnel" includes sales representatives who, like other field personnel, are non-agricultural employee who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

ALTERNATIVE ANSWER:

If the demand for overtime pay is in the nature of a proposal made in the collective bargaining table and the only reason for rejecting such demand is that "the sales

representatives are not entitled thereto,” this is not a legal justification for rejecting outright the Union's demand for overtime pay.

It is true that under the Labor Code, field personnel - and this phrase includes sales representatives are not entitled to overtime pay.

But it is precisely as regards benefits that are not rights under the law that collective bargaining is used by Labor to secure these benefits that are over and above what the law gives.

On the other hand, the rejection by the Company of the Union's demand for overtime pay is not per se illegal. The Labor Code provides that the duty to bargain collectively does not compel any party to agree to a proposal or to make any concession. (Article 252, Labor Code).

Q: Night differential is differentiated from overtime pay in that (2011 BAR QUESTION)

- (A) while overtime pay is given for overtime work done during day or night, night differential is given only for work done between 10:00 p.m. and 6:00 a.m.
- (B) while overtime pay is paid to an employee whether on day shift or night shift, night shift differential is only for employees regularly assigned to night work.
- (C) while overtime pay is for work done beyond eight hours, night differential is added to the overtime pay if the overtime work is done between 6:00 p.m. and 12 midnight.
- (D) while overtime pay is 25% additional to the employee's hourly regular wage, night differential is 10% of such hourly wage without overtime pay.

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

Q: Tarcisio was employed as operations manager and received a monthly salary of ₱25,000.00 through his payroll account with DB Bank. He obtained a loan from Roberto to purchase a car. Tarcisio failed to pay Roberto when the loan fell due. Roberto sued to collect, and moved to garnish Tarcisio's payroll account. The latter vigorously objected and argued that salaries were exempt from garnishment. Is Tarcisio correct? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

No, Tarcisio is not correct. Case law exempts rank-and-file employees from garnishment. Tarcisio, however manager, is a managerial employee. Since the rule covers only file employees, therefore, Tarcisio's salary is not exempt from (Gaa v. Court of Appeals, G.R. No. L-44169, December 3, 1985, 304).

ALTERNATIVE ANSWER:

Yes, Tarcisio is correct. Under Article 1708 of the Civil Code, "(t) he laborer's wages shall not be subject to execution or attachment, for debts incurred for food, shelter, clothing and medical attendance." The indebtedness of Tarcisio was due to a purchase of a car which is one of the exceptions under the said law.

ANOTHER ALTERNATIVE ANSWER:

Garnishment, which is a species of attachment requires that the debtor (Tarcisio) is insolvent.

Q:

- 1) **Distinguish "salary" from "wages."**
- 2) **Are these subject to attachment and execution?**

SUGGESTED ANSWER:

The term "wages" applies to compensation for manual labor, skilled or unskilled, while salary denotes a compensation for a higher degree of employment. (Goa vs. Court of Appeals. 140 SCRA 304).

ALTERNATIVE ANSWER:

- 1) "Wages" are those paid to any employee as his remuneration or earnings payable by an employer for work done or to be done, or for services rendered or to be rendered.

On the other hand, "salary" is used in the law that provides for a 13th-month pay. In this law, basic salary includes all remuneration or earnings paid by an employer to his employees for services rendered, but does not include allowances or monetary benefits

which are not considered or integrated as part of the regular or basic salary. (Art. 97(f). Labor Code; Sec. 2(b), P.D. No. 851)

2) Under Article 1708 of the Civil Code, only "wages" are exempt from attachment or execution. Salaries are not exempt from attachment or execution. (Goa vs. Court of Appeals, 140 SCRA 304).

Q: How much attorney's fees may a lawyer assess a culpable party in cases of unlawful withholding of wages?

SUGGESTED ANSWER:

In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent (10%) of the amount of wages recovered. (Art. III, Labor Code)

Q: The union's by-laws provided for burial assistance to the family of a member who dies. When Carlos, a member, died, the union denied his wife's claim for burial assistance, compelling her to hire a lawyer to pursue the claim. Assuming the wife wins the case, may she also claim attorney's fees? (2011 BAR QUESTION)

- (A) No, since the legal services rendered has no connection to CBA negotiation.
- (B) Yes, since the union should have provided her the assistance of a lawyer.
- (C) No, since burial assistance is not the equivalent of wages.
- (D) Yes, since award of attorney's fee is not limited to cases of withholding of wages.

Q: In a case for illegal dismissal and non-payment of benefits, with prayer for Damages, Apollo was awarded the following: 1) P200,000.00 as backwages; 2) P80,000.00 as unpaid wages; 3) P20,000.00 as unpaid holiday pay; 4) P5,000.00 as unpaid service incentive leave pay; 5) P50,000.00 as moral damages; and 6) P10,000.00 as exemplary damages. Attorney's fees of ten percent (10%) of all the amounts covered by items 1 to 6 inclusive, plus interests of 6% per annum from the date the same were unlawfully withheld, were also awarded.

[a] Robbie, the employer, contests the award of attorney fees amounting to 10% on all the amounts adjudged on the ground that Article 111 of the Labor Code authorizes only 10% "of the amount of wages recovered". Rule on the issue and explain. (2016)

SUGGESTED ANSWER:

The attorney's fees should be granted to Robbie. There are two commonly accepted concepts of attorney's fees the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorneys fees is the one contemplated in Article 111 of the Labor Code, which provides:

"Art. 111. Attorneys fees. (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorneys fees equivalent to ten percent of the amount of wages recovered x x x"

Article 111 is an exception to the declared policy of strict construction in the awarding of attorneys fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.

In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the employees' welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided in Article 4 of the Labor Code which states that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor, and Article 1702 of the Civil Code which provides that in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer (PCL Shipping Philippines, Inc. v. NLRC, G.R. No. 153031, [December 14, 2006]).

[b] Robbie likewise questions the imposition of interests on the amounts in question because it was not claimed by Apollo, and the Civil Code provision on interests does not apply to a labor case. Rule on the issue and explain.

SUGGESTED ANSWER:

It is now well-settled that generally, legal interest may be imposed upon any unpaid wages, salary differential, merit increases, productivity bonuses, separation pay, backwages on other monetary claims and benefits awarded illegally dismissed employees. Its grant, however, remains discretionary upon the courts (Conrado A. Lim v. HMR Philippines G.R. No. 189871, August 13, 2013). Legal interest was imposed on all the monetary awards by the SC in the case of Bani Rural Bank v. De Guzman (G.R. No. 170904 November 13, 2013). The Court therein declared that imposition of legal interest in any final and executory judgment does not violate the immutability principle. The court ruled that once a decision in a labor case becomes final, it becomes a judgment for money from which another consequence flows - the payment of interest in case of delay.

2. Minimum wage defined, Minimum wage setting

Q: The Regional Tripartite Wages and Productivity Board (RTWPB) for Region 3 issued a wage order on November 2, 2017 fixing the minimum wages for all industries throughout Region 3.

(a) Is the wage order subject to the approval of the National Wages and Productivity Commission before it takes effect? (2%)

SUGGESTED ANSWER:

No, because the NWPC exercises only technical and administrative supervision -over the RTWPB (Article 121 (g), Labor Code).

ALTERNATIVE ANSWER:

No, the Wage Order becomes effective fifteen (15) days after its publication in at least one (1) newspaper of general circulation in the region pursuant to the Rules of Procedure in Minimum Wage Fixing.

ANOTHER ALTERNATIVE ANSWER:

Yes. In NWPC v. Alliance of Progressive Labor (G.R. No. 150326, March 12, 2014), it was ruled that "(t)he very fact that the validity of the assailed sections of Wage Order No. NCR-07 had been already passed upon and upheld by the NWPC meant that the NWPC had already given the wage order its necessary legal imprimatur. Accordingly, the requisite approval or review was complied with."

(b) The law mandates that no petition for wage increase shall be entertained within a period of 12 months from the effectivity of the wage order. Under

what circumstances may the Kilusang Walang Takot, a federation of labor organizations that publicly and openly assails the wage order as blatantly unjust, initiate the review of the wage increases under the wage order without waiting for the end of the 12-month period? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

The federation may initiate a review of the wage order even before the expiration of the 12-month period when there are supervening conditions, such as extraordinary increase in prices of petroleum products and basic goods/services which demand a review of minimum wage rates as determined by the Board and confirmed by the Commission.

Q: A lady worker was born with a physical deformity, specifically, hard of hearing, speech impaired and color blind. However, these deficiencies do not impair her working ability.

Can the employer classify the lady worker as a handicapped worker so that her daily wage will only be seventy-five percent (75%) of the applicable daily minimum wage? [5%]

SUGGESTED ANSWER:

No, the employer cannot classify the lady worker as a handicapped worker because according to the facts in the question, her deficiencies do not impair her working ability. If her earning capacity is therefore not also impaired, then she cannot be considered a handicapped worker.

Because of the above fact, the employer shall not pay her less than the applicable daily minimum wage. (See Article 78 of the Labor Code)

ANOTHER SUGGESTED ANSWER:

Yes, the employer can classify the lady worker as a handicapped worker because her earning capacity maybe impaired by her physical deficiencies. As such handicapped worker, the employer may enter into an employment agreement with her whereby the rate to be paid to her may be less than the applicable legal minimum wage but not less than 75% of such wage.

3. Minimum wage of workers paid by results

Q: Nemia earns P7.00 for every manicure she does in the barber shop of a friend which has nineteen (19) employees. At times she takes home P 175.00 a day and at other times she earns nothing. She now claims holiday pay. Is Nemia entitled to this benefit? Explain briefly. (5%)

SUGGESTED ANSWER:

No, Nemia is not entitled to holiday pay.

Art. 82 of the Labor Code provides that workers who are paid by results are, among others, not entitled to holiday pay. Nemia is a worker who is paid by results. She earns P7.00 for every manicure she does.

ANOTHER SUGGESTED ANSWER:

Yes. Nemia is entitled to holiday pay.

The Supreme Court has ruled: "As to the other benefits, namely, holiday pay, premium pay, 13^m month pay, and service incentive leave which the labor arbiter failed to rule on but which the petitioners prayed for in their complaint, we hold that petitioners are so entitled to these benefits. Three (3) factors lead us to conclude that petitioners, although piece rate workers, were regular employees of private respondents. First as to the nature of the petitioner's tasks, their job of repacking snack food was necessary or desirable in the usual business of private respondents, who were engaged in the manufacture and selling of such food products; second, petitioners worked for private respondents throughout the year, their employment not having been dependent on a specific project or season; and third, the length of time that petitioners worked for private respondents. Thus, while petitioner's mode of compensation was on a "per piece basis" the status and nature of their employment was that of regular employees." [Labor Congress of the Philippines v. NLRC, 290 SCRA 509(1998)]

Q: "Piece rate employees" are those who are paid by results or other non-time basis. As such they are NOT entitled to overtime pay for work done beyond eight hours if (2011 BAR)

- (A) their workplace is away from the company's principal place of work.
- (B) they fail to fill up time sheets.
- (C) the product pieces they do are not countable.
- (D) the piece rate formula accords with the labor department's approved rates.

4. Commissions

Q: A, a driver for a bus company, sued his employer for non-payment of commutable service incentive leave credits upon his resignation after five years of employment. The bus company argued that A was not entitled to service incentive leave since he was considered a field personnel and was paid on commission basis and that, in any event, his claim had prescribed. If you were the Labor Arbiter, how would you rule? Explain. (6%) (2010 Bar Question)

SUGGESTED ANSWER:

I will grant the prayer of A.

Payment on commission basis alone does not prove that A is a field personnel. There must be proof that A is left to perform his work unsupervised by his employer. Otherwise, he is not a field personnel, thus entitled to commutable service incentive leave (SIL) credits [Auto Bus v. Bautista, 458 SCRA 578 [2005]].

His action has not yet prescribed. In Auto Bus v. Bautista (supra.), the Supreme Court recognized that SIL is such a unique labor standard benefit, because it is commutable. An employee may claim his accrued SIL throughout the years of his service with the company upon his resignation, retirement, or termination. Therefore, when A resigned after five years, his right of action to claim ALL of his SIL benefits accrued at the time when the employer refused to pay him his rightful SIL benefits. (Art. 291, Labor Code).

ALTERNATIVE ANSWER:

The money claim as cause of action has prescribed because the claim was filed after five (5) years from date of negotiation. Art. 291 of the Labor Code provides that all money claims arising from employer- employee relations occurring during the effectivity of the Code shall be filed within three (3) years from that time the cause of action has accrued, otherwise, they shall be forever barred.

5. Deductions from wages

Q: A worked as a roomboy in La Mallorca Hotel. He sued for underpayment of wages before the NLRC, alleging that he was paid below the minimum wage. The employer denied any underpayment, arguing that based on long standing, unwritten policy, the Hotel provided food and lodging to its housekeeping employees, the costs of which were partly shouldered by it and the balance was charged to the employees. The employees' corresponding share in the costs was thus deducted from their wages. The employer concluded that such valid deduction naturally resulted in the payment of wages below the prescribed minimum. If you were the Labor Arbiter, how would you rule? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

I will rule in favor of A.

Even if food and lodging were provided and considered as facilities by the employer, the employer could not deduct such facilities from its workers' wages without compliance with law (Mayon Hotel & Restaurant v. Adana, 458 SCRA 609 [2005]).

In Mabeza v. NLRC (271 SCRA 670 [1997]), the Supreme Court held that the employer simply cannot deduct the value from the employee's wages without satisfying the following: (a) proof that such facilities are customarily furnished by the trade; (b) the

provision of deductible facilities is voluntarily accepted in writing by the employee; and (c) the facilities are charged at fair and reasonable value.

Q: In accordance with the provisions of the collective bargaining agreement, the Republic Labor Union (RLU) submitted to the Zenith Drug Company a union board resolution authorizing the deduction from the wage of each of the union's two thousand members a special assessment in the sum of twenty pesos to help pay for the expenses of the RLU president during his observation tour of New Zealand.

When the company honored the authorization and implemented the deductions, more than a thousand of the employees complained and sought your assistance. What legal advice would you give and what action would you take on behalf of the employees?

SUGGESTED ANSWER:

I will advise the complaining employees that they should file a complaint against the Company for making the illegal deductions of P20.00 from their wages.

According to the Labor Code (in Art. 113) of the legal deductions that an employer may make from the wages of his employees are: (a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance; (b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

The deductions made by the employer are not for union dues.

ANOTHER SUGGESTED ANSWER:

I will advise the complaining employees that they should file a complaint against the members of the union board of directors for violating the rights and conditions of membership in a labor organization by levying a special assessment without its being authorized by a written resolution of majority of all union members at a general membership meeting called for the purpose. (Art. 241 (2)).

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:

- 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

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. Wage Distortion/Rectification

Q: What is wage distortion? Can a labor union invoke wage distortion as a valid ground to go on strike? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Wage distortion refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service and other logical bases of differentiation. (Art. 124, Labor Code)

No. the existence of wage distortion is not a valid ground for staging a strike because Art. 124 of the Labor Code provides for a specific method or procedure for correcting wage distortion. In *Ilaw at Buklod ng Manggagawa vs. NLRC*, (198 SCRA 586, 594-5 [1991]), the Cour said.

Q: What procedural remedies are open to workers who seek correction of wage distortion? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The Procedural Remedies of Wage Distortion disputes are provided in Art. 242 of the Labor Code, as follows.

1. Organized establishment - follow the grievance procedure as provided for in the CBA, ending in voluntary arbitration.
2. Unorganized establishments - employer and workers, with the aid of the NCMB shall endeavor to correct the wage distortion, and if they fail, to submit the issue to the NLRC for compulsory arbitration.

Q: How should a wage distortion be resolved (1) In case there is a collective bargaining agreement and (2) in case there is none? Explain briefly. (3%)

SUGGESTED ANSWER:

According to Art 124 of the Labor Code, in case there is a collective bargaining agreement, a dispute arising from wage distortions shall be resolved through the grievance machinery provided in the CBA, and if remains unresolved, through voluntary arbitration. In case there is no collective bargaining agreement the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten calendar days of conciliations, then the dispute is referred to the appropriate branch of the National Labor Relations Commission.

Q:

- a) Define Wage Distortion.
- b) May a wage distortion, alleged by the employees but rejected by the employer to be such, be a valid ground for staging a strike?

SUGGESTED ANSWER:

(a) A wage distortion is that brought about where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage rates based on skills, length of service and other logical bases of differentiation.

(b) No. the existence of wage distortion is not a valid ground for a strike because Art. 124 of the Labor Code provides for a specific method of procedure for correcting wage distortion. In *Raw at Buklod ng Manggagawa vs. NLRC*, 198 SCRA 586, the Court said:-

It goes without saying that these joint or coordinated activities may be forbidden or restricted by law or contract. For the particular instance of "distortions of the wage structure within an establishment" resulting from the application of any prescribed wage increase by virtue of a law or wage order, Section 3 of Republic Act No. 6727 prescribes a specific, detailed and comprehensive procedure for the correction thereof, thereby implicitly excluding strikes or lockouts or other concerted activities as modes of settlement of the issue.

ALTERNATIVE ANSWER:

(b) A wage distortion, alleged by the employees but rejected by the employer can be a valid ground for staging a strike if it happens that in rejecting the allegation of wage distortion, the employer refuses to consider the issue under the grievance procedure provided for in the applicable CBA and later on through Voluntary Arbitration. These acts of the employer could be considered as a violation of its duty to bargain collectively which is unfair labor practice (ULP). A ULP strike is legal.

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:

- c. 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:

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

7. 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:

- e) 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: X Company's CBA grants each employee a 14th month year-end bonus. Because the company is in financial difficulty, its head wants to negotiate the discontinuance of such bonus. Would such proposal violate the "nondiminution rule" in the Labor Code? (2011 BAR)

- (A) No, but it will certainly amount to negotiating in bad faith.
(B) Yes since the rule is that benefits already granted in a CBA cannot be withdrawn or reduced.
(C) No, since the law does not prohibit a negotiated discontinuance of a CBA benefit.
(D) Yes, since such discontinuance will cancel the enjoyment of existing benefits.

Q: In computing for 13th month pay, Balagtas Company used as basis both the employee's regular base pay and the cash value of his unused vacation and sick leaves. After two and a half years, it announced that it had made a mistake and was discontinuing such practice. Is the management action legally justified? (2011 BAR)

- (A) Yes, since 13th month pay should only be one-twelfth of the regular pay.
(B) No, since the erroneous computation has ripened into an established, non withdrawable practice.
(C) Yes, an error is not a deliberate decision, hence may be rectified.
(D) No, employment benefits can be withdrawn only through a CBA negotiation.

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)

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.

C. Rest Periods (Weekly rest day, Emergency rest day work)

Q: An employer may require an employee to work on the employee's rest day (2011 BAR)

- (A) to avoid irreparable loss to the employer.
- (B) only when there is a state of calamity.
- (C) provided he is paid an extra of at least 50% of his regular rate.
- (D) subject to 24-hour advance notice to the employee.

D. Holiday Pay/ Premium Pay

1. Coverage, exclusion

Q: When an employee works from 8 a.m. to 5 p.m. on a legal holiday falling on his rest day, which of the following formulas do you use to compute for his day's wage on that day? (2011 BAR)

- (A) His regular daily wage multiplied by 200% plus 30% of the 200%
- (B) His regular daily wage multiplied by 200%
- (C) His regular daily wage plus 200%
- (D) His daily regular wage

Q: A, a worker of ABC Company, was on leave with pay on March 31, 2010. He reported for work on April 1 and 2, Maundy Thursday and Good Friday, respectively, both regular holidays. Is A entitled to holiday pay for the two successive holidays? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

YES. A is entitled to holiday pay equivalent to two hundred percent (200%) of his regular daily wage for the two successive holidays that he worked (Section 6[a], Rule IV, Book III of the Omnibus Rules implementing the Labor Code).

Q: Nemia earns P7.00 for every manicure she does in the barber shop of a friend which has nineteen (19) employees. At times she takes home P 175.00 a day and at other times she earns nothing. She now claims holiday pay. Is Nemia entitled to this benefit? Explain briefly. (5%)

SUGGESTED ANSWER:

No, Nemia is not entitled to holiday pay.

Art. 82 of the Labor Code provides that workers who are paid by results are, among others, not entitled to holiday pay. Nemia is a worker who is paid by results. She earns P7.00 for every manicure she does.

ANOTHER SUGGESTED ANSWER:

Yes. Nemia is entitled to holiday pay.

The Supreme Court has ruled: "As to the other benefits, namely, holiday pay, premium pay, 13^m month pay, and service incentive leave which the labor arbiter failed to rule on but which the petitioners prayed for in their complaint, we hold that petitioners are so entitled to these benefits. Three (3) factors lead us to conclude that petitioners, although piece rate workers, were regular employees of private respondents. First as to the nature of the petitioner's tasks, their job of repacking snack food was necessary or desirable in the usual business of private respondents, who were engaged in the manufacture and selling of such food products; second, petitioners worked for private respondents throughout the year, their employment not having been dependent on a specific project or season; and third, the length of time that petitioners worked for private respondents. Thus, while petitioner's mode of compensation was on a "per piece basis" the status and nature of their employment was that of regular employees." [Labor Congress of the Philippines v. NLRC, 290 SCRA 509(1998)]

Q: On orders of his superior, Efren, a high-speed sewing machine technician, worked on May 1, Labor Day. If he worked eight (8) hours on that day, how much should he receive if his daily rate is P400.00? (2%)

SUGGESTED ANSWER:

Efren should receive P800.00. Art 92 of the Labor Code provides that the employer may require an employee to work on any regular holiday but such employee shall be paid compensation equivalent to twice his regular rate.

Q: This year, National Heroes Day (August 2.5) falls on a Sunday. Sunday is the rest day of Bonifacio whose daily rate is P500.00.

- A. If Bonifacio is required by his employer to work on that day for eight (8) hours, how much should he be paid for his work? Explain. (3%)
- B. If he works for ten (10) hours on that day, how much should he receive for his work? Explain. (2%)

SUGGESTED ANSWER:

A. For working on his scheduled rest day, according to Art. 93(a), Bonifacio should be paid P500.00 (his daily rate) plus P150.00 (30% of his daily rate) = P650.00. This amount of P650.00 should be multiplied by 2 = P1, 300.00. This is the amount that Bonifacio as employee working on his scheduled rest day which is also a regular holiday, should receive. Art. 94(c) of the Labor Code provides that an employee shall be paid a compensation equivalent to twice his regular rate for work on any regular holiday. The “regular rate” of Bonifacio on May 1, 2002 is with an additional thirty percent because the day is also his scheduled rest day.

B. P1,300.00 which is the amount that Bonifacio is to receive for working on May 1, 2002 should be divided by 8 to determine his hourly rate of P162.50. This hourly rate should be multiplied by 2 (the number of hours he worked overtime). Thus, the amount that Bonifacio is entitled to receive for his overtime work on May 1, 2002 is P325.00.

Q: Ping Gabo is the Chief Engineer of the National Publishing Corp. with a monthly salary of P3,000.00. He works over eight (8) hours daily from Monday to Saturday. In May, June and July 1991, he rendered, each month, ten (10) hours beyond his regular work schedule.

Is he entitled to overtime pay and holiday pay? Why?

SUGGESTED ANSWER:

The entitlement of Gabo to overtime pay and holiday pay is dependent on whether he is a managerial employee or not. If he is a managerial employee, he is not entitled to

overtime pay and holiday pay. The Labor Code provides that the provisions that grant overtime pay and holiday pay shall not apply, among others, to managerial employees.

A managerial employee is defined by the Code as referring to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

Gabo, as Chief Engineer, appears to be a managerial employee. On the other hand, his monthly pay is rather low for a managerial employee. Despite his title, his duty may not consist of a management of department or of a subdivision thereof.

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:

- (d) 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

Dennis was a taxi driver who was being paid on the "boundary" system basis. He worked tirelessly for Cabrera Transport Inc. for fourteen (14) years until he was eligible for retirement. He was entitled to retirement benefits. During the entire duration of his service, Dennis was not given his 13th month pay or his service incentive leave pay.

- a. Is Dennis entitled to 13th month pay and service leave incentive pay? Explain. (5%) (2012 BAR)

Suggested Answer:

No. A taxi driver paid under the "boundary system" is not entitled to a 13th month and a SIL pay. Hence, his retirement pay should be computed solely on the basis of his salary. Specifically, Sec. 3 (e) of the Rules and Regulations Implementing P.D. 851 excludes from the obligation of 13th Month Pay "Employers of those who are paid on xxx boundary basis". On the other hand, Sec. 1 (d), Rule V, Book III of the Omnibus Rules provides that those "employees whose performance is unsupervised by the employer" are not entitled to Service Incentive Leave. A taxi driver paid under the Boundary System is an "unsupervised" employee.

- b. Since he was not given his 13th month pay and service incentive leave pay, should Dennis be paid upon retirement, in addition to the salary equivalent to fifteen (15) days for every year of service, the additional 2.5 days representing one-twelfth (1/12) of the 13th month pay as well as the five (5) days representing the service incentive leave for a total of 22.5 days? Explain. (5%) (2012 BAR)

Suggested Answer:

No. Since he is not entitled to 13th month pay and SIL, his retirement pay should be computed solely on the basis of his salary. [R&E Transport v. Latag, G.R. No. 155214, February 13, 2004].

E. Leaves

1. Maternity Leave

Q: Mans Weto had been an employee of Nopolt Assurance Company for the last ten (10) years. His wife of six (6) years died last year. They had four (4) children. He then fell in love with Jovy, his co-employee and they got married.

In October this year, Weto's new wife is expected to give birth to her first child. He has accordingly filed his application for paternity leave, conformably with the provisions of the Paternity Leave Law which took effect in 1996. The HRD manager of the assurance firm denied his application, on the ground that Weto had already used up his entitlement under that law. Weto argued that he has a new wife who will be giving birth for the first time, therefore, his entitlement to paternity leave benefits would begin to run anew.

X X X

(b) Is Jovy entitled to maternity leave benefits? (6%)

SUGGESTED ANSWER:

(b) Yes, if Jovy, as a female employee, has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of her childbirth (Sec, 14-A, R.A. 1161, as amended); otherwise, she is not entitled to the benefit.

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.

Q: Melissa, a coffee shop worker of 5 months, requested her employer for 5 days' leave with pay to attend to the case that she filed against her husband for physical assault two weeks earlier. May the employer deny her request for leave with pay? (2011 BAR)

- (A) Yes, the reason being purely personal, approval depends on the employer's discretion and is without pay.
- (B) No, as victim of physical violence of her husband, she is entitled to five days paid leave to attend to her action against him.

- (C) No, the employer must grant the request but the leave will be without pay.
- (D) Yes, since she is not yet a permanent employee.

1. **Paternity Leave**

Q: To avail himself of paternity leave with pay, when must the male employee file his application for leave? (2011 BAR)

- (A) Within one week from the expected date of delivery by the wife.
- (B) Not later than one week after his wife's delivery or miscarriage
- (C) Within a reasonable time from the expected deliver date of his wife.
- (D) When a physician has already ascertained the date the wife will give birth.

Q: Which of the following is NOT a requisite for entitlement to paternity leave? (2011 BAR)

- (A) The employee is cohabiting with his wife when she gave birth or had a miscarriage.
- (B) The employee is a regular or permanent employee.
- (C) The wife has given birth or suffered a miscarriage.
- (D) The employee is lawfully married to his wife.

Q: Mans Weto had been an employee of Nopolt Assurance Company for the last ten (10) years. His wife of six (6) years died last year. They had four (4) children. He then fell in love with Jovy, his co-employee and they got married.

In October this year, Weto's new wife is expected to give birth to her first child. He has accordingly filed his application for paternity leave, conformably with the provisions of the Paternity Leave Law which took effect in 1996. The HRD manager of the assurance firm denied his application, on the ground that Weto had already used up his entitlement under that law. Weto argued that he has a new wife who will be giving birth for the first time, therefore, his entitlement to paternity leave benefits would begin to run anew.

Whose contention is correct, Weto or the HRD manager?

SUGGESTED ANSWER:

(a) The contention of Weto is correct. The law provides that every married male is entitled to a paternity leave of seven (7) days for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting (Section 2, RA6187). Jovyis Weto's legitimate spouse with whom he is cohabiting. The fact that Jovy is his second wife and that Weto had 4 children with his first wife is beside the point. The important fact is that this is the first child of Jovy with Weto. The law did not distinguish and we should therefore not distinguish.

The paternity leave was intended to enable the husband to effectively lend support to his wife in her period of recovery and/or in the nursing of the newly born child (Sec. 3, RA 8187). To deny Weto this benefit would be to defeat the rationale for the law.

ANOTHER SUGGESTED ANSWER:

The HRD manager is correct. Since it is conceded that Weto earlier availed of four (4) paternity leaves when his first wife gave birth to their four (4) children, he clearly "already used up his entitlement under the law". His new wife's giving birth for the first time would not, matter as the benefit given by. Section 2 of R.A. 8187 is an exhaustible benefit granted to a father "for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting".

Q: How many times may a male employee go on Paternity Leave? Can he avail himself of this benefit, for example, 50 days after the first delivery by his wife? (3%)

SUGGESTED ANSWER:

A male employee may go on Paternity Leave up to four (4) children. (Sec. 2, RA 8187) On the question of whether or not he can avail himself of this benefit 50 days after the delivery of his wife, the answer is: Yes, he can because the Rules Implementing Paternity Leave Act says that the availment should not be later than 60 days after the date of delivery.

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]

3. Service Incentive Leave

Q: Which of the following grounds exempts an enterprise from the service incentive leave law?

- (A) The employees already enjoy 15 days vacation leave with pay.
- (B) The employer's business has been suffering losses in the past three years.
- (C) The employer regularly employs seven employees or less.
- (D) The company is located in a special economic zone.

Q: If not used by the end of the year, the service incentive leave shall be (2011 BAR)

- (A) carried over to the next year.
- (B) converted to its money equivalent.
- (C) forfeited.
- (D) converted to cash and paid when the employee resigns or retires.

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.

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.

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: How often should the collected service charges be distributed to employees in hotels and restaurants? (2011 BAR)

- (A) Every end of the month
- (B) Every two weeks
- (C) Every week
- (D) At the end of each work day

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: What would be your advice to your client, a manufacturing company, who asks for your legal opinion on whether or not the 13th Month Pay Law (Presidential Decree No. 851) covers a casual employee who is paid a daily wage? [5%]

SUGGESTED ANSWER:

I will advise the manufacturing company to pay the casual employee 13th Month Pay if such casual employee has worked for at least one (1) month during a calendar year.

The law on the 13th Month Pay provides that employees are entitled to the benefit of said law regardless of their designation or employment status.

The Supreme Court ruled in Jackson Building Condominium Corporation v. NLRC, 246 SCRA 329, (1995) interpreting P.D. No. 851, as follows:

xxx employees are entitled to the thirteenth-month pay benefits regardless of their designation and irrespective of the method by which their wages are paid.

Q: Concepcion Textile Co. included the overtime pay, night-shift differential pay, and the like in the computation of its employees' 13th-month pay. Subsequently, with the promulgation of the decision of the Supreme Court in the case of San Miguel Corporation vs. Inciong (103 SCRA 139) holding that these other monetary claims should not be included in the computation of the 13th-month pay. Concepcion Textile Co. sought to recover under the principle of *solutio indebiti* overpayment of its employees' 13th-month pay, by debiting against future 13th-month payments whatever excess amounts it had previously made.

- 1) Is the Company's action tenable?
- 2) With respect to the payment of the 13th-month pay after the San Miguel Corporation ruling, what arrangement, if any, must the Company make in order to exclude from the 13th-month pay all earnings and remunerations other than the basic pay.

SUGGESTED ANSWER:

1) The Company's action is not tenable. The principle of *solutio indebiti* which is a civil law concept is not applicable in labor law. Thus, *solutio indebiti* is not applicable to the instant case. (Davao Fruits Corporations vs. National Labor Relations Commission, et al. 225 SCRA, 562)

ALTERNATIVE ANSWERS:

a) The Company's action would be tenable if payment was done by mistake, in which case recovery can be done under the principle of *solutio indebiti*. But if there was no

mistake, the Company's action would be untenable because it would violate Article 100 of the Labor Code which prohibits elimination or diminution of benefits.

b) No. The Company's action is not tenable. The grant by Concepcion Textile Co. of a better formula, more favorable to the employee, constituted a valid offer by the company as the offeror and the employees as the offeree. There having been a meeting of the minds of the parties, the rights and obligations arising therefrom were valid. Thus, any amount received by virtue thereof could not be recovered, much less taken away unilaterally. The principle does not apply to the case at bar.

2) Alter the 1981 San Miguel ruling, the High Court decided the case of Philippine Duplicators Inc. vs. NLRC, on 11 November 1993. Accordingly, management may undertake to exclude sick leave, vacation leave, maternity leave, premium pay for regular holiday, night differential pay and cost of living allowance. Sales commissions, however, should be included based on the settled rule as earlier enunciated in Songco vs. NLRC, 183 SCRA 610.

Q: Who among the following is not entitled to 13th 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:

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

H. Separation Pay

Q: Pedro Tiongco was a salesman for ten years of Lakas Appliance Company (LAC). Due to business reverses, the Company laid off Tiongco and three other salesmen and offered them separation pay based on their monthly basic salary of P5,700.00. The three salesmen accepted their separation pay and signed individual quitclaims stating, among others, that they have no more claims or causes of action whatsoever against LAC. The quitclaims were duly notarized. Tiongco refused to accept his separation pay and instead, demanded that the said pay should be computed on the basis of his monthly basic salary and his sales commissions. Upon LAC's rejection of Tiongco's demand. Tiongco filed the appropriate complaint with the Labor Arbiter.

a) **As Labor Arbiter, how will you resolve Tiongco's complaint? Reasons.**

SUGGESTED ANSWER:

As Labor Arbiter, I will grant the demand that Tiongco be paid his separation pay computed on the basis of his monthly basic salary and his sales commissions. The sales commissions under the Labor

Code is part of the "wage" that the salesmen are entitled to receive for services rendered. Wages may be fixed or ascertained on a time, task, piece or commission basis. (Article 97. Labor Code. *Songeo. et al. vs. NLRC*. G.R. No. 50999, March 23, 1990)

b) **If Tiongco obtains a favorable decision will the three other salesmen be entitled to separation pay differential? Reasons.**

SUGGESTED ANSWER:

No. If the acceptance of their separation pay by the three other salesmen and their signing individual quitclaims that stated that they have no more claims or causes of actions whatsoever against LAC (where the quitclaims were even duly notarized) is voluntarily, they can no longer ask for a recomputation of their separation pay according to the favorable decision secured by Tiongco.

The salesmen signed quitclaim that are not contrary to law morals or public policy. Not all quitclaims are invalid as against public policy if they are voluntarily entered into and represents a reasonable settlement. (*Periquel v. NLRC*, 186 SCRA 724)

Q: Under what circumstances or instances may an employee who is found to have been illegally dismissed and, therefore, entitled to reinstatement, be nevertheless, NOT ordered reinstated but merely awarded (a) separation pay in lieu of reinstatement and (b) back wages? At what rate would the separation pay be? What would be the maximum limit for the back wages?

SUGGESTED ANSWER:

In a number of Supreme Court decision, it has been ruled that an employee who is found to have been illegally dismissed shall be awarded separation pay in lieu of reinstatement if reinstatement is no longer viable in view of the strained relations between the employee and his employer. In a case, the Supreme Court also ruled that since reinstatement was no longer feasible in view of the advanced age of the employees who were illegally dismissed, they should instead received separation pay.

The rate of separation pay is one month salary for every year of service. The Supreme Court has also ruled that in the computation of separation pay account must be taken not only of the basis salary of the employee but also his allowances.

In decisions applying the law before Rep. Act No. 6715, the Supreme Court ruled that the maximum limit for back wages shall be three years.

The law has been changed by Rep. Act No. 6715. Back wages are now to be computed from the time the compensation of the employee was withheld from him up to the time of his actual reinstatement. Thus, in applying the amendment introduced by Rep. Act No. 6715, this means that back wages will now be paid for the entire period up to the actual reinstatement of the employees, even if the period is over three years.

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)

ALTERNATIVE ANSWER:

(A)

I. Retirement Pay

Q: A Collective Bargaining Agreement (CBA) between Company A and its employees provides for optimal retirement benefits for employees who have served the company for over 25 years regardless of age, equivalent to one-and-one-half months pay per year of service based on the employee's last pay. The CBA further provides that "employees whose services are terminated, except for cause, shall receive said retirement benefits regardless of age or service record with the company or to the applicable separation pay provided by law, whichever is higher." The Company, due to poor business conditions, decided to cease operations and gave its employees the required one month's advance notice as well as notice to DOLE, with the further advice that each employee may claim his corresponding separation or retirement benefits whichever is higher after executing the required waiver and quitclaim.

Dino Ramos and his co-employees who have all rendered more than 25 years of service, received their retirement benefits. Soon after, Ramos and others similarly situated demanded for their separation pay. The Company refused, claiming that under the CBA they cannot receive both benefits.

Who is correct, the employees or the Company?

SUGGESTED ANSWER:

The employees are correct. In the absence of a categorical provision in the Retirement Plan and the CBA that an employee who receives separation pay is no longer, entitled to retirement benefits, the employee is entitled to the payment of both benefits pursuant to

the social justice policy. [Conrado M. Aquino, et al v. National Labor Relations Commission, et al., G.R No. 87653, 11 February 1992)

ALTERNATIVE ANSWER:

a) The Company is correct. The CBA clearly provides that employees who are terminated are entitled to retirement benefits or separation pay, whichever is higher. The CBA, therefore, does not give the employees a right to both retirement pay and separation pay. Hence, they cannot be entitled to both. The exclusion of one by the other is deductible not only from the term “or” but also by the qualifying phrase “whichever is higher”. This phrase would be immaterial if the employees were entitled to both.

b) Dino and his co-employees were correct.

In the case of University of the East vs. NLRC, it was clarified that the retirement benefits arising from the CBA is an Obligation Ex Contractu while separation pay under Art. 284 is an Obligation Ex-Lege.

Thus, the Company should grant both benefits to those who were separated due to CLOSURE and at the same time were qualified to retire. (Cipriano v. San Miguel, 24 SCRA 703)

Q: 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)

Q: The Labor Code on retirement pay expands the term “one-half ($\frac{1}{2}$) month salary” because it means (2011 BAR)

- (A) 15 days' pay plus $\frac{1}{12}$ th of the 13th month pay and $\frac{1}{12}$ th of the cash value of service incentive leave.
- (B) 15 days' pay plus $\frac{1}{12}$ th of the 13th month pay and the cash equivalent of five days service incentive leave.
- (C) 15 days pay plus a full 13th month pay.
- (D) 15 calendar days' pay per year of service plus allowances received during the retirement year.

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

The components of retirement pay are:

- 1. 15 days pay
- 2. 1/12 of 13th month pay, and
- 3. Cash equivalent of not more than five (5) days of service incentive leave.

J. Women Workers

a. Provisions against discrimination

Q: In a work-related environment, sexual harassment is committed when (2011 BAR)

- (A) the offender has authority, influence, or moral ascendancy over his subordinate victim.
- (B) the victim's continued employment is conditioned on sexual favor from her.
- (C) the female victim grants the demand for sexual favor against her will.
- (D) the victim is not hired because she turned down the demand for sexual favor.

b. Stipulation against marriage

Q: One of Pacific Airline's policies was to hire only single applicants as flight attendants, and considered as automatically resigned the flight attendants at the moment they got married. Is the policy valid? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

The policy is not valid. It violates the provisions of Article 136 (now Article 134) of the Labor Code on stipulations against marriage, to wit: "It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate, or otherwise prejudice a woman employee merely by reason of her marriage."

Q: Dinna Ignacio was hired by Stag Karaoke Club as a guest relations officer. Dinna was also required to sing and dance with guests of the club.

In Dinna Ignacio's employment contract, which she signed, the following stipulations appeared:

Compensation: Tips and commissions coming from guests shall be subjected to 15% deduction.
Hours of work: 5 P.M. up to 2 AM. Daily Including Sundays and Holidays
Other conditions: Must maintain a body weight of 95 lbs., remain single. Marriage or pregnancy will be considered as a valid ground for a termination of employment.

A year later. Dinna Ignacio requested to go on leave because she would be getting married to one of the club's regular guests. The management of the club dismissed her.

Dinna filed a complaint for illegal dismissal, night shift differential pay, backwages, overtime pay and holiday pay. Discuss the merits of Dinna's complaint.

SUGGESTED ANSWER:

The first issue to be resolved is: Is Dinna Ignacio an employee of the Star Karaoke Club? Yes, she is an employee per the provision of the Labor Code that states: "Any woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period shall be considered an employee of such establishment for purposes of labor and social legislation"(Art. 138). In Dinna's conditions of employment have all the aforesaid characteristics.

She has been illegally dismissed. The Labor Code expressly provides, that "It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage." (Art. 136)

Because of her illegal dismissal, she is entitled to backwages from the time her compensation was withheld from her to the time of her actual reinstatement.

Dinna is not entitled to night differential pay, overtime pay and holiday pay because she belongs to one of those classes of employees who are not covered by the provision of the Labor Code providing for these benefits. She is a worker paid by results, since her compensation is determined by the tips and commission that she receives from her guests.

Mam-manu Aviation Company (Mam-manu) is a new airline company recruiting flight attendants for its domestic flights. It requires that the applicant be single, not more than 24 years old, attractive, and familiar with three (3) dialects, viz: Ilonggo, Cebuano and Kapampangan. Ingga, 23 years old, was accepted as she possesses all the qualifications. After passing the probationary period, Ingga disclosed that she got married when she was 18 years old but the marriage was already in the process of being annulled on the ground that her husband was afflicted with a sexually transmissible disease at the time of the celebration of their marriage. As a result of this revelation, Ingga was not hired as a regular flight attendant. Consequently, she filed a complaint against Mam-manu alleging that the pre-employment qualifications violate relevant provisions of the Labor Code and are against public policy. Is the contention of Ingga tenable? Why? (5%) (2012 BAR)

Suggested Answer:

Yes. Man-manu's pre-employment requirement cannot be justified as a "bona fide occupational qualification," where the particular requirements of the job would justify it. The said requirement is not valid because it does not reflect an inherent quality that is reasonably necessary for a satisfactory job performance. [PT&T vs. NRLC, G.R. No. 118978, May 23, 1997 citing 45A Am. Jur. 2d, Job Discrimination, Sec. 506, p.468]

Another Suggested Answer:

Yes, Ingga's contention is tenable considering Art. 136 of the Labor Code which prohibits discrimination against married women.

c. Prohibited acts

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

Q: Atty. Renan, a CPA-lawyer and Managing Partner of an accounting firm, conducted the orientation seminar for newly-hired employees of the firm, among them, Miss Maganda. After the seminar, Renan requested Maganda to stay, purportedly to discuss some work assignment. Left alone in the training room,

Renan asked Maganda to go out with him for dinner and ballroom dancing. Thereafter, he persuaded her to accompany him to the mountain highway in Antipolo for sight-seeing. During all these, Renan told Maganda that most, if not all, of the lady supervisors in the firm are where they are now, in very productive and lucrative posts, because of his favorable endorsement.

[a] Did Renan commit acts of sexual harassment in a work-related or employment environment? Reasons. (3%)

SUGGESTED ANSWER:

Atty. Renan is guilty of sexual harassment. This conclusion is predicated upon the following consideration:

1. Atty. Renan has authority, influence or moral ascendancy over Miss Maganda;
2. While the law calls for a demand, request or requirement of a sexual favor, it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude from the acts of the offender. (*Domingo vs. Rayala*, 546 SCRA 90 [2008]);
3. The acts of Atty. Renan towards Miss Maganda resound with deafening clarity the unspoken request for a sexual favor, regardless of whether it is accepted or not by Miss Maganda.
4. In sexual harassment, it is not essential that the demand, request or requirement be made as a condition for continued employment or promotion to a higher position. It is enough that Atty.

Renan's act result in creating an intimidating, hostile or offensive environment for Miss Maganda.

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

A spinster school teacher took pity on one of her pupils, a robust and precocious 12-year old boy whose poor family could barely afford the cost of his schooling. She lives alone at her house near the School after her housemaid had left. In the afternoon, she lets the boy do various chores as cleaning, fetching water and all kinds of errands after school hours. She gives him rice and P100.00 before the boy goes home at 7:00 every night. The school principal learned about it and charged her with violating the law which prohibits the employment of children below 15 years of age. In her defense, the teacher stated that the work performed by her pupil is not hazardous. Is her defense tenable? Why? (5%) (2012 BAR)

Suggested Answer:

The defense is not tenable. Children below fifteen (15) years of age shall not be employed except:

1. When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed...; or
2. Where a child's employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential ... [Section 12, RA 7610, as amended by RA 9231].

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x

[b] Employment of children below fifteen (15) years of age in any public or private establishment is absolutely prohibited.

SUGGESTED ANSWER:

False. Children below fifteen (15) years of age (can be employed) "when he/she works directly under the sole responsibility of his/her parents or guardian, and his employment does not in any way interfere with his schooling."

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 nit 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 requisites 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:

d. 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: Are there differences between a househelper and a homemaker? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Househelper refers to any person, whether male or female, who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family (Rule XIII, Section I(b), Book 3, Labor Code; Apex Mining Company, Inc. v. NLRC, G.R. No. 94951, April 22, 1991, 196 SCRA 251), homemaker, on the other hand, is one who works in a system of production under an employer or contractor whose job is carried out at his/her home, the materials of which may or may not be furnished by the employer or contractor (Department Order No. 005-92).

The househelper is covered by the Kasambahay Law; whereas, the homemaker is subject to the provisions of Book III of the Labor Code. The househelper works in another person's home; whereas, the homemaker does his job in the confines of his own home. The househelper has a definite employment while the homemaker has none. The househelper has security of tenure, which the homemaker does not have.

Q: In the case of a househelper, reinstatement is not a statutory relief for unjust dismissal because of the confidentiality of his or her job. Instead, the househelper shall be paid (2011 BAR)

- (A) an indemnity equivalent to 15 days' pay plus compensation already earned.
- (B) a separation pay equivalent to one month's pay per year of service.
- (C) a separation pay equivalent to one-half month's pay per year of service.
- (D) 15 days' pay as indemnity plus wages lost from dismissal to finality of decision.

