
Q & A BAR

2000-2015

• SUGGESTED ANSWERS TO BAR EXAMINATION QUESTIONS •

LABOR LAW

-Arranged by Topic-

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A PERSONAL NOTE FROM THE EDITOR

Dearest Fellow Bar Warriors,

All praises is due to Him who is the Source of All Knowledge and Wisdom!

I am very pleased to share with you this piece which I have been working on for the past three years. Despite the difficulty in having to re-page, proofread and re-classify the topics, two reasons compelled me into further re-updating: ONE, my first update is fraught with typographical errors; and TWO, I blame this Bar Q & A for making me pass the 2015 Bar Exam. :-) This work is, therefore, my little way of giving back and sharing such an amazing blessing.

To effectively use this work, it is recommended that the student/bar reviewee answer the questions first before reading the suggested answers. It may be that one's answer is not the same as that of the suggested answer -- one should not be disheartened. Remember, these are mere suggested answers. Further, one should also pay attention to topics frequently asked. By doing so, one can at least get an idea which topics are 'BAR-able', so to speak, and which are not. To the former, one should devote time; to the latter, familiarity will suffice.

As a piece of unsolicited advise from one who has tasted the 'anguish of defeat and the glory of the hour triumphant', no matter how much you have given up on yourself, NEVER GIVE UP ON THE MERCY OF GOD! For "verily, with each hardship comes relief".

- Atty. MSLD -

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¹ "GIVE CREDIT WHEN IT'S DUE.":

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GENERAL PRINCIPLES

State Policy on Labor (2009)

[a] 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%)

SUGGESTED ANSWER:

Four (4) policies enshrined in Section 3, Art. XIII Of the 1987 Constitution which are not covered by Art. 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.

State Policy on Labor; Security of Tenure; Contractualization (2009)

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%)

SUGGESTED ANSWER:

The first innovative measure. On abolition of the security of tenure 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 f the Labor Code already allows the Secretary of Labor and Employment not to make appropriate distinctions between labor-only and job contracting. This means that the Secretary may decide, through implementing regulation, not 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 persons 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.

State Policy on Labor; Principle of Co-determination (2007)

a. What is the principle of co-determination?

SUGGESTED ANSWER:

The principle of co-determination refers to the right of workers to participate in policy and decision-making process directly affecting their rights and benefits, without intruding into matters of management prerogatives. (PAL v. NLRC [1993].

b. What, if any, is the basis under the Constitution for adopting it?

SUGGESTED ANSWER:

Art. XII (On Social Justice and Human Rights), Sec. 3, par. 2 provides, among others, that workers "shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law."

State Policy on Labor; Principle of Codetermination (2008)

No. 1. b. Explain the extent of the workers right to participate in policy and decision-making process as provided under Article XIII, Section 3 of the Philippine Constitution. Does it include membership in the Board of Directors of a corporation? (3%)

SUGGESTED ANSWER:

Under Art. XIII, Sec. 3 of the Constitution, the workers shall participate in policy and decision-making affecting their rights, duties, welfare and benefits, through labor-management councils (See, Art. 211[g] and 255 of the Labor Code). The workers' rights do not include membership in the Board of Directors of a Corporation (See Meralco v. Meralco Employees, G.R. No. 127598, January 27, 1999).

Interpretation of Labor Laws; Liberal Approach (2006)

What is the concept of liberal approach in interpreting the Labor Code and its Implementing Rules and Regulations in favor of labor? (2.5%)

SUGGESTED ANSWER:

The workers' welfare should be the paramount consideration in interpreting the Labor Code and its Implementing Rules and Regulations. This is rooted in the Constitutional mandate to afford full protection to labor. Article 4 of the Labor Code provides 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" (PLOT v. NLRC, G.R. No. 111933, July 23, 1997). It underscores the policy of social justice to accommodate the interests of the working class on the humane justification that those who have less in life shall have more in law (PAL v. Santos, G.R. No. 77875, February 4, 1993).

Interpretation of Labor Laws (2009)

[b] 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%)

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 cases 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.

Labor Legislations; Purpose (2006)

What is the purpose of labor legislation? (2.5%)

SUGGESTED ANSWER:

Labor legislation is an exercise of police power. The purpose of labor legislation is to regulate the relations between employers and employees respecting the terms and conditions of employment, either by providing for certain standards or for a legal framework within which better terms and conditions of work could be negotiated through collective bargaining. It is intended to correct the injustices inherent in employer-employee relationship.

Labor Standard vs. Labor Relation (2003)

How do the provisions of the law on labor relations interrelate, if at all, with the provisions pertaining to labor standards? 5%

SUGGESTED ANSWER:

LABOR RELATIONS law focuses its provisions on the collective aspects of employer-employee relationship. Its legal provisions deal with employees organizing unions and how through these unions, employees are able to have collective bargaining with their employer. On the other hand, LABOR STANDARDS law focuses on the terms and conditions of employment of employees as individual employees or those legal provisions dealing with wages, hours of work and other terms and conditions of employment. There may be instances when the provisions of labor relations law may interrelate with provisions of labor standards law. Thus, a CBA which is dealt with in labor relations law may have provisions that improves upon the minimum terms and conditions of employment

prescribed in labor standards law, like a CBA providing for a higher minimum wage, or for the computation of a higher overtime pay or the payment of holiday pay not only for regular holidays but also for certain special holidays.

Labor; as Property Right (2006)

What property right is conferred upon an employee once there is an employer-employee relationship? Discuss briefly. (5%)

SUGGESTED ANSWER:

His employment is not merely a contractual relationship. One's employment is a property right within the mantle of constitutional protection (*Callanta v. Carnation Phil.*, No. L-70615, October 28, 1986). Hence, the employee enjoys security of tenure and he cannot be dismissed except for cause and only after due process. The worker is thus protected and insulated against any arbitrary deprivation of his job (*Philips Semi Conductors [Phils.] v. Fadriquela*, G.R. No. 141717, April 14, 2004).

Employment Contract Impressed with Public Interest (2008)

No. V. a. 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's 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 monetary 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 impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s. Is the contractual stipulation that there is no employer-employee relationship binding on labor officials? Why? Explain fully. (3%)

SUGGESTED ANSWER:

No, a contract of employment is impressed with public interest. The provisions of the applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other (*Magsalin v. National Organization of Working Men*, G.R. No. 148492, May 09, 2003).

Rights of the Employer; Management Prerogative (2000)

a) An exclusive school for girls, run by a religious order, has a policy of not employing unwed mothers, women with live-in partners, and lesbians. Is the policy violative of any provision of the Labor Code on employment of women? (3%)

b) The same school dismissed two female faculty members on account of pregnancy out of wedlock. Did the school violate any provision of the Labor Code on employment of women? (3%)

SUGGESTED ANSWER:

a) No, the policy does not violate the Labor Code. The practice is a valid exercise of management function. Considering the nature and reason for existence of the school, it may adopt such policy as will advance its laudable objectives. In fact, the policy accords with the constitutional precept of inculcating ethical and moral values in schools. The school policy does not discriminate against women solely on account of sex (Art. 135, Labor Code) nor are the acts prohibited under Art. 137 of the Labor Code.

ALTERNATIVE ANSWER:

The school violated Art. 137 (2) of the Labor Code which states that: "It shall be unlawful for any employer to discharge such woman on account of pregnancy". The pregnancy here could obviously have resulted from love and such only lends substance to the saying that "the heart has reasons of its own which reason does not know", a matter that cannot "be so casually equated with immorality" [Chua-Qua v. Iave, 189 SCRA 117 (1990)].

SUGGESTED ANSWER:

b) No, because to tolerate pregnancy out of wedlock will be a blatant contradiction of the school's laudable mission which, as already stated, accords with high constitutional precepts. This answer does not contradict the ruling in Chua-Qua where the teacher merely fell in love with a bachelor student and the teacher, also single, did not get pregnant out of wedlock.

Rights of the Employer; Management Prerogative; Benefits; Unilaterally Given (2005)

Little Hands Garment Company, an unorganized manufacturer of children's apparel with around 1,000 workers, suffered losses for the first time in history when its US and European customers shifted their huge orders to China and Bangladesh. The management informed its employees that it could no longer afford to provide transportation shuttle services. Consequently, it announced that a normal fare would be charged depending on the distance traveled by the workers availing of the service. Was the Little Hands Garments Company within its rights to withdraw this benefit which it had unilaterally been providing to its employees? Select the best answer(s) and briefly explain your reason(s) therefor.

- (a) Yes, because it can withdraw a benefit that is unilaterally given;
- (b) Yes, because it is suffering losses for the first time;
- (c) Yes, because this is a management prerogative which is not due any legal or contractual obligation;
- (d) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code;
- (e) No, because it is a fringe benefit that has already ripened into a demandable right or entitlement. (10%)

SUGGESTED ANSWER:

- (b) Yes, because it is suffering losses for the first time;
- (c) Yes, because this is a management prerogative which is not due any legal or contractual obligation;

An employer cannot be forced to continue giving a benefit, being given as a management prerogative, when it can no longer afford to pay for it. To hold otherwise, would be to

penalize the employer for his past generosity. (Producer's Bank of the Philippines v. NLRC, G.R. No. 100701, March 28, 2001)

ALTERNATIVE ANSWER:

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

(e) No, because it is a fringe benefit that has already ripened into a demandable right or entitlement.

A company practice favorable to employees had indeed been established and the payments made pursuant thereto, ripened into benefits enjoyed by them. And any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer by virtue of Article 100 of the Labor Code of the Philippines which prohibits the diminution or elimination of the employer of the employees' existing benefits. (Sevilla Trading Co. v. Semana, G.R. No. 152456, April 28, 2004)

ALTERNATIVE ANSWER:

(b) Yes, because it is suffering losses for the first time;

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

You cannot compel an employer to continue paying the benefits if it is suffering from serious business losses. However, the benefit has already ripened into an employer practice or policy, and therefore it cannot be withdrawn without violating Article 100 of the Labor Code on non-diminution of benefits.

Rights of the Employer; Management Prerogative; Weight Policy (2008)

No. X. Pepe Santos was an international flight steward of Flysafe Airlines. Under FSA's Cabin Crew Administration Manual, Santos must maintain, given his height and body frame, a weight of 150 to 170 pounds.

After 5 years as a flight steward, Santos began struggling with his weight; he weighed 200 lbs., 30 pounds over the prescribed maximum weight. The Airline gave him a one-year period to attain the prescribed weight, and enrolled him in several weight reduction programs. He consistently failed to meet his target. He was given a 6-month grace period, after which he still failed to meet the weight limit. FSC thus sent him a Notice of Administrative Charge for violation of company standards on weight requirements. He stated in his answer that, for medical reasons, he cannot have a rapid weight loss. A clarificatory hearing was held where Santos fully explained his predicament. The explanation did not satisfy FSA and so it decided to terminate Santos's service for violation of company standards.

Santos filed a complaint for illegal dismissal, arguing that the company's weight requirement policy is unreasonable and that his case is not a disciplinary but a medical issue (as one gets older, the natural tendency is to grow heavier). FSA defended its policy as a valid exercise of management prerogative and from the point of view of passenger safety and extraordinary diligence required by law of common

carriers; it also posited that Santos failure to achieve his ideal weight constituted gross and habitual neglect of duty, as well as willful disobedience to lawful employer orders. The Labor Arbiter found the dismissal illegal for there was neither gross and habitual neglect of duty nor willful disobedience.

Is the Labor Arbiter correct? Why or why not? Explain fully. (6%)

SUGGESTED ANSWER:

Yes, the Labor Arbiter is correct. The exercise of management prerogatives may be availed of for as long as they are reasonable, exercised in good faith and do not infringe upon the employee's security of tenure. It is circumscribed by limitations found in law, collective bargaining agreement, or the general principles of fair play and justice (PAL v. NLRC, G.R. No. 85985, August 13, 1993). The weight policy clearly has repercussions on Pepe Santo's right to security of tenure. After Pepe established that his inability to lose weight despite earnest effort was a medical problem, it cannot be said that he acted with gross habitual neglect of duty.

Rights of the Employer; Management Prerogatives; Trade Secrets (2009)

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] An employment contract prohibiting employment in a competing company within one year from separation is valid.

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.

Procedure; Injunction in Labor Cases (2000)

Professor Juan dela Cruz, an author of the textbook Commentaries on the Labor Code of the Philippines, citing an American case, wrote: It is said that the prohibition against the issuance of a writ of Injunction in labor cases creates substantive and not purely procedural law." Is there any statutory basis for the statement/comment under Philippine law? (5%)

SUGGESTED ANSWER:

Yes. The statutory basis is Article 254 of the Labor Code. It prohibits issuance of injunction, as a matter of policy, to resolve disputes except as otherwise provided in Articles 218 and 264 of the Labor Code. [Caltex Filipino Managers and Supervisors Association v. CZR, 44 SCRA 350 (1972)].

Procedure; Motion to Dismiss; Grounds (2007)

P.D. 1508 requires the submission of disputes before the Barangay Lupong Tagapamayapa prior to the filing of cases with the courts or other government bodies. May this decree be used to defeat a labor case filed directly with the Labor Arbiter? Discuss fully. (5%)

SUGGESTED ANSWER:

Labor disputes are the exception to P.D. 1508 (Montoya v. Escayo [1989]). Under Article 226, motions to dismiss

before the Labor Arbiter are only allowed on grounds of lack of jurisdiction, improper venue and bar by prior judgment or prescription. Hence, failure to resort to barangay conciliation is not a valid ground to defeat the labor case.

Procedure; Motion for Execution; Appeals from Order of Execution (2007)

a. How do you execute a labor judgment which, on appeal, had become final and executory? Discuss fully.

SUGGESTED ANSWER:

By filing a motion for execution, and serving a writ of execution to be served by the sheriff or such law enforcement agency as may be deputized by the DOLE or /NLRC. It may also be issued *motu proprio* by the Labor Arbiter (Arts. 223 & 224, Labor Code).

b. Cite two (2) instances when an order of execution may be appealed.

SUGGESTED ANSWER:

1. When execution becomes impossible or unjust, it may be modified or altered on appeal to harmonize the same with justice and the facts (Torres v. NLRC [2000]).
2. Supervening events may warrant modification in the execution of the judgment, as when reinstatement is no longer possible because position was abolished as a cost-cutting measure due to losses. (Abalos v. Philex Mining Corp. [2002]).
3. Where the writ is found defective, exceeds or varies the award and/or is irregularly issued (DBP v. Union Bank [2004]; Metrobank v. CA [2001]).
4. Where there is wrongful computation of award.

Procedure; Novation thru Compromise of the Labor Arbiter's Decision (2007)

May a decision of the Labor Arbiter which has become final and executory be novated through a compromise agreement of the parties? (5%)

SUGGESTED ANSWER:

Compromise agreement is encouraged and authorized by law. Hence, they may be made even when the judgment is final and executory (Jesalva v. Bautista [1959]). The validity of the agreement is determined by the compliance with the requisites and principles of contract, and not by the time it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise; (2) an object certain that is the subject matter of the compromise; and (3) the cause of the obligation that is established (Magbanua v. Uy [2005]).

Social Justice as Guiding Principles in Labor (2003)

May social justice as a guiding principle in labor law be so used by the courts in sympathy with the working man if it collides with the equal protection clause of the Constitution? Explain. 5%

SUGGESTED ANSWER:

Yes. The State is bound under the Constitution to afford full protection to Labor; and when conflicting interests collide and they are to be weighed on the scales of social justice,

the law should accord more sympathy and compassion to the less privileged workingman. (Fuentes v. NLRC. 266 SCRA 24 (1997) However, it should be borne in mind that social justice ceases to be an effective instrument for the equalization of the social and economic forces" by the State when it is used to shield wrongdoing. (Corazon Jamer v. NLRC. 278 SCRA 632 F1 99711

ANOTHER SUGGESTED ANSWER:

No, social justice as a guiding principle in law may not be used by the courts if it collides with the equal protection clause of the Constitution. Social justice is not a magic wand applicable in all circumstances. Not all labor cases will be automatically decided in favor of the worker. Management has also rights which are entitled to recognition and protection; justice must be dispensed according to facts and law; and social justice is not designed to destroy or oppress the employer.

ANOTHER SUGGESTED ANSWER:

Social justice as a guiding principle in Labor Law can be implemented side by side with the equal protection clause of the Constitution. In implementation of the principle of social justice, the Constitution commands that the State shall afford protection to labor. Thus Labor Law may be pro-labor in the sense that labor is given certain benefits not given to management. But this is not necessarily violative of the equal protection clause of the Constitution because said clause allows reasonable classification.

Labor Cases; Appearance of Non-lawyers (2007)

May non-lawyers appear before the NLRC or Labor Arbiter? May they charge attorney's fee for such appearance provided it is charged against union funds and in an amount freely agreed upon by the parties? Discuss fully. (5%)

SUGGESTED ANSWER:

Yes, non-lawyers may appear before the Commission or any Labor Arbiter only:

1. If they represent themselves;
2. If they represent their own legitimate labor organization or members thereof; or
3. If they are duly accredited by a Legal Aid Office which is DOJ or IBP-recognized.

Non-lawyers may not charge attorney's fees though charged against the union funds and agreed upon. Attorney's fees presuppose the existence of an attorney-client relationship. (PAFLU v. BISCOP [1971]).

Preventive Suspension (2015)

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. (4%)

SUGGESTED ANSWER:

No. The preventive suspension of Karina is not valid.

The employer may place an employee under a 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.

Labor Dispute (2001)

"A" was able to obtain a Judgment against his former employer, Company "B", for P750,000.00. In executing the judgment in favor of A, the Labor Arbiter sought to levy on B's office equipment. B filed an action for damages and injunction against the Labor Arbiter before the Regional Trial Court of the province where B's offices are located. Is B's action tenable? Why? (5%).

SUGGESTED ANSWER:

B's action is not tenable. In the case of Delta Ventures Resources vs. Hon. Fernando P. Labato, G.R. No. 118216, March 9, 2000, the Supreme Court ruled that the regular courts have no jurisdiction to act on Labor cases or various incidents arising therefrom, including the execution of decisions, awards or orders.

ANOTHER SUGGESTED ANSWER:

Yes, B's action before the Regional Trial Court is tenable if said action is limited to the filing of a damage suit against the Labor Arbiter because there exists no employer-employee relationship between "B" and the Labor Arbiter, and there is no labor dispute between them. In Agricultural Development Corporation vs. Court of Appeals, G.R. No. 112139. January 31, 2000, the Supreme Court, ruled: "It is well settled in law and jurisprudence that where NO employer-employee relationship exists between the parties and no issue is involved which may be resolved by reference to the Labor Code, other labor statutes or any collective bargaining agreement, it is the Regional Trial Court that has jurisdiction."

JURISDICTION

Labor Arbiter; Appeals (2001)

The affected members of the rank and file elevated a labor arbiter's decision to the NLRC via a petition for review filed after the lapse of the ten-day reglementary period for perfecting an appeal. Should the NLRC dismiss the petition outright or may the NLRC take cognizance thereof? (5%).

SUGGESTED ANSWER:

The NLRC should dismiss the appeal outright because the same was filed beyond the reglementary period of appeal. Article 223 of the Labor Code reads:

"Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from, receipt of such decisions, awards, or orders."

ANOTHER SUGGESTED ANSWER:

The NLRC could dismiss outright the appeal for being filed out of time. But if there are good reasons that may justifiably explain why there was a delay in the filing of the appeal, substantial justice may be the basis for the NLRC to take cognizance of the appeal.