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 13th month pay.

SUGGESTED ANSWER:

- d) Domestic helpers in the personnel service of another are not entitled to 13th 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: Is it correct to say that under Philippine law a househelper has no right to security of tenure? (2011 BAR)

- (A) No, since a househelper can be dismissed only for just cause or when his agreed period of employment ends.
- (B) Yes, since it is the employer who determines the period of his service.
- (C) Yes, since a househelper can be dismissed with or without just cause.
- (D) No, since a househelper can be dismissed only for just cause, except when he has been employed for a definite period not exceeding one year.

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.

Q: Albert, a 40-year old employer, asked his domestic helper, Inday, to give him a private massage. When Inday refused, Albert showed her Article 141 of the Labor Code, which says that one of the duties of a domestic helper is to minister to the employer's personal comfort and convenience.

[a] **Is Inday's refusal tenable? Explain. (3%) (2009 Bar Question)**

x x x

SUGGESTED ANSWER:

Yes. Inday's refusal to give her employer a "private massage" is in accordance with law because the nature of the work of a domestic worker must be in connection with household chores. Massaging is not a domestic work.

Q: Nova Banking Corporation has a rest house and recreational facility in the highlands of Tagaytay City for the use of its top executives and corporate clients. The rest house staff includes a caretaker, two cooks and laundrywoman.

All of them are reported to the Social Security System as domestic or household employees of the rest house and recreational facility and not of the bank. Can the bank legally consider the caretaker, cooks and laundrywoman as domestic employees of the rest house and not of the bank? (3%)

SUGGESTED ANSWER:

No, they are not domestic employees. They are bank employees because the rest house and recreational facility are business facilities as they are for use of the top executives and clients of the bank. [Art. 141, Labor Code; Apex Mining Co., Inc. v. NLRC, 196 SCRA 251 (1991)-, Traders Royal Bank v. NLRC, G.R. No. 127864, December 22, 1991.

The weekly work schedule of a driver is as follows: Monday, Wednesday, Friday - drive the family car to bring and fetch the children to and from school. Tuesday, Thursday, Saturday - drive the family van to fetch merchandise from suppliers and deliver the same to a boutique in a mall owned by the family.

a. Is the driver a house helper? (5%) (2012 BAR)

Suggested Answer:

Yes, insofar as concerns his work on "Monday, Wednesday and Friday", as he ministers to the personal comfort and enjoyment of his employer's family during those days. [Apex Mining Company, Inc. v. NLRC (G.R. No. 94951, April 22, 1991, 196 SCRA 251, 254-255)].

b. The same driver claims that for work performed on Tuesday, Thursday and Saturday, he should be paid the minimum daily wage of a driver of a commercial establishment. Is the claim of the driver valid? (5%) (2012 BAR)

Suggested Answer:

Yes, as during said days, he already works not as a domestic servant but as a regular employee in his employer's boutique in a mall [Apex Mining Company, Inc. vs. NLRC (supra)].

Q: Under the Labor Code, its provisions on working conditions, including the eight-hour work day rule, do not apply to domestic helpers. Does it follow from this that a domestic helper's workday is not limited by law? (2011 BAR)

- (A) No, since a domestic helper cannot be required to work more than ten hours a day.
- (B) Yes, since a domestic helper's hours of work depend on the need of the household he or she works for.
- (C) No, because a domestic helper is legally entitled to overtime pay after ten hours of work.
- (D) Yes, a domestic helper may be required to work twelve hours a day or beyond.

M. Employment of Homeworkers

Q: In industrial homework, the homeworker does at his home the work that his employer requires of him, using employer-supplied materials. It differs from regular factory work in the sense that (2011 BAR)

- (A) the workers are not allowed to form labor organizations.
- (B) the workers' pay is fixed by informal agreement between the workers and their employer.
- (C) the workers are under very little supervision in the performance or method of work.
- (D) the workers are simply called "homeworkers," not "employees," hence not covered by the social security law.

Q: Albert, a 40- year old employer, asked his domestic helper, Inday, to give him a private massage. When Inday refused, Albert showed her Article 141 of the Labor Code, which says that one of the duties of a domestic helper is to minister to the employer's personal comfort and convenience.

x x x

[b] **Distinguish briefly, but clearly, a "househelper" from a "homeworker." (2%) (2009 Bar Question)**

SUGGESTED ANSWER:

Art. 141. - *Domestic Helper* - one who performs services in the employers house which is usually necessary or desirable for the maintenance and enjoyment thereof and includes

ministering to the personal comfort and convenience of the members of the employer's household, including the services of a family driver.

Art. 153.- *Homeworker* -is an industrial worker who works in his/her home processing raw materials into finished products for an employer. It is a decentralized form of production with very limited supervision or regulation of methods of work.

N. **Apprentices and Learners**

Q: Distinguish a learner from an apprentice. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

1. As to nature: a learner trains in a semi-skilled job; whereas, apprentice trains in a highly technical job.
2. As to period: a learner is for three months; whereas, an apprentice is not less than three months but not more than six months, as rule.
3. As to commitment to employ: For a learner, there is a commitment to employ the learner, as regular employees if he so desire, upon completion of the learnership; whereas, for an apprentice, is no such commitment.
4. As to necessity of TESDA approval: For a learner, TESDA approval is not necessary, only TESDA inspection is required; whereas, for an apprentice, prior approval by TESDA is required.
5. As to deductibility of expenses: For a learner, there is no for deductibility of expenses; whereas, for an apprentice, of training are deductible from income tax.
6. As to compensation: a learner has compensation; an apprentice has none if DOLE authorizes, as when required by the school.

Q: Differentiate learnership from apprenticeship with respect to the period of training, type of work, salary and qualifications. (2016)

SUGGESTED ANSWER:

Learnership and apprenticeship are similar because they both mean training periods for jobs requiring skills that can be acquired through actual work experience. And because both a learner and an apprentice are not as fully productive as regular workers, the learner and the apprentice may be paid wages twenty-five percent lower than the applicable legal minimum wage.

They differ in the focus and terms of training. An apprentice trains in a highly skilled job or in any job found only in highly technical industries. Because it is a highly skilled job, the training period exceeds three months. For a learner, the training period is shorter because the job is more easily learned than that of apprenticeship. The job, in other words, is "non-apprenticeable" because it is practical skills which can be learned in three (not six) months. A learner is not an apprentice but an apprentice is, conceptually, also a learner.

Accordingly, because the job is more easily learnable in learnership than in apprenticeship, the employer is committed to hire the learner- trainee as an employee after the training period. No such commitment exists in apprenticeship.

Finally, employment of apprentices, as stated in Article 60, is legally allowed only in highly technical industries and only in apprenticeable occupations approved by the DOLE. Learnership is allowed even for non- technical jobs.

Q: A handicapped worker may be hired as apprentice or learner, provided (2011 BAR)

- (A) he waives any claim to legal minimum wage.
- (B) his work is limited to apprenticeable job suitable to a handicapped worker.
- (C) he does not impede job performance in the operation for which he is hired.
- (D) he does not demand regular status as an employee.

Q: The apprenticeship program should be supplemented by theoretical instruction to be given by

- (A) the apprentice's school only where the apprentice is formally enrolled as a student.
- (B) the employer if the apprenticeship is done in the plant.
- (C) the civic organizations that sponsor the program.
- (D) the Department of Labor and Employment.

Q: What is not a prerequisite 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].

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]

Q: Both apprenticeship and learnership are government programs to provide practical on-the-job training to new workers. How do they differ with respect to period of training? (2011 BAR)

- (A) In highly technical industries, apprenticeship can exceed 6 months; learnership can exceed one year.
- (B) Apprenticeship cannot exceed 6 months; learnership can.
- (C) Apprenticeship shall not exceed six months; while learnership shall not exceed three months.
- (D) The law lets the employer and the apprentice agree on the apprenticeship period; but the law fixes learnership period at six months in non-technical industries.

Q: Although both are training programs, apprenticeship is different from learnership in that (2011 BAR)

- (A) a learner may be paid 25% less than the legal minimum wage while an apprentice is entitled to the minimum wage.
- (B) apprenticeship has to be covered by a written agreement; no such formality is needed in learnership.
- (C) in learnership, the employer undertakes to make the learner a regular employee; in apprenticeship, no such undertaking.
- (D) a learner is deemed a regular employee if terminated without his fault within one month of training; an apprentice attains employment status after six months of apprenticeship.

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

a. Definition

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]

b. Rights of persons with disability

Q: A lady worker was born with a physical deformity, specifically, hard of hearing, speech impaired and color blind. However, these deficiencies do not impair her working ability.

Can the employer classify the lady worker as a handicapped worker so that her daily wage will only be seventy-five percent (75%) of the applicable daily minimum wage? [5%]

SUGGESTED ANSWER:

No, the employer cannot classify the lady worker as a handicapped worker because according to the facts in the question, her deficiencies do not impair her working ability. If her earning capacity is therefore not also impaired, then she cannot be considered a handicapped worker.

Because of the above fact, the employer shall not pay her less than the applicable daily minimum wage. (See Article 78 of the Labor Code)

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.

c. Prohibition on discrimination against persons with disability

For humanitarian reasons, a bank hired several handicapped workers to count and sort out currencies. The handicapped workers knew that the contract was only for a period of six-months and the same period was provided in their employment contracts. After six months, the bank terminated their employment on the ground that their contract has expired. This prompted the workers to file with the Labor

Arbiter a complaint for illegal dismissal. Will their action prosper? Why or why not? (5%) (2012 BAR)

Suggested Answer:

No. An employment contract with a fixed term terminates by its own terms at the end of such period. The same is valid if the contract was entered into by the parties on equal footing and the period specified was not designed to circumvent the security of tenure of the employees. (*Brent School v. Zamora*, 181 SCRA 702).

IV. Termination of Employment

Q: When the employer or his representative hurls serious insult on the honor or person of the employee, the law says that the employee (2011 BAR)

- (A) may leave work after at least a five-day notice to the employer.
- (B) may leave work at any time and file for constructive dismissal.
- (C) may leave work without giving a 30-day notice to the employer.
- (D) may abandon his job at once.

A. Employer-employee relationship

Q: Dr. Crisostomo entered into a retainer agreement with AB Hotel and Resort whereby he would provide medical services to the guests and employees of AB Hotel and Resort, which, in turn, would provide the clinic premises and medical supplies. He received a monthly retainer fee of ₱60,000.00, plus a 70% share in the service charges from AB Hotel and Resort's guests availing themselves of the clinic's services. The clinic employed nurses and allied staff, whose salaries, SSS contributions and other benefits he undertook to pay. AB Hotel and Resort issued directives giving instructions to him on the replenishment of emergency kits and forbidding the clinic staff from receiving cash payments from the guests.

In time, the nurses and the clinic staff claimed entitlement to rights as regular employees of AB Hotel and Resort, but the latter refused on the ground that Dr. Crisostomo, who was their employer, was an independent contractor. Rule, with reasons. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

I will rule in favor of AB Hotel and Resort. Applying the Four-Fold Test will readily show that the real employer of the nurses and the clinic staff is Dr. Crisostomo and not AB Hotel and Resort, viz: (1) the selection and engagement of the nurses and clinic staff were made by Dr. Crisostomo; (2) their wages were paid by Dr. Crisostomo. As a manager of

fact, SSS contributions were paid by him which, by itself, is already an indication that he is the employer. Although he did not exercise the power of dismissal, it can be said that as the doctor, he has the control of his employees' conduct in the dispensing of medical services to the guests and personnel of the resort. The fact that AB Hoteland Resort gave instructions to him regarding replenishment of emergency kits and forbidding his staff from receiving cash payments from guests is of no consequence. They are nothing more but guidelines which will not create an employer-employee relationship (*Insular Life Co., Ltd. v. NLRC*, G.R. No. 84484, November 15, 1989, 179 SCRA 459).

ALTERNATIVE ANSWER:

I will rule in favor of the employees. In the case of *Samonte v. La Salle Greenhills, Inc.* (G.R. No. 199683, February 10, 2016), the Court held that "Time and again, we have held that the power of control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee. It is enough that the employer has the right to wield that power." Such power is present in the hands of AB Hoteland Resort.

Q: (2017 Bar Question)

A. What are the accepted tests to determine the existence of an employer-employee relationship? (5%)

SUGGESTED ANSWER:

The accepted tests to determine the existence of an employer-employee relationship are:

A) • Four-fold Test:

1. The selection and engagement of the employees;
2. The payment of wages
3. The power of dismissal; and
4. The power to control the employees' conduct (*The Manila Hotel corp. v. NLRC*, G.R. No. 154591, March S, 2007, 343 SCRA 1).

The most important test is the element of control, which has been defined as the "right to control not only the end to be achieved but also the means to be used in reaching such end" (*LVN Pictures v. Philippine Musicians Guild*, GSR. No. L-12582, January 28, 1961, 1 SCRA 132).

B) Economic reality Test:

The Supreme Court has also used the economic reality test, where the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties (Orozco v. Court of Appeals, G.R. No. 155207, August 13, 2008, 562 SCRA 36).

B. Applying the tests to determine the existence of an employer-employee relationship, is a jeepney driver operating under the boundary system an employee of his jeepney operator or a mere lessee of the jeepney? Explain your answer. (3%)

SUGGESTED ANSWER:

The jeepney driver operating under the boundary system is an employee of the jeepney operator, not a mere lessee. The jeepney operator exercises supervision and control over the jeepney driver. The jeepney operator, as holder of the certificate of public convenience, must see to it that the jeepney driver follows the route prescribed by the franchising authority and the rules promulgated as regards its operation. Moreover, jeepney drivers perform activities which are usually necessary or desirable in the usual business or trade of the jeepney operator (Jardin, et al. v. NLRC, G.R. No. 119268, February 23, 2000, 326 SCRA 299).

Juicy Bar and Night Club allowed by tolerance fifty (50) Guest Relations Officers (GROs) to work without compensation in its establishment under the direct supervision of its Manager from 8:00 P.M. To 4:00 A.M. everyday, including Sundays and holidays. The GROs, however, were free to ply their trade elsewhere at anytime, but once they enter the premises of the night club, they were required to stay up to closing time. The GROs earned their keep exclusively from commissions for food and drinks, and tips from generous customers. In time, the GROs formed the Solar Ugnayan ng mga Kababaihang Inaapi (SUKI), a labor union duly registered with DOLE. Subsequently, SUKI filed a petition for Certification Election in order to be recognized as the exclusive bargaining agent of its members. Juicy Bar and Night Club opposed the petition for Certification Election on the singular ground of absence of employer-employee relationship between the GROs on one hand and the night club on the other hand. May the GROs form SUKI as a labor organization for purposes of collective bargaining? Explain briefly. (5%) (2012 BAR)

Suggested Answer:

Yes. The GROs worked under the direct supervision of the Night Club Manager for a substantial period of time. Hence, under Art. 138, with or without compensation, the GROs are to be deemed employees. As such, they are entitled to all the rights and benefits granted to employees/workers under the Constitution and other pieces of labor

legislation including the right to form labor organizations for purposes of collective bargaining. [Const., Art. XIII, Sec. 3; Labor Code, Art. 243).

Another Alternative Answer:

No. While the GROs are considered employees of Juicy Bar and Night Club by fiction of law for purposes of labor and social legislation (ART. 138, Labor Code), Art. 243 of the Labor Code however excludes “ambulant, intermittent and itinerant workers xxx ad those without any definite employers” such as the GROs here, from exercising “the right to self-organization xxx for purposes of collective bargaining”. They can only “form labor organization for their mutual aid and protection”.

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

[a] The relations between employer and employee are purely contractual in nature. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

FALSE. Some aspects of the relations between employer and employee are determined by certain labor standards.

ALTERNATIVE ANSWER:

FALSE. The Constitution, Labor Code, Civil Code and other social legislations are replete with provisions that define employment relationship even without contract, with the intention of insuring that all the rights of labor are protected.

Article 1700 of the Civil Code provides that “[T]he relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good.”

In Article 106 of the Labor Code, the principal is deemed as a direct employer in labor-only contracting, despite absence of contractual relationship between the worker and the principal reduced in writing.

Equity likewise affords the aggrieved party relief in a case where an agent was given apparent authority by the employer to represent it to third persons, such as in a relationship between hospitals and doctors practicing medicine in its establishment (Nogtales v. Capitol Medical Center, 511 SCRA 204 [2006]).

Q: Mr. Aristedes Epol was elected as President, Chief Executive Officer, and Board Chairman of Transnational Insurance Corp. on May 31, 1988. At that time, he owned

51% of the company's voting stock. Under the By-Laws of the company he had a one-year term of office from June 1, 1988 to June 1, 1989. On July 15, 1988, Mr. Ramos agreed with the other stockholders to re-organize the composition of officers by having the Board declare all positions of officers vacant, elect a new set of officers, with himself as President and Chief Executive. Mr. Epol would be re-elected only to the ceremonial post of Board Chairman, Mr. Epol got a Notice of Special Meeting of the Board to elect a new set of corporate officers. He consults you as lawyer.

He asks if he is covered by the Labor Code and Constitutional guarantees of security of tenure of workers. He theorizes that since he was elected for a fixed one-year term, he enjoys tenure for the term.

(a) What is your view? Reasons.

Mr. Epol, despite your opinion, observes that the Constitutional issue was not raised in those cases. He is adamant that you seek recourse to prevent his removal as President and Chief Executive Officer before his term expires.

(b) Where will you file the case?

SUGGESTED ANSWER:

(a) Mr. Epol is not covered by the Labor Code and Constitutional guarantees of security of tenure of workers. He is not an employee. He is a corporate officer and his tenure is subject to the Constitution and by-laws of the corporation and of the Corporation Code.

(b) I will file the case before the Securities and Exchange Commission which has jurisdiction over the case. Whether or not Mr. Ramos and the other stockholders legally re-organized out Mr. Epol is an intra-corporate dispute. Since it is an intra-corporate dispute which is involved, it is the SEC which has jurisdiction.

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.

Q: Baldo, a farm worker on pakyaw basis, had been working on Dencio's land by harvesting abaca and coconut, processing copra, and clearing weeds from year to year starting January 1993 up to his death in 2007. He worked continuously in the sense that it was done for more than one harvesting season.

[a] Was Dencio required to report Baldo for compulsory social security coverage under the SSS law? Explain. (2016)

SUGGESTED ANSWERS:

Dencio is required to report Baldo for compulsory social security coverage under the SSS Law. From the facts mentioned, Baldo is clearly an employee of Dencio. Considering the length of time that Baldo has worked with Dencio, it may be justifiably concluded that he is engaged to perform activities necessary or desirable in the usual trade or business of Dencio and is therefore a regular employee. Length of service was used by the Supreme Court in the case of Brotherhood Labor Unity Movement of the Philippines v. Zamora, (G.R. No. 485451 January 7, 1987), to pronounce that the individual involved is a regular employee. Baldo, is thus, not a casual or temporary employee, exempted from the coverage of the SSS Law.

[b] What are the liabilities of the employer who fails to report his employee for social security coverage? Explain.

SUGGESTED ANSWER:

The employer is subject to the following liabilities: It shall pay to the SSS damages equivalent to the benefit which the employee would have been entitled had his name been reported on time to the SSS, except that in case of pension benefits, the employer shall be liable to pay the SSS damages equivalent to five years monthly pension; however, if the contingency occurs within thirty (30) days from date of employment, the employer

shall be relieved of his liability for damages (Sec. 24 (a), R.A. 1161, as amended). It shall pay the corresponding unremitted contributions and penalties thereon (Sec.24 (b), R.A. 1161, as amended).

1. **Four-fold test**

Q: Reach-All, a marketing firm with operating capital of P100,000, supplied sales persons to pharmaceutical companies to promote their products in hospitals and doctors' offices. Reach-All trained these sales persons in the art of selling but it is the client companies that taught them the pharmacological qualities of their products. Reach-All's roving supervisors monitored, assessed, and supervised their work performance. Reach-All directly paid their salaries out of contractor's fees it received. Under the circumstances, can the sales persons demand that they be absorbed as employees of the pharmaceutical firms? (2011 BAR)

- (A) No, they are Reach-All's employees since it has control over their work performance.
- (B) Yes, since they receive training from the pharmaceutical companies regarding the products they will promote.
- (C) No, since they are bound by the agency agreement between Reach-All and the pharmaceutical companies.
- (D) Yes, since Reach-All does not qualify as independent contractoremployer, its clients being the source of the employees' salaries.

Q: The Smarly Food Company is engaged in the restaurant and catering business. Having invested a substantial amount of money to establish its business, the company decided to avoid its legal responsibilities in connection with the selection of employees, their social security and other labor relations problems. To this end, the company engaged the services of Jack Perez, doing business under the name of San Jacinto Manpower Agency, to supply it with cooks, waiters, waitresses, dishwashers, and other workers. Jack Perez does not have a separate regular business office. He operates his business from his own house. Under this economic arrangement, Jack Perez pays the wages of the workers assigned to the company directly and reports said workers to the Social Security System as his own employees. He charges the Smarty Food Company a monthly fee depending on the number of workers serving the company. After two years, all the workers assigned by Jack Perez to the company Joined the United Restaurant Workers Union. Soon thereafter, the labor union sought recognition from the Smarty Food Company and requested for collective bargaining negotiations. Thereupon, the company terminated its service contract with the San Jacinto Manpower Agency and prevented the latter's workers from entering the company premises. To keep its business going, the Smarly Food Company secured its manpower needs from

another service agency. The labor union then filed a complaint for unfair labor practice under Article 248(a) of the Labor Code against the Smarty Food Company.

Has the Smarty Food Company succeeded in avoiding its labor relations obligations to the workers of San Jacinto Manpower Agency? Is the company guilty of unfair labor practice? Give your reasons.

SUGGESTED ANSWER:

Smarty Food Company has not succeeded in avoiding its labor relations obligation to the workers of San Jacinto Manpower Agency. Under the facts of the case in the question, the cooks, waiters, waitresses, dishwashers and other workers supplied by San Jacinto Manpower Agency are employees of Smarty Food Company and not of the Agency because said workers are performing activities which are directly related to the principal business of Smarty Food Company which is engaged in the restaurant and catering business. It is also noted that the Agency does not have substantial capital or investment in the form of tools, equipment machineries and work premises. It does not have a separate regular business office and merely operates its business from the house of the owner/operator of the Agency. Thus, under the above circumstances, under the Labor Code (Art. 106) the Agency is engaged in "labor only" contracting and should therefore be considered merely as an agent of the employer, meaning Smarty Food Company.

Because of the fact that Smarty Food Company is the employer of the cooks, waiters, waitresses, dishwashers and other workers, the Company was guilty of unfair labor practice when it terminated their services by terminating its service contract with the Agency. The Company thereby discriminated against its workers to discourage membership in any labor organization which is an unfair labor practice. The Company also committed an unfair labor practice when it violated its duty to bargain collectively by refusing to meet with the United Workers Restaurant Workers Union which was organized by the workers of the Company.

Q: Don Jose, a widower, owns a big house with a large garden. One day, his househelper and gardener left after they were scolded. For days, Don Jose, who lives alone in compound to look for someone who could water the plants in the garden and clean the house. He chanced upon Mang Kiko on the street and asked him to water the plants and clean the house.

Without asking any question. Mang Kiko attended to the plants in the garden and cleaned the house. He finished the work in two days.

a) **Is there an employer-employee relationship between Don Jose and Mang Kiko?**

x x x

SUGGESTED ANSWER:

There is an employer-employee relationship between Don Jose and Mang Kiko because Mang Kiko, assuming payment of compensation, was rendering services for Don Jose and was under the orders of Don Jose as regards employment.

X X X

Q: Pandoy, an electronics technician, worked within the premises of Perfect Triangle, an auto accessory shop. He filed a complaint for illegal dismissal, overtime pay and other benefits against Perfect Triangle, which refused to pay his claims on the ground that Pandoy was not its employee but was an independent contractor. It was common practice for shops like Perfect Triangle to collect the service fees from customers and pay the same to the independent contractors at the end of each week. The auto shop explained that Pandoy was like a partner who worked within its premises, using parts provided by the shop, but otherwise Pandoy was free to render service in the other auto shops. On the other hand, Pandoy insisted that he still was entitled to the benefits because he was loyal to Perfect Triangle-, it being a fact that he did not perform work for anyone else. Is Pandoy correct? Explain briefly. (5%)

SUGGESTED ANSWER:

Pandoy is not correct.

He is not an employee because he does not meet the fourfold test for him to be an employee of Perfect Triangle. All that he could claim is: he worked within the premises of Perfect Triangle. Pandoy was NOT engaged as an employee by Perfect Triangle. He was NOT paid wages by Perfect Triangle. Perfect Triangle does NOT have the power to dismiss him although Perfect Triangle may not continue to allow him to work within its premises. And most important of all, Pandoy was NOT under the control of Perfect Triangle as regards the work he performs for customers.

The Supreme Court has ruled: "In stark contrast to the Company's regular employees, there are independent, free-lance operators who are permitted by the Company to position themselves proximate to the Company premises. These independent operators are allowed by the Company to wait on Company customers who would be requiring their services. In exchange for the privileges of favorable recommendation by the Company and immediate access to the customers in need of their services, these independent operators allow the Company to collect their service fee from the customer and this fee is given back to the independent operator at the end of the week. In effect, they do not earn fixed wages from the Company as their variable fees are earned by them from the customers of the Company. The Company has no control over and does not restrict the methodology or the means and manner by which these operators perform their work. These operators are not supervised by any employee of the Company since the results

of their work is controlled by the customers who hire them. Likewise, the Company has no control as an employer over these operators. They are not subject to the regular hours and days of work and may come and go as they wish. They are not subject to any disciplinary measures from the Company, save merely for the inherent rules of general behavior and good conduct.” [Ushio Marketing v. NLRC, 294 SCRA 673(1998)]

Inggu, an electronics technician, worked within the premises of Pit Stop, an auto accessory shop. He filed a Complaint for illegal dismissal, overtime pay and other benefits against Pit Stop. Pit Stop refused to pay his claims on the ground that Inggu was not its employee but was an independent contractor . . It was common practice for shops like Pit Stop to collect the service fees from customers and pay the same to the independent contractors at the end of each week. The auto shop explained that Inggu was like a partner who worked within its premises, using parts provided by the shop, but otherwise Inggu was free to render service in the other auto shops. On the other hand, Inggu insisted that he still was entitled to the benefits because he was loyal to Pit Stop, it being a fact that he did not perform work for anyone else. Is Inggu correct? Explain briefly. (5%) (2012 BAR)

Suggested Answer:

Yes. Inggu is an employee of the Pit Stop. Articles 1767 of the Civil Code states that in a contract of partnership two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves. Not one of these circumstances is present in this case. No written agreement exists to prove the partnership between the parties. Inggu did not contribute money, property and industry for the purpose of engaging in the supposed business. There is no proof that he was receiving a share in the profits as a matter of course. Neither is there any proof that he had actively participated in the management, administration and adoption of policies of the business. [Sy, et. al. v. Court of Appeals G.R. No 142293, February 27, 2003].

Q: Matibay Shoe and Repair Store, as added service to its customers, devoted a portion of its store to a shoe shine stand. The shoe shine boys were tested for their skill before being allowed to work and given ID cards. They were told to be present from the opening of the store up to closing time and were required to follow the company rules on cleanliness and decorum. They bought their own shoe shine boxes, polish, and rags. The boys were paid by their customers for their services but the payment is coursed through the store's cashier, who pays them before closing time. They were not supervised in their work by any managerial employee of the store but for a valid complaint by a customer or for violation of any company rule, they can be refused admission to the store. Were the boys employees of the store? Explain. (2016)

SUGGESTED ANSWER:

Yes. The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the employer's power to control the employee's conduct; and (d) the power of dismissal.

The first element is present, as Matibay Shoe allowed shoe shine boys in its shoe shine stand to render services that are desirable in the line of business of Matibay Shoe. In issuing ID's to the shoe shine boys, the same signifies that they can represent themselves as part of the work force of Matibay Shoe.

The second element is also present. Requiring the customers to pay through the Matibay Shoe's cashier signifies that their services were not engaged by the customers. Equally important, it was Matibay Shoe which gave the shoe shine boys their daily wage.

The third element is satisfied. Requiring the shoe shine boys to be present from store opening until store closing and to follow company rules on cleanliness and decorum shows that they cannot conduct their activity anywhere else but inside the store of Matibay Shoe, hence, their means and methods of accomplishing the desired services for the customers of Matibay Shoe was controlled by it.

Lastly, the fourth element is made apparent when Matibay Shoe barred the shoe shine boys from continuing with their work-related activity inside its establishment.

ALTERNATIVE ANSWER:

No. The elements to determine the existence of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the employer's power to control the employee's conduct; and (d) the power of dismissal.

The first element is absent. The mere issuance of an ID to the boys is not conclusive of the power of selection of Matibay Shoe. They may be given IDs merely as a security measure for the establishment.

Furthermore, using the control test, the boys have exclusive power over the means and method by which the shoe shining activity is to be conducted.

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.

Q: Gregorio was hired as an insurance underwriter by the Guaranteed Insurance Corporation (Guaranteed). He does not receive any salary but solely relies on commissions earned for every insurance policy approved by the company. He hires and pays his own secretary but is provided free office space in the office of the company. He is, however, required to meet a monthly quota of twenty (20) insurance policies, otherwise, he may be terminated. He was made to agree to a Code of Conduct for underwriters and is supervised by a Unit Manager.

[a] Is Gregorio an employee of Guaranteed? (2.5%)

SUGGESTED ANSWER:

No, Gregorio is not an employee of Guaranteed. Control is the most important element of employer-employee relationship, which refers to the means and methods by which the result is to be accomplished (*Avelino Lambo and Vicente Belocura v. NLRC and J.C. Tailor Shop and/or Johnny Co.*, 375 Phil. 855 [1999]), .citing *Makati Haberdashery, Inc. v. NLRC*, 259 Phil. 52 [1989]. The requirement of complying with quota, company code of conduct and supervision by unit managers do not go into the means and methods by which Gregorio must achieve his work. He has full discretion on how to meet his quota requirement, hence, there is no employer- employee relationship between Gregorio and Guaranteed.

ALTERNATIVE ANSWER:

Yes, Gregorio is Guaranteed's employee. The fact that Gregorio was made to agree to a Code of Conduct and was supervised by a Unit Manager are indicators that he is an employee of Guaranteed by using the control test mentioned in the *Makati Haberdashery* case. Furthermore, the fact that he was given a quota and can be terminated if he does not meet it all the more indicates that he is indeed an employee of Guaranteed. In *Angelina Francisco v. NLRC Kasei Corporation* G.R. No. 170087, August 31, 2006, the court added another element to ascertain employer-employee relationship. This is whether or not the worker is dependent on the alleged employer for his continued employment. This was dubbed as the economic dependence test. The fact that Guaranteed can terminate Gregorio if he does not meet the quota of 20

insurance policies a month, negates his status as an independent contractor and proves that he is an employee.

[b] Suppose Gregorio is appointed as Unit Manager and assigned to supervise several underwriters. He holds office in the company premises, receives an overriding commission on the commissions of his underwriters, as well as a monthly allowance from the company, and is supervised by a branch manager. He is governed by the Code of Conduct for Unit Managers. Is he an employee of Guaranteed? Explain. (2016)

SUGGESTED ANSWER:

Yes, Gregorio is an employee. In fact, he is deemed as a regular employee. As a unit manager who was tasked to supervise underwriters, he can be said to be doing a task which is necessary and desirable to the usual business of Guaranteed. Article 295 of the Labor code provides that "(T)he provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, x x x."

ALTERNATIVE ANSWER:

Yes. Article 219 (m) of the Labor Code defines a Managerial employee as one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. As Gregorio was appointed Unit Manager, the means and methods of accomplishing his goal come under the guidelines laid down by Guaranteed.

ANOTHER ALTERNATIVE ANSWER:

No. Guaranteed did not define the duties and responsibilities of Gregorio; Guaranteed left, it to Gregorio's discretion as to how he will achieve his goal. Therefore, the only interest Guaranteed has is in the result of Gregorio's work.

2. Kinds of employment

Q: Marciano was hired as Chief Engineer on board the vessel MN Australia. His contract of employment was for nine months. After nine months, he was re-hired. He was hired a third time after another nine months. He now claims entitlement to the benefits of a regular employee based on his having performed tasks usually necessary and desirable to the employer's business for a continuous period of more than one year. Is Marciano's claim tenable? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

No, Marciano's claim is not tenable. Seafarers are contractual employees for a fixed term, governed by the contracts they sign. We should not depart from the rulings of the Supreme Court in *Brent School, hic. v. Zamora* (GSR. No. L-48494, February 5, 1990, 181 SCRA 702); *Coyoca v. NLRC* (G.R. No. 113658, March 31, 1995, 243 SCRA 190); and *Millares v. NLRC* (G.R. No. 110524, July 29, 2002, 385 SCRA 306), which constitute *stare decisis* with respect to the employment status of seafarers as contractual employees, not regular employees, notwithstanding performance of usually necessary and desirable functions which exceed one year or continuous rehiring.

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: Amaya was employed as a staff nurse by St. Francis Hospital (SFH) on July 8, 2014 on a probationary status for six (6) months. Her probationary contract required, among others, strict compliance with SFH's Code of Discipline.

On October 16, 2014, Dr. Ligaya,, filed a Complaint with the SFH Board of Trustees against Amaya for uttering slanderous remarks against the former. Attached to the complaint was a letter of Minda, mother of a patient, who confirmed the following remarks against Dr. Ligaya:

"Bakit si Dr. Ligaya pa ang napili mong pedia ' eh ang tanda- tanda na n'un? E makakalimutin na yun x x x Alam mo ba, kahit wala namang diperensya yung baby, ipinapa-isolate nya?"

The SFH President asks you, being the hospital's counsel, which of these two (2) options is the legal and proper way of terminating Amaya: a) terminate her for a just cause under Article 288 of the Labor Code (Termination by Employer); or b) terminate her for violating her probationary contract. Explain. (2016)

ALTERNATIVE ANSWER:

I will advise the President of SFH to terminate Amaya for violating her probationary contract. Part and parcel of the standards of her employment is to strictly follow the Code of Conduct of SFH. The act of defaming Dr. Ligaya is certainly a misdemeanor that is usually not acceptable in any work environment. With such attitude Amaya displayed, she cannot pass the company standard of SFH.

I will not suggest the dismissal of Amaya under Article 297. Though she displayed misconduct, the same is not work-related, as spreading a rumor against a Doctor does not go into the duties and responsibilities of a staff nurse.

ALTERNATIVE ANSWER:

I will advise the President of SFH to terminate Amaya for a just cause under Art. 297 of the Labor Code in relation to Art. 296. The Labor Code assigns a separate provision, Article 296, and provides a different set of grounds for the dismissal of probationary employees, to wit:

ART. 296. PROBATIONARY EMPLOYMENT

Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

The law does not preclude the employer from terminating the probationary employment, if the employer finds that the probationary employee is not qualified for regular employment. As long as the termination was made for reasons provided under Article 296 of the Labor Code before the expiration of the six-month probationary period, the employer is well within its rights to sever the employer-employee relationship (Pasamba v. NLRC, G.R. No. 168421, 8 June 2007).

Q: On January 3, 1988, Sea Breeze Restaurant, Inc. (SBRI) hired Juan Reyes as a probationary kitchen helper. He received and cleaned food ingredients delivered by suppliers and stored them in freezers, cleaned kitchenware and utensils, and kept the kitchen tidy. On July 1,

1988, he was sent to the company's doctor for a complete medical examination. Thereafter, he continued working. On July 8, 1988, the doctor submitted his report finding Juan to have minimal pulmonary tuberculosis (TB).

The manager consults you as the labor adviser of the company, and asks if Juan's employment can be terminated as his presence was a hazard to the health of other workers and customers of the restaurant.

- (a) Within the time frame of the problem, was there any change in Juan's employment status?**
- (b) When did the change occur?**
- (c) Why did it occur?**
- (d) Can the company still terminate Juan as a probationer?**
- (e) Under what conditions may Juan be terminated considering his health? Explain.**
- (f) Based on your analysis of the factual and legal situation, what course of action would you advise the company to take?**

SUGGESTED ANSWER:

- (a)** There was a change in the employment status of Juan, from probationary to regular employment.
- (b)** July 4, 1988, after his six-month probationary period.
- (c)** The Labor Code (Art. 281) provides that "an employee who is allowed to work after a probationary period shall be considered a regular employee."
- (d)** The company can terminate Juan, but no longer as a probationary employee, but as a regular employee since his six (6) month probationary period has expired.
- (e)** Juan may be terminated considering the fact that he has minimal pulmonary tuberculosis. The Labor Code (Art. 284) provides that an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well his co-employees."
- (f)** Based on my analysis outlined above, I will advise the Company to dismiss the employee but pursuant to the Rules and Regulations implementing the Labor Code, the Company should not terminate the employment of its employee on the ground of his disease unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment.

Q: Mr. X was hired by Y Company on probation for six months as general utility worker. On the expiration of the probationary period, Mr. X was informed by Y Co. that his work was unsatisfactory and failed to meet the required standard. To give him a chance to improve his performance, Y Co. instead of terminating Mr. X's services, extended, with X's written consent, the probation period for another three months. This extension notwithstanding, his performance did not improve, on account of which, Y Co. terminated Mr. X's services at the end of the extended period. Mr. X filed a case for illegal dismissal contending that he was already regular at the time of his dismissal pursuant to Art. 281 of the Labor Code, the particular portion of which provides:

"xxx. An employee who is allowed to work after a probationary period shall be considered a regular employee."

Therefore, he could not have been lawfully dismissed for failure to meet company standards as a probationary worker. Decide with reason.

SUGGESTED ANSWER:

Mr. X could not argue that because his probationary period was extended beyond six months he was now a regular employee and thus could no longer be terminated except for Just cause or when authorized by law.

The fact is that the probationary period of Mr. X was extended beyond six months with his consent. It was to give him an opportunity to improve his performance.

Thus, it was legal for Y Company to terminate Mr. X for his failure to meet company standard as a probationary worker.

The Labor Code provides that probationary employment shall not exceed six (6) months. But the Supreme Court has ruled that said probationary period could be extended with the consent of the probationary employee to give him an opportunity to improve his performance. (Art. 281. Labor Code)

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: A was hired in a sugar plantation performing such tasks as weeding, cutting and loading canes, planting cane points, fertilizing and cleaning the drainage. Because his daily presence in the field was not required, A also worked as a houseboy at the house of the plantation owner. For the next planting season, the owner decided not to hire A as a plantation worker but as a houseboy instead. Furious, A filed a case for illegal dismissal against the plantation owner. Decide with reason. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

A is a regular seasonal employee. Therefore, he cannot be dismissed without just or valid cause.

The primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer (*Pier 8 Arrastre & Stevedoring Services, Inc., et al. v. Jeff B. Boclot, 534 SCRA 431 [2007]*). Considering that A, as plantation worker, performs work that is necessary and desirable to the usual business of the plantation owner, he is therefore a regular seasonal employee and is entitled to reinstatement upon onset of the next season unless he was hired for the duration of only one season (*Hacienda Bino v. Cuenca, 456 SCRA 300 [2005]*).

Converting A to a mere houseboy at the house of the plantation owner amounts to an act of severing his employment relations as its plantation worker (*Angeles v. Fernandez, 513 SCRA 378 [2007]*).

ALTERNATIVE ANSWER:

It is management prerogative to determine what kind of worker is needed by the plantation. Of course, if the prerogative is exercised and results in redundancy, there must be payment of separation pay under Article 283 of the Labor Code.

Q: Julius Lagat, a truck driver, was hired by Merdeka Trucking Company which is engaged in the business of hauling farm produce, fertilizer and other cargo for an agribusiness company on a non-seasonal and continuing basis. Lagat's contract stipulated that it was effective for six months from date of execution, renewable for the same period. Upon expiration of the renewed contract. Lagat was advised by Merdeka that his services were terminated. Lagat filed a complaint for illegal dismissal against Merdeka which contended that Lagat had no cause of action as his employment was for a definite and specific period.

You are the Labor Arbiter. Decide with reasons.

SUGGESTED ANSWER:

As Labor Arbiter, I will decide in favor of Lagat. From the circumstances of the case, it is apparent, that the six month period was imposed to preclude the employee from acquiring security of tenure. The contract that Merdeka had with Lagat can be considered as circumventing the law that gives to a worker the right to security of tenure, considering that Lagat was a truck driver in a business that was not seasonal and was on a continuing basis. If the work was seasonal, then he would have been legally employed for a specific period, namely, per season. (Cielo vs. NLRC. 193 SCRA 410)

This should also be noted. Lagat's contract was a renewed contract. This means that at the very least, he was already employed for six months after which the contract was renewed. So, if the first six months period was considered a probationary period, Lagat has now worked after the probationary period. Thus, he is now a regular employee and clearly with the right to security of tenure. (Article 281. Labor Code)

Q: Borlolo & Co. is engaged in the construction business which hired the services of Ispongklong as mason and Agaton as carpenter in 1977. Every time their services are needed, Ispongklong and Agaton are issued notices of employment by Borlolo & Co. in the following tenor:

“This is to inform you that you have been hired at Lahar Bldg., as mason and carpenter respectively at a monthly salary/daily or hourly of P12.40. Your employment shall be deemed automatically terminated either at the completion of

the project or upon the completion of the work requiring your respective services to start May 12, 1977.

ACCEPTED:

Such an arrangement continued wherein both Agaton and Ispongklong became members of a work pool from where Borloloy & Co. draws manpower to work on various projects. After each project they have been assigned to is completed, Borloloy & Co. reported the names of Ispongklong and Agaton to the Social Security System for registration.

In 1987 (or after ten years of service) they received a notice from Borloloy & Co. informing them that their services are no longer needed. Ispongklong and Agaton immediately filed a case for illegal dismissal alleging that they are regular and permanent workers of Borloloy & Co. having worked for it for ten (10) years hence prayed for reinstatement and back wages. Borloloy & Co. on the other hand, claims that Agaton and Ispongklong are project employees whereby their employment is automatically terminated either at the completion of the phase of work requiring their respective service as stated in their respective Notice of Employment the sample test of which is quoted above. If you are the Labor Arbiter assigned to the case, how will you decide the controversy?

SUGGESTED ANSWER:

As Labor Arbiter, I will promulgate a decision finding the dismissal of Agaton and Ispongklong illegal. Ispongklong and Agaton ceased to be project employees when they became members of a work pool from where their employer draws manpower to work on various projects. Thus, as regular employees, they can be terminated only if there is just cause or otherwise authorized by law. (Art. 280, Labor Code)

Q: Damian Damaso was one of 75 machinists of City Re- builders Machine Shop (CRMS). He had worked as a lathe operator there since February 15, 1975. Lathe men process metal to fine tolerances of thousandths of an inch. If tolerances are not met, work is re-done at great cost. Defective work released to customers cause breakdown on equipment in which they are used. Juan worked an average of 300 days per year at a daily wage of 1*100.00 plus the COLA mandated by law. If there are no rejects on what he processes, he got a¥15 bonus for each item done right. In the last 2.months, 10% of his output either needed re-work or were rejected. He claimed his lathe was defective. However, the second shift man using the same machine produced work meeting standards. Damian did not earn any bonuses, and received a written warning. Feeling oppressed, he went to the Kamao ng Manggagawa, a registered labor federation to ask for advice on the mechanics of organizing a union, and worker rights and duties when they organize.

You are a labor organization adviser of Kamao. x x x

A supervisor of the CRMS saw Damian leave Kamao's headquarters. Sensing that Damian would organize a union, he reported what he saw to management. Damian did not know he was seen. Management acted on the report. The next day, his foreman found Damian's work of unacceptable quality and below output standards. He was given a second warning. The following day, work exceeding allowed tolerances were again found. He was suspended for a week and thus, was unable to start organizing a union. When he came back, his work was again found deficient and 50% was rejected and condemned as waste. He was given a 15-day notice of termination on August 1, 1988, to take effect on August 16, 1988 and paid for 15 days of accumulated leave; banned from entering company premises effective immediately; and given termination pay equal to 12 days' wages per year of service, computed on his daily wage for 13 years. He reported what had happened to Kamao. The matter was referred to you again for assistance. (1988 Bar Question)

- (a) Damian wants to know if he was unlawfully terminated. Explain.
- (b) Damian asks you if he had been given all his terminal entitlements.

SUGGESTED ANSWER:

- a) Damian was unlawfully terminated. There could be just cause for his termination if his work is of unacceptable quality and below' output standards which could be considered as gross and habitual neglect of duties which is a just cause for termination. But the facts show that CRMS was intent on terminating Damian not because of his poor performance but because he was organizing a union. Thus, the act of CRMS is an unfair labor practice. The dismissal is illegal.
- b) If there is just cause for the termination of Damian, CRMS has no obligation to pay him any terminal entitlement, like termination pay. But, he should be paid whatever rights may have accrued, like, in this case, the pay to 15 days of accumulated leave.

If there is no just cause for the termination of Damian, he has the right to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement (Art. 279).

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:

- d) A and B

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.

Q: Under the Labor Code on Working Conditions and Rest Periods, a person hired by a high company official but paid for by the company to clean and maintain his staff house is regarded as (2011 BAR)

- (A) a person rendering personal service to another.
- (B) a regular company employee.
- (C) a family member.
- (D) domestic helper.

Q: Albert and four others signed employment contracts with Reign Publishers from January 1 to March 31, 2011 to help clear up encoding backlogs. By first week of April 2011, however, they remained at work. On June 30 Reign's manager notified them that their work would end that day. Do they have valid reason to complain? (2011 BAR)

- (A) No, since fixed term employment, to which they agreed, is allowed.
- (B) Yes, their job was necessary and desirable to the employer's business and, therefore, they are regular employees.
- (C) Yes, when they worked beyond March without an extended fixed term employment contract, they became regular employees.
- (D) No, since the 3-month extension is allowed in such employment.

c. Project employment

Q: Mario Brothers, plumbing works contractor, entered into an agreement with Axis Business Corporation (Axis) for the plumbing works of its building under construction. Mario Brothers engaged the services of Tristan, Arthur, and Jojo as plumber, pipe fitter, and threader, respectively. These workers have worked for Mario Brothers in numerous construction projects in the past but because of their long relationship, they were never asked to sign contracts for each project. No reports to government agencies were made regarding their work in the company.

During the implementation of the works contract, Axis suffered financial difficulties and was not able to pay Mario Brothers its past billings . As a result, the three (3) employees were not paid their salaries for two (2) months and their 13th month pay. Because Axis can not pay, Mario Brothers cancelled the contract and laid off Tristan, Arthur, and Jojo. The 3 employees sued Mario Brothers and Axis for illegal dismissal, unpaid wages, and benefits.

[a] Mario Brothers claims the 3 workers are project employees. It explains that the agreement is, if the works contract is cancelled due to the fault of the client, the period of employment is automatically terminated. Is the contractor correct? Explain. (2016)

SUGGESTED ANSWER:

No. In *GMA Network, Inc v. Pabriga*, (G.R. No. 176419, November 27, 2013, the requirements to qualify an employment as project-based was set as follows:

- 1) employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project; and
- 2) the termination of the project must be reported by the employer to the DOLE Regional Office having jurisdiction over the workplace within the period prescribed, and failure to do so militates against the employer's claim of project employment. This is true even outside the construction industry.

Mario Brothers failed to comply with both requirements; hence, Tristan, Arthur and Jojo are its regular employees. The cancellation of its contract with Axis did not result to the termination of employment of Tristan, Arthur and Jojo.

[b] Can Axis be made solidarily liable with Mario Brothers to pay the unpaid wages and 13th month pay of Tristan, Arthur, and Jojo? Explain.

SUGGESTED ANSWER:

Yes, Axis can be made solidarily liable with Mario Brothers. Principals are solidarily liable with their contractors for the wages and other money benefits of their contractors' workers.

Q: Distinguish the project employees from regular employees. (1996 Bar Question)

SUGGESTED ANSWER:

A regular employee is one engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer. On the other hand, a project employee is one whose employment is fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee. (See Art. 280 of the Labor Code)

Q: How is a project worker different from a casual or contractual worker? Briefly explain your answers, (6%)

SUGGESTED ANSWER:

A project worker is employed for a specific project or undertaking the completion or termination of which is determined at the time of his engagement. His work need not be incidental to the business of the employer. His employment may exceed 1 year without necessarily making him a regular employee.

A casual employee is engaged to perform a job, work, or service which is incidental to the business of the employer; moreover, the definite period of his employment is made known to him at the time of his engagement, His continued employment after the lapse of one year makes him a regular employee. Under the Social Security Law, employment that is purely casual and not for the purpose of occupation or business of the employer is not under the coverage of the aforesaid law.

A "project worker", on the other hand, is a specific term used to designate workers in the construction industry hired to perform a specific undertaking for a fixed period which is co-terminus with a project or phase thereof determined at the time of the engagement of the employee (Policy Instruction No, 19. DOLE), and it is mandatorily required that a termination report be submitted to the nearest public employment office upon the completion of the construction project [Aurora Land Projects Corp. v. NLRC. 266 SCRA 48 (Jan, 2. 1997)]; There is no such requirement (or an ordinary contractual worker.

Q: Design Consultants, Inc. was engaged by the PNCC to supervise the construction of the South Expressway Extension. Design Consultants, Inc. hired Omar as a driver for two (2) years. After his two-year contract expired, he was extended another contract for nine (9) months. These contracts were entered into during the various stages and before the completion of the extension project. Omar claims that because of these repeated contracts, he is now a regular employee of Design Consultants, Inc. Is he correct? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. The principal test for determining whether a particular employee is a "project employee" as distinguished from a "regular employee" is whether or not the "project employee" was assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employee was engaged for the projects.

In the problem given, there is no showing that Omar was informed that he was to be assigned to a "specific project or undertaking." Neither has it been established that he was informed of the duration and scope of such project or undertaking at the time of his engagement. [Philex Mining Corp. v. NLRC, 312 SCRA 119 (1999)]

Moreover, the re-hiring of Omar is sufficient evidence of the necessity or the indispensability of his services to the company's business. [Aurora Land Projects Corp v. NLRC, 266 SCRA 48(1997)]

Hence, Omar is correct in claiming that he is a regular employee of Design Consultants, Inc.

ANOTHER SUGGESTED ANSWER:

Omar is not correct. Omar is a project employee as defined by Art. 280 of Labor Code. He was hired for a specific project with fixed periods of employment, specifically: two (2) years for the first contract, and nine (9) months for the second contract. A project employee who is hired for a specific project only is not a regular employee notwithstanding an extension of the project provided that the contract of project employment clearly specifies the project and the duration thereof. [Palomares v. NLRC, 277 SCRA 439 (1997)]

Q: Aldrich Zamora, a welder, was hired on February 1972 by Asian Contractors Corporation (ACC) for a project. He was made to sign a contract stipulating that his services were being hired for the completion of the project, but not later than December 30, 1972, whichever comes first.

After December 1972, Zamora, being a man of many talents, was hired for different projects of ACC in various capacities, such as carpenter, electrician and plumber. In all of these engagements. Zamora signed a contract similar to his first contract except for the estimated completion dates of the project for which he was hired.

What is Zamora's status with ACC? is he a contract worker, a project employee, a temporary or a regular employee? State your reason.

SUGGESTED ANSWER:

Zamora could be a project employee if his work is coterminous with the project for which he was hired.

But in the case, Zamora was rehired after the completion of every project throughout the period of his employment with the company which ranged for quite a long time. Thus, he should be considered a regular employee. (Philippine National Construction Corporation vs. National Labor Relations Commission, et al, G.R No. 95816, 27 October 1972. J. Grino-Aquino)

ALTERNATIVE ANSWER:

a) Zamora is a regular employee because he was engaged to work in various projects of ACC for a considerable length of time, on an activity that is usually necessary desirable in the usual business or trade of ACC. (Mehitabel Furniture vs. NLRC, 220 SpRA 602)

b) Zamora is a regular employee. Article 280 of the Labor Code declares with unmistakable clarity: "THE PROVISIONS OF WRITTEN AGREEMENT TO THE CONTRARY NOTWITHSTANDING, xxx an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer."

He is not a CONTRACT or TEMPORARY WORKER because even the provisions of the simulated contracts were not followed when his Job was used continuously. He is not a project employee, as the term is understood in Art. 280 or under Policy Instruction No. 20.

Q: Martillo and other similarly-situated project workers demanded that the increases be extended to them, inasmuch as they should now be considered regular employees and members of the bargaining unit. (2006 Bar Question)

If you were ABC's legal counsel, how would you respond to this demand?

SUGGESTED ANSWER:

As legal counsel for ABC, I would argue that the employment of Martillo was fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of his engagement. Rendering 14 months of work does not make him a regular employee, when to begin with, he was employed for a specific project, i.e., which is the construction of a particular 40-storey building. The rule on more than 1 year of service making the employment regular applies only to casual employees, hence, Mariano does not belong to the bargaining unit of regular employees.

d. Seasonal

e. Casual

Q: Savoy Department Store (SDS) adopted a policy of hiring salesladies on five-month cycles.

At the end of a saleslady's five-month term, ,, another person is hired as replacement.

Salesladies attend to store customers, wear SDS uniforms, report at specified hours, and are subject to SDS workplace rules and regulations. Those who refuse the 5-month employment contract are not hired.

The day after the expiration of her 5-month engagement, Lina wore her SDS white and blue uniform and reported for work but was denied entry into the store premises. Agitated, she went on a hunger strike and stationed herself in front of

one of the gates of SDS. Soon thereafter, other employees whose 5-month term had also elapsed joined Lina's hunger strike. (2008 Bar Question)

Lina and 20 other salesladies filed a complaint for illegal dismissal, contending that they are SDS' regular employees as they performed activities usually necessary or desirable in the usual business or trade of SDS and thus, their constitutional right to security of tenure was violated when they were dismissed without a valid, just or authorized cause. SDS, in defense, argued that Lina, et al. agreed- prior to engagement – to a fixed period employment and thus waived their right to a full-term tenure. Decide the dispute (4%)

SUGGESTED ANSWER:

I would rule in favor of Lina, et al. In *Pure Foods Corporation v. NLRC* (283 SCRA 135(1997)), the scheme of the employer in hiring workers on a uniformly fixed contract basis of 5 months and replacing them upon the expiration of their contracts with other workers with the same employment status was found to have been designed to prevent "casual" employees from attaining the status of a regular employee.

ANOTHER SUGGESTED ANSWER:

The Complaint of Lina and 20 other employees should be dismissed. Under existing jurisprudence, there is no dismissal to speak of when the term of fixed-period employments expires. As such, there is no violation of the right to security of tenure of these fixed-period employees even if they performed activities usually necessary or desirable in the usual trade of business, because they knew beforehand that their contract is to expire after five (5) months.

ANOTHER SUGGESTED ANSWER:

I will resolve the illegal dismissal case in favor of SDS. In *Brent*, the Supreme Court En Banc held that while fixed term employment has already been repealed by the various amendments to the Labor Code, the Civil Code still allows fixed term employment. Such kind of employment is valid as long as it is established that: (1) the fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstance vitiating his consent; and (2) the employer and employee dealt with each other on more or less equal terms with no moral dominance on the latter.

Since admittedly, Lina, et al. agreed, prior to their engagement, to the fixed term employment, and It appearing that their consent was not vitiated, and considering further that it has not been argued that the parties dealt with each other on less equal terms, it then follows that Lina, et al's fixed term employment is valid. No illegal dismissal can take place upon expiration of such fixed term employment.

f. Fixed-term

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

Seafarers who have worked for twenty (20) years on board the same vessel are regular employees. (2009 Bar Question)

SUGGESTED ANSWER:

FALSE. Seafarers as overseas Filipino workers are fixed-term employees whose continued rehiring should not be interpreted as a basis for regularization but rather as a series of contract renewals sanctioned under the doctrine set by *Millares vs. NLRC* (*Gu-Miro v. Adorable*, 437 SCRA 162 [2004]).

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 rehiring 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]).

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: The labor sector has been loudly agitating for the end of labor-only contracting, as distinguished from job contracting. Explain these two kinds of labor contracting, and give the effect of a finding that one is a labor-only contractor. Explain your answers. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

There is labor-only contracting where: (1) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (2) the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer (Baguio v. NLRC, G.R. Nos. 79004-08, October 4, 1991, 202 SCRA 465; Art. 106, Labor Code).

There is job contracting where: (1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his principal in all matters connected with the performance of the work except as to the results thereof; and (2) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business (Baguio v. NLRC, G.R. Nos. 79004-108, October 4, 1991, 202 SCRA 465).

A finding that a contractor is a labor-only contractor is equivalent to a declaration that there is an employer-employee relationship between the principal and the employees of the labor-only contractor (Industrial Timber Corp. v. NLRC, G.R. No. 83616, January 20, 1989, 169 SCRA 341). In such a case, the person or intermediary shall be considered merely as an agent of the employer, who shall be responsible to the workers in the manner and extent as if the latter were directly employed by him (Sandoval Shipyards, Inc. v. Prisco Pepito, G.R. No. 143428, June 25, 2001, 359 SCRA 555). The liability of the principal vis-à-vis the employees of the labor-only contractor is comprehensive, i.e., not only for unpaid wages but for all claims under the Labor Code and ancillary laws (San Miguel Corporation v. MAERC Integrated Services; Inc., G.R. No. 144672, July 10, 2003, 405 SCRA 579).

Q: Empire Brands (Empire) contracted the services of Style Corporation (Style) for the marketing and promotion of its clothing line. Under the contract, Style provided Empire with Trade Merchandising Representatives (TMRs) whose services began on September 15, 2004 and ended on June 6, 2007, when Empire terminated the promotions contract with Style.

Empire then entered into an agreement for manpower supply with Wave Human Resources (Wave). Wave owns its condo office, owns equipment for the use by the TMRs, and has assets amounting to P1,000,000.00. Wave provided the supervisors

who supervised the TMRs, who, in turn, received orders from the Marketing Director of Empire. In their agreement, the parties stipulated that Wave shall be liable for the wages and salaries of its employees or workers, including benefits, and protection due them, as well as remittance to the proper government entities of all withholding taxes, Social Security Service, and Philhealth premiums, in accordance with relevant laws.

As the TMRs wanted to continue working at Empire, they submitted job applications as TMRs with Wave. Consequently, Wave hired them for a term of five (5) months, or from June 7, 2007 to November 6, 2007, specifically to promote Empire's products.

When the TMRs' 5-month contracts with Wave were about to expire, they sought renewal thereof, but were refused. Their contracts with Wave were no longer renewed as Empire hired another agency. This prompted them to file complaints for illegal dismissal, regularization, non-payment of service incentive leave and 13th month pay against Empire and Wave.

[a] Are the TMRs employees of Empire? (2016)

SUGGESTED ANSWER

Yes. From the time Empire contracted the services of Style, both engaged in labor-only contracting. In *BPI Employees Union-Davao City- FUBU v. BPI*, (G.R. No. 174912, July 24, 2013), it was ruled that where any of the following elements is present, there is labor-only contracting:

- (1) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- (2) The contractor, does not exercise the right to control over the performance of the work of the contractual employee.

The first element is present herein, as Style has no substantial capital or investment in engaging in the supply of services contracted out by Empire which is directly related to the marketing and promotion of its clothing line. The second element is present as it is inevitable for Empire to direct the activities of the TMRs to properly market and promote its product line. The subsequent contract of Empire with Wave did not affect the regular employment of the TMRs with Empire as, through the Marketing Director of Empire, the

TMRs were under the control of Empire. Thus, the five-month employment contract entered into by the TMRs with Wave did not divest them of their regular employment status with Empire. In addition, such scheme undermined the security of tenure of the TMRs which is constitutionally guaranteed, hence, the contract of the TMRs with Wave is void ad initio.

[b] Were the TMRs illegally dismissed by Wave?

SUGGESTED ANSWER:

No. As the TMRs are employees of Empire, Wave did not have the power of dismissal; thus, even if Wave dismissed the TMRs the same has no consequence.

Distinguish Labor-Only contracting and Job-Only contracting. (5%) (2012 BAR)

Suggested Answer:

Labor-only contracting. The contractor does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the employees of the contractor are performing activities which are directly related to the main business of the principal. [Sy, et al. vs. Fairland Knitcraft Co., Inc., G.R. Nos. 182915 & 189658, December 12, 2011].

Legitimate Job Contracting. The contractor has substantial capital and investment in the form of tools, equipment, etc. and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof [Escasinas vs. Shangri-la's Mactan Island Resort, 580 SCRA 344 (2009)].

Labor-Only Contracting. Contracting is prohibited while Job Contracting is allowed by law.

Another Suggested Answer:

1. Job-Only contracting is legal; whereas, Labor-Only contracting is prohibited by law
2. In Job-Only contracting, the principal is only an indirect employer; whereas, in Labor-Only contracting, the principal becomes the direct employer of the employees of the labor-only contractor.

3. The liability of the principal in Job-Only contracting vis-à-vis employees of job-contractor is for a limited purpose only, e.g. wages and violation of labor standards laws; whereas, the liability of the principal in Labor-Only contracting is for a comprehensive purpose and, therefore, the principal becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees.

In Job-Only contracting, no employer-employee relationship exists between the principal and the employees of the job contractor; whereas, in Labor-Only contracting, the law creates an employer-employee relationship between the principal and the employees of the labor-only contractor.

Q: Of the four tests below, which is the most determinative of the status of a legitimate contractor-employer? (2011 BAR)

- (A) The contractor performs activities not directly related to the principal's main business.
- (B) The contractor has substantial investments in tools, equipment, and other devices.
- (C) The contractor does not merely recruit, supply, or place workers.
- (D) The contractor has direct control over the employees' manner and method of work performance.

Q: Mario, an expert aircon technician, owns and manages a small aircon repair shop with little capital. He employs one full-time and two part-time technicians. When they do repair work in homes or offices, their clients do not tell them how to do their jobs since they are experts in what they do. The shop is shabby, merely rented, and lies in a small side street. Mario and the other technicians regard themselves as informal partners. They receive no regular salary and only earn commissions from service fees that clients pay. To what categories of workers do they fall? (2011 BAR)

- (A) Labor-only contractors
- (B) Job contractors
- (C) Pakyaw workers
- (D) Manpower agency contractors

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:

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

ALTERNATIVE ANSWER:

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:

c. 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:

d. 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 event 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 the 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 event 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.

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. Effects of Labor-Only Contracting

c. Trilateral relationship in job contracting

- a. XYZ Manpower Services (XYZ) was sued by its employees together with its client, ABC Polyester Manufacturing Company (ABC). ABC is one of the many clients of XYZ. During the proceedings before the Labor Arbiter, XYZ was able to prove that it had substantial capital of Three Million Pesos. The Labor Arbiter ruled in favor of the employees because it deemed XYZ as a labor only contractor. XYZ was not able to prove that it had invested in tools, equipment, etc. Is the Labor Arbiter's ruling valid? Explain. (5%) (2012 BAR)

Suggested Answer:

Yes. The presumption is that a contractor is a labor-only contractor unless it is shown that it has substantial capital and substantial investment in the form of tools, equipment, machineries, work premises and the like [Sy, et al. vs. Fairland Knitcraft Co., Inc., G.R. Nos. 182915 & 189658, December 12, 2011]. Besides, what Art. 106 of the Code defines is Labor-Only Contracting and not Job-Contracting. In mandating that “(t)here is ‘labor-only’ contracting where the person supplying workers to an employer does not have substantial capital OR investment in the form of tools, equipment, machineries, work premises, among others”, the law is therefore clear that the presence of either handicap – “substantial capital OR (substantial) investment in the form of tools, equipment, (etc.)” – is enough basis to classify one as a labor-only contractor.

Another Suggested Answer:

- a) No, the Labor Arbiter's ruling is not valid. Art. 106 of the Labor Code provides that the contractor has "substantial capital or investment." The law did not say substantial capital and investment. Hence, it is in the alternative; it is sufficient if the contractor has one of the other, i.e., either the substantial capital or the investment. And under Department Order No. 18-A, Series of 2011, the amount of P3 million paid-up capital for the company is substantial capital.
- b. Does the performance by a contractual employee, supplied by a legitimate contractor, of activities directly related to the main business of the principal make him a regular employee of the principal? Explain. (5%) (2012 BAR)**

Suggested Answer:

No. The element of an employee's "performing activities which are directly related to the principal business of such employer" does not actually matter for such is allowed by Art. 107 of the Labor Code. An "independent contractor for the performance of any work, task, job or project" such as Security and Janitorial Agencies, naturally hire employees whose tasks are not directly related to the principal business of the company hiring them. Yet, they can be labor-only contractors if they suffer from either of the twin handicaps of "substantial capital". "OR" "substantial investment in the form of tools", and the like. Conversely, therefore, the performance by a job-contractor's employee of activities that are directly related to the main business of the principal does not make said employee a regular employee of the principal.

Q:

- 1) **What is a "labor-only" contract?**
- 2) **Distinguish the liabilities of an employer who engages the services of a bona fide "independent contractor" from one who engages a "labor-only" contractor?**

SUGGESTED ANSWER:

- 1) "Labor-only" contract is a contract between an employer and a person who supplies workers to such employer where the person supplying workers does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. (Art. 106, Labor Code)
- 2) A person who engages the services of a bona fide "Independent contractor" for the performance of any work, task, job or project is the indirect employer of the employees who have been hired by the Independent contractor to perform said work, task, Job or project.

In the event that the independent contractor fails to pay the wages of his employees, an indirect employer, in the same manner and extent that he is liable to employees directly employed by him, is jointly and severally liable with the independent contractor to the employees of the latter to the extent of the work performed under the contract.

As for the person who engages the services of a "labor only" contractor, the latter is considered merely as an agent of the former who shall be responsible to the workers hired by the "labor only" contractor in the same manner and extent as if he directly employed such workers.

ALTERNATIVE ANSWERS:

a) An employer who engages the services of a bona fide "independent contractor" is solidarity liable with his contractor or sub-contractor only for non-payment or underpayment of wages and other labor standards provisions of the Labor Code, whereas an employer who engages a "labor-only" contractor is liable for all benefits, terms and conditions of employment that it normally grants to its regular or direct employees.

b) An employer who deals with a bona-fide independent contractor shall be liable only subsidiarily, if the contractor or sub-contractor fails to pay the wages to the workers in accordance with the Labor Code.

Upon the other hand, an employer who deals with a "labor-only" contractor shall be primarily responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Arts 106-107, Labor Code)

Q: Jolli-Mac Restaurant Company (Jolli-Mac) owns and operates the largest food chain in the country. It engaged Matiyaga Manpower Services, Inc. (MMSI), a job contractor registered with the Department of Labor and Employment, to provide its restaurants the necessary personnel, consisting of cashiers, motorcycle deliver} boys and food servers, in its operations. The Service Agreement warrants, among others, that MMSI has a paid-up capital of P2,000,000.00; that it would train and determine the qualification and fitness of all personnel to be assigned to Jolli-Mac; that it would provide these personnel with proper Jolli-Mac uniforms; and that it is exclusively responsible to these personnel for their respective salaries and all other mandatory statutory benefits.

After the contract was signed, it was revealed, based on research conducted, that MMSI had no other clients except Jolli-Mac, and one of its major owners was a member of the Board of Directors of Jolli-Mac. (2009 Bar Question)

[a] Is the Service Agreement between Jolli-Mac and MMSI legal and valid? Why or why not? (3%)

SUGGESTED ANSWER:

No. It is not legal and valid because MMSI is engaged in labor-only contracting. For one, the workers supplied by MMSI to Jolli-Mac are performing services which are directly related to the principal business of Jolli-Mac. This is so because the duties performed by the workers are integral steps in or aspects of the essential operations of the principal. (Baguio, et al. v. NLRC, et al., 202 SCRA 465 [1991]; Kimberly Independent Labor Union, etc. v. Drillon, 185 SCRA 190 [1990]. For another, MMSI was organized by Jolli-Mac itself to supply its personnel requirements. (San Miguel Corporation v. MAERC Integrated Services, Inc., et al., 405 SCRA 579 [2003]).

ANOTHER SUGGESTED ANSWER:

The Service Agreement is valid. The law, Art. 106, does not invalidate an Independent Contractors Agreement because the Independent Contractor has only one (1) client, or that the employer of the independent contractor is one of the major owners of the employing establishment. MMSI, is an independent business, adequately capitalized and assumed all the responsibilities of a legitimate Independent Contractor.

[b] If the cashiers, delivery boys and food servers are not paid their lawful salaries, including overtime pay, holiday pay, 13^h month pay, and sendee incentive leave pay, against whom may these workers file their claims? Explain. (2%)

SUGGESTED ANSWER:

They may file their claims against Jolli-Mac. A finding that MMSI is a “labor-only” contractor is equivalent to declaring there is an employer-employee relationship between Jolli-Mac and the workers of MMSI. (Associated Anglo-American Tobacco Corp. v. Clave, 189 SCRA 127 [1990], Industrial Timber Corp. v. NLRC, 169 SCRA 341 [1989]). The liability of Jolli-Mac vis-a-vis the workers of MMSI is for a comprehensive purpose, i.e., not only for the unpaid wages but for all claims under the Labor Code and ancillary laws. (San Miguel Corp. v. Maerc Integrated Services, Inc., et al., 405 SCRA 579 [2003])

ANOTHER SUGGESTED ANSWER:

The employers can file their claims against Jolli- Mac pursuant to Art. 106 of the Labor Code which reads: “Contractor or subcontractor—x x x 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 employee directly employed by him.”

Even if the RSC has a paid up capitalization of P1,000,000.00 it is not engaged in labor-only contracting, or permissible job contracting. It is engaged simply in recruiting. RSC merely provides PizCorp the former’s motorcycle-owning members to deliver the product of PizCorp in accordance with PizCorp’s directives and orders.

Q: The Pizza Corporation (PizCorp) and Ready Supply Cooperative (RSC) entered into a “service agreement” where RSC, in consideration of service fees to be paid by PizCorp, will exclusively supply PizCorp with a group of RSC motorcycle-owning cooperative members who will henceforth perform PizCorp’s pizza delivery service. RSC assumes - under the agreement - full obligation for the payment of the salaries and other statutory benefits of its members deployed to PizCorp. The parties also stipulated that there shall be no employer-employee relationship between PizCorp and the RSC members. However, if PizCorp is materially prejudiced by any act of the delivery crew that violates PizCorp’s directives and orders, PizCorp can directly impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s.

x x

c) RSC is engaged in “labor-only” contracting.

SUGGESTED ANSWER:

It is not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises. In addition, the following factors have to be considered: (a) whether the contractor is carrying on an independent business; (b) the nature and extent of the work; (c) the skill required; (d) the term and duration of the relationship; (e) the right to assign the performance of specified pieces of work; (f) the control and supervision of the workers; (g) the power of employer with respect to the hiring, firing and payment of workers of the contractor; (h) the control and supervision of the workers; (g) the power of employer with respect to the hiring, firing and payment of workers of the contractor; (h) the control of the premises; (j) the mode, manner and terms of payment (Alexander Vinoya v. NLRC, Regent Food Corporation and/or Ricky See, 324 SCRA 469[2000]; Osiasl. Corporal, Sr., et al. v. NLRC, Lao Enteng Company, Inc. and/or Trinidad IMO Ong, 341 SCRA 658[2000]).

Q: Sta. Monica Plywood Corporation entered into a contract with Arnold for the milling of lumber as well as the hauling of waste wood products. The company provided the equipment and tools because Arnold had neither tools and equipment nor capital for the job. Arnold, on the other hand, hired his friends, relatives and neighbors for the job. Their wages were paid by Sta. Monica Plywood Corp. to Arnold, based on their production or the number of workers and the time used in certain areas of work. All work activities and schedules were fixed by the company.

A. Is Arnold a job contractor? Explain briefly. (2%)

B. Who is liable for the claims of the workers hired by Arnold? Explain briefly. (3%)

SUGGESTED ANSWER:

A. No. In two cases decided by the Supreme Court, it was held that there is “job contracting” where (1) the contractor carries on an independent business and undertakes the contract work in his own account, under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (2) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials which are necessary in the, conduct of his business. [Lim v. NLRC, 303 SCRA 432 (1999); Baguio v. NLRC, 202 SCRA 465(1991)]

In the problem given, Arnold did not have sufficient capital or investment for one. For another Arnold was not free from the control and direction of Sta. Monica Plywood Corp. because all work activities and schedules were fixed by the company.

Therefore, Arnold is not a job contractor. He is engaged in labor-only contracting.

B. Sta. Monica Plywood Corp. is liable for the claims of the workers hired by Arnold. A finding that Arnold is a labor only contractor is equivalent to declaring that there exist an Employer - employee relationship between Sta. Monica Plywood Corp. and workers hired by Arnold. This is so because Arnold is considered a mere agent of Sta. Monica Plywood Corp. [Lim v. NLRC, 303 SCRA 432, (1999); Baguio et. al. v. NLRC, 202 SCRA 465 (1991)]

Q: Tower Placement Agency supplies manpower to Lucas Candy Factory to do work usually necessary for work done at its factory. After working there for more than two years under the factory manager’s supervision, the workers demanded that Lucas extend to them the same employment benefits that their directly hired workers enjoyed. Is their demand valid? (2011 BAR)

- (A) Yes, since it was Lucas that actually hired and supervised them to work at its factory.
- (B) No, since the agency workers are not employees of the client factory.
- (C) Yes, since they have been working at the factory in excess of two years.
- (D) No, since it was the placement agency that got them their jobs.

B. Dismissal from employment

Q: Rico has a temper and, in his work as Division Manager of Mata tag 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:

c. 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: What are the grounds for validly terminating the services of an employee based on a just cause? (5%) (2017 Bar Question)

SUGGESTED ANSWER:

Article 296 of the Labor Code (formerly Article 282) provides for the termination of the services of an employee for just causes.

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer- or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

Q: A was an able seaman contracted by ABC Recruitment Agency for its foreign principal, Seaworthy Shipping Company (SSC). His employment contract provided that he would serve on board the Almiada II for eight (8) months with a monthly salary of US \$450. In connection with his employment, he signed an undertaking to observe the drug and alcohol policy which bans possession or use of all alcoholic beverages, prohibited substances and unprescribed drugs on board the ship. The undertaking provided that: (1) disciplinary action including dismissal would be taken against anyone in possession of the prohibited substances or who is impaired by the use of any of these substances, and (2) to enforce the policy, random test sampling would be done on all those on board the ship.

On his third month of service while the Almiada Uwas docked at a foreign port, a random drug test was conducted on all members of the crew and A tested positive for marijuana. He was given a copy of the drug test result. In compliance with the company's directive, he submitted his written explanation which the company did not find satisfactory. A month later, he was repatriated to the Philippines.

Upon arrival in the Philippines, A filed with the National Labor Relations Commission (NLRC) a complaint against the agency and the principal for illegal dismissal with a claim for salaries for the unexpired portion of his contract. (2010 Bar Question)

a) Was A's dismissal valid? Explain. (3%)

SUGGESTED ANSWER:

NO, A's dismissal was not valid. A was not found to be "in possession of the prohibited substance" nor was he "impaired by the use" thereof. Being "tested positive for marijuana" is not a ground for "disciplinary action" under the "undertaking" he signed.

ALTERNATIVE ANSWER:

YES, A's dismissal was valid. He was tested positive for marijuana. This is in violation of the drug and alcohol policy, which bans possession, or use of all alcoholic beverages, prohibited substances and un-prescribed drugs on board the ship.

b) Is his claim for salaries for the unexpired portion of his contract tenable? Explain. (3%)

SUGGESTED ANSWER:

YES. Section 10 of Rep. Act No. 8042 (as amended by Rep. Act No. 10022) provides that in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) years for every year of the unexpired term, whichever is less (cf. *Serrano v. Gallant Maritime*, 582 SCRA 254 [2009]).

ALTERNATIVE ANSWER:

NO. Under Rep. Act No. 8042, money claim can be made only if there is dismissal without just or authorized cause.

Q: Atty. Renan, a CPA-lawyer and Managing Partner of an accounting firm, conducted the orientation seminar for newly-hired employees of the firm, among them, Miss Maganda. After the seminar, Renan requested Maganda to stay, purportedly to discuss some work assignment. Left alone in the training room, Renan asked Maganda to go out with him for dinner and ballroom dancing. Thereafter, he persuaded her to accompany him to the mountain highway in Antipolo for sight-seeing. During all these, Renan told Maganda that most, if not all, of the lady supervisors in the firm are where they are now, in very productive and lucrative posts, because of his favorable endorsement.

x x x

[b] The lady supervisors in the firm, slighted by Renan's revelations about them, succeeded in having him expelled from the firm. Renan then filed with the Arbitration Branch of the NLRC an illegal dismissal case with claims for damages against the firm. Will the case prosper? Reasons. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, serious misconduct is a ground for termination of employment. The term "misconduct" denotes intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.

ANOTHER SUGGESTED ANSWER:

No. The case for illegal dismissal with damages filed in the Office of Labor Arbiter will not prosper. Renan was terminated for serious misconduct which is a just cause under Art.

282 of the Labor Code. The act of Renan is grave and aggravated in character, and committed in connection with his work (*Echaverria v. Venutek Media*, 516 SCRA 72 [2007], and indicates that he has become unfit to continue working for his employer. (*Torreda v. Toshiba Info. Equipment, Inc. Phils.*, 515 SCRA 133 [2007]).

Q: Dion is an Accounting Supervisor in a trading company. He has rendered exemplary service to the company for 20 years. His co-employee and kumpadre, Mac, called him over the phone and requested him to punch his (Mac's) daily time card as he (Mac) was caught in a monstrous traffic jam. Dion acceded to Mac's request but was later caught by the Personnel Manager while punching Mac's time card. The company terminated the employment of Dion on the ground of misconduct. Is the dismissal valid and just? Explain. (2016)

SUGGESTED ANSWER:

Yes. The ground sustaining the dismissal of Dion is serious misconduct. The act of Dion in giving in to Mac's request to punch the latter's daily time card is loth a wrongful conduct, grave in character and not merely trivial or unimportant. The subject act involves dishonesty, and the same portrays Dion's moral obliquity to make it appear that Mac was working when actually he is not. The fact that he has rendered 20 years of service aggravates his situation because, by the length of his service, he should be well-aware that Mac must personally punch his daily time card.

ALTERNATIVE ANSWER:

No. Applying both the Proportionality Rule and the 1st offense rule, dismissal was too harsh a consequence for the actions of Dion. Absent a showing that the action amounted to serious misconduct, his length of service may be taken as a mitigating factor in the penalty to be imposed against him.

Q: Which is NOT a guideline for the dismissal of an employee on the ground of "loss of confidence"? (2011 BAR)

- (A) Loss of confidence may not be arbitrarily invoked in the face of overwhelming evidence to the contrary.
- (B) Loss of confidence as cause of dismissal should be expressly embodied in written company rules.

- (C) The employee holds a position of trust and confidence.
- (D) Loss of confidence should not be simulated nor a mere afterthought to justify earlier action taken in bad faith.

Q: A foreign guest in a luxury hotel complained that he lost certain valuable items in his hotel room. An investigation by the hotel pointed to two roomboys as the most probable thieves. May the management invoke “loss of confidence” as a just cause for dismissing the roomboys? (2011 BAR)

- (A) No, “loss of confidence” as reason for dismissal does not apply to rank and file employees.
- (B) No, “loss of confidence” applies only to confidential positions.
- (C) Yes, “loss of confidence” is broad enough to cover all dishonest acts of employee.
- (D) RIGHT ANSWER Yes, “loss of confidence” applies to employees who are charged with the care and custody of the employer's property.

Q: An employee is NOT entitled to “financial assistance” in cases of legal dismissal when the dismissal (2011 BAR)

- (A) is based on an offense reflecting the depraved character of the employee.
- (B) is based on serious misconduct or breach of the employer's trust.
- (C) is grounded on any of the just causes provided by the Labor Code.
- (D) when the employee has less than 10 years of service.

Q: Domingo, a bus conductor of San Juan Transportation Company, intentionally did not issue a ticket to a female passenger, Kim, his long-time crush. As a result, Domingo was dismissed from employment for fraud or willful breach of trust. Domingo contests his dismissal, claiming that he is not a confidential employee and, therefore, cannot be dismissed from the service for breach of trust. Is Domingo correct? Reasons. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Domingo as bus conductor holds a position wherein he was reposed with the employer's trust and confidence. In *Bristol Mgers Squibb (Phils.) v. Baban* (574 SCRA 198 [2008]), the Court established a second class of positions of trust that involve rank-and-file employees who, in the normal and routine exercise of their functions, regularly handle significant amounts of money. A bus conductor falls under such second class of persons. This does not mean, however, that Domingo should be dismissed. In *Etcuban v. Sulpicio Lines* (448 SCRA 516 [2005]), the Court held that where the amount involved is miniscule, an employee may not be dismissed for loss of trust and confidence.

Q: Julie is a branch manager of Bangko Bangkarute National, rising from the ranks through her 21 years of employment. On November 25, 1992, she filed an

application for a total 60 days leave of absence; 15 days with pay (regular annual vacation leave), starting December 1 to 15. and 45 days without pay (personal leave), starting December 16 to January 30. which she submitted to the Vice President for Branch Banking Department, for approval. Unfortunately, the Vice President for the Branch Banking Department, disapproved her request for personal leave without pay of 45 days, citing as reason the anticipated heavy work load brought about by the onset of the Christmas season. Nonetheless, he approved her regular annual leave with pay of 15 days. Realizing that the leave granted her (15 days) is not sufficient she filed a motion for reconsideration only by way of formality since she is bent on taking a leave for 60 days, irrespective of whether the bank management allows her personal leave without pay for 45 days. Without waiting for the decision of the Vice President for branch banking division, which denied her Motion for Reconsideration. Julie proceeded to take her leave commencing on Dec. 1, 1992.

Having exhausted her 60 days leave of absence, she reported back for work but was presented a letter dated Dec. 16, 1992, from the Vice President for Branch Banking Division, informing her of her termination effective December 16, 1992. She filed a case for illegal dismissal and prayed for reinstatement and damages against Bangko Bangkarute National.

- 1) Is the severance of Julie's employment for a just cause? Explain.
- 2) Is she entitled to reinstatement? Why?
- 3) Are damages recoverable from Bangko Bangkarute National?

SUGGESTED ANSWER:

1) The severance of Julie's employment is for a Just cause. She is guilty of willful disobedience of the lawful order of her employer, or her representative in connection with her work. As a branch manager of the Bank, Julie is a high official, who should be a good example to the employees on how lawful orders of the employer are to be observed and obeyed.

The refusal of the Bank to grant her request for personal leave without pay for 45 days was not whimsical or arbitrary. There was reason for the refusal, that is, the anticipated heavy workload brought about by the onset of the Christmas season.

There was willful disobedience on the part of Julie. Her filing a motion for reconsideration was only by way of formality, since she was bent on taking a leave for 60 days irrespective of whether the Bank management allows her personal leave without pay for 45 days.

ALTERNATIVE ANSWERS:

- a) There is basis for the Bank to terminate the services of Julie on the ground of its loss of confidence in her. As a branch manager of the Bank, Julie should show concern that the anticipated workload brought about by the onset of the

Christmas season is satisfactorily dealt with by the Bank. Yet, inspite of Julie being told about this problem, she was still bent on taking a leave for 60 days irrespective of whether the Bank allows her personal leave without pay for 45 days.

b) Basically, the problem is entitlement to personal leave of 45 days on the part of the employee. If she is entitled by reason of company regulations or company practice, the employer being a bank, the denial may have been arbitrary and is invalid. If so, her dismissal is without a just cause, for availment of a right cannot be a ground for discipline. She would therefore be entitled to reinstatement. However, no damages should be due from the bank, unless it is clear that it had ratified the action taken by the bank, vice-president. He should shoulder the damages instead.

On the other hand, if the claim of personal leave is entirely without legal basis, then the employee was AWOL for 45 days which is serious misconduct, hence, a just cause for dismissal. Even then, in the light of her long service plus a valid justification for personal leave (such as urgent medical treatment abroad), the dismissal would be for insufficient cause and would be too harsh, hence, she would be entitled to reinstatement without back wages.

SUGGESTED ANSWER:

2) She is not entitled to reinstatement because her dismissal was legal, it being for Just cause.

ALTERNATIVE ANSWERS:

a) She would be entitled to reinstatement since her dismissal is considered too harsh a penalty for the offense she committed.

b) Julie is not entitled to reinstatement. The "strained relations" rule applies in this case. Julie, a branch manager of the bank, occupies a highly responsible and confidential position, which requires a consistent level of confidence.

3) She cannot claim damages from the Bank. There is no basis for a claim for damages. It may be noted that she was not given the required due process by the Bank before her dismissal. She is therefore entitled to an indemnity of P1.000.

Q: "A" is an audit clerk in the Seafront Financing Company. One day he had an argument with his immediate superior after the latter accused him of having failed to record and check a certain transaction a week earlier which resulted in the loss of P100, 000. The argument led to a fist- fight with both protagonists sustaining serious injuries that required hospitalization. One and a half months later, "A" returned to work but was immediately given by the same superior a dismissal letter on the ground of loss of confidence, grave misconduct and fighting with his

superior. “A” later sued the company for illegal dismissal. He also claimed for reinstatement and backwages. Decide.

SUGGESTED ANSWER:

There may be just cause for the termination of the employment of “A”. After all, he is guilty of a serious misconduct if he fought his superior after the latter accused him of having failed to record and check a transaction which resulted in a loss of P100,000 for the company. This is also a factual basis for loss of confidence since it is a willful breach of trust by the employee of the trust reposed in him by his employer. The foregoing is a just cause for the termination of employment.

However, the Company should first give “A” the ample opportunity to be heard and defend himself with the assistance of his representatives if he so desires in accordance with company rules and regulations promulgated pursuant to the guidelines set by the DOLE.

Unless the Company gives to “A” the ample opportunity to be heard and to defend himself, its termination of “A” will be illegal, and “A” will be entitled to reinstatement and backwages.

Q: Jose and Pedro were utility workers employed by Yellow Farms. Inc. On 13 January 1984, they were picked up by the company's guards in connection with the theft of polyethylene bags belonging to the company. They were detained at the Baybay Municipal Jail. Initial investigation of the police yielded no prima facie case against them, resulting in their release. However, after further investigation, an amended complaint was formally filed against them and two others, charging them with theft before the Municipal Court. The Company terminated Jose and Pedro due to loss of confidence. Consequently, the two filed a complaint of illegal dismissal on the ground that their dismissal based on the criminal complaint did not justify their termination. Is the filing of the criminal complaint against Jose and Pedro sufficient ground for their termination? What is the quantum of proof necessary to terminate an employee for loss of confidence? What if the criminal complaint was dismissed on the ground of reasonable doubt?

SUGGESTED ANSWER:

The mere filing of the criminal complaint against Jose and Pedro would not be sufficient ground for their termination. because while it is true that the criminal complaint could be properly filed only if there was a prima facie case against said employees, this fact does not in turn automatically mean that there is already substantial evidence to prove that there is Just cause for their termination.

The quantum of evidence necessary to terminate an employee for loss of confidence is that of substantial evidence.

Even if the criminal complaint was dismissed on the ground of reasonable doubt. Jose and Pedro could still be dismissed as long as there is substantial evidence to prove that they have committed acts that could be an objective basis for loss of confidence.

ALTERNATIVE ANSWER:

Yes, the filing of a criminal complaint is sufficient ground, since such complaint is founded upon prima facie evidence of their guilt of theft. In dismissal for loss of confidence, it is sufficient if there is substantial evidence to believe that the employee is guilty of theft. This standard is equivalent to a prima facie finding of guilt in criminal procedure.

Mere dismissal on the ground that proof beyond reasonable doubt was adduced, will not entitle the employees to reinstatement. In criminal law the higher standard will not necessarily negative the existence of the lower standard of proof of substantial evidence of guilt.

Q:

- 1) **Distinguish between the substantive and the procedural requirements for the dismissal of an employee.**
- 2) **May a court order the reinstatement of a dismissed employee even if the prayer of the complaint did not include such relief?**

SUGGESTED ANSWER:

1) This is the substantive requirement for the valid dismissal of an employee: There should be a just cause for the termination of an employee or that the termination is authorized by law.

This is the procedural requirement: The employer should furnish the employee whose employment is sought to be terminated a written notice containing a statement of the causes for termination and the employer should afford the employee to be terminated ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires. (Arts. 279 and 277 (b). Labor Code)

2) So long as there is a finding that the employee was illegally dismissed, the court can order the reinstatement of an employee even if the complaint does not include a prayer for reinstatement, unless, of course, the employee has waived his right to reinstatement; By law an employee who is unjustly dismissed is entitled to reinstatement, among others.

The mere fact that the complaint did not pray for reinstatement will not prejudice the employee, because technicalities of law and procedure are frowned upon in labor proceedings. (General Baptist Bible College vs. NLRC, 219 SCRA 549).

Q: Diosdado, a carpenter, was hired by Building Industries Corporation (BIC), and assigned to build a small house in Alabang. His contract of employment specifically referred to him as a “project employee,” although it did not provide any particular date of completion of the project.

Is the completion of the house a valid cause for the termination of Diosdado’s employment?

If so, what are the due process requirements that the BIC must satisfy? If not, why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The completion of the house should be valid cause for termination of Diosdado’s employment.

Although the employment contract may not state a particular date, but if it did specify that the termination of the parties* employment relationship was to be on a “day certain” - the day when the phase of work would be completed - the employee cannot be considered to have been a regular employee (*Filipinos Pre-Fabricated Building systems v. Puente*, 453 SCRA 820 [2005]).

To satisfy due process requirement, under DOLE Department Order No. 19, series of 1993, the employer is required to report to the relevant DOLE Regional Office the fact of termination of project employees as a result of the completion of the project or any phase thereof in which one is employed.

ANOTHER SUGGESTED ANSWER:

No. The completion of the house is not a valid cause for termination of employment of Diosdado, because of the failure of the BIC to state “the specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.” (Labor Code, Art. 280). There being no valid termination of employment, there is no need to comply with the requirements of procedural due process.

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:

A) 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

Blank Garments, Inc. (BLANK), a clothing manufacturer, employs more than 200 employees in its manufacturing business. Because of its high overhead, BLANK decided to sell its manufacturing business to Bleach Garments, Inc. (BLEACH) lock, stock and barrel which included goodwill, equipment, and personnel. After taking on BLANK's business, BLEACH reduces the workforce by not hiring half the workers specifically the ones with seniority. BLANK and BLEACH are still discerned to be sister companies with identical incorporators. The laid-off employees sue both BLANK and BLEACH for unlawful termination.

(a) How would you decide this case? (4%)

(b) What is the "successor employer" doctrine? (2%) (2015 BAR)

Suggested Answer:

(a) In transfer of ownership, the buyer corporation, as a general rule, is not duty-bound to absorb the employees of the selling corporation. The buyer corporation becomes liable to the displaced employees only if the change in ownership is done in bad faith or is used to defeat the rights of labor. In such a case, the successor-employer is duty-bound to absorb the displaced employees (*Penafrancia Tours and Travel Transport, Inc., v. Sarmiento*, 634 SCRA 279).

Since the facts of the case do not show any bad faith in BLEACH's sale to BLANK, BLEACH, consequently, is not obliged to absorb the displaced employees of BLANK.

The case at hand involves sales of assets as differentiated from sales of stock. The ruling in *SME Bank v. De Guzman* (G.R. No. 184517, Oct. 8, 2013), which reversed *Manlimos v. NLRC* (312 Phil. 178), pointed out that in asset sales, the rule is that the seller in good faith is authorized to dismiss the affected employees, but is liable for the payment of separation pay under the law. The buyer in good faith, on the other hand, is not obliged to absorb the employees affected by the sales, nor is it liable for the payment of their claims. In contrast with asset sales, in which the assets of the selling corporation are transferred to another entity, the transaction in stock sales takes place at the shareholder level. Because the corporation possesses a personality separate and distinct from that of its shareholders, a shift in the composition of its shareholders will not affect its existence and continuity.

Hence the corporation continues to be the employer and continues to be liable for the payment of their just claims. Absent a just or authorized cause, the corporation or its new majority shareholders are not entitled to lawfully dismiss corporate employees.

(b) The "successor employer" doctrine refers to a sales or transfer in ownership of an entity that has been done in bad faith or to defeat the rights of labor. In such a case, it is as if there have been no changes in employer-employee relationship between the seller and its employees. The buyer becomes a "successor employer" and is obliged to absorb the displaced employees.