Labor Arbiter; Appeals/Injunction (2007)

Procedurally, how do you stay a decision, award or order of the Labor Arbiter? Discuss fully. (5%)

SUGGESTED ANSWER:

By filing for injunction within ten (10) calendar days from the receipt of the decision on the grounds of grave abuse, intrinsic fraud, on pure questions of law and/or serious, erroneous factual findings causing grave or irreparable damage, and such other grounds under Art. 223 of the Labor Code, as amended.

ALTERNATIVE SUGGESTED ANSWER:

Except for the reinstatement aspect, it is stayed by filing an appeal within ten (10) calendar days from the receipt, subject to the posting of an appeal bond if there is a monetary award.

ANOTHER ALTERNATIVE SUGGESTED ANSWER:

Yes, provided the compromise settlement was executed with the assistance of the BLR or the regional office of the DOLE as required by Art. 227 of the Labor Code. The execution of a compromise settlement is only valid with the assistance of the BLR or the regional office of the DOLE. (*Mindoro Lumber and Hardware v. Bacay, et.al* [2005]).

Labor Arbiter; Voluntary Arbitration (2008)

No. 11. b. Can a dispute falling within the exclusive jurisdiction of the Labor Arbiter be submitted to voluntary arbitration? Why or why not? (3%)

SUGGESTED ANSWER:

Yes, provided that the parties to the dispute falling within the exclusive jurisdiction of the Labor Arbiter states in unequivocal language that they conform to the submission of said dispute to the voluntary arbitration (*Vivero v. CA, G.R. No. 138938, October 24, 2000*).

Labor Arbiter; Money-claims; Overseas Workers (2009)

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:

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%)
- [b] Because Richie was not able to leave for Qatar, no employer-employee relationship was established between them; (2%) and
- [c] Even assuming that they are liable, their liability would, at most, be equivalent to Richie's salary for only six (6) months, not two years. (3%).

Rule on the validity of the foregoing arguments with reasons.

- [a] The Labor Arbiter has no jurisdiction over the case; (2%)

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 jurisdiction to hear and decide, within 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.

Labor Arbiter; Corporate Officers (2014)

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? (5%)

SUGGESTED ANSWER:

I will deny the motion to dismiss. "Corporate officers" in the context of P.D. 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 (3) 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 Asst. 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).

Labor Arbiter (2015)

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. (3%)

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.

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 the 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.

(b) What is the rule on personal liability of corporate officers for a corporate act declared to be unlawful? (2%)

SUGGESTED ANSWER:

(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).

Labor Arbiter vs. Nat'l Labor Relations Commission (2015)

(c) Distinguish the jurisdiction of a Labor Arbiter from that of the NLRC. (3%)

SUGGESTED ANSWER:

(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 RA 10022; and referred wage distortion disputes in unorganized establishments, as well as enforcement of compromise agreements pursuant to the 2011 NLRC Rules and 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 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.

Nat'l Labor Relations Commission (2001)

Company "A" and Union "B" could not resolve their negotiations for a new CBA. After conciliation proceedings before the NCMB proved futile, B went on strike. Violence during the strike prompted A to file charges against striker-members of B for their illegal acts. The Secretary of Labor assumed Jurisdiction, referred the strike to the NLRC and issued a return-to-work order. The NLRC directed the parties to submit their respective position papers and documentary evidence. At the Initial hearing before the

NLRC, the parties agreed to submit the case for resolution after the submission of the position papers and evidence.

Subsequently, the NLRC issued an arbitral award resolving the disputed provisions of the CBA and ordered the dismissal of certain strikers for having knowingly committed illegal acts during the strike.

The dismissed employees elevated their dismissal to the Court of Appeals claiming that they were deprived of their right to due process and that the affidavits submitted by A were self-serving and of no probative value. Should the appeal prosper? State the reason(s) for your answer clearly. (5%).

SUGGESTED ANSWER:

The appeal should not prosper. The Supreme Court, in many cases, has ruled that decisions made by the NLRC may be based on position papers. In the question, it is stated that the parties agreed to submit the case for resolution after the submission of position papers and evidence. Given this fact, the striker-members of B cannot now complain that they were denied due process. They are in estoppel. After voluntarily submitting a case and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court. A party cannot adopt a posture of double dealing. (Marquez vs. Secretary of Labor, 16 March 1989).

ANOTHER SUGGESTED ANSWER:

No, the appeal will not prosper. In *CMP Federal Security Agency vs. NLRC*, G.R. No. 125298, February 11, 1999, the Supreme Court ruled: "The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. Hence, it is not legally objectionable for being violative of due process, for the labor arbiter to resolve a case based solely on the position papers, affidavits or documentary evidence submitted by the parties. The affidavits of witnesses in such case may take the place of direct testimony."

Nat'l Labor Relations Commission (2001)

Some disgruntled members of Bantay Labor, Union filed with the Regional Office of the DOLE a written complaint against their union officers for mismanagement of union funds. The Regional Director did not rule in the complainants' favor. Not satisfied, the complainants elevated the Regional Director's decision to the NLRC. The union officers moved to dismiss on the ground of lack of Jurisdiction. Are the union officers correct? Why? (3%)

SUGGESTED ANSWER:

Yes, the union officers are correct in claiming that the NLRC has no jurisdiction over the appealed ruling of the Regional Director. In *Barles vs. Bitonio*, G.R. No. 120220, June 16, 1999, the Supreme Court ruled: 'Appellate authority over decisions of the Regional Director involving examination of union accounts is expressly conferred on the BLR under the Rule of Procedure on Mediation-Arbitration.

xxx

Section 4. Jurisdiction of the Bureau — (b) The Bureau shall exercise appellate jurisdiction over all cases originating from the Regional Director involving Complaints for examination of union

books of accounts. The language of the law is categorical. Any additional explanation on the matter is superfluous."

Nat'l Labor Relations Commissions (2001)

Company "A", within the reglementary period, appealed the decision of a Labor Arbiter directing the reinstatement of an employee and awarding backwages. However, A's cash bond was filed beyond the ten day period. Should the NLRC entertain the appeal? Why? (5%).

SUGGESTED ANSWER:

No, the NLRC should not entertain the appeal, as the same was not perfected for failure to file a bond. Art. 223 of the Labor Code reads: "In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of cash or surety bond... In the amount equivalent to the monetary award in the judgment appealed from." In *ABA vs. NLRC*, G.R. No. 122627, July 18, 1999, the Supreme Court ruled: "An appeal bond is necessary.....the appeal may be perfected only upon the posting of cash or surety bond issued by a reputable bonding company duly accredited by the commission in the amount equivalent to the monetary award in the judgment appealed from."

ANOTHER SUGGESTED ANSWER:

The NLRC may still entertain the appeal. It is true that the Labor Code (in Art. 223) provides that appeal is perfected only upon the posting of a cash or surety bond. But if Company A filed a motion for the reduction of the bond, and said motion was only acted upon after the reglementary period, then, the NLRC, in the interest of substantial justice, may still take cognizance of the appeal.

Nat'l Labor Relations Commission (2007)

May the NLRC or the Courts take jurisdictional cognizance over compromise agreements/settlements involving labor matters? (5%)

SUGGESTED ANSWER:

Article 227 provides that any compromise agreement involving labor matters entered into by the parties with the assistance of the DOLE shall be final and binding upon the parties, except in cases of non-compliance, or if based on fraud, when misrepresentation or coercion is present.

Nat'l Labor Relations Commission (2013)

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. (8%)

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 [1993]).

ANOTHER SUGGESTED 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]).

Nat'l Labor Relations Commission; Injunctive Powers (2015)

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? (3o/o)

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 Casual 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, the other labor statutes, CBA or employment contract. (Reference to Labor Law Rule).

(b) What are the grounds for a labor injunction to issue? (2%)

SUGGESTED ANSWER:

(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 unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained;

ii. That substantial and irreparable injury to complainant's property will follow;

iii. That the greater injury will be inflicted upon complainant by the denial of relief that will be inflicted upon defendants by the granting of relief;

iv. That complaint has no adequate remedy at law; and

v. That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection

Secretary of Labor; Power to Issue Search/Arrest Warrant (2007)

Initiating actions against alleged illegal recruiters, may the Secretary of Labor and Employment issue search and arrest warrants?

SUGGESTED ANSWER:

No, the Secretary of DOLE, not being a judge, cannot issue search or arrest warrants. Under Art. III, Sec.2 of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search. (Salazar v. Achacoso [1990]).

Secretary of Labor; Assumption over Labor Dispute (2008)

No. VI. b. On the day that the Union could validly declare a strike, the Secretary of Labor issued an order assuming jurisdiction over the dispute and enjoining the strike, or if one has commenced, ordering the striking workers to immediately return to work. The return-to-work order required the employees to return to work within twenty-four hours and was served at 8 a.m. of the day the strike was to start. The order at the same time directed the Company to accept all employees under the same terms and conditions of employment prior to the work stoppage.

The Union members did not return to work on the day the Secretary's assumption order was served nor on the next day; instead, they held a continuing protest rally against the company's alleged unfair labor practices. Because of the accompanying picket, some of the employees who wanted to return to work failed to do so. On the 3rd day, the workers reported for work, claiming that they do so in compliance with the Secretary's return-to-work order that binds them as well as the Company. The Company, however, refused to admit them back since they had violated the Secretary's return-to-work order and are now considered to have lost their employment status.

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment. You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues: Were the employees simply exercising their constitutional right to petition for redress of their grievances? (3%)

SUGGESTED ANSWER:

No, there was a defiance of the assumption order of the Secretary of Labor by the union. The assumption order is immediately executor. Following an assumption order by

the strikers is not a matter of option or voluntariness but of obligation on their part (Marcopper Mining Corporation v. Brillantes, G.R. No. 119381, March 11, 1996; Art. 264[a], Labor Code).

Secretary of Labor; Assumption over Labor Dispute; National Interest (2008)

No. III. b. 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 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. The owner of SDS considered the hunger strike staged by Lina, et al., an eyesore and disruptive of SDS business.

He wrote the Secretary of Labor a letter asking him to assume jurisdiction over the dispute and enjoin the hunger "strike". What answer will you give if you were the Secretary of Labor? (3%)

SUGGESTED ANSWER:

Although the Secretary of Labor has wide discretion in exercising jurisdiction over labor dispute, he may not enjoin the strike because SDS's is not indispensable to the national interest (Art. 263[g], Labor Code).

Secretary of DOLE; Assumption of Jurisdiction (2010)

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*.

A. Was the order to assume jurisdiction legal? Explain. (2%)

SUGGESTED ANSWER:

YES. The Secretary of Labor has plenary power to assume jurisdiction under Art. 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 industry indispensable to the national interest, the Secretary 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 is aimed at arriving at a peaceful and speedy solution to labor disputes without, without jeopardizing national interests (Steel Corporation v. SCP Employees Union [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).

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 Art. 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 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.

Secretary of Labor; Authority (2013)

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? (8%)

SUGGESTED ANSWER:

No. The power of the Secretary of Labor under Art. 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 [2010]).

Regional Director – DOLE; Visitorial and Enforcement Power; Compliance Order (2008)

No. III. c. 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 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. Assume that no fixed-term worker complained, yet in a routine inspection a labor inspector of the Regional Office of the Labor Code's security of tenure provisions and recommended to the Regional Director the issuance of a compliance order. The Regional Director adopted the recommendation and issued a compliance order.

Is the compliance order valid? Explain your answer. (3%)

SUGGESTED ANSWER:

No, the compliance order is not valid. The Regional Director exercises only visitorial and enforcement power over the labor standard cases, and the power to adjudicate uncontested money claims of employees. The Regional Director has no power to rule on SDS's 5-month term policy.

ALTERNATIVE ANSWER:

Yes, the Compliance Order is valid because the Secretary of Labor and Employment or his duly authorized representatives has the power to issue compliance orders to give effect to the labor standards based on the findings of labor employment and enforcement officers or industrial safety engineers made during inspection. The Secretary or his duly authorized representatives may issue writs of execution to the appropriate authority for the enforcement of their orders (Art. 128, Labor Code; V.L. Enterprises and/or Visitacion v. CA, G.R. No. 167512, March 12, 2007).

Regional Director – DOLE; Visitorial and Enforcement Power (2009)

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%)

[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.

SUGGESTED ANSWER:

TRUE. 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 claims exceed P5,000.00. The authority under Art. 128 may be exercised regardless of the monetary value involved. Under Art. 129, however, the authority is only for claims not exceeding P5,000.00 per claimant.

Overseas Employment; Claim; Torts (2004)

A. Under a seaman's contract of employment with a local manning agent of a foreign shipping company, Capt. TROY embarked on an oceangoing vessel in good health. One stormy night at sea, he was drenched with rainwater. The following morning, he contracted fever which lasted for days. He suffered loose bowel movement, lost his appetite, and eventually he died before a scheduled airlift to the nearest port. Subsequently, the widow of Capt. TROY complained against the local manning agent and its foreign principal before the Regional Arbitration Branch of DOLE, for actual and exemplary damages and Attorney's fees. She invoked the Labor Code provision which requires the employer to provide all necessary assistance to ensure the adequate and necessary medical attendance and treatment of the injured or sick employee in case of emergency. Respondents moved to dismiss the complaint on the ground that the Labor Arbiter has no jurisdiction over the complaint for damages arising from illness and death of Capt. TROY abroad. Resolve the motion with reasons. (5%)

SUGGESTED ANSWER:

In *Tolosa v. NLRC*, (G.R. 149578, April 10, 2003), the Supreme Court held that what we have in this case is a claim arising from tort or quasi-delict. In such a situation, the seaman who died on November 18, 1992, cannot sue before the Labor Arbiter. But this will not apply now, as under Sec. 10, R.A. 8042, [effective June 7, 1995], what we have is a claim "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", cognizable by the "Labor Arbiters of the National Labor Relations Commission" (NLRC) who have the original and exclusive jurisdiction thereon.

Overseas Employment; Mandatory Remittance; Foreign Exchange (2006)

Can an overseas worker refuse to remit his earnings to his dependents and deposit the same in the country where he works to gain more interests? Explain. (5%)

SUGGESTED ANSWER:

NO. Art. 22 of the Labor Code provides that it shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in accordance with the rules and regulations prescribed by the Secretary of Labor and Employment. Executive Order No. 857 prescribes the percentage of foreign exchange remittance from 50% to 80% of the basic salary, depending on the worker's kind of job. Hence, an overseas worker cannot refuse to remit his earnings. Otherwise, he shall be suspended or excluded from the list of eligible workers for overseas employment and in cases of subsequent violations; he shall be repatriated at his own expense or at the expense of his employer as the case may be.

Overseas Employment; Disciplinary Action by the POEA (2007)

Cite five grounds for disciplinary action by the Philippine Overseas Employment Administration (POEA) against overseas workers. (5%)

SUGGESTED ANSWER:

Pre-employment stage:

1. Using false information or documents for job application;
2. Unjustified refusal to depart for overseas assignment;

Employment stage:

1. Commission of a criminal offense punishable by Philippine or his host country laws;
2. Unjustifiable breach of POEA contract;
3. Embezzlement of company funds;
4. Embezzlement of money or property of fellow workers entrusted for delivery to relatives in the Philippines;
5. Violation of the religious or sacred practices of host country;
6. Drunkenness and disorder;
7. Desertation or abandonment of work;
8. Immoral activities, including prostitution;
9. Illegal gambling;
10. Drug addiction;
11. Creating trouble at the worksite or in the vessel;
12. Initiating or joining a strike or work stoppage where the host country prohibits the same;
13. Mutiny.

Voluntary Arbitrator (2003)

The employer company, in a directive to the union president, ordered the transfer of some of its employees, including a number of union officials, to its plant offices. The order was opposed by the union. Ultimately, the union filed an unfair labor practice against the company alleging that the purported transfer of its union officials was unjust and in violation of the Collective Bargaining Agreement (CBA). Pursuant to the terms of the CBA, the dispute was referred to a voluntary arbitrator who later ruled on the issues raised by the parties. Could it later be validly asserted that the "decision" of the voluntary arbitrator would have no "compulsory" effect on the parties? Explain.

SUGGESTED ANSWER:

No. A voluntary arbitrator chosen under the Grievance Machinery of a CBA can exercise jurisdiction not only on disputes involving interpretation/implementation of a CBA and/or company rules, personnel policies (Art. 261, Labor Code) but also, upon agreement of the parties, "all other labor disputes including unfair labor practice" (Art. 262, Labor Code). As no objection was raised by any of the parties when 'the dispute was referred to a voluntary arbitrator who later ruled on the issues raised by the parties', it follows that what we have is voluntary arbitration agreed upon by the parties. His decision is binding upon the parties and may be enforced through any of the sheriffs, including those of the NLRC, he may deputize.

ANOTHER SUGGESTED ANSWER:

No. The award of voluntary arbitrators acting within the scope of their authority determines the rights of

the parties, and their decisions have the same legal effects as a judgment of the Court. Such decisions on matters of fact or law are conclusive, and all matters in the award are thenceforth *res judicata* on the theory that the matter has been adjudged by the tribunal which the parties have agreed to make final as tribunal of last resort. [Volschel Labor Union v. NLRC. 98 SCRA 314 (1980).

Voluntary Arbitrator; Labor Disputes; Voluntary Arbitration (2008)

No. II.

a. What issues or disputes may be the subject of voluntary arbitration under the Labor Code? (4%)

SUGGESTED ANSWER:

Disputes that may be subject of voluntary arbitration are: (1) Distortion of the wage structure within an establishment arising from any prescribed wage increase because of a law or wage order which any Regional Board issues (Art. 124, Labor Code); and (2) Interpretation and implementation of the parties' collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies (Art. 217, as amended by R.A. 6715; Art. 260, Labor Code; Navarro III v. Damasco, G.R. No. 101875, July 14, 1995).

Voluntary Arbitrator; Voluntary Arbitration; Compulsory Arbitration (2008)

No. II. c. Can a dispute falling within the jurisdiction of a voluntary arbitrator be submitted to compulsory arbitration? Why or why not? (3%)

SUGGESTED ANSWER:

No, jurisdiction in compulsory arbitration is conferred by law, not by agreement of the parties (Veneracion v. Moncilla, G.R. No. 158238, July 20, 2006). The law mandated that all grievances submitted to the grievance machinery which are not settled shall be referred to the voluntary arbitration prescribed in the CBA Art. 260, Labor Code). This procedure providing for a conclusive arbitration clause in the CBA must be strictly adhered to and respected if the ends are to be achieved (Liberal Labor Union v. Phil. Can Co., G.R. No. L-4834, March 28, 1952, cited in San Miguel Corporation v. NLRC, G.R. No. 99266, March 02, 1999). Hence, to submit a dispute falling within the jurisdiction of a voluntary arbitration to compulsory arbitration would be to trifle faith the express mandate of the law.

Voluntary Arbitrator; Jurisdiction Over Interpretation & Implementation of CBA & Company Policy (2010)

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%)

SUGGESTED ANSWER:

YES. Termination cases arising in or resulting from the interpretation and implementation of CBAs, 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' CBAs, fall within the original and exclusive jurisdiction of the Voluntary Arbitrator pursuant to Art. 217(c) and Article 261 of the Labor Code.

ANOTHER SUGGESTED ANSWER:

NO. The RTC 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 (*Haliguefla v. PAL* [2009]).

LABOR STANDARDS

E-E Relationship; Effective Control or Supervision; Waitresses (2008)

No. XI. Complaints had worked five (5) years as waitresses in a cocktail lounge owned by the respondent. They did not receive any salary directly from the respondent but shared in all service charges collected for food and drinks to the extent of 75%. With respondent's prior permission, they could sit with and entertain guest inside the establishment and appropriate for themselves the tips given by guests.

After five (5) years, the complaints individual shares in the collected service charges dipped to below minimum wage level as a consequence of the lounge's marked business decline. Thereupon, complaints asked respondent to increase their share in the collected service charges to 85% or the minimum wage level, whichever is higher. Respondent terminated the services of the complainants who countered by filing a consolidated complaint for unlawful dismissal, with prayer for 85% of the collected services or the minimum wage for the appropriate periods, whichever is higher. Decide. (6%)

SUGGESTED ANSWER:

Art. 138 of the Labor Code provides as follows: —art. 138. Classification of certain women workers. – 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 of time as determined by the Secretary of Labor, shall be considered as an employee of such establishment for purposes of labor and social legislation.¶ Since complainants are under the effective control and supervision of respondent, they are therefore considered as employees and entitled to full backwages based on the minimum wage for the appropriate period plus 85% of the collected service charges.

E-E Relationship; Effective Control (2015)

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? (4%)

SUGGESTED ANSWER:

a. Yes. With Ador's simply executing Nico's instruction, Nico, now has control over Ador's work, has become the employer of Ador. In *Royale Homes Marketing Corp. v. Fidel Alcantara* (G.R. 195190, July 28, 2014) the Supreme Court held that control is the most important determinant of employer-employee relationship.

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.

(b) Will Nico need to register Ador with the Social Security System (SSS)? (2%)

SUGGESTED ANSWER:

b. Yes, 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 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).

Er-Ee Relationship; Not Purely Contractual in Nature (2010)

TRUE OR FALSE. The relations between employer and employee are purely contractual in nature. Explain your answer briefly. (2%)

SUGGESTED ANSWER:

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

ANOTHER SUGGESTED 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 all the rights of labor are protected.

Art. 1700 of the Civil Code provides "[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 Art. 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 (Nogralles v. Capitol Medical Center [2006]).

E-E Relationship; Corporation (2012)

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 A joint and severally liable with Construction Company A for illegal dismissal, backwages and separation pay. Construction Company B 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%)

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 v. Calica [1992]). The fiction of corporate entity can be disregarded when it is used to justify wrong or protect fraud. (Complex Electronics Association v. NLRC [1999]).

(Note: problem previously given in 1999 Bar Exam)

E-E Relationship; Partnership (2012)

Ingg, 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 Ingg 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 Ingg was like a partner who worked within its premises, using parts provided by the shop, but otherwise Ingg was free to render service in the other auto shops. On the other hand, Ingg 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 Ingg correct? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. Ingg is an employee of the Pit Stop. Article 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. Ingg did not contribute money, property, or 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 [2003]).

E-E Relationship; Determined by Facts & Laws (2000)

Banco de Manila and the Ang Husay Janitorial and Pest Control Agency entered into an Independent Contractor Agreement with the usual stipulations: specifically, the absence of employer-employee relationship, and the relief from liability clauses. Can the Bank, as a client, and the Agency, as an independent contractor, stipulate that no employer-employee relationship exists between the Bank and the employees of the Agency who may be assigned to work in the Bank? Reason. (5%)

SUGGESTED ANSWER:

They can so stipulate if the relationship is indeed Job contracting. Yet the stipulation cannot prevail over the facts and the laws. The existence of employer-employee relationship is determined by facts and law and not by stipulation of the parties. (Insular Life Assurance Co., Ltd. v. NLRC. 287 SCRA 476 (1998); Tabas v. California Manufacturing Co. Inc., 169 SCRA 497 (1989)).

ALTERNATIVE ANSWER:

Yes, they can stipulate provided that the contract of Independent contractor is valid in accordance with Art 106 of the Labor Code.

E-E Relationship; Four-Fold Test (2008)

No. V. b. 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's 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 monetary 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 impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s. Based on the test/s for employer-employee relationship, determine the issue of who is the employer of the RSC members. (4%)

SUGGESTED ANSWER:

The employer of the RSC is PizCorp.

The four-fold test in determining employer-employee relationship is as follows: (1) The selection and engagement of the employees; (2) The payment of wages; (3) The power of dismissal; and (4) The power of control the employee's conduct.

Of the above, the power of control over the employees' conduct is the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Applying the Control Test, PizCorp is the employer of RSC members because —if PizCorp is materially prejudices by any act of the delivery crew that violated PizCorp's directives and orders, Piz Corp can directly impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s.— clearly, PizCorop controls the RSC members' conduct not only as to the end to be achieved but also as to the means of

achieving the ends (Manaya v. Alabang Country Club, G.R. No. 168988, June 19, 2007).

E-E Relationship; Self-Employed (2003)

Pablo was a farm-hand in a plantation owned by ABC & Co., working approximately 6 days a week for a good 15 years. Upon Pablo's death, his widow filed a claim for burial grant and pension benefits with the Social Security System (SSS). The claim was denied on the ground that Pablo had not been a registered member-employee. Pablo's widow filed a petition before the SSS asking that ABC & Co. be directed to pay the premium contributions of Pablo and that his name be reported for SSS coverage. ABC & Co. countered that Pablo was hired to plow, harrow and burrow, using his own carabao and other implements and following his own schedule of work hours, without any supervision from the company.

If proven, would this factual setting advanced by ABC & Co. be a valid defense against the petition?

SUGGESTED ANSWER:

ABC & Co. has a valid defense. Pablo should be an employee of ABC & Co. to be under the compulsory coverage of the SSS. To be an employee, Pablo should be under the control of ABC & Co. as regards his employment. But the facts show that he was not under the control of ABC & Co. as regards his employment. Among others, he had his own schedule of work hours, without any supervision from the company. Thus, he is an independent contractor and not an employee. An independent contractor is not under the compulsory coverage of the SSS. He maybe covered as a self-employed person. But then as such, ABC & Co. has no legal obligation to report Pablo for coverage under the SSS because ABC & Co. is not Pablo's employer.

ANOTHER SUGGESTED ANSWER:

It is not a valid defense, for Pablo could be considered an employee of ABC & Co. The elements of hiring, payment of wages, power to dismiss and power to control are presumed from the fact that Pablo is working 6 days a week, for 15 years now. Pablo's use of his plow, harrow, burrow, carabao and other implements and his having his own schedule of work hours without any supervision from the company do not erase the element of control on the part of ABC & Co. because under the "control test", it is enough that the employer's right to control exists. It is not necessary that the same be exercised by the employer, it is enough that such right to control exists. (Religious of the Virgin Mary v. NLRC. 316 SCRA 614, 629 (1999))

E-E Relationship; GRO's & Night Clubs (2012)

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 Kababaihan

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%)

SUGGESTED ANSWER:

Yes. The GROs worked under the direct supervision of the Nite 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. (Constitution, Art. XIII, Sec. 3; Labor Code, Art. 243).

ANOTHER SUGGESTED ANSWER:

No. While 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 same Code however excludes "ambulant, intermittent and itinerant workers xxx and those without any definite employers" such as 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".

(Note: problem previously given in 1999 Bar Exam)

E-E Relationship; Workers paid by Results(2004)

B. TRX, a local shipping firm, maintains a fleet of motorized boats plying the island barangays of AP, a coastal town. At day's end the boat operators/crew members turn over to the boat owner their cash collections from cargo fees and passenger fares, less the expenses for diesel fuel, food, landing fees and spare parts. Fifty percent (50%) of the monthly income or earnings derived from the operations of the boats are given to the boatmen by way of compensation. Deducted from the individual shares of the boatmen are their cash advance and peso value of their absences, if any. Are these boatmen entitled to overtime pay, holiday pay, and 13th month pay? (5%)

SUGGESTED ANSWER:

If the boatmen are considered employees, like jeepney drivers paid on a boundary system, the boatmen are not entitled to overtime and holiday pay because they are workers who are paid by results. Said workers, under the Labor Code are not entitled, among others, to overtime pay and holiday pay. In accordance with the Rules and Regulations implementing the 13th month pay law, however, the boatmen are entitled to the 13th month pay. Workers who are paid by results are to be paid their 13th month pay.

ANOTHER SUGGESTED ANSWER:

No. The arrangement between the boat owner and the boat operators/crew members partook of the nature of a joint venture. The boatmen did not receive fixed compensation as they shared only in the cash collections from cargo fees and passenger fares, less expenses for

fuel, food, landing fees and spare parts. It appears that there was neither right of control nor actual exercise of such right on the part of the boat owner over the boatmen. It is clear that there was no employer-employee relationship between the boat owner and the boatmen. As such, these boatmen are not entitled to overtime pay, holiday pay and 13th month pay.

E-E Relationship; Transfer of Ownership; Status of Employees; "Successor Employer" Doctrine (2015)

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%)

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 of 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 disputed 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 stocks. 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 sale, 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) What is the "successor employer" doctrine? (2%)

SUGGESTED ANSWER:

b. The "successor employer" doctrine refers to a sale or transfer in ownership of an entity that has been done in bad faith or to defeat the rights of the 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.

Employment; Aliens; Requisites (2007)

AB, a non-resident American, seeks entry to the country to work as Vice-President of a local telecommunications company. You are with the Department of Labor and Employment (DOLE). What permit, if any, can the DOLE issue so that AB can assume as Vice-President in the telecommunications company? Discuss fully. (5%)

SUGGESTED ANSWER:

AB must secure an employment permit and employment registration certificate from the DOLE, who shall issue it after determining that there is no other person in the Philippines who is competent, able or willing to do the work for which the alien is hired.

Employment; Handicapped Employee (2000)

Ana Cruz has a low IQ. She has to be told at least three times before she understands her daily work assignment. However, her work output is at least equal to the output of the least efficient worker in her work section. Is Ms. Cruz a handicapped worker? Explain. (5%)

SUGGESTED ANSWER:

No, low IQ or low efficiency does not make the worker "handicapped" in the contemplation of law. Handicap means such physical or mental infirmity that impairs capacity to work. The deficiency may also be due to age or injury. (Art 78. Labor Code).

Employment; Handicapped Workers; Contractual Employees (2012)

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%)

SUGGESTED ANSWER:

No. An employment contract with a fixed final 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)

(Note: problem previously given in 2006 Bar Exam)

Employment; Handicapped Workers; Contractual Employees (2006)

For humanitarian reasons, a bank hired several handicapped workers to count and sort out currencies. Their employment contract was for six (6) months. The bank terminated their employment on the ground that their

contract has expired prompting them to file with the Labor Arbiter a complaint for illegal dismissal. Will their action prosper? (5%)

SUGGESTED ANSWER:

Their action will not prosper because they are covered by the fixed term employment contract which automatically lapsed at the end of the 6-month period (Brent School v. Zamora, G.R. No. 48494, February 5, 1990; Art. 280, Labor Code). A contract of employment for a definite period terminates on its own term at the end of its period. It does not necessarily follow that the parties are forbidden from agreeing on a fixed period of time for the performance of activities usually necessary and desirable in the usual business of the employer (Pangilinan v. Gen. Milling, G.R. No. 149329, July 12, 2004).

ALTERNATIVE ANSWER:

Yes. Undeniably, handicapped workers are never on equal terms with the bank as employer. In Philippine National Oil Company-Energy Development Corporation v. NLRC, G.R. No. 97747, March 31, 1993, the Supreme Court set down two criteria under which fixed contracts of employment do not circumvent security of tenure, to wit: 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 about any other circumstances vitiating his consent; or 2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter. Even granting that the handicapped workers and the bank agreed to term employment, it could not be said that they "dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter."

Employment; Domestic Helper; Nature of Work (2014)

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. (4%)

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 and 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, GR 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.

ALTERNATIVE ANSWER:

The complaint for illegal dismissal should be dismissed. There was no showing that in hiring the replacement cook, SU severed its Er-Ee 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., GR No. 178184, January 29, 2014). Here, Linda's dismissal was not clearly established.

Employment; Domestic Helper; Nature of Work (2009)

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%)

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.

Employment; Domestic Helper v. Homeworker (2009)

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

SUGGESTED ANSWER:

Art. 141. Domestic Helper – one who performs services in the employers house which is unusually 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 decentralized form of production with very limited supervision or regulation of methods of his work.

Employment; Homeworkers (2000)

b) Mrs. Josie Juan is the confidential secretary of the Chairman of the Board of the bank. She is presently on maternity leave. In an arrangement where the Chairman of the Board can still have access to her services, the bank allows her to work in her residence during her leave. For this purpose, the bank installed a fax machine in her residence, and gave her a cellphone and a beeper. Is Mrs. Juan a homeworker under the law? Explain. (3%)

SUGGESTED ANSWER:

No, she is actually an office worker. She is not an industrial homeworker who accepts work to be fabricated or processed at home for a contractor, which work, when finished, will be returned to or repurchased by said contractor. (Art. 155, Labor Code).

Employment; Househelpers (2000)

a) Nova Banking Corporation has a resthouse and recreational facility in the highlands of Tagaytay City for the use of its top executives and corporate clients. The

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

SUGGESTED ANSWER:

No, they are not domestic employees. They are bank employees because the resthouse 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, 1999]

Employment; Househelpers (2007)

May a house help be assigned to non-household work?

SUGGESTED ANSWER:

No. Under Art. 145 of the Labor Code, no househelper shall be assigned to work in a commercial, industrial, or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural workers as described herein.

ALTERNATIVE SUGGESTED ANSWER:

Yes, provided that he/she receives a salary not lower than that provided for non-agricultural workers.

Employment; Staff-house Worker not a Househelper (2007)

Inday was employed by mining company X to perform laundry service at its staff-house. While attending to her assigned task, she slipped and hit her back on a stone. Unable to continue with her work, she was permitted to go on leave for medication, but thereafter she was not allowed to return to work. She filed a complaint for illegal dismissal but her employer X contended that Inday was not a regular employee but a mere househelp. Decide. (5%)

SUGGESTED ANSWER:

Inday is a regular employee because she performs work that is usually necessary and desirable in the business of the mining company. Services rendered in a staff house of a company within the premises of a company cannot be considered as household work. (Apex Mining Company, Inc. v. NLRC [1991]).

Employment; Driver as Househelper & in a Commercial Establishment (2012)

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%)

SUGGESTED ANSWER:

Yes. Insofar as concerns his work "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 [1991].

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%)

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. V. NLRC [supra]).

(Note: problem previously given in 1998 Bar Exam)

Employment; Minors (2004)

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 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 P30.00 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, and she invoked the exception provided in the Department Order of DOLE for the engagement of persons in domestic and household service. Is her defense tenable? Reason. (5%)

SUGGESTED ANSWER:

No, her defense is not tenable. Under Article 139 of the Labor Code on "minimum employable age", no child below 15 years of age shall be employed except when he works directly under the sole responsibility of his parents or guardian, the provisions of the alleged Department Order of DOLE to the contrary notwithstanding. A mere Department Order cannot prevail over the express prohibitory provisions of the Labor Code.

[Note: Sec. 3, RA 9231 allows a child below 15 years of age to work for not more than 20 hours a week; provided, that the work shall not be more than four (4) hours at any given day; provided, further, that he does not work between 8 o'clock in the evening and 6 o'clock in the morning of the following day; and provided, finally, that the work is not hazardous or deleterious to his health or morals. **THIS IS A RECENT LAW APPROVED ONLY ON JULY 28, 2003, which is beyond the cut-off period of the Bar Exams**]

Employment; Minors (2012)

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%)

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 xxx; or
2. Where a child's employment or participation in public entertainment or information through cinema, theatre, radio, television or other forms of media is essential xxx". (Section 12, R.A. 7610, as amended by R.A. 9231)

Employment; Minors (2014)

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. (4%)

(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.

ALTERNATIVE ANSWER:

None. Lando [who] 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 60 years of age.

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.

Employment; Minors (2015)

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? (4%)

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.

Employment; Minors (2006)

Determine whether the following minors should be prohibited from being hired and from performing their respective duties indicated hereunder: (5%)

1. A 17-year old boy working as miner at the Walwadi Mining Corporation.

SUGGESTED ANSWER:

It is absolutely Prohibited for any person below 18 years of age to be employed in hazardous work, harmful to health and safety (Sec. 3, Rule 12, Book 3, ties Implementing the Labor Code), including construction work, logging, firefighting, mining, quarrying, stevedoring, dock work, deep sea fishing and mechanized fishing (Sec. 8[2], Rule 1, Book 4, Rules Implementing the Labor Code).

2. An 11-year old boy who is an accomplished singer and performer in different parts of the country.

SUGGESTED ANSWER:

Under RA. 7610, Section 12, as amended by RA. No. 9231 states that:

Employment of children — children below 15 years of age shall not be employed (Art. 139, Labor Code) except when the following conditions are met:

- (a) When the child's participation in public entertainment is essential;
- (b) There is a written contract approved by the DOLE and signed by the child's parents or legal guardians, with the express consent of the child; and
- (c) the employer who employs the child must secure a work permit from the DOLE.

3. A 15-year old girl working as a library assistant in a girls' high school.

SUGGESTED ANSWER:

She may work as a library assistant provided:

- (1) The employment does not endanger her life, safety, morals and normal development;
- (2) She is given the opportunity for primary or secondary education; and
- (3) The employment does not exceed 8 hours a day and 40 hours a week (Sees. 12 & 14, RA. 7610, as amended by RA. 9231).

4. A 16-year old girl working as model promoting alcoholic beverages.

SUGGESTED ANSWER:

Section 14, Article 8, RA. 7610, as amended by Section 5, RA. 9231 states that a child shall be prohibited to act as a model in any advertisement directly or indirectly promoting

alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

5. A 17-year old boy working as a dealer in a casino.

SUGGESTED ANSWER:

Section 14, Article 8, RA. 7610, as amended by Section 5, RA. 9231 prohibits the boy from working as a dealer in a casino as this promotes gambling. Moreover, DOLE Dept. Order No. 04, series of 1999, expressly prohibits employment of "teenagers" in gambling halls.

Employment; Minors (2007)

Discuss the statutory restrictions on the employment of minors?

SUGGESTED ANSWER:

Under Art. 139 of the Labor Code, as amended, it is prohibited to employ minors in the hazardous, or deleterious and immoral undertakings. It also prescribes that no child below 15 shall be employed unless he works directly under his parents or guardians and his work does not interfere with his schooling; those between 15 and 18 shall comply with appropriate DOLE Regulations.

Employment; Minors (2009)

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.

[b] Employment of children below fifteen (15) years of age in any public or private establishment is absolutely prohibited. (1%)

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.

Employment; Minors; Hazardous Work (2002)

B. You were asked by a paint manufacturing company regarding the possible employment as a mixer of a person, aged seventeen (17), who shall be directly under the care of the section supervisor. What advice would you give? Explain briefly. (2%)

SUGGESTED ANSWER:

B. I will advise the paint manufacturing company that it cannot hire a person who is aged seventeen (17). Art 139 (c) of the Labor Code provides that a person below eighteen (18) years of age shall not be allowed to work in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor. Paint manufacturing has been classified by the Secretary of Labor as a hazardous work.

Employment; Radio-TV Show Host; Expiration of Term (2005)

(1) Malyn Vartan is a well-known radio-TV show host. She signed a contract with XYZ Entertainment Network to host a one-hour daily talk show where she interviews various celebrities on topical subjects that she herself selects. She was paid a monthly remuneration of P300,000.00. The program had been airing for almost two years when

sponsors' advertising revenues dwindled, constraining the network to cancel the show upon the expiration of its latest contract with Ms. Vartan. The talk-show host protested the discontinuance of her monthly talent fee, claiming that it was tantamount to her illegal dismissal from the network since she has already attained the status of a regular employee. (6%)

(a) As the network's legal counsel, how would you justify its decision to cancel Ms. Vartan's program which in effect terminated her services in the process?