X was one of more than one hundred (100) employees who were terminated from employment due to the closure of Construction Corporation A. The Cruz family owned Construction Company A. Upon the closure of Construction Company A, the Cruzes established Construction Company B. Both corporations had the same president, the same board of directors, the same corporate officers, and all the same subscribers. From the General Information Sheet filed by both companies, it also showed that they shared the same address and/or premises. . Both companies also hired the same accountant who prepared the books for both companies.

X and his co-employees amended their Complaint with the Labor Arbiter to hold Construction Corporation 8 joint and severally liable with Construction Company A for illegal dismissal, backwages and separation pay. Construction Company 8

interposed a Motion to Dismiss contending that they are juridical entities with distinct and separate personalities from Construction Corporation A and therefore, they cannot be held jointly and severally liable for the money claims of workers who are not their employees. Rule on the Motion to Dismiss. Should it be granted or denied? Why? (5%) (2012 BAR)

Suggested Answer:

Denied. The factual circumstances – that the businesses of Construction Company A and Construction Company B are related, that all of the employees of Company A are the same persons manning and providing for auxiliary services to units of Company B, and that the physical plants, offices and facilities are situated in the same compound – justify the piercing of the corporate veil of Company B. [Indophil Textile Mill Workers Union vs. Calica, 205 SCRA 697 (1992)]. The fiction of the corporate entity can be disregarded when it is used to justify wrong or protect fraud. [Complex Electronics Association v. NLRC, G.R. No. 121315 & 122136, July 19, 1999)].

Q: Juan and Pedro were regular employees of Rose Manufacturing Company for 20 years. On May 31, 1984, both were dismissed by the company for dishonesty and fraud. They sued for reinstatement and backwages. The labor arbiter ordered the reinstatement of Juan and Pedro and the payment of their backwages. During the pendency of its appeal to the National Labor Relations Commission (NLRC). The company undertook a reorganization of its various departments where, among others, the positions of Juan and Pedro were eliminated as redundant. On April 30, 1989, the NLRC affirmed the labor arbiter's award and ordered the reinstatement of Juan and Pedro and payment of backwages covering five years. You are asked by the company to question the ruling of the NLRC before the Supreme Court. What would be your main arguments?

SUGGESTED ANSWER:

I will question the ruling of the NLRC before the Supreme Court with the following as my main arguments:

1. The order to reinstate Juan and Pedro is no longer correct because of the supervening event, namely, the reorganization at the company that included, among others, the elimination of the positions of Juan and Pedro which were considered redundant. Redundancy is an authorized cause for the termination of employment. (Art. 283, Labor Code).
2. The award of backwages covering five years is not correct. The Supreme Court has been consistently applying the so-called Mercury Drug ruling that limits the backwages to a three year period.

ALTERNATIVE ANSWER:

I will charge the NLRC and the Labor Arbiter with abuse of discretion amounting to lack of jurisdiction for ordering the reinstatement and the payment of back wages to them. Assuming that the dishonesty and fraud of Juan and Pedro have been established as facts, their dismissal is for just cause.

ABC Tomato Corporation, owned and managed by three (3) elderly brothers and two (2) sisters, has been in business for 40 years. Due to serious business losses and financial reverses during the last five (5) years, they decided to close the business.

- a. As counsel for the corporation, what steps will you take prior to its closure? (3%) (2012 BAR)**

Suggested Answer:

I will serve a written notice on both the workers and the Regional Office of the Department of Labor and Employment, at least one (1) month before the intended date of closure. (Art. 283, Labor Code); and (2) provide proof of ABC's serious business losses or financial reverses [Balasbas v. NLRC, G.R. No. 85286, August 24, 1992]

- b. Are the employees entitled to separation pay? (2%) (2012 BAR)**

Suggested Answer:

No. Where closure is due to serious business losses, no separation pay is required. [North Davao Mining Corp. v. NLRC, 254 SCRA 721; JAT General Services vs. NLRC, 421 SCRA 78 (2004)]

If the reason for the closure is due to old age of the brothers and sisters:

- c. Is the closure allowed by law? (2%) (2012 BAR)**

Suggested Answer:

Yes. The determination to cease or suspend operations is a prerogative of management that the State usually does not interfere with, as no business can be required to continue operating to simply maintain the workers in employment. [San Pedro Hospital of Digos v. Secretary of Labor, G.R. No. 104624, October 11, 1996; Espina vs. CA, 519 SCRA 327 (2007)]

- d. Are the employees entitled to separation benefits? (3%) (2012 BAR)**

Suggested Answer:

Yes. In case of cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month ay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year [Art. 283, Labor Code].

Q: Aside from the just causes enumerated in Article 282 of the Labor Code for the termination of employment, state three (3) lawful or authorized causes for the dismissal of an employee. (2%)

SUGGESTED ANSWER:

According to Art. 283 of the Labor Code, the lawful or authorized causes for the termination of an employee are:

1. installation of labor saving devices
2. redundancy
3. retrenchment to prevent losses or;
4. closing or cessation of operation of the establishment or undertaking, unless the closing is for the purpose of circumventing the provisions of the Labor Code. Art 284 also provides that an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees.

Q: Coronet Records Phil. (CRP) manufactures audio/video record players, compact discs, video discs, cassettes and the like. CRP's shareholdings is 40% foreign and 60% domestic.

CRP signed a Collective Bargaining Agreement (CBA) with its rank-and-file workers for three years starting from January 1, 1990 and ending on December 31, 1993.

Before the expiration of the CBA. CRP decided to sell all its assets to Lyra Music Corporation effective September 30, 1993. In this regard, notice was sent on August 30, 1993 to each employee advising them of the sale of the Company's assets to Lyra Music Corporation and the closure of the company's operations effective September 30, 1993. CRP, likewise, requested that each employee receive his separation pay equivalent to one-and-one-half (1 & 1/2) month's pay per year of service, exclusive of all unused leaves which were also converted to cash, and his 13th-month pay for 1993.

The employees received their respective separation pay under protest and thereafter filed an action against CRP and Lyra Music Corporation for unfair labor practice (ULP). The Arbiter ruled in favor of the workers and ordered Lyra Music

Corporation to absorb the former workers of CRP. Was the Labor Arbiter correct in his decision?

SUGGESTED ANSWER:

No. The Labor Arbiter is not correct. As held in the case of *San Felipe Neri School of Mandaluyong vs. NLRC*, when there is a legitimate sale of a company's assets, the buyer in good faith cannot be legally compelled to absorb the employees of the seller in good faith. In the case at bar, the employees of the CRP were validly terminated based on Article 284. e.g. closure of operations and separation pay was paid at a rate much higher than the law.

Furthermore, the case filed by the employees was UNFAIR LABOR PRACTICE. It is highly irregular to order absorption of employees in a ULP case.

Q:

- (1) **Y Corporation suffered business reverses and it was forced to cease operations and dismiss all its employees. Said employees filed a complaint with the National Labor Relations Commission for illegal dismissal and payment of separation pay. Decide with reasons.**
- (2) **Suppose it was found by the labor arbiter that the corporation did not suffer business losses. It was also found that the corporation went on with its operations. May an illegally dismissed employee be ordered reinstated despite his strained relationship with the corporation? What may be awarded to the employee? Explain your answers.**

SUGGESTED ANSWER:

(1) When Y Corporation dismissed all its employees because it ceased operations, the dismissal was legal. Cessation of operations of an establishment or undertaking is one of the authorized causes for the termination of employees. (Art. 283, Labor Code). But considering the facts of the case in question, the employer is not under legal obligation to pay separation pay since the cessation of operations was due to business reverses. Nevertheless, the employer should serve a written notice on the workers at least one (1) month before the intended date of the cessation of operation.

A POINT TO CONSIDER: The bar examinee may state that there shall be payment of separation pay only if the cessation of operation is due to serious business losses or financial reverses. The question did not describe the business reverses as serious. So, the bar examinee may state that there should be payment of separation pay.

(2) There are some Supreme Court decisions ruling that even if there is no legal basis for the termination of an employee, he may not be reinstated because of strained relationship between the employer and the employee. Instead, he should be given separation pay. (an example of these cases is *Hernandez vs. National Labor Relations Commission*, G.R. No. 84302, Aug. 10, 1989, where the Supreme Court said: "Inasmuch

as the charge against petitioner has not been substantiated, the inevitable result is that this Court must declare the dismissal as unwarranted and, therefore, illegal. Considering, however, that the relationship between petitioner and private respondent has been severely strained by reason of their respective imputation of bad faith against each other, this Court believes that to order reinstatement at this juncture will no longer serve any prudent purpose.")

Under the facts of the case given in the question, however, it is respectfully submitted that the above ruling of the Supreme Court should not apply. In the case, the employer acted in bad faith. He claimed business losses. It was found that there were no such business losses. He said he will cease operations. Instead, he actually went on with the operations. On the basis of these proofs of bad faith, the employer should reinstate the illegally dismissed employee pursuant to the Labor Code which specifically provides for the reinstatement of an unjustly dismissed employee.

A POINT TO CONSIDER: A bar examinee may state that there is need to prove serious business losses or financial reverses so that thereby, there may be authorized cause for termination. (Camara Shoes v. Kapisanan ng Manggagawa sa Camara Shoes. G.R. No. 63208-09, May 5, 1989)

Q: Zienna Corporation (Zienna) informed the Department of Labor and Employment Regional Director of the end of its operations. To carry out the cessation, Zienna sent a Letter Request for Intervention to the NLRC for permission and guidance in effecting payment of separation benefits for its fifty (50) terminated employees.

Each of the terminated employees executed a Quitclaim and Release before Labor Arbiter Nocomora, to whom the case was assigned. After the erstwhile employees received their separation pay, the Labor Arbiter declared the labor dispute dismissed with prejudice on the ground of settlement. Thereafter, Zienna sold all of its assets to Zandra Company (Zandra), which in turn hired its own employees.

Nelle, one of the fifty (50) terminated employees, filed a case for illegal dismissal against Zienna. She argued that Zienna did not cease from operating since the corporation subsists as Zandra. Nelle pointed out that aside from the two companies having essentially the same equipment, the managers and owners of Zandra and Zienna are likewise one and the same.

For its part, Zienna countered that Nelle is barred from filing a complaint for illegal dismissal against the corporation in view of her prior acceptance of separation pay.

Is Nelle correct in claiming that she was illegally dismissed? (5%)

SUGGESTED ANSWER:

No. In *SME Bank, Inc. v. De Guzman* (G.R. No. 184517 and 186641, October 8, 2013), there are two (2) types of corporate acquisitions: asset sales and stock sales. In asset sales, the corporate entity sells all or substantially all of its assets to another entity. In stock sales, the individual or corporate shareholders sell a controlling block of stock to new or existing shareholders. Asset sales happened in this case; hence, Zienna is authorized to dismiss its employees, but must pay separation pay. The buyer Zandra, is not obliged to absorb the employees affected by the sale, nor is it liable for the payment of their claims. The most that Zandra may do, for reasons of public policy and social justice, is to give preference in hiring to qualified separated personnel of Zienna.

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:

a) 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: Hagibis Motors Corporation (Hagibis) has 500 regular employees in its car assembly plant. Due to the Asian financial crisis, Hagibis experienced very low car sales resulting to huge financial losses. It implemented several cost-cutting measures such as cost reduction on use of office supplies, employment hiring freeze, prohibition on representation and travel expenses, separation of casuals and reduced work week. As counsel of Hagibis, what are the measures the company should undertake to implement a valid retrenchment? Explain. (2016)

SUGGESTED ANSWER:

For a valid retrenchment, the following requisites must be complied with: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.

Jurisprudential standards for the losses which may justify retrenchment are: Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question; secondly, the substantial loss must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer; x x x thirdly, because of the consequential nature of retrenchment, it must be reasonably necessary and is likely to be effective in preventing the expected losses x x x lastly; x x x alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence (*Manatad v. Philippine Telegraph and Telephone Corporation, G.R. No. 172363, March 7, 2008*).

Hagibis should exercise its prerogative to retrench employees in good faith. It must be for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure. Hagibis should use fair and reasonable criteria, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers in ascertaining who would be dismissed and who would be retained among the employees.

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:

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

Q: Venus Department Store decided to contract out the security services that its 10 direct-hired full-time security guards provided. The company paid the men separation pay. With this move, the Store was able to cut costs and secure efficient outside professional security services. But the terminated security guards complained of illegal dismissal, claiming that regular jobs such as theirs could not be contracted out. Will their complaint prosper? (2011 BAR)

- (A) No. the management has the right to contract out jobs to secure efficient and economical operations.
- (B) Yes. They should be reinstated or absorbed by the security agency as its employees.
- (C) No. They are estopped from demanding reinstatement after receiving their separation pay.
- (D) Yes. The company cannot contract out regular jobs such as they had.

Q: A golf and country club outsourced the jobs in its food and beverage department and offered the affected employees an early retirement package of 1 ½ month's pay for each year of service. The employees who accepted the package executed quitclaims. Thereafter, employees of a service contractor performed their jobs. Subsequently, the management contracted with other job contractors to provide other services like the maintenance of physical facilities, golf operations, and administrative and support services. Some of the separated employees who signed

quitclaims later filed complaints for illegal dismissal. Were they validly dismissed? (2011 BAR)

- (A) Yes. The jobs were given to job contractors, not to labor-only contractors, and the dismissed employees received higher separation pay than the law required.
- (B) No. The outsourcing and the employment termination were invalid since the management failed to show that it suffered severe financial losses.
- (C) No. Since the outsourcing of jobs in several departments entailed the separation of many employees, the club needed the Secretary of Labor's approval of its actions.
- (D) No. Since the outsourced jobs were held by old-time regular employees, it was illegal for the club to terminate them and give the jobs to others.

Q: Sampaguita Company wants to embark on a retrenchment program in view of declining sales. It identified five employees that it needed to separate. The human resource manager seems to recall that she has to give the five employees and the DOLE a 30-day notice but she feels that she can give a shorter notice. What will you advise her? (2011 BAR)

- (A) Instead of giving a 30-day notice, she can just give a 30-day advanced salary and make the separation effective immediately.
- (B) So long as she gave DOLE a 30-day prior notice, she can give the employees a shorter notice.
- (C) The 30-day advance notice to the employee and the DOLE cannot be shortened even with a 30-day advance salary.
- (D) She can give a shorter notice if the retrenchment is due to severe and substantial losses.

Q: A sugar mill in Laguna, capitalized at P300 million, suffered a P10,000.00 loss last year. This year it dismissed three young female employees who gave birth in the last three years. In its termination report to DOLE, the sugar mill gave as reason for the dismissal "retrenchment because of losses." Did it violate any law? (2011 BAR)

- (A) Yes, the law on retrenchment, the sugar mill's losses not being substantial.
- (B) Yes, the law against violence committed on women and children.
- (C) No, except the natural law that calls for the protection and support of women.
- (D) No, but the management action confirms suspicion that some companies avoid hiring women because of higher costs.

3. Due Process (Twin-notice requirement, Hearing; meaning of opportunity to be heard)

Q: Give the procedure to be observed for validly terminating the services of an employee based on a just cause? (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Procedural due process mandates that the twin requirements of Notice and Hearing should be present. The two notices are as follows:

1st notice: Notice of appraisal, which is a written notice served on the employee specifying the ground or grounds of termination, and giving the employee reasonable opportunity within which to explain his side.

2nd notice: Notice of termination, which is a written notice of termination served upon the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

1. The first notice should contain a detailed narration of facts and circumstances that will serve as basis for the charge or specific causes or ground for termination against the employee, and a directive that the employee is given the opportunity to submit his written explanation within a reasonable period (*Unilever Phil. v. Maria Ruby Rivera*, G.R. No. 201701, June 3, 2013, 697 SCRA 136). This is to enable the employee to intelligently prepare his explanation and defenses.

2. A general description of the charge will not suffice. The notice should specifically mention which company rules, if any, are violated (*King of Kings Transport, Inc. v. Mamac*, G.R. No. 166208, June 29, 2007, 526 SCRA 116), and that the employer seeks his dismissal for the act or omission charged against him; otherwise, the notice does not comply with the rules (*Magro Placement and General Services v. Hernandez*, G.R. No. 156964, July 4, 2007, 526 SCRA 408; see also *Mercury Drug Corporation v. Serrano*, G.R. No. 160509, March 10, 2006, 484 SCRA 434; citing *Maquiling v. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384, February 4, 2005, 450 SCRA 465).

3. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation against him, consult a union official or lawyer, gather data and evidence, and decide on the defenses he will raise against the complaint (*King of Kings Transport, Inc. v. Mantac*, G.R. No. 166208, June 29, 2007, 526 SCRA 116).

4. After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses.

a. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide

him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held.

b. In such a case, the conduct of a formal hearing or conference becomes mandatory, as where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pre-termination procedure (*Perez v. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110).

Q: Pedro, a bus driver of Biyahe sa Langit Transport, was involved in a collision with a car, damaging the bus. The manager accused him of being responsible for the damage and was told to submit his written explanation within

48 hours. Pedro submitted his explanation within the period. The day after, Pedro received a notice of termination stating that he is dismissed for reckless driving resulting to damage to company property, effective immediately. Pedro asks you, as his counsel, if the company complied with the procedural due process with respect to dismissal Of employees.

[a] Explain the twin notice and hearing rule. (2016)

SUGGESTED ANSWER:

The twin notice and hearing rule requires a directive that the employee be given the opportunity to submit a written explanation on why he should not be dismissed within a reasonable period of time (*King of Kings Transport, Inc. v. Santiago O. Mamac*, G.R. No. 166208, June 29, 2007). The grounds for terminating an employee, again as explained in the Kings case, must be a detailed narration of the facts and circumstances that will serve as basis for the charge against him. Further, it should mention specifically which company rule or provision of the Labor Code was violated. The Supreme Court defines 'reasonable period of time' to be five calendar days from the day the employee received the NTE. As to the hearing, in *Perez v. Philipjine Telegraph Company*, 584 SCRA 110 120091, the Supreme Court enunciated the rule that a hearing is only necessary if it was asked or requested by an employee. In case it was requested, a summary hearing must be done by the employer where the employee must be afforded the opportunity to adduce evidence and present witnesses in his behalf. Then the employer must inform the employee in writing of its decision stating the facts, the analysis of the evidence and statement of witnesses and the law or policy which led to the decision.

[b] Did the Biyahe sa Langit Transport comply with the prior procedural requirements for dismissal?

SUGGESTED ANSWER:

No. The notice given by Biyahe sa Langit Transport did not give Pedro a minimum period of five (5) days to submit a written explanation. He was given only 48 hours to submit the same. The fact that he met the deadline did not cure the lapse committed by Biyahe sa Langit Transport. There being a violation, of procedural due process, Biyahesa Langit Transport becomes liable for nominal damages even, assuming that there was a valid ground for dismissal.

Q: The employer must observe both substantive and procedural due process when dismissing an employee. If procedural due process is not observed, the dismissal will be regarded as

- (A) defective; the dismissal process has to be repeated.
- (B) an abuse of employer's discretion, rendering the dismissal void.
- (C) ineffectual; the dismissal will be held in abeyance.
- (D) legal and valid but the employer will be liable for indemnity.

Q: Juan Santos is a regular employee of Far East Development Company. During office hours, he quarrelled with a co-employee. Santos was holding a knife and when his supervisor Olivia Garcia tried to pacify him, he chased her instead with the knife but he was held back by cooler heads. On the ground of gross misconduct and insubordination, he was dismissed from the service. He filed a complaint for illegal dismissal with the labor arbiter. The labor arbiter required Santos and his employer to file their position papers. On the basis of the position papers submitted, the labor arbiter found that the dismissal was for lawful cause and thus, the complaint was dismissed. On appeal to the National Labor Relations Commission, the said decision was reversed on the ground that Santos was not afforded due process by his employer before he was dismissed. Hence, he was ordered reinstated with backwages from the date of his separation to the date of his reinstatement without qualification or deduction.

The employer elevated the case to the Supreme Court. He argued that even if there was no due process in the dismissal of Santos, at the hearing before the labor arbiter, it was found that the dismissal was for a just cause and therefore Santos was not entitled to reinstatement. Santos, on the other hand, challenged the proceedings before the labor arbiter on the ground that no hearing was conducted and that the decision was reached only on the basis of position papers submitted and hence, in violation of due process.

- (1) Is the employer's contention valid? Explain.
- (2) Is the contention of Santos correct? Explain.

SUGGESTED ANSWER:

(1) The employer's contention is valid. It is true that under the facts of the case in the question, the employer failed to give due process to Santos before the latter was dismissed since the employer did not give Santos the required written notice of his termination and the reason or reasons for his termination. The employer did not give Santos the required opportunity to defend himself.

But on the basis of the position papers submitted, the labor arbiter found that the dismissal was lawful cause since Santos was indeed guilty of serious misconduct and willful disobedience which are just causes for termination.

The fact that Santos was not afforded due process by the employer does not mean that thereby the employer cannot dismiss Santos, if there is just cause for his termination.

(2) In *Wenph.il Corporation v. National Labor Relations Commission et al*, G.A. No. 80587, Feb. 8, 1989, the Supreme Court said: "By the same token, the conclusion of the public respondent NLRC on appeal that private respondent was not afforded due process before he was dismissed is binding on this Court. Indeed, it is well taken and supported by the records. However, it can not justify a ruling that private respondent should be reinstated with back wages as the public respondent NLRC so decreed. Although belatedly, private respondent was afforded due process before the labor arbiter wherein the just cause of his dismissal had been established. With such finding, it would be arbitrary and unfair to order his reinstatement with back wages."

The contention of Santos is not correct. The Labor Codes provides (in Art. 221) that in any proceeding before the National Labor Relations Commission or any labor arbiter, the rules of evidence prevailing in courts of law or equity shall not be controlling and that it is in the spirit and intention of the Code that the Commission and the labor arbiters shall use every and all reasonable means to ascertain the fact in each case speedily, and objectively, without regard to technicalities of law on procedure, all in the interest of due process.

Considering the above provision in the Labor Code, in many decisions, the Supreme Court has held that it is proper for a labor arbiter to decide a case on the basis of the position papers submitted by the parties. (Example: *Robusta Agro Marine Products Inc. u. Corobalem*. G.R. No.80500, July 5. 1989).

ALTERNATIVE ANSWERS:

(1) The employer's contention is valid if a just cause was found by the labor arbiter on the merits on the basis of admission in the pleadings, meaning the position papers.

(2) The contention of Santos is not correct if the pleadings meaning the position papers did not tender any issue of fact. Such issue could be the subject of a hearing and

presentation of evidence. If the pleadings tendered an issue of fact, then a hearing would be required by due process.

Q: Alfredo was dismissed by management for serious misconduct. He filed suit for illegal dismissal, alleging that although there may be just cause, he was not afforded due process by management prior to his termination. He demands reinstatement with full backwages.

[a] What are the twin-requirements of due process which the employer must observe in terminating or dismissing an employee? Explain. (3%)

SUGGESTED ANSWER:

The twin requirements of due process are notice and hearing to be given to the worker. There is likewise a two-notice requirement rule, with the first notice pertaining to specific causes or grounds for termination and a directive to submit a written explanation within a reasonable period.

“The second notice pertains to notice of termination. Pursuant to *Perez v. Philippine Telegraph and Telephon Company* (G.R. No. 152048, 7 April 2009), the Court held that a hearing or conference is not mandatory, as long as the employee is given “ample opportunity to be heard”, i.e. any meaningful opportunity (verbal or written) to answer the charges against him or her and submit evidence in support of the defense, whether in a hearing, conference, or some other fair, just and equitable way.

Q: Mariano, Dondon and Pongpong were members of the United Labor Organization, a duly registered local union. During a meeting, the union expelled them for disloyalty. They were not notified of the specific accusations against them or given any opportunity to refute the charges in any hearing or investigation. The union immediately informed their employer, the XYZ CORPORATION, of their expulsion from the union and recommended their dismissal in accordance with the closed-shop agreement in the CBA.

a) May the XYZ CORPORATION look into the facts of the expulsion before affecting termination of their employment?

SUGGESTED ANSWER:

Yes, XYZ Corporation may look, in fact, it should look into the facts of the expulsion before effecting termination of their employment.

The Labor Code expressly provides that the employer should not only furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination. The employee should also be afforded the opportunity to be heard and to defend himself.

b) If the corporation decided to investigate the circumstances of the expulsion and found out that the union acted arbitrarily in expelling them from its ranks, may it refuse to terminate their employment?

SUGGESTED ANSWER:

The employer may refuse to terminate the employment of Mariano, Dondon and Pongpong. The closed-shop agreement in the CBA can be the basis for terminating an employee only if the employees have been validly expelled from union membership.

3. Suppose Juan Dukha proved during the hearing that he was robbed of his collections and, consequently, the Labor Arbiter decided in his favor. In the meantime, the Ladies Garments Company appealed to the National Labor Relations Commission (NLRC).

Pending appeal, what rights are available to Juan relative to the favorable decision of the Labor Arbiter? Explain.

SUGGESTED ANSWER:

Juan can ask for immediate reinstatement pending resolution of the appeal filed by the company with the NLRC. At the option of his employer, he may be admitted back to work or merely reinstated in the payroll.

Q: Atty. Oliza heads the legal department of Company X with the rank and title of Vice-President. During his leave of absence, his assistant took over as acting head of the legal department. Upon his return, Atty. Oliza was informed in writing that his services were no longer needed, it appearing that the Company had lost so many cases by default due to his incompetence. Atty. Oliza filed a case for illegal dismissal.

- 1) Will his case prosper?**
- 2) Pending hearing, may Atty. Oliza ask the Secretary of Labor to suspend the effects of the termination of the services of an employee and to order his temporary reinstatement?**

SUGGESTED ANSWER:

1) His case will prosper. He was not given procedural due process. He was not given the required notice, namely, a written notice containing a statement of the causes for termination, and he was not afforded ample opportunity to be heard and to defend himself.

But if, before the Labor Arbiter, in a hearing of the case of illegal dismissal that Atty. Oliza may have filed, he is found to be grossly Incompetent, this is Just cause for his dismissal. (Art. 277(b), Labor Code)

ALTERNATIVE ANSWER:

Yes. The examinee submits that Atty. Oliza's case will prosper. Well-settled is the rule that even managerial employees are entitled to the constitutional guarantee of security of tenure. In the case at bar, there was a clear deprivation of Atty. Oliza's right to due process. The blanket accusation of "incompetence" hardly qualifies as compliance with the substantive requirements for an employee's dismissal. The written notice that his services were no longer needed also fall short of the procedural requirements of notice and opportunity to be heard, the twin ingredients of due process.

SUGGESTED ANSWER:

2) The Labor Code gives the Secretary of Labor and Employment the power to suspend the effects of a termination made by an employer pending resolution of a labor dispute in the event of a prima facie finding by the Department of Labor and Employment before whom such dispute is pending that the termination may cause serious labor dispute or is in implementation of a mass lay-off.

The termination of Atty. Oliza does not cause a serious labor dispute considering that he is a managerial employee. It is not in implementation of a mass lay-off. Thus, pending hearing, the Secretary of Labor and Employment may not suspend the effects of the termination and order his temporary reinstatement. (Art. 277(b))

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:

- a. A written notice to the DOLE at least thirty (30) days before the effectivity of termination.

C. Reliefs for Illegal Dismissal

1. Reinstatement (Pending appeal (Art. 223, Labor Code), Separation pay in lieu of reinstatement)

Q: Juanito initiated a case for illegal dismissal against Mandarin Company. The Labor Arbiter decided in his favor, and ordered his immediate reinstatement with full backwages and without loss of seniority and other benefits. Mandarin Company did not like to allow him back in its premises to prevent him from influencing his co-workers to move against the interest of the company; hence, it directed his payroll reinstatement and paid his full backwages and other benefits even as it appealed to the NLRC.

A few months later, the NLRC reversed the ruling of the Labor Arbiter and declared that Juanito's dismissal was valid. The reversal ultimately became final.

May Mandarin Company recover the backwages and other benefits paid to Juanito pursuant to the decision of the Labor Arbiter in view of the reversal by the NLRC? Rule, with reasons. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

Mandarin cannot recover the backwages and Other benefits paid to Juanito. The decision of the Labor Arbiter insofar as the reinstatement aspect is concerned, is immediately executory pending appeal (*Fellr v. Eneritech Systems Industries Inc.*, G.R. No. 192007, March 28, 2001, 355 SCRA 680). In fact, in the case of *Pioneer Texturizing Corp. v. NLRC* (G.R. No. 118651, October 16, 1997, 280 SCRA 806), it was held that the order of the Labor Arbiter is self-executory; hence, it is the obligation of Mandarin to immediately admit Juanito back to work or reinstate him in the payroll.

When Mandarin appealed the Labor Arbiter's decision to the NLRC, the employer-employee relationship between the former and Juanito never ceased; and his employment status remained uncertain until the NLRC reversed the decision, which became final.

Thus, the reinstatement salaries due to Juanito were, by their nature, payment of unworked backwages. These were salaries due to him because he was prevented from working despite the finding of the Labor Arbiter that he had been illegally dismissed (*Wenphil Corp. v. Abing and Tuason*, G.R. No. 207983, April 7, 2014, 721 SCRA 126).

Q: Cite four (4) instances when an illegally dismissed employee may be awarded separation pay in lieu of reinstatement. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

These four instances are:

- (i) in case the establishment where the employee is to be reinstated has closed or ceased operations;
- (ii) where the company has been declared insolvent;
- (iii) former position no longer exists at the time of reinstatement for reason not attributable to the fault of the employer; and
- (iv) where the employee decides not to be reinstated as when he does not pray for reinstatement in his complaint or position paper.

Q: Discuss briefly the instances when non-compliance by the employer with a reinstatement order of an illegally dismissed employee is allowed. (2007 Bar Question)

SUGGESTED ANSWER:

Despite a reinstatement order, an employer may not reinstate an employee in the following instances: (a) when the position or any substantial equivalent thereof no longer exists; (b) when reinstatement has been rendered moot and academic by supervening events, such as insolvency of the employer as declared by the court or closure of the

business; or (c) the existence of strained relations between the employer and the illegally dismissed employee, provided the matter is raised before the Labor Arbiter.

ALTERNATIVE ANSWER:

When reinstatement is not feasible due to the strained employer-employee relationship; or that the reinstatement is rendered moot by the bona fide closure of business; or when the position previously held by the employee no longer exists and there is no equivalent position available; or that the employee is sick with an illness that cannot be cured within 6 months, or that the employee has reached the age of retirement; or that the employee himself refuses to be reinstated for one reason or another; in view of the expiration of the 4-year prescriptive period; RA 8042 (Migrant Workers and Overseas Act) does not allow reinstatement to overseas Filipinos workers especially seamen. In these instances, separation pay in lieu of reinstatement may be ordered at the rate of one month or one month for ever year of service, a fraction of at least 6 months equivalent to one year, whichever is higher.

Q: What is meant by "payroll reinstatement" and when does it apply? (4%) (2005 Bar Question)

SUGGESTED ANSWER:

Payroll reinstatement is a form of reinstatement which an employer may opt to exercise in lieu of an actual reinstatement. Here, the illegally dismissed employee is to receive his basic pay without the obligation of rendering any service to the employer. This occurs when a Labor Arbiter decides that an employee was illegally dismissed and as a consequence awards reinstatement, pursuant to Article 279 of the Labor Code. Such award of reinstatement, according to Art. 223 of the Code, is immediately executory even pending appeal.

Q: Juan Dukha, a bill collector of Ladies Garments Company, was dismissed because he did not remit his collections. He filed a case against his company for illegal dismissal. During the hearing, the President of the Company admitted that Juan was never formally investigated for his dishonesty; neither was he informed of the nature of the charge against him. He was simply barred from entering company premises by the security guards upon instruction of management.

Juan Dukha asks for immediate reinstatement with full back wages and without loss of seniority rights. (1995 Bar Question)

x x
x x
x x

4. Suppose Juan Dukha proved during the hearing that he was robbed of his collections and, consequently, the Labor Arbiter decided in his favor. In the

meantime, the Ladies Garments Company appealed to the National Labor Relations Commission (NLRC).

Pending appeal, what rights are available to Juan relative to the favorable decision of the Labor Arbiter? Explain.

SUGGESTED ANSWER:

Juan can ask for immediate reinstatement pending resolution of the appeal filed by the company with the NLRC. At the option of his employer, he may be admitted back to work or merely reinstated in the payroll.

Q: Linder what circumstances or instances may an employee who is found to have been illegally dismissed and, therefore, entitled to reinstatement, be nevertheless, NOT ordered reinstated but merely awarded (a) separation pay in lieu of reinstatement and (b) back wages? At what rate would the separation pay be? What would be the maximum limit for the back wages?

SUGGESTED ANSWER:

In a number of Supreme Court decision, it has been ruled that an employee who is found to have been illegally dismissed shall be awarded separation pay in lieu of reinstatement if reinstatement is no longer viable in view of the strained relations between the employee and his employer. In a case, the Supreme Court also ruled that since reinstatement was no longer feasible in view of the advanced age of the employees who were illegally dismissed, they should instead receive separation pay.

The rate of separation pay is one month salary for every year of service. The Supreme Court has also ruled that in the computation of separation pay account must be taken not only of the basis salary of the employee but also his allowances.

In decisions applying the law before Rep. Act No. 6715, the Supreme Court ruled that the maximum limit for back wages shall be three years.

The law has been changed by Rep. Act No. 6715. Back wages are now to be computed from the time the compensation of the employee was withheld from him up to the time of his actual reinstatement. Thus, in applying the amendment Introduced by Rep. Act No. 6715, this means that back wages will now be paid for the entire period up to the actual reinstatement of the employees, even if the period is over three years.

Q: Johnny Torres is an employee of M.C.U, hospital having worked therein as janitor for 12 years. Sometime in March 1993, he was suspected of conniving with some medical students in the theft of laboratory equipment for which reason, the management of M.C.U Hospital ordered his employment terminated for loss of confidence. Johnny Torres filed before the Arbitration Branch of the NLRC a case of illegal dismissal against the hospital. After hearing, the Labor Arbiter cleared

Johnny Torres of any involvement in the theft and rendered a decision declaring the order of dismissal illegal thereby ordering the hospital to reinstate Johnny Torres to his former position and to pay him full backwages, which he would have received were it not for the illegal dismissal.

MCU Hospital filed a Motion for Reconsideration alleging that the Labor Arbiter gravely abused his discretion in ordering a reinstatement which is no longer possible under the

“strained relations” principle, a hostility that developed between the parties as a result of the litigation. Is the legal argument poised by MCU Hospital tenable?

SUGGESTED ANSWER:

The legal argument poised by MCU Hospital is not tenable. An employer cannot use “strained relations” as a valid reason for not reinstating an employee who has been illegally dismissed, if such strained relations arose from a worker filing a case of illegal dismissal against his employer. When he filed the case, the employee was only asserting his constitutional right to security of tenure.

ALTERNATIVE ANSWER:

The principle of “strained relations” does not apply on this case, Johnny Torres a janitor, does not occupy a confidential or responsible position. The rule cannot be applied universally. Otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of litigation.

Q: The Septuagint Company, Inc., through its general manager, dismissed Juan Suntok, a rank-and-file employee, on the ground of loss of confidence. The company served on his the notice of termination effective on the date of receipt, which was 8 September 1986. Taken aback by his sudden dismissal, Juan confronted the general manager and hit him on the face with a cast of iron pipe. The company filed a complaint against him for less serious physical injuries. On 1 September 1990, a week after he was acquitted by the court which tried the criminal case, Juan filed a complaint for illegal dismissal, seeking reinstatement and payment of back wages.

a) On the basis of the facts given, was the dismissal of Juan valid?

SUGGESTED ANSWER:

The dismissal of Juan was not valid. The ground for his dismissal is mere allegation of “loss of confidence.” Such allegation is not sufficient unless there are facts that provide the objective basis of loss of confidence. It should also be noted that Juan was not given any opportunity to be heard and to defend himself.

b) If the Labor Arbiter finds that the dismissal was illegal for being without just cause, what relief/s may be granted to Juan?

SUGGESTED ANSWER:

Juan is entitled to these reliefs, namely reinstatement without loss of seniority and other privileges and full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

c) If the Labor Arbiter finds that there was just cause for the termination of Juan's employment, but that the requirement of notice and hearing was not complied with, what relief/s may be granted to Juan?

SUGGESTED ANSWER:

The relief to be granted to Juan is indemnity if the amount of P1,000.00.

d) Was the complaint for illegal dismissal filed within the reglementary period?

SUGGESTED ANSWER:

It was filed within the reglementary period. Juan filed his complaint for illegal dismissal within four (4) years from the date of his dismissal which is the prescriptive period for filing cases of illegal dismissal. An action for illegal dismissal prescribes in four years under the Civil Code, It being an action predicated "upon an injury to the rights of the plaintiff."

Q: The employees' union in San Joaquin Enterprise continued their strike despite a return to work order from the Secretary of Labor. Because of this defiance, the employer dismissed the strikers. But the Labor Arbiter declared as illegal the dismissal of those whose commission of unlawful acts had not been proved. They were ordered immediately reinstated. The employer refused, however, to reinstate them on the ground that the rule on immediate reinstatement applies only to terminations due to just or authorized causes. Is the employer's refusal justified? (2011 BAR)

- (A) No, every employee found to have been illegally dismissed is entitled to immediate reinstatement even pending appeal.
- (B) Yes. The employer's refusal is legal and justified as a penalty for defying the secretary's lawful order.
- (C) Yes, the rule on immediate reinstatement does not apply to employees who have defied a return-to-work order.
- (D) No. The dismissal of the employees was valid; reinstatement is unwarranted.

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).

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]

Q: An employee proved to have been illegally dismissed is entitled to reinstatement and full backwages computed on the basis of his (2011 BAR)

- (A) basic salary plus the regular allowances and the thirteenth month pay.
- (B) basic salary plus the salary CBA increases during the pendency of his case.
- (C) basic salary plus the increases mandated by wage orders issued during the pendency of his case.
- (D) basic salary at the time of dismissal.

2. Backwages (Computation, Limited backwages)

Q: An employee was ordered reinstated with backwages. Is he entitled to the benefits and increases granted during the period of his lay-off? Explain briefly. (3%)

SUGGESTED ANSWER:

Yes. An employee who is ordered reinstated with backwages is entitled to the benefits and increases granted during the period of his lay-off. The Supreme Court has ruled:

“Backwages are granted for earnings a worker lost due to his illegal dismissal and an employer is obliged to pay an illegally dismissed employee the whole amount of salaries plus all other benefits and bonuses and general increases to which the latter should have been normally entitled had he not been dismissed.” [Sigma Personnel Services v. NLRC, 224 SCRA 181 (1993)]

Q: Distinguish between an award for back wages and an award for unpaid wages.

SUGGESTED ANSWER:

An award for backwages is to compensate an employee who has been illegally dismissed, for the wages, allowances and other benefits or their monetary equivalent, which said employee did not receive from the time he was illegally dismissed up to the time of his actual reinstatement.

On the other hand, an award for unpaid wages is for an employee who has actually worked but has not been paid the wages he is entitled to receive for such work done. (Arts. 279 and 97(f). Labor Code)

ALTERNATIVE ANSWER:

An award of backwages is given to an employee who is unjustly dismissed. The cause of action here is the unjust dismissal. On the other hand, an award of unpaid wages is given to an employee who has not been paid his salaries or wages for services actually rendered. The cause of action here is non-payment of wages or salaries. (General Baptist Bible College vs. NLRC 219 SCRA 549).

Q: Baldo was dismissed from employment for having been absent without leave (AWOL) for eight (8) months. It turned out that the reason for his absence was his incarceration after he was mistaken as his neighbor’s killer. Eventually acquitted and released from jail, Baldo returned to his employer and demanded reinstatement and full backwages. Is Baldo entitled to reinstatement and backwages? Explain your answer. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes. Baldo is entitled to reinstatement. Although he shall not be entitled to backwages during the period of his detention, but only from the time the company refused to reinstate him. (Magtoto v. NLRC, 140 SCRA 58 [1985]).

ANOTHER SUGGESTED ANSWER:

No. Baldo is not entitled to reinstatement and backwages. The dismissal was for cause, i.e., AWOL. Baldo failed to timely inform the employer of the cause of his failure to report for work; hence, prolonged absence is a valid ground to terminate employment.

Q: May the general manager of a company be held jointly and severally liable for backwages of an illegally dismissed employee? (2%)

SUGGESTED ANSWER:

Yes. If it is shown that he acted in bad faith, or without or In excess of authority, or was motivated by personal ill-will in dismissing the employee, the general manager may be held jointly and severally liable for the backwages of an illegally dismissed employee. [ARB Construction C. v. Court of Appeals, 332 SCRA 427, (2000), Lim v. NLRC, 303 SCRA 432, (1999)]

ANOTHER SUGGESTED ANSWER:

Yes. The General Manager may be held jointly and severally liable for back wages of an illegally dismissed employee if he or she actually authorized or ratified the wrongful dismissal of the employee under the rule of respondent superior. In case of illegal dismissal, corporate directors and officers are solidarily liable with the corporation where termination of employment are done with malice or bad faith. {Bogo- Medellin Sugar Planters Assoc., Inc. v. NLRC, 296 SCRA 108, (1998)}

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

Q: Which takes precedence in conflicts arising between employers's MANAGEMENT PREROGATIVE and the employees right to security of tenure? Why?

SUGGESTED ANSWER:

The employee's right to security of tenure takes precedence over the employer's management prerogative. Thus, an employer's management prerogative includes the right to terminate the services of an employee but this management prerogative is limited by the Labor Code which provides that the employer can terminate an employee only for a just cause or when authorized by law. This limitation on management prerogative is because no less than the Constitution recognizes and guarantees an employee's right to security of tenure. (Art. 279. Labor Code: Art. XIII, Sec. 3. Constitution)

Q: Harbor View Hotel has an existing Collective Bargaining Agreement (CBA) with the union of rank-and-file employees consisting, among others, of bartenders, waiters, roomboys, housemen and stewards. During the lifetime of the CBA, Harbor View Hotel, for reasons of economy and efficiency, decided to abolish the position of housemen and stewards who do the cleaning of the hotel's public areas. Over the protest of the Union, the Hotel contracted out the aforementioned job to the City Service Janitorial Company, a bonafide independent contractor which has a substantial capital in the form of janitorial tools, equipment, machineries and competent manpower. Is the action of the Harbor View Hotel legal and valid?

SUGGESTED ANSWER:

The action of Harbor View Hotel is legal and valid.

The valid exercise of management prerogative, discretion and judgment encompasses all aspects of employment, including the hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and the discipline, dismissal and recall of workers, except as provided for, or limited by special laws.

Company policies and regulations are, unless shown to be gross oppressive or contrary to law, generally binding and valid on the parties and must be complied with until finally revised or amended unilaterally or preferably through negotiation or by competent authority. (San Miguel Corporation vs. Reynaldo R. Ubaldo and Emmanuel Noel A. Cruz, Chairman and Member respectively of the Voluntary Arbitration Panel, et al. G.R. No. 92859, 1 February 1993. J. Campos, Jr.. 218 SCRA.293)

ALTERNATIVE ANSWER:

a) The action of the Harbor View Hotel is legal and valid. Contracting out services or functions being performed by union members is not illegal per se. In fact, it is the prerogative of management to adopt cost-saving measures to ensure economy and efficiency. Contracting out services or functions being performed by union members becomes illegal only when it interferes with, restrains or coerces employees in the exercise of their right to self-organization.

b) The action of Harbor View Hotel would, at first glance, appear to be an unfair labor practice under Article 248(c), e.g., “to contract out services or functions being performed by union members if such will interfere with, restrain or coerce employees in the exercise of their right to self-organization.”

Considering, however, that in the case at bar, there is no showing that the contracting out of services would violate the employees right to self-organization, it is submitted that the hotel's action is a valid exercise of its management prerogatives and the right to make business judgments in accordance with law.

Q: Flight attendant A, five feet and six inches tall, weighing 170 pounds ended up weighing 220 pounds in two years. Pursuant to the long standing Cabin and Crew Administration Manual of the employer airline that set a 147-pound limit for A's height, management sent A a notice to “shape up or ship out” within 60 days. At the end of the 60-day period, A reduced her weight to 205 pounds. The company finally served her a Notice of Administration Charge for violation of company standards on weight requirements. Should A be dismissed? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

NO. While the weight standards for cabin crew may be a valid company policy in light of its nature as a common carrier, the airline company is now estopped from enforcing the Manual as ground for dismissal against A.

It hired A despite her weight of 170 pounds, in contravention of the same Manual it now invoked.

The Labor Code gives to an airline the power to determine appropriate minimum age and other standards for requirement or termination in special occupations such as those of flight attendants and the like. Weight standards for cabin crew is a reasonable imposition by reason of flight safety [Yrasuegui v. PAL, 569 SCRA 467 [2008]]. However, A had already been employed for two (2) years before the airline company imposed on her this weight regulation, and an incident did the airline company raise which rendered her amiss of her duties.

Q: Bulacan Medical Hospital (BMH) entered into a Collective Bargaining Agreement (CBA) with its Union, wherein it is expressly stipulated in the Management Prerogative Clause that BMH shall, in the exercise of its management prerogatives, have the sole and exclusive right to promulgate, amend and modify rules and regulations for the employees within the bargaining unit. A year after the contract was signed, BMH issued its Revised Rules and Regulations and furnished a copy thereof to the Union for dissemination to all employees covered by the CBA. The Union wrote BMH demanding that the Revised Rules and Regulations be first discussed with them before its implementation. BMH refused. So. the Union filed an action for unfair labor practice (ULP) against BMH.

- 1) Is the Union correct?
- 2) Assuming that the CBA was signed or executed before the 1987 Constitution was ratified, would your answer to the preceding question be different?

SUGGESTED ANSWER:

1) The Union is correct. A provision in the collective bargaining agreement concerning management prerogatives, may not be interpreted as cession of the employees' right to participate in the deliberation of matters which may affect their right and the formulation of policies relative thereto, such as the formulation of a code of discipline.

A line must be drawn between management prerogatives regarding business operations per se and those which affect the rights of the employees, and in treating the latter, management should see to it that its employees are at least properly informed of its decisions or modes of action.

The attainment of a harmonious labor-management relationship and the existing state policy of enlightening workers concerning their rights as employees demand no less than the observance of transparency in managerial moves affecting employees' rights.