SUGGESTED ANSWER:

As the network's legal counsel, I will argue that Ms. Vartan is under contract on a fixed term employment basis. The network cancelled the show "upon the expiration of its latest contract with Ms. Vartan." Hence, this does not involve dismissal but an expiration of term. (Felix v. Buenaseda, G.R. No. 109704, January 17, 1995; St. Theresa's School of Novaliches Foundation v. NLRC, G.R. No. 122955, April 15, 1998)

ALTERNATIVE ANSWER:

As the network's counsel, there was no termination of her services, only the expiration of her contract, being an independent contractor. (Sonza v. ABSCBN, G.R. No. 138051, June 10, 2004)

(b) As counsel for the talk-show host, how would you argue your case?

SUGGESTED ANSWER:

As a radio-TV talk show host, Ms. Vartan is performing an activity which is necessary and desirable in the usual trade or business of XYZ Entertainment Network. Hence, Ms. Vartan is a regular employee and cannot be terminated except for cause and only after due process. The cancellation of the program is tantamount to closure but XYZ Entertainment Network did not comply with the procedural requirements of law, i.e., 30 days notice to Ms. Vartan and to DOLE prior to the intended date of termination.

ALTERNATIVE ANSWER:

As counsel for the talk show host, I will argue that she is a regular employee. First, she performs job that is necessary and desirable to the nature of the business of the employer; Second, she serves for at least one (1) year which is an indication of regular employment.

Employment; Women; Discrimination by Reason of Marriage (2012)

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%)

SUGGESTED ANSWER:

Yes. Mam-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 v. NLRC [1997] citing 45A Am. Jur. 2d, Job Discrimination, Sec. 506, p. 486).

ANOTHER SUGGESTED ANSWER:

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

(Note: problem previously given in 1995 Bar Exam)

Employment; Women; Anti-Sexual Harassment Act (2000)

A Personnel Manager, while interviewing an attractive female applicant for employment, stared directly at her for prolonged periods, albeit in a friendly manner. After the interview, the manager accompanied the applicant to the door, shook her hand and patted her on the shoulder. He also asked the applicant if he could invite her for dinner and dancing at some future time. Did the Personnel Manager, by the above acts, commit sexual harassment? Reason. (3%)

SUGGESTED ANSWER:

Yes, because the Personnel Manager, a man, is in a position to grant or not to grant a favor (a job) to the applicant. Under the circumstances, inviting the applicant for dinner or dancing creates a situation hostile or unfriendly to the applicant's chances for a job if she turns down the invitation. [Sec. 3(a)(3), R.A. No. 7877, Anti-Sexual Harassment Act].

ALTERNATIVE ANSWER:

There is no sexual harassment because there was no solicitation of sexual favor in exchange of employment. Neither was there any intimidating, hostile or offensive environment for the applicant.

Employment; Women; Anti-Sexual Harassment Act (2000)

b) In the course of an interview, another female applicant inquired from the same Personnel Manager if she had the physical attributes required for the position she applied for. The Personnel Manager replied: "You will be more attractive if you will wear micro-mini dresses without the undergarments that ladies normally wear." Did the Personnel Manager, by the above reply, commit an act of sexual harassment? Reason. (3%)

SUGGESTED ANSWER:

No, the Personnel Manager's reply to the applicant's question whether she qualifies for the position she is applying for does not constitute sexual harassment. The Personnel Manager did not ask for or insinuate a request for a sexual favor in return for a favorable action on her

application for a job. But the Manager's statement may be offensive if attire or physical look is not a criterion for the job being applied for.

ALTERNATIVE ANSWER:

Yes. The remarks would result in an offensive or hostile environment for the employee. Moreover, the remarks did not give due regard to the applicants' feelings and it is a chauvinistic disdain of her honor, justifying the finding of sexual harassment [Villarama v. NLRC, 236 SCRA 280 (1994)]

Employment; Women; Anti-Sexual Harassment Act (2004)

A. Pedrito Masculado, a college graduate from the province, tried his luck in the city and landed a job as utility/maintenance man at the warehouse of a big shopping mall. After working as a casual employee for six months, he signed a contract for probationary employment for six months. Being well-built and physically attractive, his supervisor, Mr. Hercules Barak, took special interest to befriend him. When his probationary period was about to expire, he was surprised when one afternoon after working hours, Mr. Barak followed him to the men's comfort room. After seeing that no one else was around, Mr. Barak placed his arm over Pedrito's shoulder and softly said: "You have great potential to become regular employee and I think I can give you a favorable recommendation. Can you come over to my condo unit on Saturday evening so we can have a little drink? I'm alone, and I'm sure you want to stay longer with the company." Is Mr. Barak liable for sexual harassment committed in a work-related or employment environment? (5%)

SUGGESTED ANSWER:

Yes, the elements of sexual harassment are all present. The act of Mr. Barak was committed in a workplace. Mr. Barak, as supervisor of Pedrito Masculado, has authority, influence and moral ascendancy over Masculado. Given the specific circumstances mentioned in the question like Mr. Barak following Masculado to the comfort room, etc. Mr. Barak was requesting a sexual favor from Masculado for a favorable recommendation regarding the latter's employment. It is not impossible for a male, who is a homosexual, to ask for a sexual favor from another male.

ANOTHER SUGGESTED ANSWER:

I do not see any sexual favor being solicited. Having a "little drink" in Mr. Barak's Condo Unit, as condition for a "favorable recommendation is not one of the prohibited acts enumerated in Sec. 3 (a) of R.A. 7877, otherwise known as the Anti-Sexual Harassment Act of 1995.

Employment; Women; Anti-Sexual Harassment vs. Discrimination against Women (2003)

Can an individual, the sole proprietor of a business enterprise, be said to have violated the Anti-Sexual Harassment Act of 1995 if he clearly discriminates against women in the adoption of policy standards for employment and promotions in the enterprise? Explain.

SUGGESTED ANSWER:

When an employer discriminates against women in the adoption of policy standards for employment and promotion in his enterprise, he is not guilty of sexual

harassment. Instead, the employer is guilty of discrimination against women employees which is declared to be unlawful by the Labor Code. For an employer to commit sexual harassment, he - as a person of authority, influence or moral ascendancy - should have demanded, requested or otherwise required a sexual favor from his employee whether the demand, request or requirement for submission is accepted by the object of said act.

Employment; Women; Sexual Harassment Act (2005)

Carissa, a comely bank teller, was due for her performance evaluation which is conducted every six months. A rating of "outstanding" is rewarded with a merit increase. She was given a "below average" rating in the last two periods. According to the bank's personnel policy, a third rating of "below average" will result in termination. Mr. Perry Winkle called Carissa into his office a few days before submitting her performance ratings. He invited her to spend the night with him in his rest house. She politely declined. Undaunted, Mr. Winkle renewed his invitation, and Carissa again declined. He then warned her to "watch out" because she might regret it later on.

A few days later, Carissa found that her third and last rating was again "below average." Carissa then filed a complaint for sexual harassment against Mr. Winkle with the Department of Labor and Employment. In his counter-affidavit, he claimed that he was enamored with Carissa. He denied having demanded, much less received any sexual favors from her in consideration of giving her an "outstanding" rating. He also alleged that the complaint was premature because Carissa failed to refer the matter to the Committee on Decorum and Discipline for investigation and resolution before the case against him was filed.

In her reply affidavit, Carissa claimed that there was no need for a prior referral to the Committee on Decorum and Discipline of her complaint.

Resolve the case with reasons. (5%)

SUGGESTED ANSWER:

I will hold Mr. Perry Winkle guilty of sexual harassment. This resolution is predicated mainly upon the following considerations:

- (1) Mr. Perry Winkle exercises authority, influence or moral ascendancy over Carissa;
- (2) Mr. Winkle's insistence in inviting Carissa "to spend the night with him in his rest house" implies a request or demand for a sexual favor;
- (3) Mr. Winkle's warning clearly manifests that the refusal of the sexual favor would jeopardize Carissa's continued employment; and
- (4) Mr. Winkle's invitation for a sexual favor will result in an intimidating, hostile, or otherwise offensive working environment for Carissa.

Carissa is correct in stating that there was no need for prior referral to the Committee on Decorum and Discipline of her complaint because nothing in the law precludes the victim of sexual harassment from instituting a separate and independent action for damages and other affirmative relief. (Sec. 6, R.A. No. 7877)

Employment; Women; Sexual Harassment Act (2006)

As a condition for her employment, Josephine signed an agreement with her employer that she will not get married, otherwise, she will be considered resigned or separated from the service. Josephine got married. She asked Owen, the personnel manager, if the company can reconsider the agreement. He told Josephine he can do something about it, insinuating some sexual favors. She complained to higher authorities but to no avail. She hires you as her counsel. What action or actions will you take? Explain. (5%)

SUGGESTED ANSWER:

I will file a criminal case against Owen for violation of RA. No. 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995." I will also file a separate and independent action for damages against Owen. By reason of the fact that the Company did not take immediate action thereon, I will include the Company in the civil suit for damages and make it jointly and severally liable with Owen.

ALTERNATIVE ANSWER:

Aside from filing a criminal case against Owen for violation of the Sexual Harassment Law (R.A. 7877) and a separate action for damages, impleading the company, I will also file an action for constructive dismissal against the Company since the employee was placed in a job atmosphere imposing oppressive work conditions contrary to public policy and morals.

Employment; Women; Anti-Sexual Harassment Act (2009)

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 v. Rayala* [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.

Independent Contractor (2001)

(a) "X" is a bona fide service contractor providing manpower services to various companies, possessing the necessary capital and equipment needed to effectively carry out its commitments. "Y" is an employee of "X" and assigned to work as a janitor in Company "Z". In the course of Y's assignment, Z's supervisors and employees would give verbal instructions to Y as to how and where to perform his work. X pays Y salary. Subsequently, Y's services were terminated by X. Y sued Z for illegal dismissal. May Y's case against Z prosper? Why? (2%).

SUGGESTED ANSWER:

Y's case against Z will not prosper, because Z is not the employer of Y. The employer of "Y" is "X". "Y" would be an employee of "Z" if "X" here is a labor-only contractor but X is not a labor-only contractor. He possesses the necessary capital and equipment needed to effectively carry out its commitment as a service contractor. Applying the control test, the fact that "Z's" supervisors and employees give verbal instructions to Y as to how and where to perform his work does not necessarily mean that thereby he is under the control of Z as regards his employment as long as X, as service contractor, actually directs the work of Y. It should also be noted that X pays the salary of Y as the employee of the former.

ANOTHER SUGGESTED ANSWER:

Yes, Y's case against Company "Z" will prosper. Company "Z" will be deemed the direct employer because the Company directly and specifically controlled the manner by which the work should be done and, by doing so also the result. (See *Traders Royal Bank vs. NLRC*, December 2, 1999). The presence of the element or factor of control, which is the most important factor in determining the existence of an employer-employee relationship is present. In *Religious of the Virgin Mary vs. NLRC*, G.R. No. 103606, October 13, 1999, the Supreme Court, ruled: As this Court has consistently ruled, the power of control is the most decisive factor in determining the existence of employer-employee relationship.

Independent Contractor (2002)

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)}

Independent Contractor; E-E Relationship (2012)

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%)

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.

Independent Contractor; E-E Relationship (2014)

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? (4%)

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 Art. 218 of the same Code.

Independent Contractor vs. Labor-Only Contracting; Four-Fold Test (2000)

Metro Grocery Inc. arranged with Mr. Juan Dado, a Barangay Chairman, to provide the grocery with workers who will work as cashiers, bag boys, shelf counter helpers and sanitation workers. The grocery will pay Mr. Dado an amount equivalent to the direct and hidden costs of the wages of each worker assigned, plus ten percent (10%) to cover the administrative costs related to their arrangement. Mr. Dado, in turn, will pay directly the workers their wages. As far as the workers are concerned, Mr. Dado is their employer. A group of concerned workers consulted you if Mr. Dado is really under the law their employer.

A. How will you analyze the problem in order to formulate your answer? (3%)

SUGGESTED ANSWER:

I will analyze the problem by applying the fourfold test of employer-employee relationship. I will examine if Mr. Dado exercises power of control or supervision over the workers' manner and method of doing their work. Control is the most important factor in examining employer-employee relationship. The other factors are hiring, payment of wages, and power to dismiss, I will also examine whether there was job contracting or labor-only contracting.

ALTERNATIVE ANSWER:

a) My analytical framework will be an analysis of the law on Independent contractor and labor only contracting. If there is a valid INDEPENDENT CONTRACTOR situation, Mr. Dado will be the direct employer, and the Metro Grocery will be the indirect employer. If there is a LABOR-CONTRACTOR only relationship, the Metro Grocery will be the employer as it directly hired the employees.

B. What is the legal significance, if any, of the question of the concerned workers as to who is their employer? (3%)

SUGGESTED ANSWER:

The legal significance is the determination of employee-employer relationship, which gives rise to certain rights and obligation of both employer and employee, such as SSS membership, union membership, security of tenure, etc.

Independent Contractor; Liabilities (2004)

A. Clean Manpower Inc. (CMI) had provided janitorial services to the National Economic Development Authority (NEDA) since April 1988. Its service contract was renewed every three months. However, in the bidding held on July 1992, CMI was disqualified and excluded. In 1993, six janitors of CMI formerly assigned at NEDA filed a complaint for underpayment of wages. Both CMI and NEDA were impleaded as respondents for failure to comply with NCR Wage Orders Nos. 01 and 02, which took effect on November 1, 1990 and January 2, 1992, respectively. Should NEDA, a government agency subject to budgetary constraints, be held liable solidarily with CMI for the payment of salary differentials due the complainants? Cite the legal basis of your answer. (5%)

SUGGESTED ANSWER:

NEDA shall be held solidarily liable with CMI for the payment of salary differentials due to the complainants, because NEDA is the indirect employer of said complainants. The Labor Code provides that xxx (A) person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project" xxx "shall be jointly and severally liable with his contractor or subcontractor to such employees (of the contractor or subcontractor) to the extent of work performed under the contract xxx." (Arts. 106 and 107, Labor Code)

Independent Contractor; Liabilities (2014)

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. (4%)

SUGGESTED ANSWER:

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

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 *USA v. Ruiz* (GR 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.

Labor-Only Contractor (2002)

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%)

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

SUGGESTED ANSWER:

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)]

Labor-Only Contractor (2008)

No. V. c. 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's 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 monetary 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 impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s. Assume that RSC has a paid-up capitalization of P1,000,000.00 Is RSC engaged in "labor only" contracting, permissible job contracting or simply, recruitment? (3%)

SUGGESTED ANSWER:

RSC is engaged in llabor-onlyll contracting. Apart from the substantial capitalization or investment in the form of tools, equipment, machinery and work premises, the following factors need 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 specific pieces of work;
- (F) the control and supervision of the workers;
- (G) the power of the employer with respect to the hiring, firing and payment of workers of the contractor;
- (H) the control of the premises;
- (I) the duty to supply premises, tools, appliances, materials, and labor; and
- (J) the mode, manner and terms of payment.

(Alexander Vinoya v. NLRC, Regent Food Corporation and/or Ricky See, G.R. No. 126586, February 02, 2000; Rolando E. Escario, et. al. v. NLRC, et. al., G.R. No. 124055, June 08, 2000; Osias I. Corporal, Sr., et. al. v. NLRC, Lao Enteng Company, Inc. and/or Trinidad Lao Ong, G.R. No. 129315, October 02, 2000)

Consider also the following circumstances: (1) the workers placed by RSC are performing activities which are directly related to the principal business of PizCorp. (Baguio v. NLRC, G.R. Nos. 79004-08, October 04, 1991); (2) RSC is not free from the control and direction of PizCorp in all matters connected with the performance of the work (ibid).

Labor-only Contractor (2009)

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 delivery 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.

[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 Joolli-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 [1991]; Kimberly Independent Labor Union, etc. v. Drillon [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. [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.

Labor-only Contractor (2012)

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%)

SUGGESTED ANSWER:

Yes. The presumption is that a contractor is a labor 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 v. Fairland Knitcraft Co., Inc. [2011]). Besides, what Art. 106

of the Labor 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:

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 or the other, i.e. either the substantial capital or the investment. And under Dept. Order No. 18-A, Series of 2011, the amount of P3 million paid-up capital for the company is substantial capital.

Labor-only Contractor; Extent of Liability (2009)

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 delivery 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.

[b] If the cashiers, delivery boys and food servers are not paid their lawful salaries, including overtime pay, holiday pay, 13th month pay, and service 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 MMSI. (Associated Anglo-American Tobacco Corp. v. Clave [1990]; Industrial Timber Corp. v. NLRC [1989]). The liability of Jolli-Mac vis-a-vis the workers of MMSI is 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 [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 – 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”.

Labor-only Contractor (2015)

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. (4%)

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 the Star Crafts. Since both 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.

Labor-only Contract v. Job-Contracting (2012)

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

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 v. Fairland Knitcraft Co., Inc. [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 v. Shangri-la's Mactan Island Resort [2009]).

Labor-only contracting is prohibited while job-contracting is allowed by law.

ANOTHER SUGGESTED ANSWER:

1. Job-only contracting is legal; whereas, Labor-only contract[ing] 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-a-vis employees of the job-contractor is for a limited purpose only e.g. wages and violation of labor-standard laws; whereas, the liability of the principal in labor-only contracting is for a comprehensive purpose and, therefore, the principal becomes solidary with the labor-only contractor for all the rightful claims of the employees;
4. 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.

Recruitment & Placement; Cancellation; Certificate of Registration; Travel Ban (2004)

Concerned Filipino contract workers in the Middle East reported to the Department of Foreign Affairs (DFA) that XYZ, a private recruitment and placement agency, is covertly transporting extremists to terrorist training camps abroad. Intelligence agencies of the government allegedly confirmed the report.

Upon being alerted by the DFA, the Department of Labor and Employment issued orders cancelling the licenses of XYZ, and imposing an immediate travel ban on its recruits for the Middle East. XYZ appealed to the Office of the President to reverse and set aside the DOLE orders, citing damages from loss of employment of its recruits, and violations of due process including lack of notice and hearing by DOLE. The DOLE in its answer claimed the existence of an emergency in the Middle East which required prompt measures to protect the life and limb of OFWs from a clear and present danger posed by the ongoing war against terrorism. Should the DOLE orders be upheld or set aside? (5%)

SUGGESTED ANSWER:

1. The DOLE order cancelling the licenses of XYZ is void because a report that an agency is covertly transporting extremists is not a valid ground for cancellation of a Certificate of Registration (Art. 239, Labor Code) and there is failure of due process as no hearing

was conducted prior to the cancellation (Art. 238, Labor Code).

2. The DOLE order imposing the travel ban is valid because it is a valid exercise of police power to protect the national interest (Sec. 3, Art. XIII, Constitution on full protection to labor safety of workers) and on the rule making authority of the Secretary of Labor (Art. 5, Labor Code; Phil. Assn. of Service Exporters v. Drilon, 163 SCRA 386 11988)).

ANOTHER SUGGESTED ANSWER:

The DOLE orders should be set aside. It is true that the Migrant Workers and Overseas Filipinos Act, particularly its Section 5, could be the basis of the power of DOLE to effect a ban on the deployment of OFWs by XYZ. If the ban, however, is for the purpose of preventing XYZ from transporting extremists to terrorist training camps abroad, this is a police and national security problem better dealt with by the police or the Office of the National Security Adviser. More importantly, the cancellation of the license of XYZ requires notice and hearing. Absent such notice and hearing, the order of cancellation of the Secretary of Labor and Employment is null and void because of the denial of due process.

Recruitment & Placement; Equity Requirement (2015)

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. (2%)

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.

Recruitment & Placement; Illegal Recruitment; Economic Sabotage (2002)

When is illegal recruitment considered a crime of economic sabotage? Explain briefly. (3%)

SUGGESTED ANSWER:

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.

Recruitment & Placement; Illegal Recruitment; Economic Sabotage (2005)

(1) During the open forum following your lecture to a group of managers and HRD personnel, you were asked the following questions: (a) What qualifying circumstances will convert "illegal recruitment" to "economic sabotage," thus subjecting its perpetrator or perpetrators to a penalty of life imprisonment and a fine of at least P500,000.00? Please explain your answer briefly. (3%)

SUGGESTED ANSWER:

Under Article 38(b) of the Labor Code, as amended by P.D. No. 2018, it provides that illegal recruitment shall be considered an offense involving economic sabotage if any of the following qualifying circumstances exists:

(1) When illegal recruitment is committed by a SYNDICATE, requiring three or more persons who conspire or confederate with one another in carrying out any unlawful or illegal transaction, enterprise or scheme; When illegal recruitment is committed in a LARGE SCALE, as when it is committed against three or more persons individually or as a group. (People v. Navarra, G.R. No. 119361, February 19, 2001; See also Sec. 6 of R.A. No. 8042)

Recruitment & Placement; Large Scale Illegal Recruitment (2005)

Maryrose Ganda's application for the renewal other license to recruit workers for overseas employment was still pending with the Philippine Overseas Employment Administration (POEA). Nevertheless, she recruited Alma and her three sisters, Ana, Joan, and Mavic, for employment as housemates in Saudi Arabia. Maryrose represented to the sisters that she had a license to recruit workers for overseas employment. Maryrose also demanded and received P30,000.00 from each of them for her services. However, Maryrose's application for the renewal of her license was denied, and consequently failed to employ the four sisters in Saudi Arabia. The sisters charged Maryrose with large scale illegal recruitment. Testifying in her defense, Maryrose declared that she acted in good faith because she believed that her application for the renewal of her license would be approved. Maryrose adduced in evidence the Affidavits of Desistance which the four private complainants had executed after the prosecution rested its case. In the said affidavits, they acknowledge receipt of the refund by Maryrose of the total amount of P120,000.00 and indicated that they were no longer interested to pursue the case against Maryrose. Resolve the case with reasons. (5%)

SUGGESTED ANSWER:

Illegal recruitment is defined by law as any recruitment activities undertaken by non-licenses or non-holders of authority. (People v. Senoron, G.R. No. 119160, January 30, 1997) And it is large scale illegal recruitment when the offense is committed against 3 or more persons, individually or as a group. (Article 38[b], Labor Code) In view of the above, Maryrose is guilty of large scale illegal recruitment. Her defense of good faith and the Affidavit of Desistance as well as the refund given will not save her because R.A. No. 8042 is a special law, and illegal recruitment is *malum prohibitum*. (People v. Saulo, G.R. No. 125903, November 15, 2000)

ALTERNATIVE ANSWER:

With the execution of the affidavit of desistance by the complainants and the refund made by Maryrose, the case against her for large scale illegal recruitment will surely fail.

Recruitment & Placement; Illegal Recruitment; Economic Sabotage (2015)

B. When does the recruitment of workers become an act of economic sabotage? (2%)

SUGGESTED ANSWER:

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 (3) persons, individually or as a group.

Recruitment & Placement; Illegal Recruitment (2007)

Discuss the types of illegal recruitment under the Labor Code.

SUGGESTED ANSWER:

The types of illegal recruitment under the Labor Code are:

1. Recruitment by a non-licensee;
2. Simple illegal recruitment is committed by a licensee against one or two persons only (People v. Sadosa [1988])
3. Large scale or qualified recruitment which is committed against three or more persons, individually or as a group;

Illegal recruitment is qualified as economic sabotage when done by a syndicate or where it is committed in large scale.

Recruitment & Placement; Illegal Recruitment (2010)

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.

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 [2000]). The fault not being attributable to him, he may be considered to have apparent authority to represent Alpha in 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 Sec 6(m) of R.A. 8042, failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment does not actually take place without the worker's fault, amounts to illegal recruitment.

Recruitment & Placement; Recruitment Agencies (2002)

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:

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 seventyfive percent (75%).

Recruitment & Placement; Effects; Non-deployment (2010)

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%)

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 sanction against XYZ under Sec. 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 Sec. 6 (L) of R.A. 8042 (cf. Sec.11 Rule I, Part V of the 2003 POEA Rules on Employment of Seafarers);

A may likewise file a complaint for breach of contract, and claim damages therefor before the NLRC, despite absence of Er-Ee relationship. Sec. 10 of R.A. 8042 conferred

jurisdiction on the Labor Arbiter not only on claims arising out of Er-Ee relationship, 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 v. CF Sharp Crew Management [2007]).

Recruitment & Placement; Travel Agency; Prohibition (2006)

Wonder Travel and Tours Agency (WTTA) is a well-known travel agency and an authorized sales agent of the Philippine Air Lines. Since majority of its passengers are overseas workers, WTTA applied for a license for recruitment and placement activities. It stated in its application that its purpose is not for profit but to help Filipinos find employment abroad. Should the application be approved? (5%)

SUGGESTED ANSWER:

The application should be disapproved, as it is prohibited by Article 26 of the Labor Code, to wit:

"Article 26. Travel agencies and sales agencies of airline companies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment whether for profit or not."

Rule I, Part II POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Workers (2002) disqualifies any entity having common director or owner of travel agencies and sales agencies of airlines, including any business entity from the recruitment and placement of Filipino workers overseas, whether they derive profit or not.

ALTERNATIVE ANSWER:

No. Section 6 of RA No. 8042 considers the following act as illegal recruitment: "(j) For an officer or agent of a recruitment agency to become an officer or member of the Board of any corporation engaged in travel agency or to engage directly or indirectly in the management of a travel agency." The law considers the operation of travel agencies and recruitment agencies as incompatible activities.

Recruitment & Placement; E-E Relationship w/ Recruitment Agency (2009)

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:

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SR and MRA traversed Richie's complaint, raising the following arguments:

[b] Because Richie was not able to leave for Qatar, no employer-employee relationship was established between them; (2%) and

SUGGESTED ANSWER:

An employer-employee relationship already existed between Richie and MRA. MRA and SR, as an agent of MRA, already approved and selected and engaged the services of Richie.

Recruitment & Placement; Principal Employer vis-a-vis Recruitment Agency; Solidary Liability (2010)

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%)

SUGGESTED ANSWER:

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

Recruitment & Placement; Ban on Direct Hiring; Exceptions (2010)

TRUE OR FALSE. As a general rule, direct hiring of Overseas Filipino Workers (OFWs) is not allowed. Explain your answer briefly. (2%)

SUGGESTED ANSWER:

TRUE. Art. 18 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 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.

Wage Distortion (2002)

A. 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:

A. 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 (10) calendar days of conciliations, then the dispute is referred to the appropriate branch of the National Labor Relations Commission.

Wage; Reduction of Minimum Pay & Wages (2006)

Can an employer and an employee enter into an agreement reducing or increasing the minimum percentage provided for night differential pay, overtime pay, and premium pay? (5%)

SUGGESTED ANSWER:

Article 100 of the Labor Code prohibits the elimination and the diminution of benefits being enjoyed by employees at the time the law was passed. The employer and employee cannot enter into an agreement to reduce the minimum percentage provided by law for night differential pay, overtime pay and premium pay as that would be against public policy. On the other hand, an agreement increasing the percentage of benefits would be valid for being beneficial to the employee. However, Art. 227 of the Labor Code authorizes diminution or reduction of benefits in case of an impelling, reasonable justification arising out of an emergency, exigency or business losses.

Wage; Wage Distortion; Definition & Elements (2006)

When is there a wage distortion?

SUGGESTED ANSWER:

A WAGE DISTORTION arises when an increase in 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, or other logical bases of differentiation (Article 124, Labor Code of the Philippines).

ALTERNATIVE ANSWER:

There is wage distortion when the following four elements concur:

- An existing hierarchy of positions with corresponding salary rates;
- A significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one;
- The elimination of the distinction between the two levels; and

d. The existence of the distortion in the same region of the country.

Wage; Wage Distortion; Means of Solving (2006)

How should a wage distortion be settled?

SUGGESTED ANSWER:

In organized establishments, the wage distortion shall be resolved through the GRIEVANCE PROCEDURE under their collective bargaining agreement, and if it remains unresolved, through VOLUNTARY ARBITRATION. On the other hand, in establishments where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortion. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board, and if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission for COMPULSORY ARBITRATION (Article 124, Labor Code of the Philippines).

Wage; Wage Distortion; Means of Solving (2009)

[b] What procedural remedies are open to workers who seek correction of wage distortion? (2%)

SUGGESTED ANSWER:

The Procedural Remedies of Wage Distortion disputed 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 establishment - employer and workers, with the aid of NCMB shall endeavor to correct the wage distortion, and if they fail, to submit the issue to the NLRC for compulsory arbitration.

Wage; Wage Distortion; Not a ground for Strike/Lockout (2006)

Can the issue of wage distortion be raised in a notice of strike? Explain. (10%)

SUGGESTED ANSWER:

NO. Section 16, Chapter I of Rules Implementing RA 6727 provides that "Any dispute involving wage distortions shall not be a ground for strike/lockout." Article 124 of the Labor Code, as amended by Republic Act 6727 prescribes a procedure for the correction of a wage distortion, implicitly excluding strikes or lockouts or other concerted activities as modes of settlement of the issue. The legislative intent that wage distortion shall be solved by voluntary negotiation or arbitration is made clear in the rules (Ilaiv at Buklod ng Manggagawa v. NLRC, G.R. No. 91980, June 27, 1991).

Wage; Wage Distortion; Not a ground for Strike/Lockout (2009)

[a] What is wage distortion? Can a labor union invoke wage distortion as a valid ground to go on strike? Explain. (2%)

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 distinction 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.

Wages; Mode of Payment (2015)

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? (2%)

SUGGESTED ANSWER:

No. Arrangement is not allowed. The models are not Benito's employees. As such, their service require compensation in legal tender (Art. 102 of Labor Code). Three sets of clothes, regardless of value, are in kind; hence, the former's compensation is not 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.

ALTERNATIVE ANSWER:

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

But even if they are not employees, the wage arrangement between Benito and the models is allowed by Art. 97 (1) 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 the reasonable value, as determined by the secretary of Labor, of board, lodging or other facilities customarily furnished by the employer to the employee.

Wages; No Work No Pay Principle (2008)

No. XIII. The rank-and-file union staged a strike in the company premises which caused the disruption of business operations. The supervisors union of the same company filed a money claim for unpaid salaries for the duration of the strike, arguing that the supervisors' failure to report for work was not attributable to them. The company contended that it was equally faultless, for the strike was not the direct consequence of any lockout or unfair labor practice. May the company be held liable for the salaries of the supervisor? Decide (6%)

SUGGESTED ANSWER:

No, following the —No work No Payll principle, the supervisors are not entitled to their money claim for unpaid salaries. They should not be compensated for services skipped during the strike. The age-old rule governing the relation between labor and capital, or management and employee of a —fair day's wage for a fair day's laborll remains as the basic factor in determining employees' wage (Aklan Electric Cooperative, Inc. v. NLRC, G.R. No. 121439, January 25, 2000).

Wages; Deduction; Facilities (2010)

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%)

SUGGESTED ANSWER:

I will rule in favour 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' wage without compliance with law (Mayon Hotel & Restaurant v. Adana [2005]).

In Mabeza v. NLRC [1997], the Supreme Court held that the employer simply cannot deduct the value from the employee's wages without satisfying the ff: (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.

Wages; Wage Deduction; Facilities (2013)

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? (8%)

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 employees' wages. (Mayon Hotel & Restaurant v. Adarna [2005]).

ANOTHER SUGGESTED ANSWER:

NO. Rule 78, Sec. 4 provides that there must be a written authorization.

Wages; Bonus (2002)

B. 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.

Wages; Bonus (2003)

XYZ Employees Association filed a complaint against ABC Bank for wrongful diminution of benefits. It alleged that the bank had been providing for a mid-year bonus equivalents onemonth basic pay and a Christmas bonus equivalent to one-month basic pay since 1971. Upon the effectivity of Presidential Decree (P.D.) No. 851 in 1975 which granted the 13th month pay, the bank started giving its employees a one-month basic pay as mid-year bonus, one-month basic pay as Christmas bonus, and one-month basic pay as 13th month pay. In 1980, the bank was placed under conservatorship and by virtue of a monetary board resolution of the Central Bank, the bank only gave one month basic pay mandated by P.D. 851, and it no longer gave its employees the traditional mid-year and Christmas bonuses. Could ABC Bank be compelled, given the circumstances, to continue paying its employees the

traditional midyear and Christmas bonuses in addition to the 13th month pay?

SUGGESTED ANSWER:

No. The grant of a bonus is a prerogative, not an obligation, of the employer. (*Traders Royal Bank v. NLRC*, 189 SCRA 274 (1990)). The matter of giving a bonus over and above that which is required by law is entirely dependent on the financial capability of the employer to give it. (*Businessday v. NLRC*, 221 SCRA 9 (1993)). Hence, given the circumstances, ABC Bank cannot be compelled to continue paying its employees the traditional mid-year and Christmas bonuses in addition to the 13th month pay.

Wages; Bonus (2014)

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? (4%)

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, 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, GR No. 155059 [2005]).

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.

Wages; Bonus (2015)

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 20% 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. (3%)

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 bonus, Katrina is deemed to have earned them because of her excellent performance rating 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.

Wages; 13th Month Pay; Taxi Driver under Boundary System (2012)

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%)

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 IRR of 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 SIL. A taxi driver paid under the boundary system is an "unsupervised" employee.

Wages; Holiday Pay; Computation (2002)

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 a compensation equivalent to twice his regular rate.

Wages; Holiday Pay; Overtime Pay; Computation (2002)

This year, National Heroes Day (August 25) 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.

Wages; Holiday Pay (2010)

A, a worker at 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%)

SUGGESTED ANSWER:

YES. A is entitled to holiday pay equivalent to 200% of his regular daily wage for the two successive holidays that he wotker (Sec.6(a), Rule IV, Book III of the Omnibus Rules Implementing the Labor Code).

Wages; Overtime Pay; Waiver (2009)

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.

[d] A waiver of the right to claim overtime pay is contrary to law. (1%)

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 [1982]). An exception would be the adoption of a compressed workweek on a voluntary basis,

subject to the guidelines of Department Order No. 02, Series of 2004.

Wages; Overtime Pay; Cannot be Off-set (2010)

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.

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 Art. 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. Overtime is not off-set by overtime (Art. 88, Labor Code).

Wages; Holiday Pay; Workers Paid by Result (2002)

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 P175.00 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, 13th 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)]

Wages; Overtime Pay; Management Prerogative (2015)

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? (4%)

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 of two (2) shifts, he can now 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 Employee's 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 the case, such is not demandable.

Wages; Holiday Pay (2005)

During the open forum following your lecture before members of various unions affiliated with a labor federation, you were asked the following questions (State your answers and your reasons therefor):

(a) Araw ng Kagitingan and Good Friday are among the 10 paid regular holidays under Article 94 of the Labor Code. How much will an employee receive when both holidays fall on the same day? (4%)

SUGGESTED ANSWER:

If unworked, the covered employees are entitled to at least 200% of their basic wage, because to do otherwise would reduce the number of holidays under EO No. 203. If worked, the covered employees are entitled to compensation equivalent to at least 300% of their basic wage because they are entitled to the payment not only of the two regular holidays, but also of their regular wage, plus the premium thereof. (DOLE Explanatory Bulletin on Workers' Entitlement to Holiday Pay on 9 April 1993, Araw ng Kagitingan and Good Friday)

Wages; Service Incentive Leave (2010)

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%)

SUGGESTED ANSWER:

I will grant the prayer of A.

Payment on commission basis 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* [2005]).

His action has not yet prescribed. In *Auto Bus v. Bautista* [supra], the Supreme Court recognized SIL throughout the years of his service with the company upon his resignation, retirement, or termination. Therefore, when A resigned after 5 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).

ANOTHER SUGGESTED ANSWER:

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

Wages; Money Claims; Overseas Worker (2009)

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:

[c] Even assuming that they are liable, their liability would, at most, be equivalent to Richie's salary for only six (6) months, not two years. (3%).

SUGGESTED ANSWER:

No. In the recent case of *Serrano v. Gallant Maritime* (G.R. No. 167614, March 24, 2009), the Supreme Court held that the clause "three (3) months for every year of the unexpired term, whichever is less" in Sec. 10, R.A. 8042 is unconstitutional. Richie is therefore entitled to two (2) years salaries due him under the POEA approved contract.

Wages; Money Claims; Overseas Worker (2010)

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 *Almieda 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 *Almieda II* was 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.

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

SUGGESTED ANSWER:

YES. Sec. 10 of R.A. 8042 (as amended) 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 12% per annum, plus his salaries for the unexpired portion of his employment contract or for 3 years for every year of the unexpired term, whichever is less. (cf. *Serrano v. Gallant Maritime* [2009]).

Wages; Money Claims; Attorney's Fees; Damages (2001)

(a) Eduardo Santiago, a project worker, was being assigned by his employer, Bagsak Builders, to Laoag, Ilocos Norte. Santiago refused to comply with the transfer claiming that it, in effect, constituted a constructive dismissal because it would take him away from his family and his usual work assignments in Metro Manila. The Labor Arbiter found that there was no constructive dismissal but ordered the payment of separation pay due to strained relations between Santiago and Bagsak Builders plus attorney's fees equivalent to ten percent (10%) of the value of Santiago's separation pay. Is the award of attorney's fees valid? State the reasons for your answer. (2%).

SUGGESTED ANSWER:

No, the award of attorney's fees is not valid. According to the Labor Code (Art. 111 (a)), attorney's fees may be assessed in cases of unlawful withholding of wages which does not exist in the case. The worker refused to comply with a lawful transfer order, and hence, a refusal to work. Given this fact, there can be no basis for the payment of attorney's fees.

(b) Could the labor arbiter have validly awarded moral and exemplary damages to Santiago instead of attorney's fees? Why? (3%).

SUGGESTED ANSWER:

No, moral and exemplary damages can be awarded only if the worker was illegally terminated in an arbitrary or capricious manner. (*Nueva Ecija Electric Cooperative Inc., Employees Assn., vs. NLRC*, G.R. No. 116066, January 24, 2000; *Cruz vs. NLRC*, G.R. No. 116384, February 7, 2000; *Phil. Aeolus etc., vs. NLRC*, G.R. No. 124617, April 28, 2000).

Wages; Non-diminution of Benefits (2013)

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? (8%)

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 Art. 100 of the Labor Code appears to be meritorious. Since three (3) years have already elapsed, the overtime rate of 35% has ripened into practice and policy, and cannot anymore be removed. (*Sevilla Trading v. Semana* [2004]). This is deliberate, consistent and practiced over a long period of time.