(Philippine Airlines, Inc. vs. National Labor Relations Commission, et al, G.R. No. 85985, 13 August 1993. J. Melo. 225 SCRA 258. 301.)

ALTERNATIVE ANSWER:

- a) The Union is correct. Workers have the right to participate in policy and decision-making processes affecting their rights, benefits and welfare. (Art. 255).
- b) Yes. The Union is correct in asking for discussion of the revised rules prior to their effectivity. The reason is Art. XIII. Sec. 3 of the 1987 Constitution, allowing workers the right to participate 'in policy and decision-making on matters related to their welfare and benefits.

The Union's remedy however should not be to file a ULP case but to initiate a GRIEVANCE proceeding, and if unresolved, submit the matter to voluntary arbitration.

SUGGESTED ANSWER:

- 2) The answer would be the same even if the CBA was signed or executed before the ratification of the 1987 Constitution because it has always been the policy of the State to promote the enlightenment of workers concerning their rights and obligations as employees. (Art. 211; PAL vs. NLRC, GR 85985. August 13. 1993)

Q: 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

Q: Bulacan Medical Hospital (BMH) entered into a Collective Bargaining Agreement (CBA) with its Union, wherein it is expressly stipulated in the Management Prerogative Clause that BMH shall, in the exercise of its management prerogatives, have the sole and exclusive right to promulgate, amend and modify rules and regulations for the employees within the bargaining unit. A year after the contract was signed, BMH issued its Revised Rules and Regulations and furnished a copy thereof to the Union for dissemination to all employees covered by the CBA. The Union wrote BMH demanding that the Revised Rules and Regulations be first discussed with them before its implementation. BMH refused. So. the Union filed an action for unfair labor practice (ULP) against BMH.

1. Is the Union correct?
2. Assuming that the CBA was signed or executed before the 1987 Constitution was ratified, would your answer to the preceding question be different?

SUGGESTED ANSWER:

1. The Union is correct. A provision in the collective bargaining agreement concerning management prerogatives, may not be interpreted as cession of the employees' right to participate in the deliberation of matters which may affect their right and the formulation of policies relative thereto, such as the formulation of a code of discipline.

A line must be drawn between management prerogatives regarding business operations per se and those which affect the rights of the employees, and in treating the latter,

management should see to it that its employees are at least properly informed of its decisions or modes of action.

The attainment of a harmonious labor-management relationship and the existing state policy of enlightening workers concerning their rights as employees demand no less than the observance of transparency in managerial moves affecting employees' rights. (Philippine Airlines, Inc. vs. National Labor Relations Commission, et al, G.R. No. 85985, 13 August 1993. J. Melo. 225 SCRA 258. 301.)

ALTERNATIVE ANSWER:

- a. The Union is correct. Workers have the right to participate in policy and decision-making processes affecting their rights, benefits and welfare. (Art. 255).
- b. Yes. The Union is correct in asking for discussion of the revised rules prior to their effectivity. The reason is Art. XIII. Sec. 3 of the 1987 Constitution, allowing workers the right to participate 'in policy and decision-making on matters related to their welfare and benefits.

The Union's remedy however should not be to file a ULP case but to initiate a GRIEVANCE proceeding, and if unresolved, submit the matter to voluntary arbitration.

2) The answer would be the same even if the CBA was signed or executed before the ratification of the 1987 Constitution because it has always been the policy of the State to promote the enlightenment of workers concerning their rights and obligations as employees. (Art. 211; PAL vs. NLRC, GR 85985. August 13. 1993)

B. Transfer of employees

Q: George Clinton, an American, was hired as marketing assistant by Perot Drug Company in its main office in Cleveland, Ohio. Because of his good performance, Clinton was appointed manager of the Company's branch in Manila. After two years in Manila, Clinton was advised of his promotion and transfer to Cleveland as director for international marketing. Because of his refusal to be promoted and transferred "for family reasons", Clinton was dismissed by the Company. Clinton sought your advice. As his counsel, answer the following:

- a) **What Clinton's cause of action, if any, against Perot Drug Company?**

SUGGESTED ANSWER:

The course of action of Clinton against Perot Drug Company is that of illegal dismissal. When the Company dismissed him for his refusal to be promoted and transferred "for family reason", he could claim he was being dismissed without just cause.

b) If he has a cause of action, where will you file the appropriate petition — in the U.S. or in the Philippines?

SUGGESTED ANSWER:

I will file the case of illegal dismissal in the Philippines where Clinton was working when he was dismissed. The Company can be sued in the Philippines because it is doing business in the country by having a branch in Manila.

c) Will your petition, if you decide to file one, proper? Answer with reasons.

SUGGESTED ANSWER:

The petition will prosper. The refusal of Clinton to be promoted and transferred to Cleveland is not just cause. His refusing a promotion - his refusing to receive the gift that the Company was offering, namely, his promotion - cannot be considered as willful disobedience of a lawful order of his employer. Thus, there is not just cause for the dismissal of Clinton

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

Q: Union "X" is the majority union of the rank and file employees at Slipper Mart Company. It amended its by-laws to include among the obligations of its members "to refuse to work with non-union members." Slipper Mart wants the amendment

to be declared null and void considering that not all its rank and file employees belong to Union “X” and its enforcement will cause work stoppage in the company. Give your opinion on the validity of the amendment.

SUGGESTED ANSWER:

The provision of the by-laws of the union that made it among the obligations of its members “to refuse to work with non-union members” cannot be implemented at the Slipper Mart Company. It is management’s prerogative to determine who shall work together in a company.

ALTERNATIVE ANSWER:

The act is an unfair labor practice on the part of the union because it could have the effect of compelling the employer to compel its employees to join Union “X”, thus, in effect restraining or coercing employees in the exercise of their right to self-organization.

D. Grant of bonus

Q: What is a bonus? When is it demandable as a matter of right? Explain.

SUGGESTED ANSWER:

A bonus is money given in addition to an employee’s usual compensation.

It may be given as a gratuity, as an act of liberality. But a bonus is demandable as a matter of right if it is made a legal obligation by law or in a collective bargaining agreement or in a contract of employment or by its having been given for such a long time such that the receipt of a bonus has ripened into a right.

ALTERNATIVE ANSWER:

A bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the employer's success and realization of profit.

- (1) Grant of bonus is a prerogative, not an obligation of the employer; and
- (2) It is entirely dependent on the employer's capacity to pay.

Normally discretionary, it becomes part of the regular compensation by reason of long and regular concession or when the bonus is included as among the benefits granted in a CBA.

Q: The projected bonus for the employees of Suerte Co. was 50% of their monthly compensation. Unfortunately, due to the slump in the business, the president

reduced the bonus to 5 % of their compensation. Can the company unilaterally reduce the amount of bonus? Explain briefly. (2%)

SUGGESTED ANSWER:

Yes. The granting of a bonus is a management prerogative, something given in addition to what is ordinarily received by or strictly due the recipient.

An employer, like Suerte Co., cannot be forced to distribute bonuses when it can no longer afford to pay. To hold otherwise would be to penalize the employer for his past generosity. [Producers Bank of the Phil. V. NLRC, 355 SCRA 489, (2001)]

ANOTHER SUGGESTED ANSWER:

It depends. If there is a legal obligation on the part of Suerte Co. to pay a bonus of its employees equivalent to 50% of their monthly compensation, because said obligation is included in a collective bargaining agreement, then Suerte Co. cannot reduce the bonus to 5% of their monthly compensation. But if the payment of the bonus is not a legal obligation but only a voluntary act on the part of the employer, said employer, unilaterally, can only reduce the bonus from 50% to 5% of the monthly compensation of its employees; the employer can, in fact, not give any bonus at all.

Q: Lito was anticipating the bonus he would receive for 2013. Aside from the 13th 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. Rules on Marriage between employees of competitor-employers

Q: A was working as a medical representative of RX pharmaceutical company when he met and fell in love with B, a marketing strategist for Delta Drug Company, a competitor of RC. On several occasions, the management of RX called A’s attention to the stipulation in his employment contract that requires him to disclose any relationship by consanguinity or affinity with co-employees or employees of competing companies in light of a possible conflict of interest. A seeks your advice on the validity of the company policy. What would be your advice? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The company policy is valid. However, it does not apply to A. As A and B are not yet married, no relationship by consanguinity or affinity exists between them. The case of *Duncan v. Glaxo Wellcome* (438 SCRA 343 [2004]) does not apply in the present case.

F. Post-employment ban

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

An employment contract prohibiting employment in a competing company within one year from separation is valid. (2009 Bar Question)

SUGGESTED ANSWER:

True. An employment contract prohibiting employment in a competing company within a reasonable period of one year from separation is valid. The employer has the right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information.

G. 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.

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

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

1. Coverage

Q: Seventy (70) private security guards of TAPANG SECURITY AGENCY CORPORATION, assigned to guard the mining area of DAVAO GOLD CORPORATION, filed a complaint against both their direct employer, TAPANG SECURITY, and their indirect employer, DAVAO GOLD, when they discovered they could not avail of the benefits of the Social Security System law for the failure of respondents TAPANG or DAVAO GOLD to remit its contributions to the System.

By way of answer to the complaint, TAPANG claims that there is no employer-employee relationship, since it has only two (2) office employees whose duties are to monitor their assignment and hours of work and to pay the salaries under the agency contract of the security guards from the funds remitted by DAVAO GOLD, keeping a certain percentage of the amount for office expenses and supervisory fees, the true and real employer being DAVAO GOLD. On the other hand, DAVAO GOLD maintains that it has no employer-employee relationship with TAPANG's security guards assigned to secure its mining area since it has no control over

hiring/dismissal of its guards. TAPANG is a duly licensed security agency and a bona fide independent contractor.

- 1) Who is deemed an "employee" for purposes of coverage under the SSS law?
- 2) Under the above facts whose duty is it to bring the security guards for compulsory coverage pursuant to the SSS law? Discuss.

SUGGESTED ANSWER:

1) A person is deemed an "employee" for purposes of coverage under the Social Security Law if such person performs services for an employer in which either or both mental and physical efforts are used and who received compensation for such services, where there is an employer-employee relationship. Also, a self-employed person is both an employee and employer at the same time. (Sec. 8(d), Social Security Law). It is the duty of Tapang Security Agency Coip. to bring the security guards for compulsory coverage pursuant to the SSS law. Said law expressly provides that employees of bona fide independent contractors shall not be deemed employees of the employer engaging the services of said contractors. (Sec. 8(j), Social Security Law)

ALTERNATIVE ANSWERS:

a) The Social Security Law defines an employer as one who uses the services of another person who is under his orders as regards the employment. Under the facts of the case, it is very clear that it is Davao Gold that has control of the security guards. The security guards are under the orders of Davao Gold as regards their employment, meaning how they perform their work. It could be said that Tapang Security Agency Corp. was acting only like a labor-only contractor and thus, was just an agent of Davao Gold who is the real employer. (Sec. 8(e), Social Security Law and Art. 106, Labor Code)

b) If a company enters into a contract of services with a security agency whereby the latter hired security guards to work with the said company, then that company becomes the indirect employer of the guards hired by said security agency. The company and the security agency become jointly and severally liable to the security guards. Hence, it is the duty, of both the direct and indirect employer to bring the security guards for compulsory coverage pursuant to the SSS law.

Q: Sapatilya Company, a manufacturer of wooden shoes started its operations on January 1, 1989. As of June 15, 1989, the company had in its payroll a general manager, an assistant general manager, three supervisors and forty rank and file employees, all of whom started with the company on January 1, 1989. On July 1, 1989, the company also had ten casual employees who had been with the company since February 16, 1989 and twelve contractual employees whose contracts of employment with the company is for the period from August 1, 1989 to September 30, 1989,. Who among the aforementioned employees are under coverage of the Social Security Law? When did their coverage under the said law take effect?

SUGGESTED ANSWER:

All of the foregoing employees are covered by the Social Security Law, except the ten (10) casual employees. The coverage of the Social Security System is very comprehensive; it covers “all” employees not over sixty years of age except, among others those whose “employment is purely casual and not for the purpose of occupation or business of the employer.” But the casual employees in the question may not even be casual under the Social Security Law because they have been with the company since February 16, 1989. How could they be with the Company that long if their employment is not for the purpose of occupation or business of the employer?

The coverage of the Social Security Law takes effect on the day of the employment of the employee.

Q: Can a member of a cooperative be deemed an employee for purposes of compulsory' coverage under the Social Security Act? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, an employee of a cooperative, not over sixty (60) years of age is, under the SSS Law, subject to compulsory coverage. The Section 8(d) SSS Law defines an employee as - “Sec. 8(d)— any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such service, where there is an employer- employee relationship.”

Q: Don Jose, a widower, owns a big house with a large garden. One day, his househelper and gardener left after they were scolded. For days, Don Jose, who lives alone in compound to look for someone who could water the plants in the garden and clean the house. He chanced upon Mang Kiko on the street and asked him to water the plants and clean the house. Without asking any question. Mang Kiko attended to the plants in the garden and cleaned the house. He finished the work in two days.

x x x

b) **Are they compulsorily covered by the Social Security System?**

SUGGESTED ANSWER:

No. In their employer-employee relationship, Don Jose and Mang Kiko are not compulsory covered by the Social Security System because Mang Kiko is rendering domestic sendees in a private home which is one of the kinds of employment excluded from the compulsory coverage of the Social Security System.

Q: Tito Pacencioso is an employee of a foundry shop in Malabon, Metro Manila. He is barely able to make ends meet with his salary of P4,000.00 a month. One day, he asked his employer to stop deducting from his salary his SSS monthly contribution, reasoning out that he is waiving his social security coverage.

If you were Tito's employer, would you grant his request? Why? (6%)

SUGGESTED ANSWER:

No. As Tito's employer, I am bound by law to remit to SSS Tito's monthly contribution. The SSS law covers any person natural, juridical, domestic or foreign, carrying in the Philippines trade, business, industry, undertaking or activity and uses the services of another under his order as regards employment (Sec. 89[c]).

The compulsory coverage of employers and employees under the SSS law is actually a legal imposition on the employers and employees, designed to provide social security to workingmen. Membership in SSS is in compliance with a lawful exercise of the police power of the State, and may not be Waived by agreement of any party (Phil. Blooming Mills, Co., Inc. v. SSS, 17 SCRA 1077(1966)).

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

Q: The owners of FALCON Factory, a company engaged in the assembling of automotive components, decided to have their building renovated. Fifty (50) persons, composed of engineers, architects and other construction workers, were hired by the company for this purpose. The work was estimated to be completed in three (3) years. The employees contended that since the work would be completed after more than one (1) year, they should be subject to compulsory coverage under

the Social Security Law. Do you agree with their contention? Explain your answer fully. (5%)

SUGGESTED ANSWER:

No. Under Section 8 (j) of RA 1161, as amended, employment of purely casual and not for the purpose of the occupation or business of the employer are excepted from compulsory coverage.

An employment is purely casual if it is not for the purpose of occupation or business of the employer.

In the problem given, Falcon Factory is a company engaged in the assembling of automotive components.

The fifty (50) persons (engineers, architects and construction workers) were hired by Falcon Factory to renovate its building. The work to be performed by these fifty (50) people is not in connection with the purpose of the business of the factory. Hence, the employ of these fifty (50) persons is purely casual. They are, therefore, excepted from the compulsory coverage of the SSS law.

I agree with the contention that the employees hired by the owners of FALCON factory as construction workers in the renovation of its building should be under the compulsory coverage of the Social Security Law.

It is true that in connection with FALCON Factory, which is engaged in the assembling of automotive components, the construction workers may be considered casual employees because their employment is not for the purpose of occupation of business of FALCON Factory. As such, In accordance with Section 8(j) of the Social Security Law, they are excepted form the compulsory coverage of the Social Security System.

But they could also be considered project employees of FALCON Factory and as such could be under the compulsory coverage of the SSS, applying Art 4 of the Labor Code that provides that all doubts in the implementation and interpretation of the provisions of Labor Law shall be resolved in favor of labor. The employees here therefore, should be considered as under the compulsory coverage of the SSS.

3. Benefits

Q: Gene is a married regular employee of Matibay Corporation. The employees and Matibay Corporation had an existing CBA that provided for funeral or bereavement aid of ₱15,000.00 in case of the death of a legal dependent of a regular employee. His widowed mother, who had been living with him and his family for many years, died; hence, he claimed the funeral aid. Matibay Corporation denied the claim on

the basis that she had not been his legal dependent as the term *legal dependent* was defined by the Social Security Law. (2017 Bar Question)

(a) Who may be the legal dependents of Gene under the Social Security Law? (2.5%)

(b) Is Gene entitled to the funeral aid for the death of his widowed mother? Explain your answer. (2%)

SUGGESTED ANSWER:

(a) Pursuant to Section 8(e) of Rep. Act No. 1161, the legal dependents Of Gene under the Social Security Law are the legitimate, legitimated or legally adopted child who is unmarried, not gainfully employed and not over twenty-one years of age, or over twenty-one years of age provided that he is congenitally incapacitated and incapable of self-support, physically or mentally; the legitimate spouse dependent for support upon the employee; and the legitimate parents wholly dependent upon the covered employee for regular support.

(b) Gene would be entitled to the funeral aid under the CBA for the death of his widowed mother because the latter is a legitimate parent wholly dependent upon him for regular support for many years. As held in a case, the coverage of the term "legal dependent" in a stipulation in a CBA granting funeral or bereavement benefits to a regular employee for the death of a legal dependent, if the CBA is silent about it, is to be construed as similar to the meaning that contemporaneous social legislation have set. This is because the terms of such social legislation are deemed incorporated in or adopted by the CBA (Philippines Journalists, Inc. v. Journal Employees Union, et al, G.R. No. 192601, June 3, 2013, 697 SCRA 103).

Q: A, single, has been an active member of the Social Security System for the past 20 months.

She became pregnant out of wedlock and on her 7th month of pregnancy, she was informed that she would have to deliver the baby through caesarean section because of some complications. Can A claim maternity benefits? If yes, how many days can she go on maternity leave? If not, why is she not entitled? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

YES. The SSS Law does not discriminate based on the civil status of a female member-employee. As long as said female employee has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of her childbirth, she can avail of the maternity benefits under the law.

Since A gave birth through C-section, she is entitled to one hundred percent (100%) of her average salary credit for seventy-eight (78) days, provided she notifies her employer of her pregnancy and the probable date of her childbirth, among others (See Section 14-A, Rep. Act No. 8282).

The same maternity benefits are ensured by Sec. 22 (b)(2) of the Magna Carta of Women (Rep. Act No. 9710).

Q: Samson Security Agency (SAMSON) undertook to provide 24 hours security service to Jarillo Realty (JARILLO) in the latter's construction operations. The contract between SAMSON and JARILLO expressly stipulated that Samson's security guards are its employees and not that of JARILLO. SAMSON undertook to hold JARILLO free from any liability whatsoever resulting from injuries which its (SAMSON's) guards may suffer or be exposed to suffer as guards of JARILLO's construction operations.

To facilitate payment, JARILLO undertook to pay directly to the guards the agreed wages, which are subsequently deducted from the monthly payments to SAMSON under its contract with JARILLO. JARILLO, in turn, charges SAMSON for the equipment supplied to the guards' such as uniforms, pistols and ammunition and cost of training of guards JARILLO wants replaced.

During a storm, several scaffoldings of JARILLO fell and killed two (2) guards whose families later sued JARILLO. JARILLO, in turn, impleaded SAMSON as third-party defendant before the Arbiter.

Decide who should be held liable.

SUGGESTED ANSWER:

Liability lies against the State Insurance Fund administered by the SSS. This is a case of death in connection with the employees' work.

Jarillo is deemed to be the employer of the guards in view of the direct payment of wages to the guards. Thus, if there are benefits arising from employer-employee relationship, Jarillo should be held answerable.

NOTE: The law involved, namely the law on employees compensation and State Insurance Fund was expressly excluded from this year's bar examination in Labor and Social Legislation.

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:

- c. 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

Q: Pedro Tortilla and his employer were covered by the Social Security System. Tortilla was legally married to Orpha de la Cruz, a plain housewife with whom he had two minor, unmarried and unemployed children. But for two years, he had been living with his common-law wife, Dora Tea, with whom he had two minor, unmarried and unemployed children. His jobless father stayed with him. In his SSS record, he designated as beneficiary his best friend, a 20-year-old student who was totally dependent on him for support. In a car accident. Tortilla, Orpha de la Cruz and their two children died.

Who are entitled to the death benefits?

SUGGESTED ANSWER:

The Social Security Law defines beneficiaries as “the dependent spouse until he remarries and dependent children, who shall be primary beneficiaries. In their absence, the dependent parents and, subject to the restrictions imposed on dependant children, the legitimate descendants and illegitimate children who shall be the secondary

beneficiaries. In the absence of any of the foregoing, any other person designated by the covered employee as secondary beneficiary."

Applying the above provision, when Tortilla died, he died with the persons who are his primary beneficiaries.

Thus, Tortilla's secondary beneficiaris namely, his dependent jobless father and illegitimate children, who were minor, unmarried and unemployed are entitled to death benefits under the Social Security Law.

Under the law, the common law wife is not among those who could be a beneficiary, either as primary or secondary beneficiary;

As for the 20-year old student who was Tortilla's best friend, because he was designated by Tortilla as beneficiary, he could have been entitled to death benefits, in the absence of either primary and secondary beneficiaries, which is not the case, however, in the question given.

Q: Eduardo Serangco. an SSS member for 20 years, died on May 1, 1992. The records of the SSS show that Serangco designated as his beneficiaries Marietta Uy. wife; Gloria Serangco. daughter, bom June 30. 1979; and Jose Serangco, son, bom July 16, 1981. On May 10. 1992, the SSS granted Marietta Uy funeral benefits. On May 16, 1992. Josefa Costa filed a claim for death benefits alleging that she was married to the late Eduardo Serangco on October 15, 1982 and depended upon him for support. She attached to her claim, copy of a marriage contract duly certified and sealed by the civil registrar of Pasig, Rizal. Marietta Uy opposed

Josefa Costa's claim, contending that she and her children, Gloria and Jose Serangco, are entitled to death benefits because they were the primary beneficiaries designated by the deceased Serangco.

To whom shall the SSS award death benefits? Why?

SUGGESTED ANSWER:

The primary beneficiaries of a deceased employee are the dependent spouse until he/she remarries and dependent children.

On the other hand, a dependent spouse is the legitimate spouse dependent for support upon the employee and dependent children are legitimate, legitimated or legally adopted children, who are unmarried, not gainfully employed and not over twenty one years of age, or over twenty one years of age, provided that they are congenitally incapacitated and incapable of self-support. (Article 8(e), (k). Social Security Law)

Considering the above provisions of the Social Security Law, Gloria and Jose Serangco are dependent children because they are still not over twenty one years of age assuming that they are also unmarried and are not gainfully employed.

The legitimate wife of the deceased employee is Marietta Uy and not Josefa Costa. The marriage of the deceased employee to Costa is bigamous. Thus, Marietta is primary beneficiary together with her children Gloria and Jose. As such primary beneficiaries, the SSS should award to them the death benefits arising from the death of Eduardo Serangco.

Q: A is an employee of B who in turn registered A with the Social Security System as required by law. Unfortunately, B did not remit A's contributions to the System. In the course of his employment, A met a serious accident requiring his hospitalization.

- (1) **Suppose he decides to retire from the firm because of the accident, is he entitled to recover retirement benefits under the System? Explain your answer.**
- (2) **Suppose that he died because of the accident, are his heirs entitled to death benefits under the System? Explain your answer.**

SUGGESTED ANSWER:

(1) A is entitled to receive benefits from the Social Security System even if his employer did not remit A's contribution to the System because the Social Security Law provides (in Sec. 22(b) that the failure or refusal of the employer to pay or remit contributions shall not prejudice the right of the covered employee to the benefits of the coverage.

But A is not entitled to retirement benefits in the form of a monthly pension unless at the time of the accident, he has reached the age of sixty years and has paid at least 120 monthly contributions prior to the semester of the accident. (Sec. 12-B, Social Security Law).

(2) The heirs are not entitled, but his primary beneficiaries or in the absence of primary beneficiaries, his secondary beneficiaries are entitled.

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

1. Coverage

Q: State briefly the compulsory coverage of the Government Service Insurance Act. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The following are compulsorily covered by the GSIS pursuant to Sec. 3 of R.A. No. 8291.

1. All employees receiving compensation who have not reached the compulsory retirement age, irrespective of employment status.
2. Members of the judiciary and constitutional commissions for life insurance policy

Q: Efrenia Reyes was a classroom teacher assigned by the Department of Education, Culture and Sports (DECS) in Panitan, Capiz. She has been in the government service since 1951 up to November, 1985 when she retired at 55 due to poor health.

In March, 1982, while she was teaching her Grade 1 pupils the proper way of scrubbing and sweeping the floor, she accidentally slipped. Her back hit the edge of a desk. She later complained of weak lower extremities and difficulty in walking. After an X-ray examination, she was found to be suffering from Pott's disease and was advised to undergo an operation. In 1985, she filed with the GSIS a claim for disability benefits under Presidential Decree No. 626, as amended. The GSIS granted the claim and awarded Efrenia permanent partial disability benefits.

After she underwent a surgical operation on her spine in November, 1985, her condition worsened.

In 1990, Efrenia filed with the GSIS a petition for conversion of her disability status to permanent total disabilities with corresponding adjustment of benefits. GSIS denied the claim stating that after Efrenia's retirement, any progression of her ailment is no longer compensable.

Is the GSIS correct in denying the claim. Explain.

SUGGESTED ANSWER:

Considering that the disability of Reyes is work connected the provisions of the Labor Code dealing with employees compensation should determine her right to benefits.

According to said provisions, if any employee under permanent partial disability suffers another injury which results in a compensable disability greater than the previous injury, the State Insurance Fund shall be liable for the income benefit of the new disability even after her retirement.

Was Reyes still an "employee" for the purpose of applying the above provision of the Labor Code?

Liberally construing said provision, Reyes may be considered still as an employee so that she could receive additional benefits for the progression of her ailment.

ALTERNATIVE ANSWERS:

a) No. When an employee is constrained to retire at an early age due to his illness and the illness persists even after retirement, resulting in his continued unemployment, such condition amounts to total disability which should entitle him to the maximum benefits allowed by law. Her disability which should entitle her to the maximum falls within the definition of permanent total disability.

b) No, the GSIS erred in denying the claim. Note, that the original claim and grant of benefits was based on Presidential Decree No. 626, or Book IV, Title II of the Labor Code: Employees Compensation and State Insurance Fund. The same law does not provide for separation fee from employment as a basis for denial of benefits.

The worsening of the school teacher's condition is a direct result, or a continuing result of the first injury which was deemed work-connected by the GSIS and hence compensable.

"Diopenes vs. GSIS. 205 SCRA 331 (1992), the Supreme Court cautioned against a too strict interpretation of the law which may be detrimental to claimants and advised the GSIS of the constitutional mandate on protection to labor and the promotion of social justice. Said the Court:

The GSIS and the ECC should be commended for their vigilance against unjustified claims that will only deplete the funds intended to be disbursed for the benefit only of deserving disabled employees. Nevertheless, we should caution against a too strict interpretation of the rules that will result in the withholding of full assistance from those whose capabilities have been diminished if not completely impaired as a compensation of their service in the government. A humanitarian impulse dictated by no less than the Constitution itself under the social justice policy, calls for a liberal and sympathetic approach to the legitimate appeals of disabled public servants. Compassion for them is not a dole but a right.

2. Exclusions from coverage

3. Benefits

Q: Juan Sipay was elected councilor of the municipality of San Felipe. On the second year of his term, he left his legitimate wife, Josefa Asuwa, and their three minor, unmarried and unemployed children and lived with a common-law wife, Maria Makupad, with whom he had two minor, unmarried and unemployed children. Immediately after he completed his term. Juan was appointed cashier in the office of the municipal treasurer of San Felipe. He was dishonorably discharged from the service upon being convicted of malversation of public funds. A year later, he died.

Who are entitled to the GSIS survivorship benefits?

SUGGESTED ANSWER:

None. When Sipay was dishonorably discharged from the service, having been convicted of malversation of public funds, he automatically forfeited his right to the benefits that he or his beneficiaries could have been entitled to received from the GSIS. Thus, Sipay's death did not give rise to any right to survivorship benefits.

4. Beneficiaries

Q: FACTS: Pitoy Mondero was employed as a public school teacher at the Marinduque High School from July 1, 1983 until his untimely demise on May 27, 1997.

On April 27, 1997, a memorandum was issued by the school principal, which reads: "You are hereby designated to prepare the MODEL DAM project, which will be the official entry of or school the forthcoming Division Search for Outstanding Improved Secondary Science Equipment for Teachers to be held in Manila on June 4, 1997. You are hereby instructed to complete this MODEL DAM on or before the scheduled date of the contest."

Mordero complied with his superior's instruction and constructed an improvised electric microdam, which he took home to enable him to finish it before the deadline. On May 27, 1997, while working on the MODEL DAM Project in his house, he came to contact with a live wire and was electrocuted. He was immediately brought to a clinic for emergency treatment but was pronounced dead on arrival. The death certificate showed that he died of cardiac arrest due to accidental electrocution. Pepay Palaypay (Pitoy Mordero's common-law wife for more than twenty years) and a Pitoy Mordero Jr. (his only son) filed a claim for death benefits with the Government Service Insurance System (GSIS), which was denied on the ground that Pitoy Mordero's death did not arise out of and in the course of employment and therefore not compensable because the accident occurred in his house and not in the school premises.

- 1. Is Pepay Palaypay entitled to file a claim for death benefits with the GSIS? Why? (2%)**

SUGGESTED ANSWER:

The beneficiaries of a member of the GSIS are entitled to the benefits arising from the death of said member. Death benefits are called survivorship benefits under the GSIS Law.

Not being a beneficiary, Pepay Palaypay is not entitled to receive survivorship benefits. She is not a beneficiary because she is a common-law wife and not a legal dependent spouse.

2. Is the cause of death of Pitoy Mordeno (cardiac arrest due to accidental electrocution in his house) compensable? Why? (3%).

SUGGESTED ANSWER:

Yes. To be compensable under the GSIS Law, the death need not be work connected.

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 advice? (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.

Under the Limited Portability law, funds from the GSIS and the SSS maybe transferred for the benefit of a worker who transfers from one system to the other. For this purpose, overlapping periods of membership shall be (2011 BAR)

- (A) credited only once.
- (B) credited in full.
- (C) proportionately reduced.
- (D) equally divided for the purpose of totalization.

D. Employee's compensation – coverage and when compensable

C. Rosa was granted vacation leave by her employer to spend three weeks in Africa with her family. Prior to her departure, the General Manager of the company requested her to visit the plant of a client of the company in Zimbabwe in order to derive best manufacturing practices useful to the company. She accepted the request because the errand would be important to the company and Zimbabwe was anyway in her itinerary. It appears that she contracted a serious disease during the trip. Upon her return, she filed a claim for compensation, insisting that she had contracted the disease while serving the interest of her employer.

Under the *Labor Code*, the sickness or death of an employee, to be compensable, must have resulted from an illness either definitely accepted as an occupational disease by the Employees' Compensation Commission, or caused by employment subject to proof that the risk of contracting the same is increased by working conditions.

Is the serious disease Rosa contracted during her trip to Africa compensable? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

For sickness and the resulting disability to be compensable, the sickness must be the result of an occupational disease listed under Annex A of the Amended Rules on Employees' Compensation with the condition set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working condition. The burden of proof is upon Rosa. No proof was presented by Rosa to substantiate the foregoing. Moreover, it is required that the sickness and the resulting injury must have arisen out of or in the course of employment. In the present case/ Rosa contracted the disease While on vacation leave. Consequently, the disease contracted by her in Africa during her vacation leave is not compensable (Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission et al., G.R. NO, L-26341, November 27, 1968, 26 SCRA 102).

ALTERNATIVE ANSWER:

Yes, although Rosa's leave of absence was approved, she was merely on a partial vacation due to the business assignment that her employer gave her to visit the plant of a client in Zimbabwe to derive best manufacturing practices useful to the company; thus, she had to go and observe said activity beneficial to her employer in the performance of her assigned task. As she contracted the disease during her trip, the same must be construed as work-related.

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:

- b. 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: Of the four grounds mentioned below, which one has been judicially affirmed as justification for an employee's refusal to follow an employer's transfer order? (2011 BAR)

- (A) A transfer to another location is not in the employee's appointment paper.
- (B) The transfer deters the employee from exercising his right to self-organization.
- (C) The transfer will greatly inconvenience the employee and his family.
- (D) The transfer will result in additional housing and travel expenses for the employee.

Q: The Securities and Exchange Commission approved a merger that allowed Broad Bank to absorb the assets and liabilities of EBank. Broad Bank also absorbed EBank's rank-and-file employees without change in tenure, salary, and benefits. Broad Bank was unionized but EBank was not. The Broad Bank bargaining union requested the management to implement the union security clause in their CBA by requiring the ex-EBank employees to join the union. Does the union security clause in the Broad Bank CBA bind the ex-EBank employees? (2011 BAR)

- (A) No, since the ex-EBank employees were not yet Broad Bank employees when that CBA was entered into.
- (B) No, Broad Bank's absorption of ex-EBank employees was not a requirement of law or contract; hence, the CBA does not apply.
- (C) Yes, Broad Bank's absorption of ex-EBank employees automatically makes the latter union members of Broad Bank's bargaining union.

(D) Yes, since the right not to join a labor union is subordinate to the policy of unionism that encourages collective representation and bargaining.

Q: A. Malou is the Executive Secretary of the Senior Vice- President of a bank while Ana is the Legal Secretary of the bank's lawyer. They and other executive secretaries would like to join the union of rank and file employees of the bank. Are they eligible to join the union? Why? Explain briefly. (3%)

B. Mang Bally, owner of a shoe repair shop with nine (9) workers in his establishment, received proposals for collective bargaining from the Bally Shoe Union. Mang Bally refused to bargain with the workers for several reasons. First, his shoe business is just a service establishment. Second, his workers are paid on a piecework basis (i.e.. per shoe repaired) and not on a time basis. Third, he has less than ten (10) employees in the establishment. Which reason or reasons is/are tenable? Explain briefly. (2%)

SUGGESTED ANSWER:

A. The following rules will govern the right of self- organization of Malou, Ana, and the other Executive Secretaries;

1. No Right to Self-Organization — Confidential employees who act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor-management relation. The two criteria are cumulative and both must be met. [San Miguel Corporation Union v. Laguesma, 277 SCRA 370 (1997)]

2. With Right to Self-Organization — When the employee does not have access to confidential labor relations information, there is no legal prohibition against confidential employees from forming, assisting, or joining a labor organization. [Sugbuanon Rural Bank, Inc. v. Laguesma, 324 SCRA 425 (2000)]

No right of self-organization for Legal Secretaries — Legal Secretaries fall under the category of confidential employees with no right to self-organization. [Pier & Arrastre Stevedoring Services, Inc. v. Confesser, 241 SCRA 29* (1995)]

B. None. First, Mang Bally's shoe business is a commercial enterprise, albeit a service establishment. Second, the mere fact that the workers are paid on a piece- rate basis does not negate their status as regular employees. Payment by piece is just a method of compensation and does not define the essence of the relation. [Lambo v. NLRC, 317 SCRA 420 (1899)]. Third, the employees' right to self-organization is not delimited by their number.

The right to self-organization covers all persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not [Art. 243, Labor Code]

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:

- c. 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 personally? (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:

- b) 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 (Who cannot form, join or assist labor organizations)

Q: Section 255 (245) of the *Labor Code* recognizes three categories of employees, namely: managerial, supervisory, and rank-and-file.

(a) Give the characteristics of each category of employees, and state whether the employees in each category may organize and form unions. Explain your answer. (5%)

SUGGESTED ANSWER:

Managerial employees — those vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall employees (Article 219 12121, par. m, Labor Code) Managerial employees cannot join, assist or form unions (Article 255 12451, Labor Code).

Supervisory employees — those who, in the interest of management, effectively recommend such managerial actions if the exercise of such authority is not merely routine or clerical in nature, but requires use of independent judgment (Article 219 12121, par. m, Labor Code). Supervisory employees are not eligible for membership in a labor organization of rank-and-file employees but may join, assist, or form separate labor organizations of their own (Art. 255 12451, Labor Code).

Rank-and-file employees — all other employees not falling within the definition of "managerial" or "supervisory" employees are considered rank-and-file employees (Article 219 [2121, par. m, Labor Code). Rankand-file employees have the right to form, join or assist unions of their own choosing (Art. 253 12431, Labor Code).

(b) May confidential employees who assist managerial employees, and who act in a confidential capacity or have access to confidential matters being handled by persons exercising managerial functions in the field of labor relations form, or assist, or join labor unions? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

No, these confidential employees cannot form, assist, or join labor unions. The exclusion from bargaining units of employees who, in the general course of their duties, become aware of management policies relating to labor relations is founded upon the "confidential employee rule". The rationale behind this rule is that employees should not be placed in a position involving a potential conflict of interests. Management should not be required to handle labor relation matters through employees who are represented by the union with which the company is required to deal and who in the normal performance of their duties may obtain advance information of the company's position with regard to contract negotiations, the disposition of grievances or other labor relations matters (San Miguel

Corporation Supervisor and Exempt Employees Union v. Laguesma, G.R. No. 110399, August 15, 1997, 277 SCRA 370).

ALTERNATIVE ANSWER:

No. Under the doctrine of necessary implication, the same reason for the disqualification of managerial employees applies to confidential employees (Pepsi-Cola Products Phil., Inc. v. Sec. of Labor, G.R. Nos. 96693 and 103300, August 10, 1999, 312 SCRA 104).

Q: A group of 15 regular rank-and-file employees of Bay Resort formed and registered an independent union. On hearing of this, the management called the officers to check who the union members were. It turned out that the members included the probationary staff, casuals, and the employees of the landscape contractor. The management contends that inclusion of non-regulars and employees of a contractor makes the union's composition inappropriate and its registration invalid. Is this correct? (2011 BAR)

- (A) Yes, union membership should be confined to direct-hired employees of the company.
- (B) Yes, the "community of interest" criterion should be observed not only in the composition of a bargaining unit but also in the membership of a union.
- (C) Yes, a union must have community of interest; the non-regulars do not have such interest.
- (D) No, union membership may include non-regulars since it differs from membership in a bargaining unit.

Q:

- A. **Distinguish managerial employees from supervisory employees. (3%)**
- B. **Do employees of a cooperative have a right to form a union? Explain briefly. (2%)**

SUGGESTED ANSWER:

A. A managerial employee is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees, on the other hand, are those who in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment [Art. 212 (m), Labor Code]

In a case, the Supreme Court said: "In the petition before us, a thorough dissection of the job description of the concerned supervisory employees and section heads indisputably show that they are not actually managerial but only supervisory employees since they do not lay down company policies. PICOP's contention that the subject section heads and

unit managers exercise the authority to hire and fire is ambiguous and quite misleading for the reason that any authority they exercise is not supreme but merely advisory in character. Theirs is not a final determination of the company policies inasmuch as any action taken by them on matters relative to hiring, promotion, transfer, suspension and termination of employees is still subject to confirmation and approval by their respective superior. [See *Atlas Lithographic Services, Inc. v. Laguesma*, 205 SCRA 12, 17 (1992)] Thus, where such power, which is in effect recommendatory in character, is subject to evaluation, review and final action by the department heads and higher executives of the company, the same, although present, is not effective and not an exercise of independent judgment as required by law. [*Philippine Appliance Corp. v. Laguesma*, 226 SCRA 730, 737 (1993) citing *Franklin Baker Company of the Philippines v. Trajano*, 157 SCRA 416, 422-433 (1988)]." (*Paper Industries Corp. of the Philippines v. Bienvenido E. Laguesma*, 330 SCRA 295, (2000)]

B. Employees who are members of a cooperative cannot form a union because, as members, they are owners and owners cannot bargain with themselves. However, employees who are not members of the cooperative can form a union. [*San Jose Electric Service Cooperative v. Ministry of Labor*, 173 SCRA 697 (1989)]

Q: Executive Order No. 180, which protects government employees, does NOT apply to "high-level employees," namely, (2011 BAR)

- (A) presidential appointees.
- (B) those performing policy-determining functions, excluding confidential employees and supervisors.
- (C) confidential employees and those performing policy-determining functions.
- (D) elective officials.

Q: Government employees may elect a union as their exclusive representative but this right is not available to (2011 BAR)

- (A) regular employees in government instrumentalities and agencies.
- (B) employees of government-owned and -controlled corporations without original charters.
- (C) employees of government-owned-or-controlled corporations with original charters.
- (D) employees of provincial and local government units.

Q: Distinguish the rights of managerial employees from members of a managerial staff.

SUGGESTED ANSWER:

Managerial employees have no collective bargaining rights because, they cannot join or form any other labor organization while officers of a managerial staff are not prohibited from joining, assisting or forming or arresting a supervisor's union; hence, they can

bargain collectively. (Art. 245, Labor Code; National Sugar Refineries Corp. vs. NLRC. 220 SCRA 452).

ALTERNATIVE ANSWER:

Managerial employees, under Article 212(m) of the Labor Code are vested with the prerogatives to lay down and execute management policies and/or to hire, fire, transfer, promote, lay-off and discipline employees. They are not eligible for the right to self-organization for purposes of collective bargaining.

Upon the other hand, members of managerial staff, under Article 82 of the Labor Code, are not vested with the above-cited prerogatives. They are not entitled to overtime pay and other benefits under Book III, Title I of the Code.

Q:

- 1) **Can an employer legally oppose the inclusion of confidential employees in the bargaining unit of rank-and-file employees?**
- 2) **Would your answer be different if the confidential employees are sought to be**

Included in the supervisory union?

SUGGESTED ANSWER:

1) Yes. an employed can legally oppose the inclusion of confidential employees in the bargaining unit of the rank -and-file. This issue has been settled in the case of Golden Farms vs. Calleja, and reiterated in the case of Philips Industrial Dev. Inc. vs. NLRC.

ALTERNATIVE ANSWERS:

Yes, an employer can legally oppose the inclusion of the confidential employees in the bargaining unit of rank-and-file employees because confidential employees are Ineligible to form, assist or join a labor union.

By the nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations, and the union might not be assured of their loyalty in view of evident conflict of interest.

An employer can legally oppose the inclusion of confidential employees in the bargaining unit of rank -and- file employees because confidential employees are considered part of management. (Philtranco vs. BLR, 174 SCRA 388).

SUGGESTED ANSWER:

2) The answer would be the same if confidential employees are sought to be included in the supervisory union because confidential employees, being a part of management would not qualify to Join, much less form a labor union. (Philtranco vs. BLR. 174 SCRA 388).

ALTERNATIVE ANSWER:

My answer would remain the same, even If the confidential employees were sought to be included in the supervisory union. Confidential employees would have the same adverse impact on the bargaining unit of supervisors: Confidential employees' access to highly sensitive information may become the source of undue advantage by the union over the employer. [Philips Industrial Development Inc., vs. National Labor Relations Commission, et.al, G.R. No. 88957, 25 June 1992)

Q: The existing collective bargaining unit in Company X includes some fifty “secretaries” and “clerks” who routinely record and monitor reports required by their department heads. Believing that these secretaries and clerks should not be union members because of the confidential nature of their work, the management discontinued deducting union dues from their salaries. Is the management’s action legal? (2011 BAR)

- (A) No, only managers are prohibited from joining unions; the law does not bar “confidential employees” from joining unions.
- (B) No, “confidential employees” are those who assist persons who formulate, determine, or enforce management policies in the field of labor relations.
- (C) Yes, secretaries and clerks of company executives are extensions of the management and, therefore, should not join the union.
- (D) No, “confidential” employees are those who handle executive records and payroll or serve as executive secretaries of top-level managers.

Q: Company XYZ has two recognized labor unions, one for its rank-and-file employees (RFLU), and one for supervisory employees (SELU). Of late, the company instituted a restructuring program by virtue of which A, a rank-and-file employee and officer of RFLU, was promoted to a supervisory position along with four (4) other colleagues, also active union members and/or officers. Labor Union KMJ, a rival labor union seeking recognition as the rank-and-file bargaining agent, filed a petition for cancellation of the registration of RFLU on the ground that A and her colleagues have remained to be members of RFLU. Is the petition meritorious? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

No. Having been promoted to supervisory positions, A and her colleagues are no longer part of the rank-and- file bargaining unit. They are deemed removed from membership of RFLU (Art. 245-A, Labor Code as amended by Rep. Act No. 9481).

Q: A, an employee of XYZ Cooperative, owns 500 shares in the cooperative. He has been asked to join the XYZ Cooperative Employees Association. He seeks your advice on whether he can join the association. What advice will you give him? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

A cannot join XYZ Cooperative Employees Association, because owning shares in XYZ Cooperative makes him a co-owner thereof.

An employee-member of a cooperative cannot join a union and bargain collectively with his cooperative for an “owner cannot bargain with himself and his co-owners” (Cooperative Rural Bank, of Davao City, Inc. v. Calleja, 165 SCRA 725, 732 [1988]; San Jose City - Electric Service Cooperative, Inc. v. Ministry of Labor, 173 SCRA 697, 701- 703 [1989]).

A. Should A be a member of the supervisory union? Explain.

SUGGESTED ANSWER:

YES, as long as A is not a confidential employee who has access to confidential matters on labor relations (San Miguel Corporation Supervisors and Exempt Employees Union v. Laguesma, 277 SCRA 370,374-375 [1997]).

If A performs supervisory functions, such as overseeing employees' performance and with power of recommendation, then A is a rightful member of the supervisory union. Otherwise, he may not, because Samahang Manggagawa ng Terracota cannot represent A, A being not part of SMT's bargaining unit.

B. Assuming that A is ineligible to join the union, should the registration of Samahang Manggagawa ng Terracota be cancelled? Explain. (3%)

SUGGESTED ANSWER:

NO. Rep. Act No. 9481 introduced a new provision, Art. 245-A, which provides that mixed membership is not a ground for cancellation of a union's registration, but said employees wrongfully joined are deemed removed from said union.

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)

x x x

[b] All confidential employees are disqualified to unionize for the purpose of collective bargaining.