Wages; Unpaid Wages; Preference of Credit in favor of Employees (2003)

Premiere Bank, a banking corporation, being the creditor-mortgagee of XYZ & Co., a garment firm, foreclosed the hypothecated assets of the latter. Despite the foreclosure, XYZ & Co. continued its business operations. A year later, the bank took possession of the foreclosed property. The garment firm's business operations ceased without a declaration of bankruptcy. Jose Caspar, an employee of XYZ & Co., was dismissed from employment due to the cessation of business of the firm. He filed a complaint against XYZ & Co. and the bank. The Labor Arbiter, after hearing, so found the company liable, as claimed by Jose Caspar, for separation pay. Premiere Bank was

additionally found subsidiarily liable upon the thesis that the satisfaction of labor benefits due to the employee is superior to the right of a mortgagee of property. Was the Labor Arbiter correct in his decision?

SUGGESTED ANSWER:

No. The preference of credits established in Art. 110 of the Labor Code cannot be invoked in the absence of any insolvency proceedings, declaration of bankruptcy, or judicial liquidation. (DBP v. Santos. 171 SCRA 138 (1989).

ANOTHER SUGGESTED ANSWER:

No. What Art. 110 of the Labor Code establishes is not a lien but a preference of credit in favor of employees. Unlike a lien, a preference of credit does not create a charge upon any particular property of the debtor. (Development Bank of the Philippines v. Secretary of Labor. 179 SCRA 630 (1989).

ANOTHER SUGGESTED ANSWER:

The Decision of the Labor Arbiter holding Premiere Bank (as foreclosing mortgagee-creditor) subsidiarily liable for a money obligation of XYZ & Co. (as mortgagor) to Caspar, its employee, has no legal basis.

1. There is no privity of relationship between the Bank and Caspar. The relationship, upon which the obligation to pay a sum of money is based, is between XYZ (the mortgagor) and Caspar as its employee arising from the Labor Code provision requiring an employer to pay separation pay, re: other causes of employment.
2. At both times - Labor Arbiter Decision to pay separation pay and foreclosure - XYZ & Co. was an existing business entity and neither bankrupt or in liquidation, although its business operations after the foreclosure ceased.
3. The decision of the Labor Arbiter for XYZ & Co. to pay a sum of money to Caspar was based on an action in personam, not in rem. Enforceable against any party. (Sundowner Corporation vs. Drilon. 180 SCRA 14 (1989))
4. The reference in the Decision to "labor benefits due to an employee is superior to the right of a mortgagee of property" is misplaced. The preferential claim rule has no basis and runs contrary to law and jurisprudence.

Working Hours; Charitable Institution; Overtime Pay (2002)

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.

Working Hours; Compressed Work Week (2005)

(d) 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%)

SUGGESTED ANSWER:

The conditions for an allowable "compressed work week" are the following: the workers agree to the temporary change of work schedule and they do not suffer any loss of overtime pay, fringe benefits or their weekly or monthly take-home pay. (DOLE Explanatory Bulletin on the Reduction of Workdays on Wages issued on July 23, 1985)

ALTERNATIVE ANSWER:

"Compressed work week" is resorted to by the employer to prevent serious losses due to causes beyond his control, such as when there is a substantial slump in the demand for his goods or services or when there is lack of raw materials. (Explanatory Bulletin on the Reduction of Workdays on Wages Issued by DOLE, July 23, 1985)

Working Hours; Night Shift Differential (2002)

As a fireman 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 nightshift 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.

ANOTHER SUGGESTED ANSWER:

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.

Working Hours; Saturday Work (2003)

A case against an employer company was filed charging it with having violated the prohibition against offsetting undertime for overtime work on another day. The complainants were able to show that, pursuant to the Collective Bargaining Agreement (CBA), employees of the union had been required to work "overtime" on Saturday but were paid only at regular rates of pay on the thesis that they were not required to complete, and they did not in fact complete, the eight-hour work period daily from Monday through Friday. Given the circumstances, the employer contended that the employees were not entitled to overtime compensation, i.e., with premium rates of pay. Decide the controversy.

SUGGESTED ANSWER:

The employer is correct. While Art. 88 of the Labor Code clearly provides that undertime work on any other particular day shall not be offset by overtime work on any other day, this rule is inapplicable in this case pertaining to Saturday

work which in reality does not constitute overtime work as Saturday is still a working day under the law and there is no CBA stipulation against it.

ANOTHER SUGGESTED ANSWER:

Art. 88 of the Labor Code provides that undertime work on any particular day shall not be offset by overtime work on any other day. The CBA being the law between the parties and the Union having shown that the employees rendered overtime work on Saturday, the contention of the employer is not tenable. The employer cannot use the undertime of Monday through Friday to offset the overtime on Saturday. Hence, the employees are entitled to overtime compensation, i.e. premium rates of pay on Saturday.

Working Hours; When Compensable; "While on Call" (2004)

Gil Bates, a computer analyst and programmer of Hard Drive Company, works eight hours a day for five days a week at the main office providing customers information technology assistance. On Saturdays, however, the company requires him to keep his cellular phone open from 8:00 A.M. to 5:00 P.M. so that the Management could contact him in case of heavy work load or emergency problems needing his expertise. May said hours on Saturdays be considered compensable working hours "while on call"? If so, should said compensation be reported to the Social Security System? (5%)

SUGGESTED ANSWER:

Said hours on Saturdays should be considered as compensable working hours "while on call". In accordance with the Rules and Regulations Implementing the Labor Code, an employee who is not required to leave work at his home or with company officials as to where he may be reached is not working while on call. But in the question, Gil Bates was required to keep his cell phone open from 8:00 A.M. to 5:00 P.M. Therefore, Bates should be considered as working while on call, if he cannot use effectively and gainfully for his own purpose the time from 8:00 A.M. to 5:00 P.M. on Saturdays when he is required to keep his cellphone open. The compensation actually received by Bates for working while on call on Saturdays should be reported to the Social Security System because under the Social Security Law, compensation means "all actual remuneration for employment."

ANOTHER SUGGESTED ANSWER:

If Gil Bates can effectively utilize the Saturdays in his own interest even "while on call", said hours on Saturdays are not compensable. However, if during said hours on Saturdays, Bates is actually required to attend to urgent work to the extent of leaving what he is doing, then the same are compensable working hours to the extent of the actual hours of work rendered by him. The compensation paid by the company to Bates for said hours worked on Saturdays should be reported to the SSS. This is so because the basis of computing the SSS contribution includes all actual remuneration, including allowances and cash value of any compensation paid in any medium other than cash.

Company Policy; Prohibition to Marry (2010)

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 RX. 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%)

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* [2004] does not apply in the present case.

Company Policy; Validity; Weight Requirements in Airlines (2010)

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%)

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 stopped 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 (*Yrasegui v. PAL* [2008]). However, A had already been employed for 2 years before the airline company imposed on her this weight regulation, and nary an incident did the airline company raise which rendered her amiss of her duties.

LABOR RELATIONS

Legitimate Labor Organization (2014)

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-Arbitrator 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? (5%)

SUGGESTED ANSWER:

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

Rule on "Equity of the Incumbent (2015)

What is the rule on the "equity of the incumbent"? (2%)

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.

CBA; Arbitral Award; Retroactive Effect (2001)

Company A and Union B had a 3-year CBA that expired on June 12, 1990. Negotiations proved futile so the unresolved issues were referred to an Arbiter who rendered a decision on March 15, 1992 retroactive to December 14, 1990. Is the Arbiter's decision providing for retroactivity tenable or not? Why? (5%)

SUGGESTED ANSWER:

The referral of the unresolved issues of the collective bargaining negotiations to an Arbiter is not within the jurisdiction of the Arbiter. But assuming that the unresolved issues in the collective bargaining negotiations were properly referred to the Arbiter pursuant to the provision of the Labor Code (Art. 262) that states that a Voluntary Arbitrator may hear and decide any labor dispute, including bargaining deadlocks, the Arbiter's decision providing for retroactivity is tenable. Exercising his compulsory arbitration power, the Arbiter could decide the issue of retroactivity in any way which is not contrary to law, morals, good customs, public order or public policy. But in a case (Manila Electric Co. vs. Secretary of Labor Leonardo Quisumbing, G.R. No. 127598, February 22, 2000), the Supreme Court said that an arbitral award shall retroact to the first day after the six-month period following the expiration of the last day of the CBA that was being renegotiated.

ANOTHER SUGGESTED ANSWER:

The retroactive Order of the Labor Arbiter is void for want of jurisdiction. Jurisdiction is conferred by law. Nowhere in the Labor Code, more specifically, Article 217, is the Labor

Arbiter given jurisdiction over unresolved issues in collective bargaining, including determining the period or duration of a Collective Bargaining Agreement.

CBA; Automatic Renewal Clause (2001)

Company "A" and Union "B" negotiated the last two years of their five-year CBA on April 1, 1990 to expire on March 31, 1992. Considering the amicable relations between the parties, neither one moved for the extension or termination of the agreement. Sometime in 1995, some disgruntled employees filed a complaint demanding that they be paid the annual salary increases and other related annual increases specified in the CBA of April 1990, citing the provision in Art. 253 of the Labor Code which requires the parties to "xxx keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60 day period and/or until a new agreement is reached by the parties".

A, however, maintained that the annual salary increases and related benefits specifically provided for in the CBA were, pursuant to contract and law, effective only for the term specified therein, namely, until March 31, 1992 only. Who is correct? State the reason(s) for your answer. (5%)

SUGGESTED ANSWER:

The disgruntled employees are correct in their claim that the expired CBA remains in full force and effect until a new CBA is signed in accordance with Article 253 of the Labor Code. The SC ruled in *New Pacific Timber and Supply Co., Inc. vs. NLRC*, GR No. 124224, March 17, 2000: "Article 253 of the Labor Code explicitly provided that until a new Collective Bargaining Agreement has been executed by and between the parties, they are duly bound to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement. The law does not provide for any exception or qualification as to which of the economic provisions of the existing agreement are to retain force and effect, therefore, it must be understood as encompassing all the terms and conditions in the said agreement."

ANOTHER SUGGESTED ANSWER:

With Art. 253 of the Labor Code as basis, the disgruntled employees should be paid the annual salary increases and other related annual increases provided in the 1990-1992 CBA even after the expiration of said CBA as long as said CBA did not provide that said increases were to be paid only for certain specific years.

CBA; Automatic Renewal Clause; Hold-over Principle (2010)

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%)

SUGGESTED ANSWER:

YES, under Art. 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 'hold-over', which states that despite the lapse of the formal effectivity of the CBA, the law still considers the same as continuing in force and effect until a new CBA shall have been validly executed (MERALCO v. Hon. Sec. Of Labor [2000] citing Nat'l Congress of Unions in the Sugar Industry of the Philippines v. Ferrer Calleja [1992]).

The terms and conditions of the existing CBA remain under the principle of CBA continuity.

CBA; Duty to Bargain in Good Faith (2009)

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.

[c] Is management's withdrawal of the fringe benefits valid? Reasons. (2%)

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 of the Labor Code.

CBA; Bargaining Representative (2000)

The Ang Sarap Kainan Workers Union appointed Juan Javier, a law student, as bargaining representative. Mr. Javier is neither an employee of Ang Sarap Kainan Company nor a member of the union. Is the appointment of Mr. Javier as a bargaining representative in accord with law? Explain. (3%)

SUGGESTED ANSWER:

Yes, the law does not require that the bargaining representative be an employee of the company nor an officer or member of the union. {Art 212 (j), Labor Code}.

CBA; Certification Election (2005)

As Human Resources Department (HRD) manager of EZ Components, an unorganized manufacturer of electric and electronic components for household appliances, you are suddenly confronted with demands for recognition and collective bargaining negotiations from two competing labor unions. They both claim to represent all the rank-and-file employees. Union A is led by a moderate faction, while Union B is affiliated with a militant federation identified with leftist ideology. Which of the following courses of action should you take to best protect the interests of your company and employees?

- (a.) Recognize Union A as the rightful bargaining representative because it will be more reasonable to deal with;
- (b.) Recognize Union B because you do not want to antagonize its leftist connections and foment inter-union conflicts;
- (c.) Ignore the demands of either union since you cannot be compelled legally to deal with them at this stage; or
- (d.) Petition the Bureau of Labor Relations to conduct a certification election to determine which union really represents the majority of the employees in the bargaining unit. (10%)

SUGGESTED ANSWER:

(d) Petition the Bureau of Labor Relations to conduct a certification election to determine which union really represents the majority of the employees in the bargaining unit. (Haw at Buklod ng Manggagaiva [IBM] v. Calleja, G.R. No. 84685, February 23, 1990)

ALTERNATIVE ANSWER:

(c) Ignore the demands of either union since you cannot be compelled legally to deal with them at this stage.

CBA; Certification Election (2009)

Among the 400 regular rank-and-file workers of MNO Company, a certification election was ordered conducted by the Med-Arbiter of the Region. The contending parties obtained the following votes:

1. Union A - 70
2. Union B - 71

3. Union C - 42
4. Union D - 33
5. No union - 180
6. Spoiled votes - 4

There were no objections or challenges raised by any party on the results of the election.

[a] Can Union B be certified as the sole and exclusive collective bargaining agent among the rank-and-file workers of MNO Company considering that it garnered the highest number of votes among the contending unions? Why or why not? (3%)

SUGGESTED ANSWER:

No. To be certified as bargaining agent, the vote required is majority of the valid votes cast. There were 396 valid votes cast, the majority of which is 199. Since Union B got only 71 votes, it cannot be certified as the sole and exclusive bargaining agent of MNO's rank-and-file workers.

[b] May the management or lawyer of MNO Company legally ask for the absolute termination of the certification election proceedings because 180 of the workers -- a clear plurality of the voters -- have chosen not to be represented by any union? Reasons. (3%)

SUGGESTED ANSWER:

No, because 216 workers want to be represented by a union as bargaining agent. Only 180 workers opted for No Union. Hence, a clear majority is in favor of being represented by a union.

[c] If you were the duly designated election officer in this case, what would you do to effectively achieve the purpose of certification election proceedings? Discuss. (3%)

SUGGESTED ANSWER:

I will conduct a run-off election between the labor-unions receiving the two highest number of votes. To have a run-off election, all the contending unions (3 or more choices required) must have garnered 50% of the number of votes cast. In the present case, there are four (4) contending unions and they garnered 216 votes. There were 400 votes cast. The votes garnered by the contending unions is even more than 50% of the number of vote cast. Hence, a run-off election is in order.

CBA; Certification Election (2014)

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

(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 Dept. 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 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 (Art. 256, now Art. 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 (Art. 256, now Art. 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 (Art 255, now Art. 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 (Art. 256, now Art. 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.

CBA; Certification Election; "No-Union" Win (2006)

Can a "no-union" win in a certification election? (2.5%)

SUGGESTED ANSWER:

YES. Sec. 20, Rule 9, Book V provides that where the votes cast results in "no union" obtaining the majority, the med arbitrator shall declare such fact in the order. Hence, the employees may choose not to be represented by anyone (Reyes-Trajano v. Trajano, G.R. No 84433, June 2, 1992).

CBA; Certification Election; Employer As A Mere Bystander (2014)

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. (5%)

SUGGESTED ANSWER:

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

CBA; Certification Election; Consent Election; Run-Off Election (2000)

Distinguish between "Certification Election", "Consent Election," and "Run-off Election", (6%)

SUGGESTED ANSWER:

CERTIFICATION ELECTION requires a petition for a Certification Election filed by a union or employer. A Med-Arbitrator grants the petition and an election officer is designated by the regional director to supervise the election. (Art. 256, 257, 258, Labor Code).

CONSENT ELECTION is held by agreement of the unions with or without participation of the mediator. [Warren Manufacturing Workers Union v. Bureau of Labor Relations, 159 SCRA 387 (1988)]

RUN-OFF ELECTION takes place between the unions who received the two highest number of votes where not one of the unions obtained the majority of the valid votes cast, provided that the total union votes is at least 50% of the votes cast. (Art. 256, Labor Code).

CBA; Coverage; Non-Union Members; Religious Sect (2005)

A group of employees in XYZ Factory belonging to a religious sect, in conformity with the teachings and dictates of their religion, refused to join the labor union in the factory. The labor union was able to negotiate a substantial wage increase in its collective bargaining agreement with management. A provision therein stated that the wage increase would be paid to the members of the union only in view of a "closed shop" union security clause in the new agreement. The members of the sect protested and demanded that the wage increase be extended to them. The officers of the union countered by demanding their termination from the company pursuant to the "closed shop" provision in the just-concluded CBA. (6%)

(a) Is the CBA provision valid?

SUGGESTED ANSWER:

No, the CBA provision is not valid. The benefits of a CBA are extendible to all employees regardless of their

membership in the union because to withhold the same from non-union members would be to discriminate against them. (National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc., G.R. No. L-18170, August 31, 1963)

(b) Should the company comply with the union's demand of terminating the members of the religious sect?

SUGGESTED ANSWER:

No. The right to join includes the right not to join by reason of religious beliefs. Members of said religious sect cannot be compelled or coerced to join the labor union even when the union has a closed shop agreement with the employer; that in spite of any closed shop agreement, members of said religious sect cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union. (Victoriano v. Elizalde Rope Workers' Union, G.R. No. L-25246, September 12, 1974)

CBA; interpretation (2004)

The CBA between the Company and the rank-and-file Union contained the following provision:

"Section 3. MEAL ALLOWANCE. The Company agrees to grant a MEAL ALLOWANCE of TEN PESOS (P10.00) to all employees who render at least TWO (2) hours or more of actual overtime work on a workday, and FREE MEALS, as presently practiced, not exceeding TWENTY FIVE PESOS (P25.00) after THREE (3) hours of actual overtime work."

Dispute in the interpretation of the above provision arose as the Company asserts that the phrase "after three (3) hours of actual overtime work" does not mean after exactly three (3) hours of actual overtime work; it means after more than three (3) hours of actual overtime work. The Union, on the other hand, maintained that "after three (3) hours of actual overtime work" simply means after rendering exactly, or no less than, three (3) hours of actual overtime work. Which interpretation do you think should prevail? Why? (5%)

SUGGESTED ANSWER:

The interpretation of the union should prevail. In a Supreme Court Decision, it was ruled that the condition "after 3 hours of actual overtime work" is satisfied after exactly 3 hours of actual overtime work.

CBA; Lock-out vs. Closed Shop (2004)

Distinguish clearly but briefly between Lock-out and Closed Shop.

SUGGESTED ANSWERS:

LOCKOUT refers to the temporary refusal of an employer to furnish work as a result of a labor or industrial dispute. CLOSED SHOP, on the other hand, refers to a union security clause in a collective bargaining agreement whereby the employer agrees not to employ any person who is not a member of the exclusive collective bargaining representative of the employees in a bargaining unit.

CBA; Registration Requirement; Contract Bar-Rule (2000)

A Collective Bargaining Agreement was signed between the Ang Sarap Kainan Company and the Ang Sarap Kainan Workers Union. Should the Collective Bargaining Agreement be registered with the Bureau of Labor Relations? If so, why? (3%)

SUGGESTED ANSWER:

So that the contract-bar rule may apply the CBA should be registered, assuming it has been validly ratified and contains the mandatory provisions. (Art. 232, Labor Code).

CBA; Run-Off Election (2006)

When does a "run-off" election occur? (2.5%)

SUGGESTED ANSWER:

A run-off election occurs when the following elements occur:

1. Between three (3) or more choices, and no choice receiving a majority of the valid votes cast;
2. The total number of votes for all contending unions is at least 50% of the number of vote cast; and
3. Between the labor unions receiving the two highest number of votes (Article 256, Labor Code).

CBA; Certification Election; Consent Election; Voluntary Recognition (2012)

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%)

1. VOLUNTARY RECOGNITION

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 recognizes 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.

2. CERTIFICATION ELECTION

SUGGESTED ANSWER:

"Certification Election" refers to the process of determining thru 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).