SUGGESTED ANSWER:

False. Not all confidential employees are disqualified to unionize for the purpose of collective bargaining. Only confidential employees, who, because of the nature of their positions, have access to confidential information affecting labor-management relations as an integral part of their position are denied the right of self-organization for purpose of collective bargaining (San Miguel Corporation Supervisors v. Laguesma, 277 SCRA 370 [1997]).

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)

x x
x x
x x

[c] Government employees have the right to organize and join concerted mass actions without incurring administrative liability.

SUGGESTED ANSWER:

False. Government employees have the right to organize, but they may be held liable for engaging in concerted mass actions, it being a prohibited activity under CSC Law (E.O. 181). The right of government employees to organize is limited to the formation of unions or associations without including the right to strike. (Gesite v. CA, 444 SCRA 51 [2004]).

Q: The Confederation of Free Workers (CFW), a national labor federation, has an existing collective bargaining agreement with Tanawan Leather Company covering the Company's rank-and-file employees who are direct members of CFW. The supervisors of the Company organized themselves into a union which they affiliated to CFW. CFW filed a petition in behalf of the supervisors for certification election. The Company opposed the petition asserting that CFW cannot represent the supervisors for collective bargaining purposes because it also represents the rank-and-file employees.

You are the Med-Arbiter. Will you order the holding of a certification election? Reasons.

SUGGESTED ANSWER:

I will not order the holding of a certification election if the supervisors of the Company have been included by the existing CBA in the bargaining unit of the Company's rank-and-file employees before the effectivity of Republic Act No. 6715 where the supervisors

may remain, in accordance with the pertinent Rules and Regulations implementing the Labor Code.

But if the supervisors are not included by the existing CBA in the bargaining unit of the Company's rank and file employees. I will order a certification election. But the Union that I will allow in the ballot of the certification election will not be CFW. the national federation which has a direct members the Company s rank and file employees. On the ballot of the certification election will instead be the local Union organized by the supervisors. The Labor Code provides that supervisory employees shall not be eligible for membership in a labor organization of the rank and file employees but may form 01 join a separate labor organization of their own. Thus. CFW of which the Company's rank and file employees are members, cannot be the Union to represent the supervisors in collective bargaining. [Atlas Lithographic Services, Inc. us. Laguesma. et al., 205 SCRA 12)

Q: Lazaro, an engineer, organized a union in Garantisado Construction Corporation (Garantisado) which has 200 employees. He immediately filed a Petition for Certification Election, attaching thereto the signatures of 70 employees. Garantisado vehemently opposed the petition, alleging that 25 signatories are probationary employees, while 5 are supervisors. It submitted the contracts of the 25 probati9nary employees and the job description of the supervisors. It argued that if 30 is deducted from 70, it gives a balance of 40 valid signatures which is way below the minimum number of 50 signatories needed to meet the alleged 25% requirement. If you are the Director of Labor Relations, will you approve the holding of a Certification Election. Explain your answer. (2016)

SUGGESTED ANSWER:

Yes, I will allow the certification election. What is required for a certification election is that at least 25 per cent of the bargaining unit must sign the petition. Since 25 percent of 200 is 50 then the fact that there were 70 signatories who signed means that it should be allowed. Note that out of the 70 signatories only the supervisors should be excluded. Article 254 of the Labor Code allows supervisory employees to form, join, or assist separate labor organizations but they are not eligible for membership in a Labor organization of the rank-and-file. Thus, they are the only ones, that should be disqualified. As to the probationary employees, they should be included. The fact that an employee is given a classification such as beginner, trainee, or probationary employee, and the fact that contemplation of permanent tenure is subject to satisfactory completion of an initial trial period, are insufficient to warrant such employees' exclusion from a bargaining unit. Moreover the eligibility of probationary employees does not turn on the proportion of such employee who, willingly or not, fails to continue to work for the employer throughout the trial period.

ALTERNATIVE ANSWER:

Yes, I will allow the certification election. Following the Bystander Rule, the role of the employer in certification elections is that of a mere bystander; it has no right or material interest to assail the certification election. Thus, its opposition to the certification election must not be given credence.

The only exception to this rule is where the employer has to file the petition for certification election pursuant to Article 270 of the Labor Code because it was requested to bargain collectively; such exception does not apply in this case.

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.

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: The modes of determining the exclusive bargaining agent of the employees in a business are: (a) voluntary recognition; (b) certification election; and (c) consent election. Explain how they differ from one another. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Voluntary Recognition: An employer may voluntarily recognize the representation status of a labor union if the establishment is unorganized and has only one legitimate labor organization. Such voluntary recognition, accompanied by supporting documents, should be submitted to the Regional Office, which issued the labor union's certificate of registration.

Certification Election: This is the process by which a legitimate labor organization or the employer may file a petition for

certification election to determine the choice of an exclusive collective bargaining agent of the employees. A med-arbiter shall automatically order a certification election by secret ballot when a petition is filed (1) in an unorganized establishment or (2) in an organized establishment where the petition is supported by at least 25% of all employees in the

bargaining unit. To have a valid certification election, at least a majority of all eligible votes in the bargaining unit must have cast their votes. The labor union receiving the majority of the valid votes cast Shall be certified as the exclusive bargaining agent of all employees in the unit.

Consent Election: Similar to a certification election proceeding, consent election is the process of determining through secret ballot the sole and exclusive bargaining agent of employees in an appropriate collective bargaining unit for purposes of collective bargaining or negotiations. This process, however, differs from a certification election as this is voluntarily agreed upon by the parties, with or without the DOLE's intervention. In such a case, the med-arbiter need not issue a formal order calling for such an election. The minutes of the agreement and records of the case are forwarded to the Regional Director for implementation of the consent election.

Q: On what ground or grounds may a union member be expelled from the organization? (3%)

SUGGESTED ANSWER:

Union members may be expelled from the labor organization only on valid grounds provided for in the Union Constitution, By-Laws, or conditions for union membership.

Whenever appropriate for any violation of the rights as:

1. Refusal to pay union dues and special assessments;
2. Disloyalty to the union; and
3. Violation of the constitution and by-laws of the union.

Q: The modes of determining an exclusive bargaining agreement are:

1. **voluntary recognition**
2. **certification election**
3. **consent election**

Explain briefly how they differ from one another. (5%) (2012 BAR)

Suggested Answer:

“Voluntary Recognition” refers to the process by which a legitimate labor union is recognized by the employer as the exclusive bargaining representative or agent in a bargaining unit. Sec. 1, (bbb), Rule 1, Book V (Omnibus Rules Implementing the Labor Code).

Another Suggested Answer:

1. Voluntary Recognition is possible only in unorganized establishments where there is only one legitimate labor organization and the employer voluntarily recognize the representation status of such a union; whereas,
2. Certification election is a process of determining the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit for purposes of collective bargaining, which process may involve one, two or more legitimate labor organizations. On the other hand,
3. Consent election is an agreed one, the purpose being merely to determine the issue of majority representation of all the workers in the appropriate bargaining unit.

“Certification Election” refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is ordered by the Department. [Sec. 1, (h), Rule 1, Book V, Omnibus Rules Implementing the Labor Code].

“Consent Election” refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A consent election is voluntary agreed upon by the parties, with or without the intervention by the Department. [Sec. 1 (h), Rule I, Book V, Omnibus Rules].

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.

Q: Differentiate a “labor organization” from a “legitimate labor organization.” (2011 BAR)

- (A) While the employees themselves form a “labor organization,” a “legitimate labor organization” is formed at the initiative of a national union or federation.
- (B) While the members of a “labor organization” consists only of rank and file employees, a “legitimate labor organization” consists of both supervisory and rank and file employees.
- (C) While a “labor organization” exists for a lawful purpose, a “legitimate labor organization” must, in addition, be registered with the labor department.
- (D) While the officers in a “labor organization” are elected in an informal way, the officers in “legitimate labor organization” are formally elected according to the union's constitution and by-laws.

Q: During the CBA negotiation the management panel proposed a redefinition of the “rank-and-file” bargaining unit to exclude “HR Specialist” in the human resource department and “Analyst” in the research and development department. The union panel objected since those affected have already been included in the bargaining unit covered by the existing CBA and so could no longer be excluded. Is the union correct in insisting that their exclusion would amount to bad faith on the part of the management panel? (2011 BAR)

- (A) No, efforts to modify an existing CBA do not constitute bad faith if such modification does not diminish employment benefits.
- (B) Yes, the proposed exclusion amounts to management’s violation of its duty to bargain because it disregards the bargaining history between the parties.
- (C) Yes, once the coverage of the bargaining unit has been contractually defined, it can no longer be redefined.
- (D) No, bargaining history is not the only factor that determines the coverage of the bargaining unit; seeking its redefinition is not negotiating in bad faith.

a) Test to determine the constituency of an appropriate bargaining unit

b) Voluntary recognition (Requirements)

c) Certification election

Q: What is the purpose of a certification election?

SUGGESTED ANSWER:

The purpose of a certification election is to determine the labor organization which shall be the exclusive bargaining agent of the employees of an appropriate collective

bargaining unit. A certification election may also determine whether or not the employees wish to have a collective bargaining representative because in a certification election, employees can vote for "no union." Preliminarily, through a certification election, the members of an appropriate collective bargaining unit may also be authoritatively determined. (Arts. 255, 256, 257, Labor Code)

Q:

(a) **Distinguish and/or explain the following terms:**

1. **direct certification;**
2. **certification election;**
3. **consent election.**

SUGGESTED ANSWER:

1. There is direct certification if a Med-Arbitrator certifies that a certain Union is the exclusive collective bargaining representative of the employees of an appropriate bargaining unit without the holding of a certification election, but merely on the basis of evidence presented in support of the

Union's claim that it is the choice of the majority of the employees. Such evidence may consist of affidavits made by a clear majority of the employees stating that they are members of and are supporting the Union petitioning for direct certification to be their exclusive collective bargaining representation.

2. A certification election is an election ordered by Med-Arbitrator for the purpose of determining the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit.

3. A consent election is an election agreed upon by the parties to determine the issue of majority representation of all the workers of an appropriate collective bargaining unit.

Q: Where there is only one union claiming to be the bargaining representative, is it proper to grant direct certification to said union?

SUGGESTED ANSWER:

(b) It is proper to grant direct certification to said Union, but in addition to its being the only union claiming to be the bargaining representative, it should submit evidence that it is the choice of a majority of the employees in an appropriate bargaining unit, as the bargaining representative. The Labor Code (in Art. 255) provides that the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining."

ALTERNATIVE ANSWER:

It may not be proper to grant direct certification in view of the decision in the case of Colgate-Palmolive where the Supreme Court said:

The constitutional mandate that the State shall “assure the rights of the workers to self-organiza-tion, collective bargaining, security of tenure and just and humane conditions of work,” should be achieved under a system of law such as the aforementioned provisions of the pertinent statutes. When an overzealous official by-passes the law on the pretext of retaining a laudable objective, the intendment or purpose of the law will lose its meaning as the law itself is disregarded. When the Minister of Labor directly certifies the union, he in fact disregards this procedure and its legal recruitment. There is failure to determine with legal certainty whether the Union enjoyed majority representation.

The holding of a certification election at the proper time is not necessarily a mere formality where there is a compelling legal reason not to directly and unilaterally certify a union whose legitimacy is precisely the object of litigation in a pending cancellation case filed by a group of employees who also claim majority status.

Even in a case where a union has filed a petition for certification elections, the mere fact that no opposition is made does not warrant a direct certification. More so in a case when the required proof is not presented in an appropriate proceeding and the basis of the direct certification is the union’s mere allegation in its position paper that it has 87 out of 117 regular employees. In other words, the Minister may not merely rely on the self-serving assertion of a union that it enjoys the support of the majority of the employees, without subjecting such assertion to the test of competing claims. Colgate Palmolive Philippines, Inc. v. Bias Ople, G.R. 73681, 30 June 88, Second Division, Paras, J.

Q: The Construction and Development Corporation has a total of one thousand and one hundred (1,100) employees. In a certification election ordered by the Bureau of Labor Relations to elect the bargaining representative of the employees, it was determined that only one thousand (1,000) employees are eligible voters. In the election a total of nine hundred (900) ballots was cast. There were fifteen (15) spoiled ballots and five (5) blank ballots. A total of four hundred (400) votes was cast for ABC Labor Union, a total of two hundred forty (240) votes was cast in favor of JVP Labor Union, and a total of two hundred and forty (240) votes was in favor of RLG Labor Organization.

- (a) **Is there a valid certification election? Why?**
- (b) **You are called upon to decide the case. Which labor union will you certify as the collective bargaining representative of the employees of the company? Why?**

SUGGESTED ANSWER:

- (a) There is a valid certification election. In the facts of the case in question, there is no bar to the holding of the certification election.

The Labor Code provides (in Art. 256) that to have a valid certification election, at least a majority of all eligible voters in the bargaining unit must have cast their votes in the election. In the facts of the case in the question, 1,000 employees are eligible voters and 900 voters, which is very much more than the majority (501) of the eligible voters cast their votes.

(b) As med-arbiter called upon to decide the case, I will not certify any labor union as the collective bargaining representative of the company, because none of the labor unions who participated in the certification election garnered a majority of the valid votes cast. According to the Labor Code (in Art. 256), the labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agency of all the workers in the unit. The valid votes cast in the certification election total 880 votes (900 votes cast minus 20 invalid votes. 15 of which were spoiled ballots and 5 blank ballots). No labor union garnered at least 441 votes which is the majority of 880 votes.

Q: Llanas Corporation and Union X, the certified bargaining agent of its employees, concluded a CBA for the period January 1, 2000 to December 31, 2004. But, long before the CBA expired, members of Union Y, the minority union, showed dissatisfaction with the CBA under the belief that Union X was a company union. Agitated by its members, Union Y filed a petition for a Certification Election on December 1, 2002. Will the petition prosper? (2011 BAR)

- (A) No, such a petition can only be filed within the freedom period of the CBA.
- (B) No, since a petition for certification can be filed only upon the expiration of the CBA.
- (C) Yes, a certification is the right remedy for ousting a company union.
- (D) Yes, employees should be allowed to cancel at the earliest opportunity a CBA that they believed was obtained by a company union.

Q: The Amalgamated Workers of the Philippines (AWP) was certified on July 1, 1992 as bargaining representative of the rank-and-file employees of Company "X". The employees are members of a local Company affiliated with AWP. On September 1, 1992, "X" received a letter from the local union stating that it had disaffiliated from AWP. The employees had disauthorized AWP as their bargaining representative and it (local union) will negotiate a bargaining contract with "X". When AWP sent its bargaining proposals to "X" on September 5, 1992, "X" informed AWP that it could not consider the proposals because the local union had disaffiliated from AWP and the employees had disauthorized it to act as their representative. AWP filed an unfair labor practice case against "X" for refusal to bargain. "X" invoked good faith as a defense.

Will AWP's complaint prosper? Why?

SUGGESTED ANSWER:

AWP's complaint will prosper. AWP was certified on July 1, 1992 as bargaining representative of the rank and file employees of Company "X". Under the one-year rule, meaning that provided in the Rules and Regulations implementing the Labor Code (Book V, Rule V, Sec. 3) which states that no certification election may be filed within one year from the date of issuance of a final certification election result, there could be no change of the collective bargaining representative within one year from the date of its certification as such representative. Thus, the local union which disaffiliated with AWP cannot take over from AWP the latter's status as collective bargaining representative. (Balmar Farms, Inc. vs. NLRC. et al.. G.R. No. 73504. October 15. 1991)

It would be a different matter if the local union, as an affiliate of AWP. was certified as the collective bargaining representative. Then. AWP cannot insist that it be the collective bargaining representative after the local union disaffiliated from AWP. From the beginning, it is the local union that was the collective bargaining representative and not AWP. (Tropical Hut Employees Union-CGW, et al.. vs. Tropical Hut Food Market, Inc.. et al. G.R. L-43495-99, January' 30. 1990)

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 the 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 union.

(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 union.

(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.

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-Arbiter. 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

Q: Where the petition for a certification election in an unorganized establishment is filed by a federation, it shall NOT be required to disclose the

- (A) names of the local chapter's officers and members.
- (B) names and addresses of the federation officers.
- (C) names and number of employees that initiated the union formation in the enterprise.
- (D) names of the employees that sought assistance from the federation in creating the chapter.

Q: The PMG Stevedoring Company is a relatively new firm engaged in the stevedoring business in the port of Cebu City. The company has 278 regular and permanent employees, engaged in the loading and unloading of foreign and domestic vessels docking at the said port. The Company also employs 55 supervisory personnel.

The AH Labor Organization filed a verified petition with the company stating, inter alia, that it is a legitimate labor organization representing majority of the employees, and that there is no bargaining agent in the unit. The union asked for recognition as the bargaining agent of all the employees of the company.

The company replied that while it is not anti-union, it cannot, under the circumstances, accede to the union demand on the ground that the petition is not supported by the written consent of at least twenty-five percent (25%) of all the employees and also because the company-wide unit sought to be represented by the union is not an appropriate collective bargaining unit.

After hearing, the med-arbiter ordered a certification election in the company-wide unit. Not satisfied therewith, the company elevated the order to the Secretary of Labor and Employment.

If you were the Secretary of Labor and Employment, how will you decide this case? Give your reasons.

SUGGESTED ANSWER:

As Secretary of Labor and Employment, I will affirm the order for a certification election made by the Med Arbiter.

But I will amend the order. Instead of a certification election in a company wide unit, I will order a certification election only for a bargaining unit composed of rank and file employees, or only for a bargaining unit composed of supervisory employees, in whichever bargaining unit are found the members of the petitioning labor organization.

The order for a certification election is proper even if the petition for certification election filed by AH Labor Organization is not supported by at least 25% of the employees of the appropriate collective bargaining unit. The petition for certification election is filed in an unorganized establishment there being, as yet, no bargaining agent in PMG Stevedoring Company. A petition for certification election in an unorganized establishment does not require the consent of at least 25% of all the employees in the bargaining unit (Art. 257, Labor Code). This is a requirement only for petitions filed in an organized establishment. (Art. 256, Labor Code)

But the bargaining unit cannot be company wide. Rep. Act No. 6715, in reaffirming the right of supervisory employees to form a union, provides that they can only be members of unions whose members are all supervisory employees. This restriction means that, unlike the situation before Rep. Act No. 6715, supervisory employees and rank and file employees could no longer belong to one union. Thus, as a result, a bargaining unit could no longer be composed of rank and file employees and supervisor employees.

A POINT TO CONSIDER: A bar examinee may, however, assume that the reference to the bargaining unit being a companywide unit means either a companywide unit of all rank and file employees or a companywide unit of all supervisory employees.

ALTERNATIVE ANSWER:

As Secretary, I would affirm the order of the med- arbiter. There is no bar to the election, and the employees are entitled to a speedy determination of their bargaining representative so that they could exercise their right to bargain collectively.

(ii) In an organized establishment

Q: The constituency of the bargaining unit in Complex Electronics Corporation consisted of 800 employees. Four unions - A, B, C, and D - vied to represent the employees for collective bargaining purposes. In a certification election ordered by the Med-Arbitrator, 700 employees voted. Union A obtained 200 votes; Union B, 150 votes, Union C, 70 votes; and Union D, 30 votes. 250 employees voted "no union."

a) Was there a valid election? Why?

SUGGESTED ANSWER:

Yes, There was a valid election. The Labor Code requires that for a certification election to be valid, at least a majority of all eligible voters in the unit must have cast their votes. (Article 256, Labor Code) Here, the number of eligible voters was 800. Seven hundred (700) or more than a majority voted. Thus, the election was valid.

b) Which union should be certified as bargaining representative of tire employees? Why?

SUGGESTED ANSWER:

No union could be certified as bargaining representative of employees. To be certified, a labor union should receive a majority of valid votes cast of at least a majority of the 800 votes cast which should be 401 votes. (Article 256, Labor Code) The union obtaining the highest number of votes is Union A. It obtained only 200 votes, short of the majority by 201 votes.

a) Should a new election be conducted with all the four unions participating? Reasons.

SUGGESTED ANSWER:

A new election should be conducted, but the Labor Code provides that it should be an election not at all the four unions who participated in the election but a run-off election where only the labor unions receiving the two highest numbers of votes will participate. This run-off election can be held because in the earlier election, the total number of votes for all the contending unions was at least fifty percent (50%) of the number of votes cast. Here, 450 votes or more than a majority of the 800 votes cast, were votes for all contending unions. (Article 256, Labor Code)

b) Suppose in the election. Union A obtained 300 votes. Union B, 30 votes. Union C, 10 votes and Union D, no votes and 360 voted no union. Should Union A be certified as bargaining representative? Reasons.

SUGGESTED ANSWER:

Here, the total number of votes cast was 700 votes. Union A can not be certified as bargaining representative. It did not get the majority of the valid votes cast, namely 351 votes. Union A got only 300 votes.

Q: Rank-and-file workers from Peacock Feathers, a company with 120 employees, registered their independent labor organization with the Department of Labor and Employment (DOLE) Regional Office. Management countered with a petition to cancel the union's registration on the ground that the minutes of ratification' of the union constitution and-by-laws submitted to the DOLE were fraudulent. Specifically, management presented affidavits of ten (10) out of forty (40) individuals named in the list of union members who participated in the ratification, alleging that they were not present at the supposed January 1, 2010 meeting held for the purpose. The union argued that the stated date of the meeting should have read "January 11, 2010," instead of "January 1, 2010", and that, at any rate, the other thirty (30) union members were enough to register a union. Decide with reason. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Petition for cancellation is dismissed for want of merit.

The date specified therein is purely a typographical error as admitted by the union itself. There was no willful or deliberate intention to defraud the union members that will vitiate their consent to the ratification. To be a ground for the cancellation of union registration under the Labor Code, the nature of the fraud must be grave and compelling enough to vitiate the consent of the majority of union members (*Mariwasa Siam Ceramics v. Secretary*, 60S SCRA 706 [2009]).

Moreover, 20% of 120 is 24. So, even if the 10 union members disown their participation to the ratification of the union constitution and by-laws, the union is correct in arguing that the 30 union members suffice to uphold the legitimacy of its union (Art. 234, Labor Code).

d) Run-off election (Requirements)

Q: In a certification election, three (3) unions participated. The election results were as follows: Union "A" got 100 votes; Union "B" got 80 votes; Union "C" got 120 votes. The "NO-UNION" got 150 votes. The aggregate number of votes cast was 450; the total number of eligible voters was likewise 450.

- (a) Which union, if any, should be certified?
- (b) If a run-off election is necessary, which union(s) or choices should appear in the ballot? Explain your answer.

SUGGESTED ANSWER:

(a) No union should be certified. No union got a majority of the valid votes cast, which is 224 votes [Vi of 450 plus 1). The Labor Code (in Art. 256) provides that a union, to be certified as the exclusive bargaining agent of the workers in a bargaining unit, should receive a majority of the valid votes cast. '

(b) Since no union was certified, a run-off election should be held between Union "A" which got 100 votes and Union "C" which got 120 votes. They are unions who got the two highest number of votes. The Labor Code (in Art. 256) provides that when an election which provides three or more choices results in no choice receiving a majority of valid vote cast, a run-off election shall be conducted between the labor union having the two highest number of votes.

ALTERNATIVE ANSWER:

NO-UNION which got 150 votes and Union "C" which got 120 votes were the choices which got the two highest number of votes. Thus, the run-off election should be between the NO-UNION and Union "C". The provision in Republic. Act No. 6715 the limits a run-off election to labor unions excluding thereby the NO-UNION choice is unconstitutional. It violates the workers' right to self-organization which also includes the right not to join a labor union.

e) Re-run election

f) Consent election

Q: Distinguish clearly but briefly between:

xx

x x

x x

x x

Consent election and certification election.

Social security and union security.

SUGGESTED ANSWERS:

"A certification election and a consent election are" both elections held to determine through secret ballot the sole and exclusive representative of the" employees in an appropriate bargaining unit for the purpose of collective bargaining or negotiations. There is this difference, however. A certification election is ordered by the Department of Labor and Employment while a consent election is voluntarily agreed upon by the parties, with or without the intervention of the Social Security is the protection given by social insurance programs such as the programs of the SSS, GSIS and PHIC undertaken pursuant to their respective charters, including the employees compensation program provided for in the Labor Code. The aforesaid programs provide income benefits and/or medical care when

contingencies like sickness, (also maternity in the case of SSS) disability, death, or retirement, including in the case of the GSIS, separation and unemployment benefits.

On the other hand, union security refers to a clause in a collective bargaining agreement whereby the employer agrees to employ or continue in employment only workers who are members of the exclusive collective bargaining representative of the employees of said employer in a bargaining unit.

g) Affiliation and disaffiliation of the local union from the mother union

(i) Substitutionary doctrine

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x
x x
x x
x x

[d] In the law on labor relations, the substitutionary doctrine prohibits a new collective bargaining agent from repudiating an existing collective bargaining agreement. (2009 Bar Question)

SUGGESTED ANSWER:

True. The existing collective bargaining agreement (in full force and effect) must be honored by a new exclusive bargaining representative because of the policy of stability in labor relations between an employer and the workers.

h) Union dues and special assessments

(i) Requirements for validity

Q: The union deducted P20.00 from Rogelio's wages for January. Upon inquiry he learned that it was for death aid benefits and that the deduction was made pursuant to a board resolution of the directors of the union. Can Rogelio object to the deduction? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. In order that the special assessment (death aid benefit) may be upheld as valid, the following requisites must be complied with: (1) Authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; (2) Secretary's record of the meeting; and (3) Individual written authorization for the check-off duly signed by the employee concerned. [ABS-CBN Supervisors Employees

Union Members v. ABS-CBN Broadcasting Corp. and Union Officers, 304 SCRA 489(1999)]

In the problem given, none of the above requisites were complied with by the union. Hence, Rogelio can object to the deduction made by the union for being invalid.

i) Agency fees (Requisites for assessment)

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x
x x
x x
x x

[e] Agency fees cannot be collected from a non-union member in the absence of a written authorization signed by the worker concerned. (2009 Bar Question)

SUGGESTED ANSWER:

False. Agency fee can be collected from a union member even without his prior written authorization as long as he receives the benefits of a CBA, and is a member of the appropriate bargaining unit. (Arts. 248(e)& 241(o), Labor Code).

Q: Atty. Facundo Veloso was retained by Welga Labor Union to represent it in the collective bargaining negotiations. It was agreed that Atty. Veloso would be paid in the sum of P20,000.00 as attorney's fees for his assistance in the CBA negotiations.

After the conclusion of the negotiations, Welga Labor Union collected from its individual members the sum of P100.00 each to pay for Atty. Veloso's fees and another sum of P100.00 each for services rendered by the union officers. Several members of the Welga Labor Union approached you to seek advice on the following matters.

- (a) Whether or not the collection of the amount assessed on the individual members to answer for the Attorney's fees was valid.**
- (b) Whether or not the assessment of P100.00 from the individual members of the Welga**

Labor Union for services rendered by the union officers In the CBA negotiations was valid.

SUGGESTED ANSWER:

(a) The assessment of P 100.00 from each union member as attorney's fees - for union negotiation, is not valid. Art. 222(b) of the Labor Code, reads:

"No attorneys fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any individual member of the contracting union; Provided, however, that attorneys fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to be contrary shall be null and void."

(b) The assessment of P100.00 as negotiation fees charged to each individual union member and payable to union officers is also not valid, for the same reason as stated above. The assessment is an act violative of Art. 222(b).

ALTERNATIVE ANSWER:

- (a) The collection of the amount assessed on the individual members to answer for the attorney's fees would be valid if it was authorized by a written resolution of a majority of all the members in a general membership meeting called for the purpose.
- (b) The assessment of P100.00 from the individual members of the Welga Labor Union for services rendered by the union officers in the CBA negotiations would be valid if it was authorized by a written resolution of a majority of all the members in a general membership meeting duly called for the purpose. (Art. 241(N)].

Q: In the general assembly meeting held on September 5, 1992, a BANK UNION with a majority of its 1,500 rank- and-file members attending, ratified and confirmed the decision of its UNION OFFICERS to engage the sendees of one ATTY. DAYOS to assist them in the negotiation of a new 3-year Collective Bargaining Agreement (CBA). to replace the expiring CBA. A contractual undertaking was signed by the UNION OFFICERS providing for the pay-ment of attorney's fees to ATTY. DAYOS in the amount equivalent to ten (10%) percent of the total package benefits that may be secured from the BANK. The BANK was authorized to deduct or check-off said attorney's fees and to turn over the proceeds directly to ATTY. DAYOS.

After the conclusion and signing of the new CBA between the BANK UNION and the BANK MANAGEMENT, many of the members of the BANK UNION who attended the general assembly meeting on September 5. 1992. objected to the payment of ATTY. DAYOS' attorney's fees for various reasons: (1) Some claimed that the UNION'S contract to pay attorney's fees, negotiation fees or similar charges of any kind arising from any CBA negotiations or conclusion of the CBA, imposed on the individual members of the contracting UNION, was null and void; (2) Some also claimed that they never attended the UNION'S gen-eral assembly meeting of September 5. 1992, and even if they were present, then they would have opposed

to the payment of attorney's fees to ATTY. DAYOS; (3) others claimed that although they signed the resolution authorizing the payment of the attorney's fees, they were withdrawing such authorizations. On the other hand, the UNION OFFICERS insisted on paying UNION'S counsel 10% attorney's fees alleging that its rank and file members in their general assembly meeting held on September 5, 1992, authorized and ratified their contractual undertaking to pay 10% to ATTY'. DAYOS for services rendered.

- 1) Discuss and justify the stand or position of the recalcitrant or opposition UNION members.
- 2) Discuss and justify the stand or position of the UNION OFFICERS and ATTY. DAYOS.

SUGGESTED ANSWER:

1) The opposition Union members could contend that the Labor Code (in Art. 222(b)) categorically provides that no attorney's fees, negotiation fees or similar charges of any kind arising from collective bargaining negotiations or conclusion of the Collective Agreement shall be imposed on any individual member of the contracting union and that any contract, agreement or arrangement of any sort to the contrary shall be null and void.

ALTERNATIVE ANSWER:

The opposition Union members could contend that the payment of attorney's fees to Atty. Dayos equivalent to ten (10%) percent of the total package of benefits imposed on the individual members of the contracting union is in the nature of a special assessment that may not be levied upon members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting called for the purpose. (Art. 241(n), Labor Code). Members can withdraw their earlier authorization.

Re: the check-off for the attorney's fees, because the same is not for mandatory activities, there could be no check-off without individual written authorization duly signed by the employee. (Art. 241(0), Labor Code)

2) The Union officers and Atty. Dayos could contend that after a majority of the members of the Union ratified and confirmed at a general assembly meeting the decision of the Union officers to engage the services of Atty. Dayos to assist them in the negotiation of a new CBA, and in implementation of such ratification and confirmation, the Union officers entered into a contract for the purpose with Atty. Dayos, the contract was legal and after his rendition of services, the union can pay Atty. Dayos his fees to be paid from the funds of the Union which was raised by special assessment of Union members.

The Labor Code provides that attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. (Art. 222 (b))

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:

c) 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]

Q: The CBA for the period January 2007 to December 2009 granted the employees a P40 per day increase with the understanding that it is creditable as compliance to any future wage order. Subsequently, the regional wage board increased by P20 the minimum wage in the employer's area beginning January 2008. The management claims that the CBA increase may be considered compliance even if the Wage Order itself said that "CBA increase is not creditable as compliance to the Wage Order." Is the management's claim valid? (2011 BAR)

- (A) Yes, since creditability of the CBA increase is the free and deliberate agreement and intention of the parties.
- (B) Yes, since the Wage Order cannot prejudice the management's vested interest in the provisions of the CBA.
- (C) No, disallowing creditability of CBA pay increase is within the wage board's authority.
- (D) No, the CBA increase and the Wage Order are essentially different and are to be complied with separately.

Q: The employees' rights to organize and to bargain collectively are means of exercising the broader right to participate in policy or decision-making processes. The employees' right to participate in policy and decision making processes is available (2011 BAR)

- (A) if a labor-management council exists.
- (B) if a labor-management council does not exist.

- (C) if a union exists and it agrees to the creation of a labor-management council.
(D) whether or not a labor-management council exists.

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

Q: ABC company and U labor union have been negotiating for a new Collective Bargaining Agreement (CBA) but failed to agree on certain economic provisions of the existing agreement. In the meantime, the existing CBA expired. The company thereafter refused to pay the employees their midyear bonus, saying that the CBA which provided for the grant of midyear bonus to all company employees had already expired. Are the employees entitled to be paid their midyear bonus? Explain your answer. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

YES, under Article 253 of the Labor Code, the parties are duty-bound to maintain the status quo and to continue in full force and effect the terms and conditions of the existing CBA until a new agreement is reached by the parties.

Likewise, Art. 253-A provides for an automatic renewal clause of a CBA. Although a CBA has expired, it continues to have legal effects as between the parties until a new CBA has been entered into.

The same is also supported by the principle of holdover, which states that despite the lapse of the formal effectivity of the CBA, the law stills considers the same as continuing in force and effect until a new CBA shall have been validly executed (MERALCO v. Hon. Sec. of Labor, 337 SCRA 90 [2000] citing National Congress of Unions in the Sugar Industry of the Philippines v. Ferrer-Calleja, 205 SCRA 478 [1992]).

The terms and conditions of the existing CBA remain under the principle of CBA continuity.

Q: The Company and Triple-X Union, the certified bargaining agent of rank-and-file employees, entered into a Collective Bargaining Agreement (CBA) effective for the period January 1, 2002 to December 31, 2007.

For the 4th and 5th years of the CBA, the significant improvements in wages and other benefits obtained by the Union were:

- 1. Salary increases of P1,000 and P1,200 monthly, effective January 1, 2006 and January 1, 2007, respectively;**
- 2. Vacation Leave and Sick Leave were adjusted from 12 days to 15 days annually for each employee;**
- 3. Medical subsidy of P3,000 per year for the purchase of medicines and hospitalization assistance of P10,000 per year for actual hospital confinement;**
- 4. Rice Subsidy of P600 per month, provided the employee has worked for at least 20 days within the particular month; and**
- 5. Birthday Leave with Pay and Birthday Gift of P1,500.**

As early as October 2007, the Company and the Union started negotiations to renew the CBA. Despite mutual good faith and earnest efforts, they could not agree. However, no union filed a petition for certification election during the freedom period. On March 30, 2008, no CBA had been concluded. Management learned that the Union would declare a bargaining deadlock on the next scheduled bargaining meeting.

As expected, on April 3, 2008, the Union declared a deadlock. In the afternoon of the same day, management issued a formal announcement in writing, posted on the bulletin board, that due to the CBA expiration on December 31,2007, all fringe

benefits contained therein are considered withdrawn and can no longer be implemented, effective immediately.

X X
X X
X X

[c] Is management's withdrawal of the fringe benefits valid? Reasons. (2%)
(2009 Bar Question)

SUGGESTED ANSWER:

No. Pending renewal of the CBA, the parties are bound to keep the status quo and to treat the terms and conditions embodied therein still in full force and effect, until a new agreement is reached by the union and management. This is part and parcel of the duty to bargain collectively in good faith under Article 253, the Labor Code.

2. Collective Bargaining Agreement (CBA)

Q:

What, if any, is the maximum term of a collective bargaining agreement under R.A. 6715?

Company America and the union entered into a five (5) year collective bargaining agreement (CBA). Three (3) years thereafter, the Company received a demand letter from the union for renegotiation of the terms and conditions of the CBA on the ground that the cost of living and prices of the essential commodities have gone up by 30% since the CBA was concluded.

1. Was the five-year term of the CBA legal?
2. Is the Company obligated to renegotiate the CBA as demanded by the union? If your reply is in the affirmative, state the extent of the Company's obligations.
3. What are the remedies available to the Union in the event the Company refuses to renegotiate the CBA? Does it include the right to strike?

SUGGESTED ANSWER:

According to Republic Act No. 6715 (Article 253-A, of the Labor Code, as amended), the maximum term of a collective bargaining agreement is 5 years, but except as to the representation aspect, all other provisions of the agreement shall be renegotiated not later than three (3) years after its execution.

1. The five year term of CBA is legal. This is provided for in Rep. Act No. 6715.

2. The company is obligated to renegotiate the CBA as demanded by the union. Rep. Act. No. 6715 provides that all the provisions of a CBA shall be renegotiated not later than three (3) years after its execution except the representation aspect of the CBA.

3. The refusal of the company to renegotiate not later than three (3) years after the execution of the CBA is a refusal to bargain collectively and is, therefore, an unfair labor practice. Thus, a case of unfair labor practice may be filed against the employer with a Labor Arbiter.

The Union may go on an unfair labor practice strike considering that the employer is guilty of an unfair labor practice if it refuses to renegotiate the CBA within three (3) years after its execution.

Q: Republic Drug Co. has 1,000 employees, including 50 managerial personnel, 90 supervisors and 150 sale representatives. The regular workday in the Company is from 8:00 a.m. to 5:00 p.m. The sales representatives register their presence with the timekeeper at 8:00 A.M. every day before they go to their respective sales territories. They are paid a basic salary plus commission. Sixty of the sales representatives are members of the Republic Salesmen Union which sent to the Company a set of bargaining proposals, including a demand for payment of overtime pay of the sales representatives for working beyond 5:00 P.M. everyday. The Company refused to consider the bargaining proposals and rejected the demand for overtime pay for the reason that the sales representatives are not entitled thereto. The Union filed an unfair labor practice case against the Company for refusal to bargain, and after complying with the legal requirements declared a strike.

x x x

b) **Was the Company guilty of unfair labor practice? Was the Union's strike legal? Reasons.**

SUGGESTED ANSWER:

The Company is not guilty of unfair labor practice. The Republic Salesmen Union has a members only 60 of the 150 sales representatives. This fact could mean that the Union is not the majority union that is the collective bargaining representative of the sales representatives. (Article 255. Labor Code)

Because the Union is not the collective bargaining representative, the Company did not commit an unfair labor practice when it refused to bargain with said union. The duty of the employer to bargain collectively arises only as regards the bargaining representative of the employees. (Article 252, Labor Code) Because the refusal to bargain under the above described circumstances is not an unfair labor practice, the Union's strike was not legal.

ALTERNATIVE ANSWER:

If the sales representatives constitute an appropriate collective bargaining unit in the Company, and the Republic Salesman Union (SBU) was recognized or certified as the collective bargaining representative in said bargaining unit, inspite of the fact that only 60 of the 150 sales representative are members of SBU. (because SBU is nevertheless designated or selected by a majority of the sales representatives) then, the Company is guilty of unfair labor practice when it refused, at the very least, j ust to consider the bargaining proposals of the Union. The refusal to at least just consider the bargaining proposals of the Union constitutes a refusal to bargain collectively; thus, it is an unfair labor practice.

The strike, then, of the Union is legal because an unfair labor practice strike is legal.

a) Mandatory provisions of CBA (Grievance procedure, Voluntary arbitration, No strike-no lockout clause, Labor management council)

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.

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:

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

b) Duration

(i) For economic provisions

Q: The Company and Triple-X Union, the certified bargaining agent of rank-and-file employees, entered into a Collective Bargaining Agreement (CBA) effective for the period January 1, 2002 to December 31, 2007.

For the 4th and 5th years of the CBA, the significant improvements in wages and other benefits obtained by the Union were:

- 1) Salary increases of P1,000 and P1,200 monthly, effective January 1, 2006 and January 1, 2007, respectively;**
- 2) Vacation Leave and Sick Leave were adjusted from 12 days to 15 days annually for each employee;**
- 3) Medical subsidy of P3,000 per year for the purchase of medicines and hospitalization assistance of P10,000 per year for actual hospital confinement;**
- 4) Rice Subsidy of P600 per month, provided the employee has worked for at least 20 days within the particular month; and**
- 5) Birthday Leave with Pay and Birthday Gift of P1,500.**

As early as October 2007, the Company and the Union started negotiations to renew the CBA. Despite mutual good faith and earnest efforts, they could not agree. However, no union filed a petition for certification election during the freedom period. On March 30, 2008, no CBA had been concluded. Management learned that the Union would declare a bargaining deadlock on the next scheduled bargaining meeting.

As expected, on April 3, 2008, the Union declared a deadlock. In the afternoon of the same day, management issued a formal announcement in writing, posted on the bulletin board, that due to the CBA expiration on December 31, 2007, all fringe benefits contained therein are considered withdrawn and can no longer be implemented, effective immediately.

X X
X X
X X
X X

[d] If you were the lawyer for the union, what legal recourse or action would you advise? Reasons. (3%)

SUGGESTED ANSWER:

I would recommend the filing of an unfair labor practice case against the employer for violating the duty to bargain collectively under Article 248(g) of the Labor Code. This arbitration case also institutes the “deadlock bar” that shall prevent any other union from filing a petition for certification election.

ANOTHER SUGGESTED ANSWER:

I will advise the Union to continue negotiations with the aid of the NCMB (Art. 250, Labor Code), and to file a complaint for unfair labor practice, i.e., violation of an economic provision, gross and serious in character under Articles 248(i) and Art. 261 of the Labor Code.

- (ii) For non-economic provisions**
- (iii) Freedom period**

Q: The Company and Triple-X Union, the certified bargaining agent of rank-and-file employees, entered into a Collective Bargaining Agreement (CBA) effective for the period January 1, 2002 to December 31, 2007.

For the 4th and 5th years of the CBA, the significant improvements in wages and other benefits obtained by the Union were:

- **Salary increases of P1,000 and P1,200 monthly, effective January 1, 2006 and January 1, 2007, respectively;**
- **Vacation Leave and Sick Leave were adjusted from 12 days to 15 days annually for each employee;**
- **Medical subsidy of P3,000 per year for the purchase of medicines and hospitalization assistance of P10,000 per year for actual hospital confinement;**
- **Rice Subsidy of P600 per month, provided the employee has worked for at least 20 days within the particular month; and**
- **Birthday Leave with Pay and Birthday Gift of P1,500.**

As early as October 2007, the Company and the Union started negotiations to renew the CBA. Despite mutual good faith and earnest efforts, they could not agree. However, no union filed a petition for certification election during the freedom period. On March 30, 2008, no CBA had been concluded. Management learned that the Union would declare a bargaining deadlock on the next scheduled bargaining meeting.

As expected, on April 3, 2008, the Union declared a deadlock. In the afternoon of the same day, management issued a formal announcement in writing, posted on

the bulletin board, that due to the CBA expiration on December 31,2007, all fringe benefits contained therein are considered withdrawn and can no longer be implemented, effective immediately.

When was the “freedom period” referred to in the foregoing narration of facts? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The freedom period or the time within which a petition for certification election to challenge the incumbent collective bargaining agent may be filed is from 60 days before the expiry date of the CBA.

3. Union Security

In the Collective Bargaining Agreement (CBA) between Dana Films and its rank-and-file Union (which is directly affiliated with MMFF, a national federation), a provision on the maintenance of membership expressly provides that the Union can demand the dismissal of any member employee who commits acts of disloyalty to the Union as provided for in its Constitution and By-Laws. The same provision contains an undertaking by the Union (MMFF) to hold Dana Films free from any and all claims of any employee dismissed. During the term of the CBA, MMFF discovered that certain employee-members were initiating a move to disaffiliate from MMFF and join a rival federation, FAMAS. Forthwith, MMFF sought the dismissal of its employee-members initiating the disaffiliation movement from MMFF to FAMAS. Dana Films, relying on the provision of the aforementioned CBA, complied with MMFF's request and dismissed the employees identified by MMFF as disloyal to it.

- a. Will an action for illegal dismissal against Dana Films and MMFF prosper or not? Why? (5%) (2012 BAR)

Suggested Answer:

Yes. While Dana Films, under the CBA, is bound to dismiss any employee who is expelled by MMFF for disloyalty (upon its written request), this undertaking should not be done hastily and summarily. Due process is required before a member can be dropped from the list of union members of good standing. The company's dismissal of its workers without giving them the benefit of a hearing, and without inquiring from the workers on the cause of their expulsion as union members, constitute bad faith. [Liberty Cotton Mills Workers Union, et. al vs. Liberty Cotton Mills, Inc. et. al., G.R. No. L-33987, May 31, 1979].

- b. What are the liabilities of Dana Films and MMFF to the dismissed employees, if any? (5%) (2012 BAR)

Suggested Answer:

Dana Films is obliged (1) to reinstate the illegally dismissed employees to their former positions without reduction in rank, seniority and salary; and (2) to jointly and severally pay the dismissed employees backwages, without any reduction in pay or qualification. [Amada Rice v. NLRC, G.R. No. 68147, June 30, 1988].

a) Union security clauses; closed shop, union shop, maintenance of membership shop, etc.

Q: Forbes Country Club (Club) owns a golf course and has 250 rank-and-file employees who are members of the Forbes Country Club Union (Union). The Club has a CBA with the Union and one of the stipulations is a Union Security Clause, which reads: "All regular rank-and-file employees who are members of the union shall keep their membership in good standing as a condition for their continued employment during the lifetime of this agreement."

Peter, Paul and Mary were the Treasurer, Assistant Treasurer, and Budget Officer of the Union, respectively. They were expelled by the Board of Directors of the Union for malversation. The Union then demanded that the Club dismiss said officials pursuant to the Union Security Clause that required maintenance of union membership. The Club required the three officials to show cause in writing why they should not be dismissed. Later, the Club called the three Union officials for a conference regarding the charges against them. After considering the evidence submitted by the parties and their written explanations, the Club dismissed the erring officials. The dismissed officials sued the Club and the Union for illegal dismissal because there was really no malversation based on the documents presented and their dismissal from the Union was due to the fact that they were organizing another union.

- [a] Is the dismissal of Peter, Paul and Mary by the Club valid? (2016)**

SUGGESTED ANSWER:

The dismissal of Peter, Paul and Mary is valid as it was made pursuant to a union security clause contained in the Collective Bargaining Agreement between the management and

the union. A union security clause is intended to strengthen, a contracting union and protect it from the fickleness or perfidy of its own members (Caltex Refinery Employees Association v. Brillarts, G.R. No. 123782, September 16, 1997). In terminating employees by reason of union security clause, what the employer needs to determine and prove are: a). that the union security clause is applicable, b). that the union is requesting for the enforcement of the union security clause and, c). that there are sufficient evidence to support the decision of the union to expel the employee from the union (Picop Resources v. Tantla, G.R No. 160828, August 9, 2010). In the case at bar, the union demanded - the dismissal of Peter, Paul and Mary after they were expelled from the union. The Club then afforded them due process by ordering them to show cause in writing why they should not be dismissed. Thereafter, a conference was held in their behalf. Having complied with all the requirements mentioned, itj can be said that the dismissal of Peter, Paul and Mary was made validly.

[b] If the expulsion by the Union was found by the Labor Arbiter to be baseless, is the Club liable to Peter, Paul and Mary? Explain.

SUGGESTED ANSWER:

Yes, the Club can be held, liable to Peter, Paul and Mary. Even if the elements under (a) and (b), as mentioned above, are present, it behooves upon the Club to ascertain in good faith the sufficiency of evidence that supports the decision of expelling them from the union. The Club should have been circumspect in the 1 sense that it should have determined the veracity of the union's claim that Peter, Paul and Mary were indeed guilty of malversation. Should it have been guilty of making a mistake then it should be accountable for it. Just as the Court has stricken down unjust exploitation of laborers by oppressive employers, so will it strike down their unfair treatment by their own unworthy leaders. The Constitution enjoins the state to afford protection to labor. Fair dealing is equally demanded of unions as well as of employers, in their dealings with employees (Heirs of Cruz vs. CIR, G.R. Nos. L-23331-32, December 27, 1969).

Q: Explain the impact of the union security clause to the employees' right to security of tenure. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

A valid union security clause when enforced or implemented for cause, after according the worker his substantive and procedural due process rights (Alabang Country Club, Inc. v. NLRC, 545 SCRA 357 [2008]; does not violate the employee's right to security of

tenure. Art. 248(e) of the Labor Code allows union security clauses and a failure to comply with the same is a valid ground to terminate employment. Union security clause are designed to strengthen unions and valid law policy.

Q: Yellow Bus Company has an existing collective bargaining agreement (CBA) with Union “X”. During the 60-day “freedom period,” Union “A” filed a petition for certification election claiming a majority of the rank and file employees of the company had joined it. Pending the hearing of the petition, the company and Union “X” renegotiated and signed a new CBA which is admittedly better than the previous one. In view of this supervening event, the med-arbiter dismissed the petition of Union “A” for being moot and academic. Is the dismissal of the petition correct? Can the company and Union “X” claim the benefit of the “contract bar rule?”

SUGGESTED ANSWER:

The dismissal of the petition is not correct. The Company and Union “X” cannot claim the benefit of the “contract bar rule.”

The Labor Code (in Art. 256) provides: “In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five (25%) percent of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit.”

Assuming that the petition of Union “A” was supported by at least 25% of the employees in the bargaining unit, the Med-Arbiter should have automatically ordered a certification election since the petition was duly filed during the freedom period.

But how about the supervening event, i.e. a new CBA has been signed? The Rules implementing the Labor Code provides (in Book V, Rule V, Sec. 4) that the representation case shall not be adversely affected by a collective agreement submitted before or during the last 60 days of a subsisting agreement or during the pendency of a representation case.

Q: FACTS: In a certification election conducted by the Department of Labor, Associated Workers Organization in Laguna (AWOL) headed by Cesar Montanyo, won over Pangkat ng mga Manggagawa sa Laguna (PML), headed by Eddie Graciaa. Hence, AWOL was certified as the exclusive bargaining agent of the rank-and-file employees of the Laguna Transportation Company (LTC).

Shortly, thereafter, a Collective Bargaining Agreement was concluded by LTC and AWOL which provided for a closed shop. Consequently, AWOL, demanded that Eddie Graciaa and all the PML members be required to become members of AWOL

as a condition for their continued employment; other- wise, they shall be dismissed pursuant to the closed shop provision of the CBA.

The union security clause of the CBA also provided for the dismissal of employees who have not maintained their membership in the union. For one reason or another, Francis Magallona, a member of AWOL, was expelled from the union membership for acts inimical to the interest of the union. Upon receipt of the notice that Francis Magallona failed to maintain his membership in good standing with AWOL, LTC summarily dismissed him from employment.

1. Can Eddie Graciaa and all the PML members be required to become members of the AWOL pursuant to the closed shop provision of the CBA? Why? (3%)

SUGGESTED ANSWER:

Eddie Gracia and all the PML members can not be required to become members of AWOL pursuant to the closed shop provision of the CBA.

According to the Labor Code (Article 248(e)), a closed shop provision cannot be applied to those employees who are already members of another union at the time of the signing of the CBA,

2. Is the termination from employment of Francis Magallona by LTC lawful? Why? (2%)

SUGGESTED ANSWER:

Pursuant to the closed shop provision of the CBA entered into by AWOL with LTC, membership in AWOL has become a condition of employment in LTC.

As long as the expulsion of Francis Magallona from AWOL was done in accordance with applicable provisions of law and with the Constitution and By-laws of the AWOL, then it was lawful for LTC to terminate Magallona.

Panel: The termination is unlawful (Ferrer v. NLRC).

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: A is employed by XYZ Company where XYZ Employees Union (XYZ-EU) is the recognized exclusive bargaining agent. Although A is a member of rival union XYR-MU, he receives the benefits under the CBA that XYZ-EU had negotiated with the company.

XYZ-EU assessed A a fee equivalent to the dues and other fees paid by its members but A insists that he has no obligation to pay said dues and fees because he is not a member of XYZ-EU and he has not issued an authorization to allow the collection. Explain whether his claim is meritorious. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

NO. The fee exacted from A takes the form of an AGENCY FEE. This is sanctioned by Article 248 (e) of the Labor Code.

The collection of agency fees in an amount equivalent to union dues and fees from employees who are not union members is recognized under Article 248(e) of the Labor Code. The union may collect such fees even without any written authorization from the non-union member employees, if said employees accept the benefits resulting from the CBA. The legal basis of agency fees is quasi-contractual (Del Pilar Academy v. Del Pilar Academy Employees Union, 553 SCRA 590 [2008]).

Q: During the open forum following your lecture before members of various unions affiliated with a labor federation, you were asked the following questions:

May a rank-and-file employee, who is not a member of the union representing his bargaining unit, avail of the wage increases which the union negotiated for its members? (4%).

SUGGESTED ANSWER:

Yes. The beneficiaries of a Collective Bargaining Agreement include Non-Union Members; other Wise, there will be discrimination which is prohibited by law. [New Pacific Timber and Supply Co., Inc. v. NLRC, 328 SCRA 424 (2000)].

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.

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])

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)

2. Unfair Labor Practice in collective bargaining

The negotiating panels for the CBA of X Company established a rule that only employees of the company will seat in each panel. In the next session, the management panel objected to the presence of the union counsel. Still the negotiation proceeded. At the next session, the management panel again objected to the presence of the union counsel as a non-observance of the "no outsider" rule. The negotiation nonetheless proceeded. Does the management panel's objection to the presence of the union counsel constitute unfair labor practice through bad-faith bargaining? (2011 BAR)

- (A) Yes, the management is harping on a non-mandatory matter instead of proceeding with the mandatory subjects of bargaining.
- (B) No, there is no bargaining in bad faith since the bargaining proceeded anyway.
- (C) Yes, the management panel has no legal basis for limiting the composition of the union negotiating panel.
- (D) No, since it is the union that violates the ground rules fashioned by the parties, it is the one negotiating in bad faith.

a) Bargaining in bad faith

Q: Corporation "X" is engaged in a collective bargaining negotiation with the Union of its employees. With respect to the demand for profit-sharing the corporation patiently but consistently alleged that it cannot accept the said demand. The

corporation and the union several times to arrive at the proper resolution of the issue but the corporation would not yield. Finally, the union filed an unfair labor practice case accusing the corporation of bargaining in bad faith and refusing to accede to its demand of profit-sharing. Decide.

SUGGESTED ANSWER:

Corporation "X" is not guilty of unfair labor practice.

The question gives as facts that the corporation and the union met several times to arrive at the proper resolution of the issue as to whether or not there shall be profit sharing at the corporation. In these meetings, the corporation patiently but consistently stated that it cannot accept the demand for profit sharing. By these acts, the corporation bargained in good faith; it was showing that it sincerely desired to reach an agreement with the union. Its not yielding to the demand for profit sharing is not an unfair labor practice because the Labor Code (in Art. 252) expressly provide that the duty to bargain collectively does not compel any party to agree to a proposal or to make any concession.

b) Refusal to bargain

Q: The Malipol Labor Union submitted to the management of the Malilito Co.. Inc. a set of proposals for a collective bargaining agreement. A few days later, the Kapuspalad Labor Union forwarded its own proposals, claiming to represent the majority of the rank-and-file employees in the company. The company refused to bargain with either Malipol Labor Union or Kapuspalad Labor Union.

Malipol Labor Union then filed a complaint for unfair labor practice, charging that the Kapuspalad Labor Union is a company union. The company then filed with the Med- Arbiter a petition for certification election.

- a) **Was the company's refusal to bargain with either Malipol Labor Union or the Kapuspalad Labor Union an unfair labor practice?**

SUGGESTED ANSWER:

The refusal of the Company to bargain with either Malipol Labor Union or the Kapuspalad Labor Union is not an unfair labor practice. The refusal is justified. The Company is not certain as to which of the two labor unions is the union representing the majority of the employees of the employer belonging to the appropriate collective bargaining unit. It is the duty of the employer to bargain collectively only with the labor union which is the representative of the employees, which in turn the labor union designated or selected by the majority of the employees in an appropriate collective bargaining unit.

- b) **Was the company's petition for certification election proper? Will it prosper?**

SUGGESTED ANSWER:

The company's petition for certification election is proper. Under the Labor Code, an employer may file a petition for certification election when there is a demand for collective bargaining.

But the petition may not immediately prosper.

Malipol Labor Union has charged that Kapuspalad Labor Union is a company union. This charge brings about a prejudicial question which should first be resolved, before the certification election may be held. A company union cannot be certified as a bargaining representative.

- c) Blue sky bargaining
- d) Surface bargaining

Q: Differentiate “surface bargaining” from “blue-sky bargaining”. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

(1) **SURFACE BARGAINING** is defined as “going through the motions of negotiating” without any legal intent to reach an agreement. The determination of whether a party has engaged in unlawful surface bargaining is a question of the intent of the party in question, which can only be inferred from the totality of the challenged party’s conduct both at and away from the bargaining table. It involves the question of whether an employer’s conduct demonstrates an unwillingness to bargain in good faith or is merely hard bargaining (Standard Chartered Bank Employees Union (NUBE)v. Confesor, 432 SCRA 308 [2004]).

(2) **BLUE-SKY BARGAINING** is defined as “unrealistic and unreasonable demands in negotiations by either or both labor and management, where neither concedes anything and demands the impossible” (Standard Chartered Bank Employees Union (NUBE) v. Confesor, supra.).

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

- x x
- x x
- x x

[a] A runaway shop is an act constituting unfair labor practice. (2009 Bar Question)

SUGGESTED ANSWER:

False. A runaway shop is not automatically an unfair labor practice. It is an unfair labor practice if the relocation that brought about the runaway shop is motivated by anti-union animus rather than for business reasons.

ANOTHER SUGGESTED ANSWER:

True. The transfer of location of a strike bound establishment to another location (runaway shop) can constitute an act of interference or restraint of the employees' right to self-organization. There is an inferred anti-union bias of the employer (Labor Code, Art. 248[a]). The provisions of Art. 248[a] should be broadly and liberally interpreted to achieve the policy objective of the law, i.e., to enhance the workers right to self-organization and collectively bargain (Constitution, Art. XIII, Sec. 3 & Art. III, Sec. 8; Labor Code, Arts. 243, 244 & 245; *Caltex Filipino Managers, etc. v. C1R*, 44 SCRA 350 [1972]).

5. Unfair Labor Practice (ULP)

a) Nature of ULP

Q: Which of the following acts is NOT considered unfair labor practice (ULP)? (2011 BAR)

- (A) Restraining employees in the exercise of the right to self-organization.
- (B) Union's interference with the employee's right to self-organization.
- (C) Refusal to bargain collectively with the employer.
- (D) Gross violation of the collective bargaining agreement by the union.

b) ULP of employers

Q: The Company has a renewed collective bargaining agreement (CBA) with the Union, which covers the bargaining unit of rank-and-file employees, including twenty (20) security guards and has a term of five years effective January 1, 1992. In 1991, the Company had consultation meetings with the Union on the abolition of the security guard section and the engagement of the sendees of an independent security agency. On July 16, 1992, the Company abolished the security guard section, contracted the services of Edsa Security Agency, and advised the Union that the guards will be transferred to other positions in the Company with increase in pay and transfer bonus. The Union objected to the abolition as it was in violation of the CBA. The Company asserted that its action was an exercise of its management prerogatives after consultations with the Union in 1991 and intended to promote efficiency and economy. After satisfying all requirements, the Union declared a strike. There is a provision in the CBA recognizing in general terms management prerogatives.

a) Did the Company violate the CBA? Explain.

SUGGESTED ANSWER:

The Company violated the CBA. It is noted that in the CBA, the bargaining unit covered not only the rank and file employees. It also covered 20 security guards.

Yet, the Company was abolishing the security guard sector where these security guards belonged. It may be noted that an employer commits an unfair labor practice if it contracts and services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization. (Article 248(c), Labor Code)

It is true that in 1991, there were consultation meetings with the Union on the abolition of the security guard section and the engagement of the services of an independent security agency.

But yet, after these consultation meetings, the CBA that was entered into included the 20 security guards in the bargaining unit of the CBA. There was thereby, an agreement to retain said security guards.

ALTERNATIVE ANSWER:

The Company did not violate the CBA. When it abolished the security guard section and engaged the sendees of an independent security agency, the Company was merely exercising its management prerogatives. It is an unfair labor practice for an employer to contract services or functions being performed by union members, but only when such interferes with, restrains or coerces employees in the exercise of their rights to self-organization. Here, the Company exercised its prerogative Management ever in consultation with the Union and its objective was to promote efficiency and economy.

b) **Was the Union's strike legal? Explain.**

SUGGESTED ANSWER:

If the Company is guilty of unfair labor practice, then the strike of the Union has legal basis and thus is legal.

ALTERNATIVE ANSWER:

If the Company is not guilty of unfair labor practice, then, the strike of the Union is illegal, because there will be no legal ground for the strike.

Q: Article 248(d) of the Labor Code states that it shall be unlawful for an employer to initiate, dominate, assist in or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or to its organizers or officers.

X Company, Inc. has been regularly contributing money to the recreation fund of the labor union representing its employees. This fund, including the financial

assistance given by the employer, is used for refreshment and other expenses of the labor union whenever the employees go on a picnic, on an excursion, or hold a Christmas party. Is the employer liable for unfair labor practice under Article 248(d) of the Labor Code? Explain your answer.

SUGGESTED ANSWER:

No. If the contributions of the employer benefit all the employees and there is no employee discriminated against, there is no unfair labor practice. The contributions may be considered a fringe benefit given by the employer.

ALTERNATIVE ANSWER:

If the regular contributions are pursuant to a CBA provision, there is no unfair labor practice. If not pursuant to a CBA violation, the assistance may constitute an unfair labor practice.

ANOTHER ALTERNATIVE ANSWER:

If Art. 248(d) is strictly applied, the giving of money by the employer to the recreation fund of the labor union is an unfair labor practice because said Article considers as an unfair labor practice “the giving of financial or other support to it (meaning a union) or to its organizers or officers.” The Article does not provide for a situation where such giving is not an unfair labor practice.

Q: The management and Union X in Atisan Mining entered into a CBA for 1997 to 2001. After 6 months, a majority of the members of Union X formed Union Y and sought management recognition. The latter responded by not dealing with either union. But, when the CBA’s economic provisions had to be renegotiated towards the end of the term of the CBA, the management chose to negotiate with Union Y, the newer union. Thus, Union X which negotiated the existing CBA charged the company with unfair labor practice (ULP). The company argued that it committed no unfair labor practice since the supposed violation had nothing to do with economic provisions of the CBA. Is the management right? (2011 BAR)

- (A) No. Refusal to comply with the CBA’s economic provisions is not the only ground for ULP; a disregard of the entire CBA by refusing to renegotiate with the incumbent bargaining agent is also ULP.
- (B) Yes. No unfair labor practice was committed because the supposed violation has nothing to do with economic provisions of the CBA.
- (C) Yes. The management commits no ULP when it decided to renegotiate with the numerically majority union.
- (D) Yes. A CBA violation amounts to ULP only if the violation is “gross,” meaning flagrant or malicious refusal to comply with the CBA’s economic provisions which is not the case here.

Q: Unions “A” and “B” are competing with one another to organize the employees of Ocean

Supermart. Inc. It was an uncertain contest until the President of Ocean Supermart issued a written statement expressing the hope that the employees refrain from joining a union but in the event they should decide to do so, stating his preference for Union “A”. In the certification election Union “B” lost. Is there an unfair labor practice? Reasons.

SUGGESTED ANSWER:

Ocean Supermart was guilty of unfair labor practice. The Labor Code (in Art. 248) provides that it is unfair labor practice for an employer “To interfere with, restrain or coerce employees in the exercise of their right to self-organization” and “for an employer to initiate, dominate, assist or otherwise interfere in the formation or administration of any labor organization, including the giving of financial or other support to it or its organizations or supporters.”

In the question given, Ocean Supermart issued a written statement expressing the hope that the employees refrain from joining a union. It also express a preference for Union “A”. These statements could be considered interference with the exercise by employees by the right to self-organize. Giving support to a particular union is an act of company unionism therefore, was an unfair labor practice.

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:

a. 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: Union "X" is the majority union of the rank and file employees at Slipper Mart Company. It amended its by-laws to include among the obligations of its members "to refuse to work with non-union members." Slipper Mart wants the amendment to be declared null and void considering that not all its rank and file employees

belong to Union “X” and its enforcement will cause work stoppage in the company. Give your opinion on the validity of the amendment.

SUGGESTED ANSWER:

The provision of the by-laws of the union that made it among the obligations of its members “to refuse to work with non-union members” cannot be implemented at the Slipper Mart Company. It is management’s prerogative to determine who shall work together in a company.

ALTERNATIVE ANSWER:

The act is an unfair labor practice on the part of the union because it could have the effect of compelling the employer to compel its employees to join Union “X”, thus, in effect restraining or coercing employees in the exercise of their right to self-organization.

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:

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

C. Right to peaceful concerted activities

Q: Freiburg Electronics Corporation which employs 400 rank-and-file employees, 80 supervisors and 20 managerial personnel, negotiated a collective bargaining agreement with the Modemo Labor Union (MLU), the bargaining representative of the rank-and-file employees. Because of deadlocked negotiations. MLU after complying with the legal re-quirements declared a strike and picketed the Company's gates. The picketers obstructed the free ingress into the engrees from the premises. Fearing that it might not meet its commitments to European and American buyers, the Company appealed to the MLU to allow entry of personnel who were willing to work. MLU rejected the appeal. On the tenth day of the strike, a squad of policemen escorted the managerial and supervisory personnel and 100

rank-and-file employees entering the Company's premises to work. During the entry, 20 supervisors and 50 rank-and-file employees were beaten by the picketers.

The MLU charged the Company and the policemen with violation of the anti-scab law under the Labor Code. The Company, for its part, filed a petition to declare the strike and picketing illegal.

As the Labor Arbiter, resolve MLU's charge and the Company's petition with reasons.

SUGGESTED ANSWER:

The charge made by MLU that the Company and the policemen violated the anti-scab law under the Labor Code has no basis. The Code provides that no public official or employee, including officers and personnel of the New Armed Forces of the Philippines and the Integrated National Police, or armed personnel, shall bring in, introduce or escort in any manner any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of strikers. (Article 264(d), Labor Code)

The Company of the policemen did not violate the above provision of the Labor Code when a squad of policemen escorted the managerial and supervisory personnel and 100 rank-and-file employees in entering the Company's premises to work because the above personnel and employees are old employees, not new employees who will "replace" the strikers.

The Company's petition to declare the strike and picketing illegal has basis. The picketers committed an unlawful act when they obstructed the free ingress into and egress from the Company premises. The beating up by the picketers of 20 supervisors and 50 rank and file employees is also the basis for making the strike illegal.

ALTERNATIVE ANSWER:

The Labor Code, (in Article 264(d). provides that "the police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein. In the case in the question, when a squad of policemen escorted the personnel and employs in entering the Company's premises to work, the policemen violated the above provision of the Labor Code by crossing the picket lines, when as yet there was no actual violence, other criminal acts were not occurring.

1. Forms of concerted activities

Q: The union filed a notice of strike due to a bargaining deadlock. But, because the Secretary of Labor assumed jurisdiction over the dispute, the strike was averted. Meanwhile, the employer observed that the union engaged in a work slowdown. Contending that the slowdown was in fact an illegal strike, the employer dismissed all the union officers. The union president complained of illegal dismissal because

the employer should first prove his part in the slowdown. Is the union president correct? (2011 BAR)

- (A) Yes, since the employer gave him no notice of its finding that there was a slowdown.
- (B) Yes. The employer must prove the union president's part in slowdown.
- (C) No. When a strike is illegal, the management has the right to dismiss the union president.
- (D) No. As the union president, it may be assumed that he led the slowdown.

Q: What do you understand by the "improved offer balloting?"

SUGGESTED ANSWER:

A strike may be an economic strike, namely, it is a strike caused by a deadlock at the bargaining table. A deadlock may arise because the offer of the employer, e.g., its offer of a 20% across-the-board increase in wages and salaries, was not accepted by the Union who wanted a 50% increase.

After considering the matter, the employer may improve its offer, e.g. it offers a 35% increase.

This improved offer of the employer may be submitted to the union members on or before the 30th day of the strike. The secret balloting that will determine whether a majority of the union members accept the improved offer of the employer is the so-called "improved offer balloting."

In case it is a lockout, and not a strike, what may be the subject matter of a secret balloting, this time among the members of the Board of Directors of the employer, may be the reduced offer of the union, i.e., instead of asking for 50% across the board increase in wages and salaries, it may reduce its demand to 25 % .

Q: On May 24, 1989, the UKM urged its member-unions to join a "Welga ng Bayan" in support of its efforts to pressure Congress to increase the daily minimum wage. Union "X" is a member of the UKM and represents all the rank and file employees of the Puritan Mining Company. Following the call for a nationwide strike, Union "X" staged a strike and put up a picket the following day. As a result, the company's operations were paralyzed although company officials and supervisory employees were allowed ingress and egress to and from the company premises. The picket was likewise peaceful. On May 28, 1989, the UKM leadership announced the end of the "Welga ng Bayan." Union "X" immediately lifted its picket and its members went back to work. The company sought our legal advice on the legality of the strike and the liability, if any, of the union officers and the participating members. What is your opinion? Explain.

SUGGESTED ANSWER:

The strike was illegal. For a strike to be legal, it should either be an economic strike, i.e., caused by a bargaining deadlock or an unfair labor practice strike, i.e., caused by the commission of an unfair labor practice by an employer.

The strike of Union "X" was neither an economic strike or an unfair labor strike. Thus, it was an illegal strike.

Because it was an illegal strike, any union officer who knowingly participated in it may be declared to have lost his employment status, meaning such union officer could be legally terminated.

As for the union members who participated in the strike, the facts show that no illegal acts were committed. They allowed ingress and egress to and from the company premises. The picket was peaceful. The mere participation of the union members, without their committing illegal acts, does not constitute sufficient ground for the termination of their employment.

ALTERNATIVE ANSWER:

The strike is legal and the union officers and participating union members incur no liability for calling and participating in the strike respectively. Applying the rule in Philippine Blooming Mills to the effect that the workers only personally assembled to influence the decision making process of the government which is a constitutionally guaranteed right.

Note: Credit should be given to answer that focus on the procedural requirement for a strike to be legal, i.e. strike vote, notice, cooling off period.

Q: On the first day of collective bargaining negotiations between rank-and-file Union A and B Bus Company, the former proposed a P45/day increase. The company insisted that ground rules for negotiations should first be established, to which the union agreed. After agreeing on ground rules on the second day, the union representatives reiterated their proposal for a wage increase. When company representatives suggested a discussion of political provisions in the Collective Bargaining Agreement as stipulated in the ground rules, union members went on mass leave the next day to participate in a whole-day prayer rally in front of the company building.

A. The company filed a petition for assumption of jurisdiction with the Secretary of Labor and Employment. The Union opposed the petition, arguing that it did not intend to stage a strike. Should the petition be granted? Explain. (2%)

SUGGESTED ANSWER:

YES. There was a strike. What the union engaged in was actually a "work stoppage" in the guise of a protest rally.

Article 212(o) of the Labor Code defines strike as a temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. The fact that the conventional term

"strike" was not used by the striking employees to describe their common course of action is inconsequential. What is controlling is the substance of the situation, and not its appearance. The term "strike" encompasses not only concerted work stoppages, but also slowdowns, mass leaves, sit-downs, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities (Santa Rosa Coca-Cola Plant Employees Union, Donrico v. Sebastian, et al. v. Coca-Cola Bottlers Phils., Inc., 512 SCRA 437 [2007]).

2. Who may declare a strike or lockout?

3. Requisites for a valid strike

Q: A sympathetic strike is stoppage of work to make common cause with other strikers in another establishment or business. Is the sympathetic strike valid? Explain your answer. (1%) (2017 Bar Question)

SUGGESTED ANSWER:

A sympathetic strike is not valid. It is illegal because the strikers have no direct grievance against their own employer; that is, no labor dispute exists between the strikers and the employer.

Q: Where there is a bargaining deadlock, who may file a notice of strike? (2011 BAR)

- (A) The majority members of the bargaining unit.
- (B) The recognized bargaining agent.
- (C) Any legitimate labor organization in the employer's business.
- (D) The majority members of the bargaining union.

Q: A is a member of the labor union duly recognized as the sole bargaining representative of his company. Due to a bargaining deadlock, 245 members of the 500-strong union voted on March 13, 2010 to stage a strike. A notice of strike was submitted to the National Conciliation and Mediation Board on March 16, 2010. Seven days later or on March 23, 2010, the workers staged a strike in the course of which A had to leave and go to the hospital where his wife had just delivered a baby. The union members later intimidated and barred other employees from entering the work premises, thus paralyzing the business operations of the company.

A was dismissed from employment as a consequence of the strike. (2010 Bar Question)

SUGGESTED ANSWER:

NO. The strike was not legal due to the union's failure to satisfy the required majority vote of union membership (251 votes), approving the conduct of a strike (See Art. 263(f), Labor Code; Section 11, Rule XXII, Dept. Order No. 40-03).

Also, the strike was illegal due to the non-observance of the 30-day cooling off period by the union (Art. 263(c), Labor Code). rights of employees to self-organization (Club Filipino, Inc. v. Bautista, 592 SCRA 471 [2009]).

Q: On the first day of collective bargaining negotiations between rank-and-file Union A and B Bus Company, the former proposed a P45/day increase. The company insisted that ground rules for negotiations should first be established, to which the union agreed. After agreeing on ground rules on the second day, the union representatives reiterated their proposal for a wage increase. When company representatives suggested a discussion of political provisions in the Collective Bargaining Agreement as stipulated in the ground rules, union members went on mass leave the next day to participate in a whole-day prayer rally in front of the company building.

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B. The Union contended that assuming that the mass leave will be considered as a strike, the same was valid because of the refusal of the company to discuss the economic provisions of the CBA. Rule on the contention. (2%)

SUGGESTED ANSWER:

The Union's contention is wrong. A strike may be declared only in cases of deadlock in collective bargaining negotiations and unfair labor practice (Article 263(c), Labor Code; Section 1, Rule V, NCMB Manual of Procedures).

The proposal of the company to discuss political provisions pursuant to the ground rules agreed upon does not automatically mean that the company refuses to discuss the economic provisions of the CBA, or that the company was engaged in "surface bargaining" in violation of its duty to bargain, absent any showing that such tend to show that the company did not want to reach an agreement with the Union. In fact, there is no deadlock to speak of in this case.

The duty to bargain does not compel either party to agree to a proposal or require the making of a concession. The parties failure to agree which to discuss first on the bargaining table did not amount to ULP for violation of the duty to bargain.

Besides, the mass leave conducted by the union members failed to comply with the procedural requirements for a valid strike under the Rules, without which, the strike conducted taints of illegality.

C. Union member AA, a pastor who headed the prayer rally, was served a notice of termination by management after it filed the petition for assumption of jurisdiction. May the company validly terminate AA? Explain. (2%)

SUGGESTED ANSWER:

NO. The company cannot terminate AA because the Labor Code provides mere participation of a worker in a strike shall not constitute sufficient ground for termination of his employment.

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 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:

- d. 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:

b. 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).
- (D) 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

Q: Asia Union (Union) is the certified bargaining agent of the rank-and-file employees of Asia Pacific Hotel (Hotel).

The Union submitted its Collective Bargaining Agreement (CBA) negotiation proposals to the Hotel. Due to the bargaining deadlock, the Union, on December 20, 2014, filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB). Consequently, the Union conducted a Strike Vote on January 14, 2015, when it was approved.

The next day, waiters who are members of the Union came out of the Union office sporting closely cropped hair or cleanly shaven heads. The next day, all the male Union members came to work sporting the same hair style. The Hotel prevented these workers from entering the premises, claiming that they violated the company rule on Grooming Standards.

On January 16, 2015, the Union subsequently staged a picket outside the Hotel premises and prevented other workers from entering the Hotel. The Union members blocked the ingress and egress of customers and employees to the Hotel premises, which caused the Hotel severe lack of manpower and forced the Hotel to temporarily cease operations resulting to substantial losses.

On January 20, 2015, the Hotel issued notices to Union members, preventively suspending them and charging them with the following offenses:

(1) illegal picket; (2) violation of the company rule on Grooming Standards; (3) illegal strike; and (4) commission of illegal acts during the illegal strike. The Hotel later terminated the Union officials and members who participated in the strike. The Union denied it engaged in an illegal strike and countered that the Hotel committed an unfair labor practice (ULP) and a breach of the freedom of speech.

[a] Was the picket legal? Was the mass action of the Union officials and members an illegal strike? Explain. (2016)

SUGGESTED ANSWER:

The picket was illegal. The right to picket as a means of communicating the facts of a labor dispute is a phase of freedom of speech guaranteed by the constitution (*De Leon v. National Labor Union* 100 Phil 789 [1957]). But this right is not absolute. Article 278 of the Labor Code provides that no person engaged in picketing shall ... obstruct the free ingress to or egress from the employer's premises for lawful purposes or obstruct public thoroughfares. The acts of the union members in blocking the entrance and exit of the hotel which caused it to shut down temporarily makes the picket illegal.

The actions of all the union members in cropping or shaving their head is deemed an illegal strike. In *National Union of Workers in the Hotel Restaurant and Allied Industries (NUWHRAINAPL-IUF) Dusit Hotel Nikko Chapter v. Court of Appeals*, G.R. No. 163942 November 11 2008, the Supreme Court ruled that the act of the Union was not merely an expression of their grievance or displeasure but was, indeed, a calibrated and calculated act designed to inflict serious damage to the hotel's grooming standards which resulted in the temporary cessation and disruption of the hotel's operations. This should be considered as an illegal strike.

ALTERNATIVE ANSWER:

As regards the shaving of heads by the union members, their mass action was not an illegal strike. It was the Hotel administration which prevented them from entering the hotel premises.

[b] Rule on the allegations of ULP and violation of freedom of speech. Explain.

SUGGESTED ANSWER:

The Hotel is not guilty of ULP. The act of the hotel in suspending and eventually dismissing the union officers who concertedly antagonized and embarrassed the hotel management and, in doing so, effectively disrupted the operations of the hotel, is an act of self-preservation. The law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer. The right of the employer to dismiss its erring employees is a measure of self-protection (*Filipro v. NLRC*, G.R. No. 70546, October 16, 1966). The power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate its business (*Philippine Singapore Transport Service v. NLRC*, G.R. No. 95449 [1997]).

It cannot be said that the hotel is guilty of violating the union member's right to freedom of speech. The right to freedom of expression is not absolute; it is subject to regulation so that it may not be injurious to the right of another or to society. As discussed, the union member's act of cropping or shaving their heads caused substantial losses to the hotel

caused by the cessation of its operations. The Supreme Court in one case held that the union's violation of the hotel grooming standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the hotel and was, therefore, not a protected action. The physical appearance of the hotel employees directly reflect the character and well-being of the hotel, being a five-star hotel that provides service to topnotch clients.

ALTERNATIVE ANSWER:

Yes. The Hotel is guilty of Unfair Labor Practice under Art. 259 of the Labor Code, specifically Art. 259 (1) To interfere with, restrain or coerce employees in the exercise of their right to self-organization. The act of the Hotel in preventing the employees from entering the work premises constitutes this unfair labor practice.

Q: Following a deadlock in collective bargaining, the AC- AC Labor Union filed a notice of strike with the Department of Labor and Employment and, thirty (30) days later, went on strike and picketed the gates of the UP-UP Company, paralyzing its operations. The company is engaged in telecommunications, including the supply of cellular phone equipment, with a nationwide network of facilities. In a petition with the DOLE, the company questioned the legality of the strike and asked for compulsory arbitration. The Secretary of the DOLE certified the dispute to the NLRC for compulsory arbitration and ordered the company to readmit the workers pending the arbitration. The workers returned and were readmitted by the company but five (5) technicians were temporarily reassigned to the warehouse while five (5) others were reinstated on payroll only. The company justified its acts as an exercise of management prerogative.

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x x
x x

During the strike, may the striking union picket the company's outside outlets although they are not company- owned but independent dealers? Was there a valid strike?

SUGGESTED ANSWER:

The strike is not valid.

It is true that the Labor Code provides that if an employer violates a collective bargaining agreement, the said employer commits an unfair labor practice act, which in turn is a legal ground for a strike.

But Rep. Act No. 6715 amended the Labor Code by providing that violations of a collective bargaining agreement, except those which are gross in character shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement. The violation involved in the question is not a gross violation because there is no "flagrant and/or malicious refusal to comply with the economic provisions of such agreement which is how the Code defines a gross violation of a collective bargaining agreement.

SUGGESTED ANSWER:

Peaceful picketing conducted by employees in a strike area during any labor controversy is given protection by the Labor Code.

Thus, if the place being picketed is a strike area which is defined by the Labor Code as "the establishment, warehouses, depots, plants or offices, including the sites or premises used as runaway shops, of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exit from said establishment," then the picketing is protected, if it is peaceful.

In the question given, however, since the striking union is picketing the company's outside outlets who are not company owned but independent dealers, the picketing is not in a strike area, thus the picketing is not protected by the Code.

6. Assumption of jurisdiction by the DOLE Secretary or Certification of the labor dispute to the NLRC for compulsory arbitration

Q: Calabarzon Transportation Company (CTC) and the Calabarzon Workers Union (CWU) are parties to a collective bargaining agreement (CBA), which is effective until December 31, 1992. The CBA provides for among others, a bipartite committee composed of CTC and CWU representatives to evaluate all positions in the CTC and determine adjustment of wages and allowances. The Committee members having failed to agree on the adjustments, the CWU filed a notice of strike. Conciliation efforts by the National Conciliation and Mediation Board failed. The CWU then declared a strike. The Secretary of Labor and Employment assumed jurisdiction over the dispute and after proceedings issued an order (a) awarding certain monetary benefits to the strikers, (b) declaring the strike legal on the ground that CWU complied with all the requirements for a valid strike, and (c) restraining CTC from taking retaliatory actions against the officers and members of CWU who were responsible for the strike.

a) **As lawyer for CTC what action should you take?**

SUGGESTED ANSWER:

As lawyer of CTC, I will first file with the Secretary of Labor and Employment a Motion for Reconsideration. If this Motion is denied, then I will file with the Supreme Court a petition

for certiorari under Rule 65 of the Rules of Court. I will assail the issuance by the Secretary of Labor of his Order, and his refusal to reconsider said Order as a grave abuse of discretion amounting to lack or excess of jurisdiction.

b) **Was the assumption of the labor dispute by the Secretary of Labor and Employment valid?**

SUGGESTED ANSWER:

It is valid. Under the Labor Code, (in Article 263 (g)) the Secretary of Labor has the power to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest. CTC, as a transportation Company, is in an industry indispensable to the national interest.

c) **Was the Secretary's order granting monetary benefits, declaring the strike of CWU legal and restraining the CTC from penalizing CWU members valid? Reasons.**

SUGGESTED ANSWER:

The Secretary's order declaring the strike of CWU legal and restraining the CTC from penalizing CWU members on the basis of the finding of the Secretary that the strike is legal, is illegal. He is acting in excess of his jurisdiction. It is a Labor Arbiter, not the Secretary of Labor, that has the jurisdiction to determine the legality of a strike. (Article 217. Labor Code. *Philippine Airlines, Inc. vs. Secretary of Labor and Employment et al.*, 193 SCRA 223) but in *International Pharmaceuticals vs. Secretary of Labor*, 205 SCRA 65, (Jan. 9, 1992), the Supreme Court that the Secretary of Labor, when he assumes jurisdiction under Article 263(g) of the Labor Code could deal with all the incident of the labor dispute including the issue as to whether or not a strike is legal.

The Secretary's Order granting monetary benefits is valid. When the Secretary assumed jurisdiction over the labor disputes, he assumed such jurisdiction for compulsory arbitration, meaning, he could thereby determine the monetary benefits that CTC and CWU cannot agree about.

Q: Following a deadlock in collective bargaining, the AC- AC Labor Union filed a notice of strike with the Department of Labor and Employment and, thirty (30) days later, went on strike and picketed the gates of the UP-UP Company, paralyzing its operations. The company is engaged in telecommunications, including the supply of cellular phone equipment, with a nationwide network of facilities. In a petition with the DOLE, the company questioned the legality of the strike and asked for compulsory arbitration. The Secretary of the DOLE certified the dispute to the NLRC for compulsory arbitration and ordered the company to readmit the workers pending the arbitration. The workers returned and were readmitted by the company but five (5) technicians were temporarily reassigned to the warehouse while five (5) others were reinstated on payroll only. The company justified its acts as an exercise of management prerogative.

b) **Was the certification of the dispute for compulsory arbitration proper?**

SUGGESTED ANSWER:

The certification of the dispute for compulsory arbitration was proper.

The dispute was causing a strike in an industry indispensable to the national interest. The company was engaged in telecommunication including the supply of cellular equipment, with a nationwide network of facilities. All these activities are at present indispensable to the national interest.

c) **Were the temporary reassignment and payroll reinstatement valid?**

SUGGESTED ANSWER:

No. The temporary re-assignment and payroll reinstatement are not valid. According to the Labor Code, when the Secretary of Labor assumes Jurisdiction, such assumption has the effect of automatically enjoining the strike that is taking place and all striking employees shall immediately return to work as the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strikes.

ALTERNATIVE ANSWER:

The temporary re-assignment and payroll reinstatement are valid, if they are made in good faith, and are not for the purpose of discouraging membership in the union. It is the prerogative of the management to assign its employees to where the management believes their services could be best utilized. As for the payroll reinstatement, it is valid if there is a valid reason to prevent the workers placed or payroll reinstatement from actually returning to work, like a valid fear that they will sabotage equipment in the company,

Q: Several employees and members of Union A were terminated by Western Phone Co. on the ground of redundancy. After complying with the necessary requirements, the Union staged a strike and picketed the premises of the company. The management then filed a petition for the Secretary of Labor and Employment to assume jurisdiction over the dispute. Without the benefit of a hearing, the Secretary issued an Order to assume jurisdiction and for the parties to revert to the status quo ante litem. (2010 Bar Question)

A. Was the order to assume jurisdiction legal? Explain. (2%)

SUGGESTED ANSWER:

YES. The Secretary of Labor and Employment has plenary power to assume jurisdiction under Article 263(g) of the Labor Code. When in his opinion, there exists a labor dispute

causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor may assume jurisdiction over the dispute and decide it or certify it to the NLRC for compulsory arbitration (Art. 263[g], Labor Code). This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests (*Steel Corporation v. SCP Employees Union*, 551 SCRA 594 [2008]). Such assumption shall have the effect of automatically enjoining an impending strike or lockout, or an order directing immediate return to work and resume operations, if a strike already took place, and for the employer to re-admit all employees under the same terms and conditions prevailing before the strike or lockout (Art. 263(g), Labor Code; Sec. 15, Rule XXII, Dept. Order No. 40-G-03).

7. Nature of assumption order or certification order

Q: In a labor dispute, the Secretary of Labor issued an "Assumption Order". Give the legal implications of such an order.

SUGGESTED ANSWER:

Under Art. 263(g) of the Labor Code, such assumption shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption order. If one had already taken place at the time of assumption, all striking or lockout employees shall immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. The mere issuance of an assumption order by the Secretary of Labor automatically carries with it a return-to-work order, even if the directive to return to work is not expressly stated in the assumption order. Those who violate the foregoing shall be subject to disciplinary action or even criminal prosecution.

Under Art. 264 of the Labor Code, no strike or lockout shall be declared after the assumption of jurisdiction by the Secretary.

Q: Several employees and members of Union A were terminated by Western Phone Co. on the ground of redundancy. After complying with the necessary requirements, the Union staged a strike and picketed the premises of the company. The management then filed a petition for the Secretary of Labor and Employment to assume jurisdiction over the dispute. Without the benefit of a hearing, the Secretary issued an Order to assume jurisdiction and for the parties to revert to the status quo ante litem. (2010 Bar Question)

A. x x x

B. Under the same set of facts the Secretary instead issued an Order directing all striking workers to return to work within 24 hours, except those who were terminated due to redundancy. Was the Order legal? Explain. (3%)

SUGGESTED ANSWER:

NO. The Secretary of Labor's order will be inconsistent with the established policy of the State of enjoining the parties from performing acts that undermine the underlying principles embodied in Article 263(g) of the Labor Code.

In this case, excepting the employees terminated due to redundancy from those who are required to return- to-work, which was the very labor dispute that sparked the union to strike, the Secretary of Labor comes short of his duty under Article 263(g) to maintain status quo or the terms and conditions prevailing before the strike. In fact, the Secretary could be accused of disposing of the parties' labor dispute without the benefit of a hearing, in clear derogation of due process of law.

8. Effect of defiance of assumption or certification orders

Q: The Secretary of Labor assumed jurisdiction over a strike under Art. 263(g) of the Labor Code and issued a return-to-work order. The Union defied the return-to-work order and continued the strike. The Company proceeded to declare all those who participated in the strike as having lost their employment status.

- 1) **Was the Company's action valid?**
- 2) **Was the Company still duty bound to observe the requirements of due process before declaring those who participated in the strike as having lost their employment status?**

SUGGESTED ANSWER:

1) The Company's action is valid. Any declaration of a strike after the Secretary of Labor has assumed jurisdiction over a labor dispute is considered an illegal act. and any worker or union officer who knowingly participates in a strike defying a return-to-work order may consequently be declared to have lost his employment status and forfeited his right to be readmitted, having abandoned his position, and so could be validly replaced.

For the moment a worker defies a return-to-work order, he is deemed to have abandoned his job, as it is already in itself knowingly participating in an illegal act, otherwise the worker will simply refuse to return to his work and cause a standstill in company operations while returning the position he refuses to discharge or allow management to fill. (SL Scholastica's College vs. Hon. Ruben Torres, Secretary of Labor, et al., G.R. No. 100158, 29 June 1992.)

2) Considering that the workers who defied the return-to-work order are deemed to have abandoned their employment, the only obligation required of an employer is to serve notices declaring them to have lost their employment status at the worker's last known address. (Sec. 2 Rule XIV, Book V, Rules Implementing the Labor Code)

9. Illegal strike

a) Liability of union officers

b) Liability of ordinary workers

Q: Due to business recession, Ballistic Company retrenched a part of its workforce. Opposing the retrenchment, some of the affected employees staged a strike. Eventually, the retrenchment was found to be justified, and the strike was declared illegal; hence, the leaders of the strike, including the retrenched employees, were declared to have lost their employment status.

Are the striking retrenched employees still entitled to separation pay under Sec. 298 (283) of the *Labor Code* despite the illegality of their strike? Explain your answer. (2%) (2017 Bar Question)

SUGGESTED ANSWER:

No. The Supreme Court has ruled if the strike staged by the union is declared illegal, the union officers and members are considered validly dismissed from employment for committing illegal acts during the illegal strike. The striking retrenched union officials and members who were found guilty of having staged an illegal strike, which constituted serious misconduct, will not be entitled to separation pay (C. Alcantara & sons, Inc. v. Court of Appeals, G.R. No. 155109, March 14, 2012, 631 SCRA 486; citing Toyota Motors Phils. Corp. Workers Association v. NLRC, G.R. No. 158786 & 158789, October 19, 2007, 537 SCRA 171).

ALTERNATIVE ANSWER:

Yes. Article 298 (283) of the Labor Code requires an employer to give, without qualification, separation pay in cases of retrenchment. The law does not make a distinction as to which among the retrenched employees are entitled to receive separation pay; thus, the striking retrenched employees are still entitled to separation pay despite the illegality of their strike.

Q: Given that the liability for an illegal strike is individual, not collective, state when the participating union officers and members may be terminated from employment because of the illegal strike. Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

When a strike is declared illegal because of non-compliance with statutory or contractual requirements or because of the use of unlawful means, the consequence is loss of employment status of the officers of the union who knowingly participated in the illegal strike.

Ordinary union members will lose their employment status only if they participated in the commission of illegal acts during the strike, thus, mere union membership does not result in automatic loss of employment as a result of an illegal strike (Article 263-264 [now Articles 278-2791 of the Labor code; Pepsi-Cola Labor Union v. NLRC, G.R. No. L-58341, June 29, 1982, 114 SCRA 930; Solidbank corp. v. Solidbank Union, G.R. No. 159461, November 15, 2010, 634 SCRA 554).

Q: Union A filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment. Upon a motion to dismiss by the Company on the ground that the acts complained of in the notice of strike are non-strikeable the NCMB dismissed the Notice of Strike but continued to mediate the issues contained therein to prevent the escalation of the dispute between the parties. While the NCMB was conducting mediation proceedings, the Union proceeded to conduct a strike vote as provided for under the Labor Code. After observance of the procedural processes required under the Code, the Union declared a strike.

- 1) Is the strike legal?
- 2) Can the employer unilaterally declare those who participated in the strike as having lost their employment status?
- 3) What recourse do these employees (declared by the employer to have lost their employment status) have, if any?