3. CONSENT ELECTION

SUGGESTED ANSWER:

"Consent Election" refers to the process of determining thru 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 voluntarily agreed upon by the parties, with or without the intervention by the Department. (Sec. 1[h], Rule 1, Book V, Omnibus Rules Implementing the Labor Code).

CBA; Social Security vs. Union Security (2004)

Distinguish clearly but briefly between Social security and union security

SUGGESTED ANSWERS:

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.

CBA; Substitutionary Doctrine (2000)

a) The Samahan ng Mga Manggagawa sa Pids and Co. Inc. lost its majority status in the bargaining unit one year after the signing of the Collective Bargaining Agreement. Bickerings among all the three other unions in the bargaining unit were a daily occurrence, with each union asserting majority status. To resolve this pestering problem, the Company and the three other unions agreed to hold a consent election under the supervision of the Bureau of Labor Relations. In the consent election, Pids and Co. Worker's Union won, and was accordingly recognized by the Company as the exclusive bargaining representative in the bargaining unit. Is the Pids and Co. Workers Union bound by the Collective Bargaining Agreement signed between the Company and the Samahan ng Mga Manggagawa Sa Pids and Co. Inc.? Explain. (3%)

b) Shortly after the consent election, Pids and Co. Inc. sold the Groceries Division to Metro Manila Grocery Inc. The employees of the sold division formed part of the bargaining unit described in the Collective Bargaining Agreement, and all were absorbed by Metro Manila Grocery Inc. Is Metro Manila Grocery Inc., as the new employer, bound by the Collective Bargaining Agreement existing at the time of the sale? Explain. (3%)

SUGGESTED ANSWER:

a) Yes, because the Collective Bargaining Agreement is not invalidated by the change of the bargaining agent while the CBA is still effective. The "substitutionary doctrine" applies. (Benguet Consolidated Inc. v. BCI Employees, 23 SCRA 465 (1968))

b) No. There are no indications that the sale is simulated or intended to defeat the employees' right to organize. A bona fide sale terminates the employment relationship between the selling company and its employees. The CBA does not bind the purchaser in good faith because the CBA is a personam contract, unless the buyer agrees to be bound. [Sundowner Dev. Corp. v. Drilon, 180 SCRA 14 (1989); Associated Labor Union v. NLRC, 204 SCRA 913 (1993)].

CBA; Substitutionary Doctrine (2009)

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.

[d] In the law on labor relations, the substitutionary doctrine prohibits a new collective bargaining agent from repudiating an existing collective bargaining agreement.

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.

CBA; Freedom Period; Deadlock Bar Rule (2009)

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.

[a] When was the "freedom period" referred to in the foregoing narration of facts? Explain. (2%)

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.

[b] After April 3, 2008, will a petition for certification election filed by another legitimate labor union representing the rank-and-file employees legally prosper? Reasons. (3%)

SUGGESTED ANSWER:

Yes, because the deadlock declared by the Union had not been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout. Any of these measure is required to institute the so-called "deadlock bar rule".

ANOTHER SUGGESTED ANSWER:

The petition for Certification Election filed on April 3, 2008 by another union will not prosper. Art. 253 of the Labor Code reads: "It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement...until a new agreement is reached by the parties." Furthermore, the petition was filed outside of the freedom period. (Arts. 256 & 253-A of the Labor Code).

Conciliation Proceedings; Privileged Communication (2007)

How sacrosanct are statements/data made at the conciliation proceeding in the Department of Labor and Employment? What is the philosophy behind your answer?

SUGGESTED ANSWER:

Under Art. 233, statements made at the conciliation proceedings are privileged communications that can neither be used as evidence nor can conciliators testify on any matters taken up in the proceedings. The philosophy is to ascertain the truth about the controversy which the parties may be afraid to divulge if the revelations can be utilized against them later on.

CBA; Union Security Clause (2004)

A. MPH Labor Union is the duly certified bargaining representative of the rank-and-file employees of MM Park Hotel since the 1970's. The collective bargaining agreement contained union shop security provisions. After the signing of the 2000– 2005 CBA, the Union demanded the dismissal of 3 employees, XX, YY and ZZ, pursuant to the union security clause in the CBA. The Hotel Management replied that it was legally impossible to comply with the demand of the Union. It might even be construed as unfair labor practice. For it appeared that XX, YY and ZZ had been recently promoted as supervisors and resigned from the Union. But according to the Union, the three submitted their resignations outside the freedom

period after the 1996–2000 CBA expired on June 30, 2000. The Union argued that the Hotel Management could not skirt its obligation to respect and implement the union security clause by promoting the three employees. That could be viewed as rewarding employees for their disloyalty to the union, said the union officers. Does the union security clause sufficiently justify the demand for dismissal of the three employees or not? May the Hotel Management validly refuse the Union's demand? (5%)

SUGGESTED ANSWER:

No, the union security clause does not justify the dismissal of the promoted supervisors who were formerly members of rank-and-file union.

Yes. The hotel management may validly refuse to dismiss the supervisors.

As supervisors, they are no longer covered by the CBA of the employer and the rank-and-file union. The law does not require a promoted supervisor to resign upon promotion from their membership with the rank-and-file union; rather, by operation of law, they can no longer continue their membership with the rank-and-file union.

Art. 245 of the Labor Code provides that supervisory employees shall not be eligible for membership in a labor organization of rank-and-file employees but may join, assist, or form separate labor organization of their own.

CBA; Union Security Clause vis-à-vis Security of Tenure (2009)

[b] Explain the impact of the union security clause to the employees' right to security of tenure. (2%)

SUGGESTED ANSWER:

A valid union security when enforced or implemented for cause, after according the worker his substantive and procedural due process rights (Alabang Country Club, Inc. V. NLRC [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.

CBA; "Closed Shop" Clause vs. "Maintenance of Membership" Clause (2015)

(b) Distinguish between a "closed shop" clause and a "maintenance of membership" clause. (2%)

SUGGESTED ANSWER:

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. 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.

CBA; Wage Increase Coverage; Non-Union Employees (2005)

(b) 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, because the bargaining representative (union) does not act for its members alone. It represents all the employees covered by the bargaining unit. (Mactan Workers Union v. Aboitiz, G.R. No. L-30241, June 30, 1972) However, nonmembers who avail of CBA benefits are required under the law to pay agency fees.

CBA; Surface Bargaining vs. Blue-sky Bargaining (2010)

Differentiate "surface bargaining" from "blue-sky bargaining." (2%)

SUGGESTED ANSWER:

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 [2004].

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).

CBU; Confidential Employees (2009)

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%)

[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 to self-organization for purpose of collective bargaining. (San Miguel Corporation Supervisors v. Laguesma, 277 SCRA 370 [1997]).

CBU; Company Union vs. Union Shop (2004)

Distinguish clearly but briefly between Company union and union shop.

SUGGESTED ANSWERS:

A COMPANY UNION is a union of employees dominated or under the control of the employer of said employees. A UNION SHOP, on the other hand, refers to a union security clause in a collective bargaining agreement whereby the employer agrees to terminate the employment of an employee who has not become a member of the union which is the exclusive collective bargaining representative of the employees in a bargaining unit within a certain

period after the employment of said employee or has ceased to become a union member.

CBU; Consent Election vs. Certification Election (2004)

Distinguish clearly but briefly between Consent election and certification election.

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 Department of Labor and Employment.

CBU; Modes; Determination of Exclusive Bargaining Agreement (2006)

The modes of determining an exclusive bargaining agreement are: a. voluntary recognition b. certification election c. consent election. Explain briefly how they differ from one another. (5%)

SUGGESTED ANSWER:

(a.) **VOLUNTARY RECOGNITION** — is the voluntary recognition by the employer of the status of the union as the bargaining representative of the employees [Section I(bbb), Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003 (17 February 2003)].

(b.) **CERTIFICATION ELECTION** is the process of determining the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit [Section I(h), Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003 (17 February 2003)].

(c.) **CONSENT ELECTION** is an agreed election, conducted with or without the intervention of the DOLE to determine the issue of majority representation of all the workers in the appropriate bargaining unit (Algire v. De Mesa, G.R. No. 97622, October 19, 1994).

Employees; Managerial Employees vs. Supervisory Employees (2002)

Distinguish managerial employees from supervisory employees. (3%)

SUGGESTED ANSWER:

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, 229 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))

Employees; Managerial vs. Supervisory vs. Rank-and-File Employees (2003)

The Labor Code treats differently in various aspects the employment of (i) managerial employees, (ii) supervisory employees, and (iii) rank-and-file employees. State the basic distinguishing features of each type of employment.

SUGGESTED ANSWER:

Under Book Three of the Labor Code, a MANAGERIAL EMPLOYEE refers to one whose primary duty consists of the management of the establishment in which he is employed or of a department or subdivision thereof, and to other officers or members of the managerial staff. A supervisor and a rank and file employee can be considered as members of the managerial staff, and therefore, a managerial employee if their primary duty consists of work directly related to management policies; if they customarily and regularly exercise discretion and independent judgment; regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which they are employed or a subdivision thereof; or execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or execute under general supervision special assignments and tasks; and who do not devote more than 20 percent of their hours worked in a work-week to activities which are not directly and closely related to the performance of the work described above. All others are rank and file employees under said Book (Art. 82, Labor Code, Sec. 2 (c), Rule I, Bk. III, Omnibus Rules Implementing the Labor Code).

Under Book Five of the Labor Code, "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. A SUPERVISORY EMPLOYEE is one who, in the interest of the employer, effectively recommends such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book (Art. 212 (M), Labor Code). On the matter of right to self-organization, a managerial employee cannot exercise such right; while a supervisor and a rank and file employee can (Arts. 245, 243, Labor Code).

Employees; Membership of Supervisory Employees in Rank-and-file Union; Automatically Severed (2010)

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 the 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%)

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).

Employees; Membership of Managerial Staff in a Supervisory Employees Union (2010)

Samahang Manggagawa ng Terracota, a union of supervisory employees at Terracota Inc., recently admitted a member of the company's managerial staff, A, into the union ranks.

A. Should A be a member of the supervisory union? Explain. (2%)

SUGGESTED ANSWER:

YES, as long as A is not a confidential employee who has access to confidential matters on labor relations (San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma p1997)).

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. R.A. 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.

Employees; Membership of Aliens in Unions (2015)

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? (3%)

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.

Conciliation vs. Mediation vs. Arbitration (2010)

A. Distinguish the terms "conciliation," "mediation" and "arbitration." (3%)

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 disputed 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.

ANOTHER SUGGESTED ANSWER:

(1) CONCILIATION is the process of dispute management whereby parties in dispute are brought together for the purpose of (a) amicably settling the case upon a fair compromise; (b) determining the real parties in interest; (c) defining and simplifying the issues in the case; (d) entering into admissions or stipulations of facts; and (e) 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 disputes 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), R.A. 9285).

(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 Dev't Bank v. Association of Luzon Dev't Bank Employees [1995]).

In this jurisdiction, compulsory arbitration in labor disputes are submitted to a labor arbiter, whose powers and functions are clearly defined under Art. 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 Arts. 260-262 of the Labor Code.

Right to Strike: Sympathy vs. General Strike (2004)

Distinguish clearly but briefly between: Sympathy strike and general strike.

SUGGESTED ANSWERS:

In both a sympathy strike and in a general strike, there is a stoppage of work by the concerted action of employees. In both kinds of strike, the strike is not the result of a labor or industrial dispute. As the name implies, workers go on a SYMPATHY STRIKE to show their sympathy for certain workers who are on strike. On the other hand, in a GENERAL STRIKE, workers in the country or in a region, province, or city or municipality go on a strike to publicly protest a certain policy or action taken by the government. Thus, for instance, a general strike may be declared by workers to publicly protest the stand of President Arroyo that she is against an increase of the minimum wage at this time.

Right to Strike; Effects; Hired Replacements (2006)

If due to the prolonged strike, ROSE Corporation hired replacements, can it refuse to admit the replaced strikers?

SUGGESTED ANSWER:

No. While present law recognizes the right of the employer to continue his business in the course of an economic strike, it assures the right of the strikers to return to their former positions at the expense of the replacements. Art. 264(a) of the Labor Code provides that mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike (PT&T v. NLRC, G.R. No. 109281, December 7, 1995; Diwa ng Pagkakaisa v. Filtext International Corporation, Nos. L-23960 & L-23961, February 26, 1968).

Right to Strike; Effects; illegal strike (2000)

A division manager of a company taunted a union officer two days after the union submitted to the Department of Labor and Employment (DOLE) the result of the strike vote. The division manager said:

The union threat of an unfair labor practice strike is phony or a bluff. Not even ten percent (10%) of your members will join the strike." To prove union member support for the strike, the union officer immediately instructed its members to cease working and walk out. Two hours after the walkout, the workers voluntarily returned to work.

A. Was the walkout a strike? And if so, was it a valid activity? (3%)

B. Can the union officer who led the short walkout, but who likewise voluntarily led the workers back to work, be disciplined by the employer? (3%)

SUGGESTED ANSWERS:

a) Yes, it was a strike because there was a work stoppage by concerted action and there is an existing labor dispute. It was not a valid activity because the requisites for a valid strike were not observed, (Art. 212, (o), (l) Labor Code).

b) Yes, the employer may discipline the union officer. An illegal strike is a cause for the union officer to be declared to have lost his employment status. [Art 263 (c), (d),(e), (f); Art 264 (a), Labor Code].

Right to Strike; Effects; Strikers' illegal Acts (2006)

Assuming the company admits all the strikers, can it later on dismiss those employees who committed illegal acts?

SUGGESTED ANSWER:

No, when the company admits all the strikers, it is deemed to have waived the issue and condoned the strikers who committed illegal acts (Citizen's Labor Union v. Standard Vacuum Oil Co., G.R. No. L-7478, May 6, 1955; TASLI-ALU v. CA, G.R. No. 145428, July 7, 2004).

Right to Strike; Effects; Illegal Strike (2007)

Some officers and rank-and-file members of the union staged an illegal strike. Their employer wants all the strikers dismissed. As the lawyer, what will you advise the employer? Discuss fully. (5%)

SUGGESTED ANSWER:

There is no wholesale dismissal of strikers even if the strike was declared illegal. Under Art. 264 of the Labor Code, mere participation of a worker in an illegal strike shall not constitute sufficient ground for termination. Union officers, however, who knowingly engaged in an illegal strike are deemed to have lost their employment status. For a worker or union member to suffer loss of employment, he must have knowingly participated in the commission of illegal acts during the strike. (CCBPI Postmix Workers Union v. NLRC [1998]; Int'l Container Terminal Service, Inc. V. NLRC [1996]).

Right to Strike; Effects; Illegal Strike (2014)

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. (6%)

(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 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 Employer-Employee relationship.

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]).

Right to Strike; Illegal Dismissal (2003)

Magdalo, a labor union in Oakwood, a furniture manufacturing firm, after failing in its negotiations with Oakwood, filed with the Department of Labor and Employment (DOLE) a notice of strike. The DOLE summoned Magdalo and Oakwood for conciliation hearings to resolve the deadlock. Unable to agree despite efforts of the DOLE, Magdalo called a strike participated in by its officers and union members including Cesar Trinio, a rank-and-file employee, who led the "walk out." Oakwood filed a petition to declare illegal the strike which Magdalo staged without observing the seven-day ban under the Labor Code. Oakwood claimed that the strike being illegal, all those who participated therein, including Cesar Trinio, could be dismissed as, in fact, they were so dismissed by Oakwood. Decide the case.

SUGGESTED ANSWER:

When Oakwood dismissed all the officers and members of the union who participated in the strike which was declared illegal because it was staged without observing the seven-day ban under the Labor Code.

Oakwood illegally dismissed the union members, including Cesar Trinio. The Labor Code provides that a union officer who knowingly participates in an illegal strike loses his employment status. Thus, the union officers were legally dismissed. But for a union member to lose his employment status, he should have committed illegal acts during the strike, like acts of violence, coercion or intimidation or obstruction of ingress to or egress from the employer's premises for lawful purposes or obstruction of public thoroughfares. The union members, including Cesar Trinio, did not commit any of these acts. Thus, it would be illegal to dismiss them.

Right to Strike; Stoppage of Work (2008)

No. VI. a. On the day that the Union could validly declare a strike, the Secretary of Labor issued an order assuming jurisdiction over the dispute and enjoining the strike, or if

one has commenced, ordering the striking workers to immediately return to work. The return-to-work order required the employees to return to work within twenty-four hours and was served at 8 a.m. of the day the strike was to start. The order at the same time directed the Company to accept all employees under the same terms and conditions of employment prior to the work stoppage.

The Union members did not return to work on the day the Secretary's assumption order was served nor on the next day; instead, they held a continuing protest rally against the company's alleged unfair labor practices. Because of the accompanying picket, some of the employees who wanted to return to work failed to do so. On the 3rd day, the workers reported for work, claiming that they do so in compliance with the Secretary's return-to-work order that binds them as well as the Company. The Company, however, refused to admit them back since they had violated the Secretary's return-to-work order and are now considered to have lost their employment status.

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers' constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment. You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues: Was there a strike? (4%)

SUGGESTED ANSWER:

Yes, there was a strike because of the concerted stoppage of work by the union members (Art. 212[o], Labor Code).

Right to Strike; Illegal Strike; Dismissal (2010)

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.

A. Was the strike legal? Explain. (3%)

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 (Art. 263(f), Labor Code; Sec. 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).

B. Was A's dismissal valid? Why or why not? (3%)

SUGGESTED ANSWER:

NO. Art. 264 of the Labor Code distinguishes the effects of illegal strikes between ordinary workers and union officers who participate therein. A, as an ordinary striking worker, may not be declared to have lost his employment status by mere participation in an illegal strike, unless there is proof that he knowingly participated in the commission of illegal acts during the strike (Arellano University Employees and Workers Union v. CA [2006]. This is an aspect of the State's constitutional and statutory mandate to protect the rights of employees to self-organization (Club Filipino, Inc. v. Bautista [2009]).

Right to Strike; Lawful; Right to Reinstatement (2006)

As a result of bargaining deadlock between ROSE Corporation and ROSE Employees Union, its members staged a strike. During the strike, several employees committed illegal acts. The company refused to give in to the union's demands. Eventually, its members informed the company of their intention to return to work. (10%)

1. Can ROSE Corporation refuse to admit all the strikers?

SUGGESTED ANSWER:

Rose Corporation cannot refuse to admit all the strikers. Participants in a lawful strike generally have the right to reinstatement to their positions upon the termination of the strike (Insular Life Assurance Co. Employees Assn. v. Insular Life Assurance Co., G.R. No. L-25291, January 30, 1979; Consolidated Labor Assn. of the Phil. v. Marsman & Co., Inc., G.R. No. L-17038, July 31, 1964). However, the Labor Code provides that any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be deemed to have lost his employment status (Bascon v. CA, G.R. No. 144899, February 5, 2004; First City Interlink Trans. Co., Inc. v. Confessor, G.R. No. 106316, May 5, 1997; Lapanday Workers' Union v. NLRC, G.R. Nos. 95494-97, September 7, 1995; Art. 264, Labor Code).