SUGGESTED ANSWER:

1) No. The strike is not legal. The Labor Code provides that no labor organization shall declare a strike without first having bargained collectively in accordance with its Title VII of Book V, which in turn provides that during conciliation proceedings at the NCMB. the parties are prohibited from doing any act that may disrupt or impede the early settlement of the dispute. (Arts. 264(a), also 250(d); Labor Code)

ALTERNATIVE ANSWER:

a) The strike is not legal, considering that it was declared after the NCMB dismissed the Notice of Strike.

Hence, it is as if, no notice of strike was filed. A strike declared without a notice of strike is illegal; (GOP-CCP vs. CIR, 93 SCRA 118).

b) No. The strike is illegal. It is already settled in the case of PAL vs. Secretary of Labor (Drilon) that the pendency of a mediation proceedings is a bar to the staging of a strike even if all the procedural requirements were complied with,

2) The employer may unilaterally declare those who participated in the strike as having lost their employment status but such unilateral declaration does not necessarily mean that thereby the strikers are legally dismissed. The strikers could still file a case of illegal dismissal and prove, if they can, that there was no just cause for their dismissal.

ALTERNATIVE ANSWER:

a) The employer cannot unilaterally declare those who participated in the illegal strike as having lost their employment status. Only the union officers who knowingly participated in the strike and workers who knowingly participated in the commission of illegal acts, if any, may be declared to have lost their employment status. (Art. 264).

b) The employer has two options:

i) It may declare the strikers as having lost their employment status pursuant to Art. 264 of the Labor Code, or

ii) It may file a case before the Labor Arbiter, under Art. 217. to have the strike declared illegal and after that proceed to terminate the strikers.

3) They could file a case of illegal dismissal. The strikers who are union officers may contend that the strike is not illegal. The strikers who are mere union members may contend that they did not commit any illegal acts during the strike. (Art. 264, Labor Code)

c) Liability of employer

10. Injunctions (Requisites for labor injunctions, “Innocent bystander rule”)

Q: A food processing company (the Company) engaged the services of duly licensed independent contractors in connection with the operation of its business. The contractors deployed workers in the Company. The contractors’ workers joined ABC the union of rank-and-file employees of the Company, and later demanded that they be made regular employees because they are performing functions necessary and desirable in the usual business of the Company. The Company questioned the contractors’ workers joining ABC and rejected their demand for regularization. ABC filed a notice of strike with the Department of Labor and Employment. In a petition filed with the Regional Trial Court, the Company asked the court to enjoin ABC and the contractors’ workers from declaring a strike, asserting that the workers are not employees of the Company and that there is no

labor dispute between the workers and the Company as its agreement is only with the contractors.

As trial judge, will you issue an injunction against ABC and the workers? Explain.

SUGGESTED ANSWER:

As trial judge, I will not issue an injunction against ABC and the workers.

The acts of ABC and the workers, namely, the workers joining ABC said workers demanding that they be made regular employees, ABC filing a notice of strike with the Department of Labor and Employment, all these acts brought about a labor dispute which is not within the jurisdiction of the Regional Trial Court.

The fact that the Company is asserting that the workers are not employees of the Company does not make the case between the Company, on one hand, and ABC and the workers, on the other hand, not a labor dispute. The truth or falsity of the assertion of the Company is a matter that is within a Labor Arbiter, not a Regional Trial Court. to decide. (San Miguel Corp. Employees Union-PTGWO-vs. Bersamina, 186 SCRA 496)

If an injunction is proper, it is the National Labor Relations Commission that can enjoin ABC and the workers from doing any unlawful act.

The Labor Code (in Article 254) is very clear: No temporary or permanent injunction or restraining order involving or growing out of a labor dispute shall be enjoined by any court or other entity except by the NLRC under Articles 218 and under 264.

VIII. Procedure and Jurisdiction

A. Labor Arbiter (Jurisdiction, Reinstatement pending appeal, Requirements to perfect appeal to NLRC)

Q: Marcel was the Vice President for Finance and Administration and a member of the Board of Directors of Mercedes Corporation. He brought a complaint for illegal suspension and illegal dismissal against Mercedes Corporation, which moved to dismiss the complaint on the ground that the complaint pertained to the jurisdiction of the RTC due to the controversy being intracorporate based on his positions in the corporation. Marcel countered that he had only been removed as Vice President for Finance and Administration, not as a member of the Board of Directors. He also argued that his position was not listed as among the corporate offices in Mercedes Corporation's by-laws. Is the argument of Marcel correct? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

Yes, Marcel's argument is correct. The question is whether the complaint for illegal dismissal filed by Marcel is intra-corporate and thus beyond the jurisdiction of the Labor Arbiter. Marcel as the Vice-President for Finance and Administration is not a corporate official. Although he is a member of the Board of Directors, he was not removed as such; he was removed only from his position as Vice-President. Inasmuch as the core issue is his termination as a non-corporate official, then Marcel's complaint for illegal dismissal is not an intra-corporate controversy (*Real v. Sangu Philippines, Inc. et al.*, G.R. No. 168757, January 19, 2011, 640 SCRA 67).

ALTERNATIVE ANSWER:

Yes, Marcel's argument is correct. Only corporate officers such as the president, secretary, treasurer, and such other officers as may be provided in the by-laws of the corporation are subject to the jurisdiction of the RTC. Corporate officers are those whose position is a creation of the corporate charter or by laws and whose election is by virtue of the acts of the Board of Directors (*Cosare v. BroadcomAsia, Inc.*, G.R. No. 201298, February 5, 2014, 715 SCRA 534).

Q: State the jurisdiction of the Voluntary Arbitrator, or Panel of Voluntary Arbitrators in labor disputes? (4%) (2017 Bar Question)

SUGGESTED ANSWER:

The jurisdiction of the Voluntary Arbitrator, or Panel of Voluntary Arbitrators in labor disputes is provided in Article 274 (formerly Article 261) of the Labor Code, viz: the Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant-and/or malicious refusal to comply with the economic provisions of such agreement.

ALTERNATIVE ANSWER:

Under Articles 274 and 275 of the Labor Code, as re-numbered, the jurisdiction of Voluntary Arbitrators or Panel of Voluntary Arbitrators are:

- (a) original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement (Article 274);

- (b) those arising from the interpretation or enforcement of company personnel policies (*Id.*);
- (c) upon agreement of the parties, jurisdiction to hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks (Article 275).

On August 01, 2008, Y, a corporation engaged in the manufacture of textile garments, entered into a collective bargaining agreement with Union X in representation of the rank and-file employees of the corporation. The CBA was effective up to June 20, 2011. The contract had an automatic renewal clause which would allow the agreement after its expiry date to still apply until both parties would have been able to execute a new agreement. On May 10, 2011, Union X submitted to Y's management their proposals for the negotiation of a new CBA. The next day, Y suspended negotiations with Union X since Y had entered into a merger with z, a corporation also engaged in the manufacture of textile garments. Z assumed all the assets and liabilities of Y. Union X filed a complaint with the Regional Trial Court for specific performance and damages with a prayer for preliminary injunction against Y and Z and Z filed a Motion to Dismiss based on lack of jurisdiction. Rule on the Motion to Dismiss. (5%) (2012 BAR)

Suggested Answer:

The Motion to Dismiss must be granted. The claim against Y and Z consists mainly of the civil aspect of the unfair labor practice charge referred to in Article 247 of the Labor Code. Under Article 247 of the Code, "the civil aspects of all cases involving unfair labor practices, which may include claims for damages and other affirmative relief, shall be under the jurisdiction of the labor arbiters." [National Union of Bank Employees vs. Lazaro G.R. No. 56431, January 19, 1988]. Besides, what the parties have is a labor dispute as defined in Art. 212 (1) of the Labor Code "regardless of whether the disputants stand in the proximate relation of employer and employee". Being so, the RTC is prohibited by Art. 254 of the Code from exercising jurisdiction over the cases.

Q: Pedring, Daniel, and Paul were employees of Delibakery who resigned from their jobs but wanted to file money claims for unpaid wages and 13th month pay. Pedring's claim totals P20,000.00, Daniel's P3,000.00, and Paul's P22,000.00. Daniel changed his mind and now also wants reinstatement because he resigned only upon the instigation of Pedring and Paul. Where should they file their claims? (2011 BAR)

- (A) With the DOLE regional director for Pedring and Paul's claims with no reinstatement; with the labor arbiter for Daniel's claim with reinstatement.

- (B) With the Office of the Regional Director of the Department of Labor for all claims to avoid multiplicity of suits.
- (C) With a labor arbiter for all three complainants.
- (D) With the DOLE Regional Director provided they are consolidated for expediency.

Q: Quiel, a househelper in the Wilson household since 2006, resigned from his job for several reasons. One reason was the daily 12-hour workday without any rest day. When he left his job he had unpaid wages totaling P13,500.00 which his employer refused to pay. He wants to claim this amount though he is not interested in getting back his job. Where should he file his claim? (2011 BAR)

- (A) He should file his claim with the DSWD, which will eventually endorse it to the right agency.
- (B) Since he has no interest in reinstatement, he can file his claim with the office of the regional director of the Department of Labor.
- (C) He should file his claim exceeding P5,000.00 with the office of the labor arbiters, the regional arbitrators representing the NLRC.
- (D) He should go to the Employee's Compensation Commission.

Q: As the lawyer of Mr. Excelente, state the nature of your action or complaint to be filed against the university, the proper body or court before which it may be filed, the laws to be invoked, and the facts or evidence to be adduced.

SUGGESTED ANSWER:

As lawyer of Mr. Excelente, I will file a complaint questioning the legality of his dismissal.

I will file the complaint with the Labor Arbiter in the Regional Arbitration Branch of the NLRC having jurisdiction over the place where Mr. Excelente works.

I will invoke the provisions of the Labor Code which are found in its Book VI that guarantee the right of workers to security of tenure.

I will adduce facts or evidence that will disprove the allegations of the University President that have been given as reasons for dismissing Mr. Excelente. The fact that he had served the University for twenty five years, was well known in his field and has received many awards should disprove the allegation of gross incompetence. I will content that the alteration over teaching loads of professors is not tantamount to insubordination and dereliction of duty.

a) May the University President be impleaded as co-respondent? If so, what will be the nature of his liability?

SUGGESTED ANSWER:

The University President may not be impleaded if his acts in connection with the termination of Mr. Excelente were official.

But he may be pleaded if he acted without or in excess of his authority or was motivated by personal ill will towards Mr. Excelente. If he is thus impleaded, the University President shall be personally liable for the payment of back wages and damages, if any that Mr. Excelente will be entitled to receive if it is found that he has been unjustly dismissed.

Q: A was dismissed from the service by his employer for theft of goods owned by the company. He was also prosecuted for theft before the Regional Trial Court of Pasay City. Meanwhile, A filed a complaint for illegal dismissal against the employer before the labor arbiter. The trial court subsequently acquitted A and ordered his reinstatement with backwages from the time of his separation to the date of his actual reinstatement.

- (1) **Is the decision of the court correct? State your reasons.**
- (2) **Even with such acquittal, may the labor arbiter still proceed to resolve the complaint for illegal dismissal filed by A? State your reasons.**

SUGGESTED ANSWER:

- (1) The decision of the court is not entirely correct.

It is within the jurisdiction of the Regional Trial Court to acquit A. As a regular court, the RTC has jurisdiction over criminal cases. But it is outside of the jurisdiction of the RTC to order the reinstatement of A with backwages. A termination dispute, which could give rise to a decision for the reinstatement of an illegally dismissed employee and the payment of his backwages is outside the jurisdiction of the RTC. It is within the original and exclusive jurisdiction of labor arbiters. (Art. 217, Labor Code).

- (2) Even with A's acquittal, the labor arbiter should still proceed to resolve the complaint for illegal dismissal filed by A. An action for illegal dismissal is entirely separate and distinct from a criminal action. (Pepsi Cola Bottling Company of the Philippines vs. Guanzon, G.R. No. 81162, April 19, 1989).

In many decisions, the Supreme Court has ruled that the acquittal of an employee in a criminal case does not mean that there could be no basis for legally dismissing the employee for, say, willful breach of trust, which is a just cause for termination. Conviction in a criminal case requires proof beyond reasonable doubt. In a termination dispute, it is enough that there is substantial evidence to prove that there has been willful breach of trust.

Q: Richie, a driver-mechanic, was recruited by Supreme Recruiters (SR) and its principal, Mideast Recruitment Agency (MRA), to work in Qatar for a period of two (2) years.

However, soon after the contract was approved by POEA, MRA advised SR to forego Richie's deployment because it had already hired another Filipino driver-mechanic, who had just completed his contract in Qatar. Aggrieved, Richie filed with the NLRC a complaint against SR and MRA for damages corresponding to his two years' salary under the POEA- approved contract.

SR and MRA traversed Richie's complaint, raising the following arguments:

[a] The Labor Arbiter has no jurisdiction over the case; (2%) (2009 Bar Question)

x x
x x
x x

Rule on the validity of the foregoing arguments with reasons.

SUGGESTED ANSWER:

The Labor Arbiter has jurisdiction. Sec. 10, R.A. No. 8042, reads:

"Money Claims.- Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages."

ANOTHER SUGGESTED ANSWER:

The Labor Arbiter has no jurisdiction over the case. The failure to deploy a worker within the prescribed period without valid reason is a recruitment violation under the jurisdiction of the POEA.

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:

- c) 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.

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:

b. 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:

a) Labor Arbiter [Sec. 10, Art. 8042]

Requirements to perfect appeal to NLRC

Q: Filmore Corporation was ordered to pay P49 million to its employees by the Labor Arbiter. It interposed an appeal by filing a Notice of Appeal and paid the corresponding appeal fee. However, instead of filing the required appeal bond equivalent to the total amount of the monetary award, Filmore filed a Motion to Reduce the Appeal Bond to P4,000,000.00 but submitted a surety bond in the amount of P4.9 million. Filmore cited financial difficulties as justification for its

inability to post the appeal bond in full owing to the shutdown of its operations. It submitted its audited financial statements showing a loss of P40 million in the previous year. To show its good faith, Filmore also filed its Memorandum of Appeal.

The NLRC dismissed the appeal for non-perfection on the ground that posting of an appeal bond equivalent to the monetary award is indispensable for the perfection of the appeal and the reduction of the appeal bond, absent any showing of meritorious ground to justify the same, is not warranted. Is the dismissal of the appeal correct? Explain. (2016)

SUGGESTED ANSWER:

No. In *McBurnie v. Ganzon* (G.R. Nos. 178034, 186984-85, October 2013), NLRC made a serious error in denying outright the motion to reduce the bond. Once the motion to reduce the appeal bond is accompanied by at least 10% of the monetary awards, excluding damages and attorney's fees, the same shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.

The NLRC must resolve the motion and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of meritorious grounds and reasonable amount. Should the NLRC later determine that a greater amount or the full amount of the bond needs to be posted by the appellant, then the party shall comply accordingly. The appellant has ten (10) days from notice of the NLRC order to perfect the appeal by posting the required appeal bond.

Q: In cases involving monetary award, why does the law require an employer to post a cash or surety bond as an indispensable condition for the perfection of an appeal?

SUGGESTED ANSWER:

An appeal stays the execution of a decision or award. Such decision or award could be in the form of a monetary award made in favor of an employee. Thus, an appeal will mean that a monetary award will not be executed. To ensure that an appealed monetary award will be paid to the employee once such monetary award is affirmed and has become final and executory, the Labor Code requires that the appeal by an employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company

duly accredited by the NLRC in the amount equivalent to the monetary award in the judgment appealed from. (Art. 223, Labor Code)

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:

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

Q: 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)].

a) versus Regional Director

Q: The Secretary of Labor and Employment or his duly authorized representative, including labor regulations officers, shall have access to employer's records and premises during work hours. Why is this statement an inaccurate statement of the law? (2011 BAR)

- (A) Because the power to inspect applies only to employer records, not to the premises.
- (B) Because only the Secretary of Labor and Employment has the power to inspect, and such power cannot be delegated.
- (C) Because the law allows inspection anytime of the day or night, not only during work hours.
- (D) Because the power to inspect is already delegated to the DOLE regional directors, not to labor regulations officers.

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: Jim is the holder of a certificate of public convenience for a jeepney. He entered into a contract of lease with Nick, whereby they agreed that the lease period is for one (1) year unless sooner terminated by Jim for any of the causes laid down in the contract. The rental is thirty thousand pesos (P30,000.00) monthly. All the expenses for the repair of the jeepney, together with expenses for diesel, oil and service, shall be for the account of Nick. Nick is required to make a deposit of three (3) months to answer for the restoration of the vehicle to its good operating

condition when the contract ends. It is stipulated that Nick is not an employee of Jim and he holds the latter free and harmless from all suits or claims which may arise from the implementation of the contract. Nick has the right to use the jeepney at any hour of the day provided it is operated on the approved line of operation.

After five (5) months of the lease and payment of the rentals, Nick became delinquent in the payment of the rentals for two (2) months. Jim, as authorized by the contract, sent a letter of demand rescinding the contract and asked for the arrearages. Nick responded by filing a complaint with the NLRC for illegal dismissal, claiming that the contract is illegal and he was just forced by Jim to sign it so he can drive. He claims he is really a driver of Jim on a boundary system and the reason he was removed is because he failed to pay the complete daily boundary of one thousand (P1,000.00) for 2 months due to the increase in the number of tricycles.

[a] Jim files a motion to dismiss the NLRC case on the ground that the regular court has jurisdiction since the agreement is a lease contract. Rule on the motion and explain. (2016)

SUGGESTED ANSWER:

Jim's Motion to Dismiss must be denied. Although Jim and Nick called their contract as a lease, it is actually a contract of employment, and the rentals that Nick must pay to Jim is actually a boundary. *Martinez v. National Labor Relations Commission* (G.R. No. 117495, May 29, 1997) teaches that jeepney owners/operators exercise control over jeepney drivers. The fact that the drivers do not receive fixed wages but get only that in excess of the so-called boundary they pay to the owner/operator does not affect the existence of employer-employee relationship. Nick was engaged by Jim to perform activities which were usually necessary or desirable to the business or trade of Jim which makes him the employer of Nick.

[b] Assuming that Nick is an employee of Jim, was Nick validly dismissed?

SUGGESTED ANSWER:

Yes. For failing to remit five (5) months worth of boundary, Nick apparently committed fraud against Jim. In *Cosmos Bottling Corporation v. Fermin*, G.R. No. 193676 and *Fermin v. Cosmos Bottling Corporation*, (G.R. No. 194303, 20 June 2012), it was ruled that theft committed against a co-employee is considered as a case analogous to serious misconduct, for which the penalty of dismissal from service may be meted out to the erring employee.

Q: What matters may be taken up by the National Labor Relations Commission (NLRC) En Banc?

SUGGESTED ANSWER:

The NLRC shall sit en banc only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches and formulating policies affecting its administration and operations. (Art. 213, Labor Code)

Q: Mr. Esto Pido is employed as a medical representative of Taypa Laboratories. By nature of his work, he was allowed to avail of the company's car loan policy whereby the company advanced the purchase price of the car to be paid back by the employee through monthly deductions from his salary with the company retaining the ownership of the motor vehicle until it shall have been fully paid.

Six months after the availment by Mr. Esto Pido of Taypa Laboratories' car loan policy, he was dismissed from the service for having participated in an illegal strike. In the Notice of Dismissal sent to him by his employer, he had been directed to either return the car to the company or settle the remaining balance of the cost of the car. Esto Pido filed an action against Taypa Laboratories for illegal dismissal before the Arbitration branch of the National Labor Relations Commission (NLRC). The Labor Arbiter, however, upheld the legality of his dismissal hence he appealed his case before the NLRC.

In the meantime. Taypa Laboratories filed before the Regional Trial Court a civil suit to recover possession of the car which Esto Pido refused to return and/or settle the remaining balance. The RTC thereafter directed the Deputy Sheriff to take into his custody the motor vehicle from Esto Pido.

To counter the order of the RTC, Esto Pido sought a temporary restraining order in the NLRC to stop the Taypa Laboratories from collecting their monthly amortization pending final resolution of his appeal in the illegal dismissal case. According to him, had he not been dismissed he would not have defaulted in his amortization. NLRC granted the relief prayed for by Esto Pido by restraining Taypa Laboratories from collecting the monthly amortization pending resolution by the NLRC of the illegal dismissal case. Taypa Laboratories filed a Petition for Certiorari alleging that

NLRC gravely abused its discretion in issuing the temporary restraining order. NLRC argues that it has the power to issue an injunction based on Art. 218 of the Labor Code. Decide the controversy with reason.

SUGGESTED ANSWER:

NLRC has no power to issue the injunction.

The powers of NLRC enumerated in Art. 218 of the Labor Code are powers that it could exercise only in connection with labor disputes.

The case involving the contract on the car loan entered into by Taypa Laboratories and Esto Pido is not a labor dispute. It is properly under the exclusive jurisdiction of the RTC. Thus, the NLRC has no power to issue the temporary restraining order that it issued.

Q: May the NLRC or the courts take jurisdictional cognizance over compromise agreements/ settlements involving labor matters?

SUGGESTED ANSWER:

No. Any compromise agreement, including those involving labor standards laws, voluntary agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation, or coercion. (Art. 227, Labor Code)

Q: Jose Lovina had been member of the board of directors and Executive Vice President of San Jose Corporation for 12 years. In 2008, the San Jose stockholders did not elect him to the board of directors nor did the board reappoint him as Executive Vice President. He filed an illegal dismissal complaint with a Labor Arbiter. Contending that the Labor Arbiter had no jurisdiction over the case since Lovina was not an employee, the company filed a motion to dismiss. Should the motion be granted? (2011 BAR)

- (A) No, the Labor Arbiter has jurisdiction over all termination disputes.
- (B) Yes, it is the NLRC that has jurisdiction over disputes involving corporate officers.
- (C) No, a motion to dismiss is a prohibited pleading under the NLRC Rules of Procedure.
- (D) Yes, jurisdiction lies with the regular courts since the complainant was a corporate officer.

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. Remedies

Q: An employee filed a complaint against his employer before the National Labor Relations Commission (NLRC). The labor arbiter decided the case in favor of the employee. The employer received a copy of the decision on April 10, 1984. April 20 being a Good Friday and the following Saturday having been declared a non-working public holiday by the President, the employer filed his appeal with the NLRC from the said decision on April 23, 1984.

- (1) **Was the appeal filed on time? Explain your reason.**
- (2) **Assuming the decision of the labor arbiter is affirmed by the NLRC. what is the recourse of the employer? State the nature of the action, the court which has jurisdiction over the action, and the period within which the same must be filed.**

SUGGESTED ANSWER:

(1) The appeal was filed on time. The Supreme Court has ruled that in the counting of the ten day period within which to file an appeal, if the tenth day is a holiday, then the appeal may be filed on the day after said holiday. But if the day after said holiday is also a non-working public holiday as in the case in the question, then the appeal cannot be filed because government offices are closed. The appeal could then be filed on the day after such non-working public holiday. But again, in the case, this day is a Sunday when government offices are also closed. Thus, the filing on the following Monday, April 23, is still within the ten-day period. (*Pacana v. National Labor Relations Commission, et al.*, G.R. No. 83513. April 18, 1989)

(2) According to the Labor Code (in Art. 223), in the exercise of its appellate jurisdiction over decisions of labor arbiters, a decision of the National Labor Relations Commission is final and executory after ten (10) calendar days from receipt thereof by the parties.

In view of the above provision, the employer in the case in the question who is aggrieved by the decision of the NLRC should file a petition for certiorari with the Supreme Court under Rule 65 of the Rules of Court within a reasonable period from receipt of the decision which is the subject of the petition for certiorari usually within 30 days. (*Pacana, op.cit*)

C. Bureau of Labor Relations – Med-Arbiters (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

Q: Distinguish the terms “conciliation,” “mediation” and “arbitration”. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

There is a DOLE official called a “Conciliator Mediator”. He is an officer of the NCMB whose principal function is to assist in the settlement and disposition of labor - management disputes through conciliation and preventive mediation. However, he does not promulgate decisions that settle controversies about rights, which are demandable and enforceable. The latter is called arbitration and is the function of a labor arbiter or a voluntary arbitrator.

ALTERNATIVE ANSWER:

(1) **CONCILIATION** is the process of dispute management whereby parties in dispute are brought together for the purpose of: (1) amicably settling the case upon a fair compromise; (2) determining the real parties in interest; (3) defining and simplifying the issues in the case; (4) entering into admissions or stipulations of facts; and (5) threshing out all other preliminary matters (Section 3, Rule V, 2005 NLRC Rules of Procedure). In resolving labor disputes, this comes before arbitration, as a mandatory process, pursuant to the State policy of promoting and emphasizing conciliation as modes of settling labor disputes (Art. 211 (A)(a), Labor Code).

(2) **MEDIATION** is a voluntary process of settling dispute whereby the parties elect a mediator to facilitate the communication and negotiation between the parties in dispute for the purpose of assisting them in reaching a compromise (Sec. 3(q), Rep. Act No. 9285 or the Alternative Dispute Resolution Law).

(3) **ARBITRATION** is a system of dispute settlement that may be compulsory or voluntary, whereby the parties are compelled by the government, or agree to submit their dispute before an arbiter, with the intention to accept the resolution of said arbiter over the dispute as final and binding on them (Luzon Development Bank v. Association of Luzon Development Employees, 249 SCRA 162 [1995]).

In this jurisdiction, compulsory arbitration in labor disputes are submitted to a labor arbiter, whose powers and functions are clearly defined under Article 217(a) of the Labor Code; whereas in voluntary arbitration, the powers and functions of the voluntary arbitrator or panel of voluntary arbitrators elected to resolve the parties' dispute involve the interpretation and implementation of the parties' collective bargaining agreement, pursuant to Articles 260-262 of the Labor Code.

E. DOLE Regional Directors

1. Jurisdiction

Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x
x x
x x
x x
x x
x x

[e] The visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standard laws can be exercised even when the individual claim exceeds P5,000.00. (2009 Bar Question)

SUGGESTED ANSWER:

True. The visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standards laws can be exercised even when the individual claims exceed P5,000.00 The authority under Article 128 may be exercised regardless of the monetary value involved. Under Article 129, however the authority is only for claims not exceeding P5,000.00 per claimant.

Q: Inggo is a drama talent hired on a per drama "participation basis" by DJN Radio Company. He worked from 8:00 a.m. until 5:00 p.m., six days a week, on a gross rate of P80.00 per script, earning an average of P20,000.00 per month. Inggo filed a complaint before the Department of Labor and Employment (DOLE) against DJN Radio for illegal deduction, non-payment of service incentive leave, and 13th month

pay, among others. On the basis of the complaint, the DOLE conducted a plant level inspection.

The DOLE Regional Director issued an order ruling that Inngo is an employee of DJN Radio, and that Inngo is entitled to his monetary claims in the total amount of P30,000.00. DJN Radio elevated the case to the Secretary of Labor who affirmed the order. The case was brought to the Court of Appeals. The radio station contended that there is no employer-employee relationship because it was the drama directors and producers who paid, supervised, and disciplined him. Moreover, it argued that the case falls under the jurisdiction of the NLRC and not the DOLE because Inngo's claim exceeded PS,000.00.

[a] May DOLE make a prima facie determination of the existence of an employer-employee relationship in the exercise of its visitorial and enforcement powers? (2016)

SUGGESTED ANSWER:

Yes. Pursuant to Article 128 (b) of the Labor Code, the DOLE may do so where the prima facie determination of employer-employee relationship is for the exclusive purpose of securing compliance with labor standards provisions of said Code and other labor legislation.

The DOLE, in the exercise of its visitorial and enforcement powers, somehow has to make a determination of the existence of an employer-

employee relationship. Such determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions (*People's Broadcasting Bombo Radyo Phils., Inc. v. Secretary of Labor, G.R. No. 179652, May 8, 2009*).

[b] If the DOLE finds that there is an employee-employer relationship, does the case fall under the jurisdiction of the Labor Arbiter considering that the claim of Inngo is more than P5,000.00. Explain.

SUGGESTED ANSWER:

No. As held in the case of *Meteoro v. Creative Creatures, Inc., G.R. No. 171275, July 13, 2009*, the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor

legislation, regardless of the amount of the claims filed by workers; thus, even claims exceeding P5,000.00.

Q: Tina Aquino, a domestic helper in the household of Fidel Aldeguer, filed an action in the Regional Office of the Department of Labor and Employment. (DOLE) for recovery of unpaid wages amounting to P3,500.00 and P1,499.00 as moral damages. Aquino claimed that the amount of P3,500.00 is equivalent to the P500.00 a month she failed to receive for the last seven months of her employment with Aldeguer. based on their agreed P2,500.00 monthly salary. Aldeguer moved to have Aquino's complaint dismissed, alleging that as a domestic helper Ms. Aquino should have first brought the matter to the Lupong Barangay.

If you were the Regional Director, how would you resolve the matter?

SUGGESTED ANSWER:

As Regional Director. I will assume jurisdiction. The provisions of P.D. No. 1508 requiring the submission of disputes before the Barangay Lupong Tagapayapa prior to their filing with the court or other government offices are not applicable to labor cases.

Article 129 of the Labor Code empowers the Regional Director to hear and decide any matter involving the recovery of wages and other monetary claims and benefits owing to an employee or person employed in* domestic or household service, provided that the money claim does not exceed P5,000.00. (Montoya vs. Escayo, G.R Nos. 82211-12, March 21, 1989)

Q: In a letter to the Regional Director of Region VII of the Department of Labor and Employment, employee Ricardo Malalang claims that his employer, the Visayan Sea Products Corp., has not compensated him for various legal benefits, including overtime pay, holiday pay, 13th month pay and other monetary benefits totaling P6,000.00.

Despite the fact that the amount claimed exceeds P5,000 how may the Regional Director exercise jurisdiction over the case? Why?

SUGGESTED ANSWER:

The power of the Regional Director over money claims may arise under either Article 128 or Article 129 of the Labor Code.

Under Article 129, for the Regional Director to exercise Jurisdiction, the aggregate money claims of an employee should not exceed P5,000.00.

Under Article 128, as the duly authorized representative of the Secretary of Labor, the Regional Director has the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of the Labor Code and other labor legislation based on the findings of labor regulation officers made in the course of inspection and issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection.

Article 128 applies where the relationship of employer- employee relationship still exists.

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 13th 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:

- b) 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: The Bantay-Salakay Security Agency (BSSA) employed ten security guards and assigned them to Surot Theater which contracted BSSA for its security needs.

On November 3, 1988, the ten (10) security guards of BSSA addressed to the Office of the President, a letter- complaint against their employer for non-compliance with R.A. 6640 providing for an increase in the statutory minimum wage and salary rates of employees and workers in the private sector. The letter was endorsed to the Secretary of Labor who, in turn, referred the matter to the Regional Director of Makunat City in Region XII where the ten (10) security guards reside and where their employer conducts business. The Office of the Regional Director conducted

an investigation and called for a hearing with all the parties present. Therefrom, the Regional Director found that there were indeed violations committed by BSSA against the ten (10) security guards, such as underpayment of wages, non-integration of cost of living allowance, underpayment of 13th-month pay and underpayment of five (5) days incentive pay BSSA and Surot Theater were directed to comply with the labor standards and ordered BSSA and Surot Theater to pay jointly and severally to the ten (10) security guards their respective claim of P 10,000.00 each or an aggregate amount of P100,000.00. BSSA and Surot Theater filed a Petition for Certiorari before the Supreme Court seeking to annul the decision of the Regional Director on the ground of grave abuse of discretion in assuming jurisdiction over the case. Will the Petition for Certiorari prosper? Decide with reason.

SUGGESTED ANSWER:

It is to be noted that the Regional Director assumed jurisdiction before the effectivity of Rep. Act No. 6715 (which is March 21, 1989). Thus, applying Art. 128 of the Labor Code, the petition for certiorari will not prosper.

Under said article of the Labor Code, the Secretary of Labor or his duly authorized representatives - and Regional Directors are duly authorized representatives - have visitatorial and enforcement powers. Thus, a Regional Director not only has visitatorial powers, i.e., to visit the premises of an employer and examine his records, he also has enforcement powers, i.e. based on the findings of labor regulation officers or industrial safety engineers made in the course of inspection. A Regional Director has the power to order and administer, after due notice and hearing compliance with the labor standards, provisions of the Labor Code. Thus, he could issue writs of execution to the appropriate authority for the enforcement of his orders, except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection.

Therefore, pursuant to Art. 128 of the Labor Code, the Regional Director was only exercising his visitatorial and enforcement powers in the case of BSSA and Surot Theater. Thus, he has jurisdiction to do what he did.

In a dissenting opinion. Chief Justice Narvasa said that even after the effectivity of Rep. Act No. 6715, the Regional Director has jurisdiction to act on claims exceeding P5,000.00.

The petition for certiorari will prosper under Rep. Act No. 6715. its provision limiting the power of Regional Directors to money claims not exceeding P5,000.00 per employee, the Regional Director no longer has the power to act on money claims exceeding P5,000.00 per employee, even if the same power is exercised pursuant to his visitatorial and enforcement power under the Labor Code (Art. 128) where the P5,000 limitation is not found.

Note:

Chief Justice Narvasa dissents from the above majority view of the Supreme Court.

Q: The Manila Industrial Corp. has fifty (50) contract workers supplied by the National Employment Agency. They joined the Novato Labor Union, the sole and exclusive bargaining representative of the rank-and-file workers in the company. In turn, the union demanded that the company consider the fifty new union members as regular employees accordance with the Labor Code. When the company refused to make their employment regular, the union, after complying with the requirements, staged a strike. The Secretary of Labor and Employment assumed Jurisdiction of the case.

Assuming that there is no employer-employee relationship between the company and the fifty contract workers, is there a labor dispute between them that properly falls under the jurisdiction of the Secretary of Labor and Employment?

SUGGESTED ANSWER:

Yes. There is a labor dispute that could properly fall under the jurisdiction of the Secretary of Labor and Employment assuming that Manila Industrial Corp. is an industry indispensable to the national interest, since the dispute between the corporation and the contract workers is a labor dispute, even if there is no employer-employee relationship between the corporation and the contract workers.

Under the Labor Code, a labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

From the above definition, it is noted that there is a labor dispute regardless of whether the disputants stand in proximate relation of employer and employee.

The demand of the union that the company regularize the employment of the contract worker is a controversy concerning terms and conditions of employment.

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 13th 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:

b. 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:

c. 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: Pursuant to his power under Sec. 278(g) (263(g)) of the *Labor Code*, the Secretary of Labor assumed jurisdiction over the 3-day old strike in Armor Steel Plates, Inc., one of the country's bigger manufacturers of steel plates, and ordered all the striking employees to return to work. The striking employees ignored the order to return to work.

- (a) What conditions may justify the Secretary of Labor to assume jurisdiction? (2.5%)**

SUGGESTED ANSWER:

The conditions that may justify the Secretary of Labor to assume jurisdiction are found in Article 278(g) (formerly Article 263 (g)), viz: "When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. xxx"

(b) What are the consequences of the assumption of jurisdiction by the Secretary of Labor, and of the disobedience to the return to work? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

The assumption of jurisdiction by the Secretary of Labor automatically results in a return-to-work of all striking workers (if one has already taken place) or enjoins the taking place of a strike, whether or not a corresponding order had been issued by the Secretary of Labor (*Union of Filipino Employees v. Nestle Philippines, Inc.*, G.R. Nos. 88710-13; December 19, 1990, 192 SCRA 396).

When jurisdiction over a labor dispute is assumed by the Secretary of Labor, such comprehensive jurisdiction includes all incidental issues and cases which otherwise would be under the original and exclusive jurisdiction of the labor arbiters (*International Pharmaceuticals, Inc v. Secretary of Labor*, G.R. Nos. 92981-83, January 9, 1992, 205 SCRA 59).

A disobedience or defiance of the return-to-work order of the Secretary of Labor results in a loss of employment status (*Allied Banking Corporation v. NLRC*, G.R. No. 116128, July 12, 1996, 258 SCRA 724).

Q: A deadlock in the negotiations for the collective bargaining agreement between College X and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5. The strike totally paralyzed the operations of the school. The Labor Secretary immediately assumed jurisdiction over the dispute and issued on the same day (November 5) a return to work order. Upon receipt of the order, the striking union officers and members, on November 1, filed a Motion for Reconsideration thereof questioning the Labor Secretary's assumption of jurisdiction, and continued with the strike during the pendency of their motion. On November 30, the Labor Secretary denied the reconsideration of his return to work order and further noting the strikers' failure to immediately return to work, terminated their employment. In assailing the Labor Secretary's decision, the Union contends that:

1. The Labor Secretary erroneously assumed jurisdiction over the dispute since College X could not be considered an industry indispensable to national interest;
2. The strikers were under no obligation to immediately comply with the November 5 return to work order because of their then pending Motion for Reconsideration of such order; and
3. The strike being legal, the employment of the striking Union officers and members cannot be terminated. Rule on these contentions. Explain. (5%) (2012 BAR)

Suggested Answer:

The contention has no merit. There is no doubt that the on-going labor dispute at the school adversely affects the national interest. The on-going work stoppage at the school unduly prejudices the students and will entail great loss in terms of time, effort and money to all concerned. More importantly, the school is engaged in the promotion of the physical, intellectual and emotional well-being of the country's youth, matters that are therefore of national interest. [St. Scholastica's College v. Ruben Toress, G.R. No. 100158, 29 June 1992 citing Philippine School of Business Administration v. Noriel, G.R. No. 80648, 15 August 1988, 164 SCRA 402].

Another Suggested Answer:

1. The Secretary of Labor correctly assumed jurisdiction over the labor dispute because the school (College X) is an industry indispensable to the national interest. This is so because the administration of a school is engaged in the promotion of the physical, intellectual and emotional well-being of the country's youth (PSBA vs. Noriel, 164 SCRA 402 [1988]).
2. An assumption order is executory in character and must be strictly complied with by the parties even during the pendency of any petition (or Motion for Reconsideration) questioning its validity (Baguio Colleges Foundation vs. NLRC, 222 SCRA 604 [1993]; Union of Filipino Employees vs. Nestle Philippines, Inc., 193 SCRA 396 [1990]).
3. Article 264 of the Labor Code, as amended. (Solid Bank Corporation, etc. vs. Solid Bank Union, G.R. No. 159641, 15 November 2010.) Thus, the union officers and members who defied the assumption order of the Secretary of Labor are deemed to have lost their employment status for having knowingly participated in an illegal act. (Union of Filipino Employees vs. Nestle Philippines, supra).

Suggested Answer:

2. This position of the union is flawed. Article 263 (g) Labor Code provides that "(s)uch assumption xxx shall have the effect of automatically enjoining the intended or impending strike xxx. If one has already taken place at the time of assumption, xxx 'all striking... employees shall immediately return to work.' xxx" This means that by its very terms, a

return-to-work order is immediately effective and executory notwithstanding the filing of a motion for reconsideration. [Ibid., citing *University of Santo Tomas v. NLRC*, G.R. No. 89920, 18 October 1990; 190 SCRA 759].

Suggested Answer:

Responsibility of the striking members and officers must be on an individual and not collective basis. Art. 264 (a) of the Labor Code mandates that “No strike or lockout shall be declared after assumption of jurisdiction by the President of the Secretary of Labor. In *Manila Hotel Employees Association vs. Manila Hotel Corporation* [517 SCRA 349 (2007)], it was held that defiance of the Assumption Order or a return-to-work order by a striking employee, whether a Union Officer or a plain member, is an illegal act which constitutes a valid ground for loss of employment status. It thus follows that the defiant strikers were validly dismissed.

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].

G. Grievance Machinery and Voluntary Arbitration

1. Subject matter of grievance

2. Voluntary Arbitrator

a) Jurisdiction

Q: When the Collective Bargaining Agreement (CBA) negotiations between COMPUTER WORKERS UNION and COMPUTER TECH CORPORATION resulted in a deadlock, both parties agreed to submit their dispute to voluntary arbitration stipulating, among other things, that the decision of the Voluntary Arbitrator shall be “final unappealable and executory” conformable with the provisions of Art. 262 of the Labor Code.

The Voluntary Arbitrator rendered his decision or award worded as follows:

“COMPUTER TECH CORP. to award a sum total package benefits to COMPUTER WORKERS UNION in the amount of TWENTY MILLION (P20.000.000.00) PESOS for the three-year period of the CBA, the distribution and availment per year to be suggested by the UNION subject to the approval of the CORPORATION, seeing to it that the decretal benefits shall first be satisfied above all others.

The UNION filed a “Motion for Clarification” claiming that the package benefit award of P20-million does not cover the decretal benefits granted by Wage Order No. 2 which was issued on the same day when the arbitration award was made. The Arbitrator issued an order which modified the original award of P20-million and sought to impose upon the CORPORATION an additional burden of decretal benefits given by Wage Order No. 2. The CORPORATION assailed the Arbitrator’s modification of the original award claiming that the modification of the original award was null and void and without or in excess of the

Arbitrator’s authority and brought the issue to the Supreme Court by petition for certiorari

- 1) Are decisions or awards of the Voluntary Arbitrators appealable? Discuss.**
- 2) Has the Voluntary Arbitrator the authority to modify his original award under the above-narrated facts. Discuss.**

SUGGESTED ANSWER:

1) No. The decisions or awards of Voluntary Arbitrators are not appealable because, according to Art.262-A of the Labor Code, they are final and executory’ after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

But said award or decision could be brought to the Supreme Court on certiorari on the ground that the Voluntary Arbitrator committed grave abuse of discretion amounting to lack or excess of jurisdiction. The Supreme Court has taken cognizance of petitions questioning decision of Voluntary Arbitrator where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice and erroneous interpretation of the law were brought to its attention.

2) No. The Voluntary Arbitrator has no authority to modify his original award. Acting on a Motion for Clarification, he could only clarify his award. It is in excess of his jurisdiction to go beyond clarifying his award by radically modifying and in fact increasing the original award.

ALTERNATIVE ANSWERS:

- a) If his award has not yet become final and executory because it is still within the ten (10) day period from receipt of the copy of award by the parties, the Voluntary Arbitrator could still modify his original award in the way he did it because in the facts of the case, a Wage Order was issued on the same day when the arbitration award was made. In his award, the Voluntary Arbitrator made reference to decretal benefits. He said: "seeing to it that the decretal benefits shall first be satisfied above all others." Thus, the Voluntary Arbitrator was just clarifying that the employer should pay the decretal benefits granted by Wage Order No. 2 which was not dealt with in the award of the Voluntary Arbitrator because the Wage Order was issued on the same day the arbitration award was made.
- b) No. such authority has disappeared, upon rendition of an award which is final, in appealable and executory by stipulation of the parties. Enforcement of the Wage Order must be by legal process, through claims filed before the Labor Arbiter.

Q: Company C, a toy manufacturer, decided to ban the use of cell phones in the factory premises. In the pertinent Memorandum, management explained that too much texting and phone-calling by employees disrupted company operations. Two employees-members of Union X were terminated from employment due to violation of the memorandum-policy. The union countered with a prohibitory injunction case (with prayer for the issuance of a temporary- restraining order) Filed with the Regional Trial Court, challenging the validity and constitutionality of the cell phone ban. The company filed a motion to dismiss, arguing that the case should be referred to the grievance machinery pursuant to an existing Collective Bargaining Agreement with Union X, and eventually to Voluntary Arbitration. Is the company correct? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

YES. Termination cases arising in or resulting from the interpretation and implementation of collective bargaining agreements, and interpretation and enforcement of company personnel policies which were initially processed at the various steps of the plant-level Grievance Procedures under the parties collective bargaining agreements, fall within the original and exclusive jurisdiction of the voluntary arbitrator pursuant to Article 217 (c) and Article 261 of the Labor Code.

ALTERNATIVE ANSWER:

NO. The Regional Trial Court has jurisdiction to hear and decide the prohibitory injunction case filed by Union X against Company C to enjoin the latter from implementing the memorandum-policy against use of cell phones in the factory. What is at issue is Union X S challenge against the validity and constitutionality of the cell phone ban being implemented by Company C. The issue, therefore, does not involve the interpretation of the memorandum-policy, but its intrinsic validity (*Halguefla v. PAL*, 602 SCRA 297 [2009]).

Q: The State has a policy of promoting collective bargaining and voluntary arbitration as modes of settling labor disputes. To this end, the voluntary arbitrator's jurisdiction has not been limited to interpretation and implementation of collective bargaining agreements and company personnel policies. It may extend to "all other labor disputes," provided (2011 BAR)

- (A) the extension does not cover cases of union busting.
- (B) the parties agreed to such extended jurisdiction.
- (C) the parties are allowed to appeal the voluntary arbitrator's decision.
- (D) the parties agreed in their CBA to broaden his jurisdiction.

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. Prescription of actions

Q: On October 30, 1980, A, an employee, was served notice of dismissal allegedly for gross dishonesty. Forthwith, the Union to which A was a member raised A's dismissal with the grievance machinery as provided for in its Collective Bargaining Agreement (CBA). At that point, negotiations for a new CBA was in progress. Hence, both the Union and the Company had very little time to address A's grievance. In fact, said grievance, as it were, slept the sleep of the dead, being resolved only with finality on November 23, 1983 when the General Manager of the Company affirmed A's dismissal on the fifth and the last step of the grievance machinery.

A filed an action for illegal dismissal with the Arbitration Branch of the NLRC on November 25, 1983. The Company immediately filed a Motion to Dismiss on the ground of prescription, invoking Article 290 of the Labor Code.

If you were the Labor Arbiter, how would you resolve the Company's Motion to Dismiss?

SUGGESTED ANSWER:

As the Labor Arbiter. I will deny the Motion to Dismiss. Where an employee was dismissed and the matter of his dismissal was then referred to the grievance machinery pursuant to the provision in the existing collective bargaining agreement, and the grievance machinery had a final meeting after quite a long while thereafter, the complaint for illegal dismissal was then filed, the action was not barred by laches, as the pendency of the matter before the grievance machinery affected the ripeness of the cause of action for illegal dismissal. [Radio Communications of the Philippines, Inc. (RCPI), vs. National Labor Relations Commission, et al. G.R No. 102958. 25 June 1993, J. Davide. Jr. 223 SCRA 656.

ALTERNATIVE ANSWER:

If I were the Labor Arbiter. I will deny the motion to dismiss because the action for illegal dismissal has not yet prescribed. The prescriptive period for an action for illegal dismissal is four (4) years. [Callanta vs. Carnation. 145 SCRA 268)

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:

- a) 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.