Right to Strike; Limitations (2000)

A. What is the rationale for the State regulation of strike activity and what are the interests involved that the State must balance and reconcile? (3%)

B. Cite two (2) examples on how the law regulates the use of the strike as a form of concerted activity. (2%)

SUGGESTED ANSWER:

a) The first rationale is the constitutional provision that the right to strike is to be exercised "in accordance with law". Another rationale is the Civil Code provision that the relations between employer and employee are imbued with public interest and are subject to the provisions of special law. A third rationale is the police power of the state. The interests to be balanced are the rights of the workers, as primary socio-economic force, to protection of the law, to security of tenure, to concerted activities, etc. These should be balanced with the right of the employer to reasonable return on investment and to expansion and growth. General welfare or the general peace and progress of society should also be considered. This is why assumption of Jurisdiction and certification to NLRC are allowed in "national interest" cases. {Art. 263, Labor Code; Raw at Buklod ng Manggagawa v. NLRC, 198 SCRA 586

(1991); Lapanday Workers Union v. NLRC, 248 SCRA 96 (1995)}

EXAMPLES: (1) procedural requirements should be observed, namely, filing of notice of strike, observance of cooling-off period, taking of strike note, and report of the strike vote; (2) use of violence, intimidation or coercion and blockade of ingress-egress are not allowed. (Art 263 (b)(c)(f)(g), Labor Code).

Right to Strike; Picketing Activity (2000)

The workers engaged in picketing activity in the course of a strike.

a) Will picketing be legal if non-employees of the strike-bound employer participate in the activity? (3%)

b) Can picketing activity be curtailed when illegal acts are committed by the picketing workers in the course of the activity? (3%)

SUGGESTED ANSWER:

Yes, the picketing is legal even though nonemployees join it. Picketing is a form of the exercise of freedom of speech. Picketing, provided it is held peacefully, is a constitutional right. The disputants in a legal dispute need not be employer-employee of each other. [De Leon v. National Labor Union, 100 Phil 789 (1957); Cruz v. Cinema Stage, etc., 101 Phil 1259 (1957)]

ALTERNATIVE ANSWER:

No, the picketing activity itself cannot be curtailed. What can be curtailed are the illegal acts being done in the course of the picket. However, if this is a "national interest" case under Art 263(g), the strike or work stoppage may be stopped by the power of assumption of Jurisdiction or certification of the case to the National Labor Relations Commission. {Nagkakaisang Manggagawa sa Cuison Hotel v. Libron, 124 SCRA 448 (1983); Free Telephone Workers Union v. PLDT, 113 SCRA 662 (1982)}.

Right to Strike; Picketing Activity; Illegal dismissal (2004)

B. President FX, head of a newly formed labor union composed of 1/3 of the total number of rank-and-file employees in Super Stores, Inc., agitated his fellow employees to demand from management pay increases and overtime pay. His supervisor summoned him to explain his tardiness and refusal to obey regulations.

Feeling threatened, he gathered 20 of his members and staged a 2-day picket in front of the shopping mall. Security staff arrived and dismantled the placards and barricades blocking the employees' entry to the mall. In retaliation, FX threw stones at the guards, but the other striking workers just stood by watching him. Seven days after the picket, FX who had gone absent without leave returned to the mall and announced that he had filed a complaint for illegal dismissal and unfair labor practice against SSI.

SSI learned that FX's group was not registered. No strike vote and strike notice were filed prior to the picket. The guards were told not to allow FX entry to the company premises as management considered him effectively terminated. Other union members were accepted back to

work by SSI. Was the dismissal of FX for a valid cause? Was due process observed? (5%)

SUGGESTED ANSWER:

There is a valid cause for the dismissal of FX, but due process was not observed. Peaceful picketing is part of the constitutional freedom of speech. The right to free speech, however, has its limits, and picketing as a concerted activity is subject to the same limitations as a strike, particularly as to lawful purpose and lawful means. But it does not have to comply with the procedural requirements for a lawful strike, like the notice of strike or the strike vote. However, in the problem given, picketing became illegal because of unlawful means, as barricades blocked the employees' entry to the mall, and violence, ensued when FX threw stones at the guards. There was thus, valid cause for the dismissal of FX, however, due process was not observed because SSI did not comply with the twin requirements of notice and hearing.

Right to Strike; Statutory Requisites; Procedural Requirements (2004)

Enumerate and discuss briefly:

1. What are the statutory requisites for a valid strike by the workers? Should these requisites be complied with substantially or strictly?

SUGGESTED ANSWERS:

The STATUTORY REQUISITES for a valid strike are the following:

1. A strike may be declared only in cases of bargaining deadlocks or unfair labor practices. Violations of Collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes.

2. No strike may be declared without first having filed a notice of strike or without the necessary strike vote having been obtained and reported to the National Conciliation and Mediation Board. A strike may actually take place only after a 30-day waiting period after notice was filed for a strike arising from a bargaining deadlock or after a 15-day waiting period for an unfair labor practice strike. Notice about a

strike vote should be given seven days before the intended strike.

3. No strike can be declared after assumption of jurisdiction by the Secretary of Labor and Employment or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

The above requisites are to be complied with strictly. Thus, the Supreme Court has ruled that non-compliance of the requirements of notice or a strike vote or of the waiting periods makes a strike an illegal strike.

ANOTHER SUGGESTED ANSWER:

STATUTORY REQUIREMENTS for a Valid Strike

A. STATUS OF STRIKING UNION -

For a ULP strike or bargaining deadlock strike, only a duly-certified or -recognized bargaining representative may declare such strike.

B. PROCEDURAL REQUIREMENTS -

(1) Notice of Intent. Filing of Notice of Intent to Strike with the NCMB.

(2) Cooling-off Period.- Observance of Cooling-off Period.

(a) ULP - 15 days before intended date of strike

(b) Bargaining Deadlock - 30 days before intended date of strike.

(3) Strike Vote and Filing of the same with the NCMB and the observance of the seven (7) days strike ban. [Art. 263 (c-f), Labor Code].

C. CAUSE -

The cause of a strike must be a labor or industrial dispute.

[Art. 212fo). Labor Code. Compliance with

all legal requirements are meant to be and should be mandatory. (National Federation of Sugar Workers v. Ovajera, 114 SCRA 354 [1982]).

Right to Strike; Requirements; 'Purpose & Means' Test (2007)

Discuss the legal requirements of a valid strike. (5%)

SUGGESTED ANSWER:

It must comply with the 'purpose and means' test which that both the purpose and the means to carry out the strike must be legal. The purpose must be based solely on bargaining deadlock (economic) and/or ULP (political). The means to carry out the strike should also be legal where there should be no illegal acts committed in the course of the strike.

Right to Strike; Requirements; Cooling-off Period; Strike Vote (2009)

Johnny is the duly elected President and principal union organizer of the Nagkakaisang Manggagawa ng Manila Restaurant (NMMR), a legitimate labor organization. He was unceremoniously dismissed by management for spending virtually 95% of his working hours in union activities. On the same day Johnny received the notice of termination, the labor union went on strike.

Management filed an action to declare the strike illegal, contending that:

[a] The union did not observe the "cooling-off period" mandated by the Labor Code; (2%)

[b] The union went on strike without complying with the strike-vote requirement under the Labor Code. (2%)

Rule on the foregoing contentions with reasons.

SUGGESTED ANSWER:

[a] Yes. The conduct of a strike action without observing the cooling-off period is a violation of one of the requirements of law which must be observed. The cooling-off periods required by Arts. 263 (c) and (f) of the Labor Code are to enable the DOLE to exert efforts to amicably settle the controversy, and for the parties to review and reconsider their respective positions during the cooling-off periods. But the Labor Code also provides that if the dismissal constitutes union busting, the union may strike immediately.

[b] Yes. The conduct of strike action without a strike vote violates Art. 263 (f) -- "In every case, the union or the

employer shall furnish the DOLE the results of the voting at least seven (7) days before the intended strike..." to enable the DOLE and the parties to exert the last effort to settle the dispute without strike action.

Right to Strike; Requirements; Strike Vote/ Notice of Strike (2015)

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 strike 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? (3%)

SUGGESTED ANSWER:

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 *Sukochoi* 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 can 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) Was the Secretary of Labor correct in declining to assume jurisdiction over the dispute? (2%)

SUGGESTED ANSWER:

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, Feb. 26, 2014). Thus, if in his opinion national interest is not involved, then the company cannot insist that he assume jurisdiction.

(c) Was LB justified in terminating all those who were members of AILU on the two grounds cited? (3%)

SUGGESTED ANSWER:

c. if dismissal is based on illegal strike:

The company has to file a complaint for illegal strike first. Once the strike 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. Art. 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.

Right to Strike; Industries Vital to National Interest (2004)

Which of the following may be considered among industries most vital to national interest as to be the subject of immediate assumption of jurisdiction by the Secretary of Labor and Employment or certification for compulsory arbitration in case of strike or work stoppage arising from a labor dispute?

- (1) Bulletin daily newspaper publishing company.
 - (2) Local franchise of Jollibee and Starbucks.
 - (3) Shipping and port services in Cebu and Manila.
 - (4) Enchanted Kingdom, Elephant Island and Boracay Resort.
 - (5) LBC, DHL and FedEx centers.
- Justify your answer or choice. (5%)

SUGGESTED ANSWER:

Certification of labor dispute for immediate assumption of jurisdiction by the Secretary of the Department of Labor and Employment, as indispensable to national interest. (Art. 263 [g], Labor Code).

1. Bulletin Daily Newspaper. Access to information, e.g., local, foreign, or otherwise are requirements for an informed citizenry.
2. Shipping and port services in Cebu and Manila. The country needs domestic sea transport due to our topography and for the smooth flow of business and government operations.
3. LBC, DHL, FEDEX Centers. Couriers are essential to foreign and domestic business and government operations.

Right to Strike; National Interest; DOLE Sec. intervention (2004)

Employees of ABC declared a strike after filing a Notice of Strike with the DOLE. They barricaded company gates and damaged vehicles entering company premises. On the second day of the strike, ABC filed a petition with the DOLE Secretary to intervene through the issuance of an assumption of jurisdiction order that the Secretary may issue when a strike or lock-out will adversely affect national interest. ABC furnished the Secretary with evidence to show that company vehicles had been damaged; that

electric power had been cut off; and equipment and materials were damaged because electric power was not immediately restored. ABC forecast that the country's supply of chlorine for water treatment (which the company produces) would be affected adversely if ABC's operations were closed down by the strikers. Could the DOLE Secretary intervene, assume jurisdiction and issue a TRO (Temporary Restraining Order)? Briefly justify your answer. (5%)

SUGGESTED ANSWER:

Yes. The Secretary of Labor and Employment can assume jurisdiction over the dispute because ABC could be considered as an industry indispensable to the national interest since it produces the country's supply of chlorine for water treatment.

The assumption of jurisdiction by the Secretary has the effect of ending the strike. The strikers will be subject to a return-to-work order by the Secretary upon his assumption.

Right to Strike; Assumption Power

FACTS: Jenson & Jenson (J & J) is a domestic corporation engaged in the manufacturing of consumer products. Its rank-and-file workers organized the Jenson Employees Union (JEU), a duly registered local union affiliated with PAFLU, a national union. After having been certified as the exclusive bargaining agent of the appropriate bargaining unit, JEU-PAFLU submitted its proposals for a Collective Bargaining Agreement with the company. In the meantime, a power struggle occurred within the national union PAFLU between its National President, Manny Pakyao, and its National Secretary General, Gabriel Miro. The representation issue within PAFLU is pending resolution before the Office of the Secretary of Labor. By reason of this intra-union dispute within PAFLU, J & J obstinately and consistently refused to offer any counterproposal and to bargain collectively with JEU-PAFLU until the representation issue within PAFLU shall have been resolved with finality. JEU-PAFLU filed a Notice of Strike. The Secretary of Labor subsequently assumed jurisdiction over the labor dispute.

1) Will the representation issue that has arisen involving the national union PAFLU, to which the duly registered local union JEU is affiliated, bar collective bargaining negotiation with J & J? Explain briefly. (3%)

2) Can the Secretary of Labor decide the labor dispute by awarding the JEU CBA proposals as the Collective Bargaining Agreement of the parties? Explain briefly. (2%)

SUGGESTED ANSWER:

1. Representation issue in this case is not a bar...

2. Yes. The Secretary of Labor can decide the labor dispute by awarding the JEU CBA proposals as the Collective Bargaining Agreement of the parties because when the Secretary of Labor (under Article 263[g]) assumes jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor exercises the power of compulsory arbitration over the labor dispute, meaning, that as an exception to the general rule, the Secretary of Labor now has the power to set or fix wages, rates of pay, hours of work or terms and conditions of employment by determining what should be the CBA of the

parties. (See *Divine Word University vs. Secretary of Labor*, 213 SCRA 759)

ALTERNATIVE ANSWER:

What is involved in the case in the question is a corporation engaged in the manufacturing of consumer products. If the consumer products that are being manufactured are not such that a strike against the company cannot be considered a strike in an industry indispensable for the national interest, then the assumption of Jurisdiction by the Secretary of Labor is not proper. Therefore, he cannot legally exercise the powers of compulsory arbitration in the labor dispute.

Right to Strike; Assumption Power (2014)

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. (4%)

(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 Filipino 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]).

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 Art. 277 (b) of the Labor Code. Nothing in Art. 264 of the Code authorizes immediate dismissal of those who committed 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].

Right to Strike; Return to Work Order; Assumption Order (2003)

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.

Right to Strike; Return to Work Order; Assumption Order (2012)

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;

SUGGESTED ANSWER:

The contention has no merit. There is no doubt that the on-going labor dispute at the school adversely affects 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 Torres* [2009] citing *PSBA v. Noriel* [1988]).

ANOTHER SUGGESTED ANSWER:

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 v. Noriel* [1988]).

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

SUGGESTED ANSWER:

The position of the union is flawed. Art. 263(g) of the 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 executor notwithstanding the filing of a motion for reconsideration. [*Ibid.* citing *University of Sto. Tomas v. NLRC* [1990)].

ANOTHER SUGGESTED ANSWER:

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 College Foundation v. Nestle Philippines, Inc.* [1990]; Art. 264 of the Labor Code, as amended; *Solid Bank Corp. Etc. v. Solid Bank Union* [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 v. Nestle Philippines* [supra]).

3. The strike being legal, the employment of the striking Union officers and members cannot be terminated. Rule on these contentions. Explain. (5%)a.

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 or by the Secretary of Labor". In *Manila Hotel Employees Association v. Manila Hotel Corporation* [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.

Right to Strike; Return to Work Order; Dismissal due to Defiance Thereto (2008)

No. VI. c. On the day that the Union could validly declare a strike, the Secretary of Labor issued an order assuming jurisdiction over the dispute and enjoining the strike, or if one has commenced, ordering the striking workers to immediately return to work. The return-to-work order required the employees to return to work within twenty-four hours and was served at 8 a.m. of the day the strike was to start. The order at the same time directed the Company to accept all employees under the same terms and conditions of employment prior to the work stoppage. The Union members did not return to work on the day the Secretary's assumption order was served nor on the next day; instead, they held a continuing protest rally against the company's alleged unfair labor practices. Because of the accompanying picket, some of the employees who wanted to return to work failed to do so. On the 3rd day, the

workers reported for work, claiming that they do so in compliance with the Secretary's return-to-work order that binds them as well as the Company. The Company, however, refused to admit them back since they had violated the Secretary's return-to-work order and are now considered to have lost their employment status.

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment. You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues: What are the consequences, if any, of the acts of the employees? (3%)

SUGGESTED ANSWER:

Defiance of the return-to-work order of the Secretary of Labor after he has assumed jurisdiction is a ground for loss of the employment status of any striking officers or member (Telefunken Semiconductors Employees Union-FFW v. CA, G.R. Nos. 143013-14, December 18, 2000). However, this rule should not apply to the employees who failed to return because of the accompanying picket that blocked free egress & ingress to and from company premises.

Right to Strike; Temporary Stoppage of Work (2002)

Eaglestar Company required a 24-hour operation and embodied this requirement in the employment contracts of its employees. The employees agreed to work on Sundays and Holidays if their work schedule required them to do so for which they would be paid additional compensation as provided by law. Last March 2000, the union filed a notice of strike. Upon Eaglestar's petition, the Secretary of Labor certified the labor dispute to the NLRC for compulsory arbitration. On April 20, 2000 (Maundy Thursday), while conciliation meetings were pending, the union officers and members who were supposed to be on duty did not report for work. Neither did they report for work on April 21 (Good Friday) and on April 22 (Black Saturday), disrupting the factory's operations and causing it huge losses. The union denied it had gone on a strike because the days when its officers and members were absent from work were legal holidays. Is the contention of the union correct? Explain briefly. (5%)

SUGGESTED ANSWER:

The contention of the union is NOT correct. In the case, it is clear that the employees agreed to work on Sundays and Holidays if their work schedule required them to do so for which they would be paid additional compensation as provided by law. The above-mentioned agreement that the employees voluntarily entered into is valid. It is not contrary to law. It is provided in the agreement that if they will work Sundays or Holidays that they will be paid additional compensation as provided by law. Neither is the agreement contrary to morals, good customs, public order or public policy. Thus, when the workers did not report for work when by agreement they were supposed to be on duty, there was a temporary stoppage of work by the concerted action of the employees as a result of an Industrial or labor dispute because they were on strike. [See Interphil Laboratories Employees Union-FFW v.

Interphil Laboratories Inc., GR No. 142824, December 19, 2001]

Right to Strike; Mass Leave (2010)

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 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.

Art. 212(o) of the Labor Code defines strike as a temporary stoppage of work by the concerted action of the employees as a result of 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 only concerted work stoppages, but also slowdowns, mass leaves, sit-downs, attempts to damage, destroy 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. [2007]).

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 ULP (Art. 263[c]), Labor Code; Se. 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 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.

Self Organization; Acquisition of Legal Personality (2003)

At what particular point does a labor organization acquire a legal personality?

- a) On the date the agreement to organize the union is signed by the majority of all its members; or
- b) On the date the application for registration is duly filed with the Department of Labor or
- c) On the date appearing on the Certificate of Registration; or
- d) On the date the Certificate of Registration is actually issued; or
- e) None of the above.

Choose the correct answer.

SUGGESTED ANSWER:

d.) On the date the Certificate of Registration is actually issued.

Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration.

ANOTHER SUGGESTED ANSWER:

(c) "On the date appearing on the Certificate of Registration."

When the law provides that a "labor organization xxx shall acquire legal personality xxx upon issuance of the certificate of registration", the date appearing therein is legally presumed - under the rule on presumption of regularity - to be its date of issuance. Actual issuance is a contentious evidentiary issue that can hardly be resolved, not to mention that the law does not speak of "actual" issuance.

Self Organization; Appropriate Bargaining Unit; Confidential Employees (2002)

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%)

SUGGESTED ANSWER:

The following rules will govern the right of selforganization 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 labormanagement 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)]

3. 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 294 (1995)]

Self-organization; Grounds; Cancellation of Registration (2010)

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%)

SUGGESTED ANSWER:

[The] Petition for cancellation is dismissed for want merit.

The date specified therein is purely a typographical error as admitted by the union itself. There was no wilful 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 [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).

Self Organization; Certification Election (2001)

UNIDAD, a labor organization claiming to represent the majority of the rank and file workers of BAGSAK Toyo Manufacturing Corp. (BMTc), filed a petition for certification election during the freedom period obtaining in said corporation. Despite the opposition thereto by SIGAW Federation on the ground that UNIDAD was not possessed with all the attributes of a duly registered union, the Med-

Arbiter issued an Order calling for a certification election on July 25, 2001. This Order was promulgated and served on the parties on July 12, 2001. On July 14, 2001, UNIDAD submitted and served the required documents for its registration as an independent union, which documents were approved by the DOLE on July 15, 2001.

During the elections, UNIDAD won over SIGAW. SIGAW questioned UNIDAD's victory on the ground that UNIDAD was not a duly registered union when it filed the petition for a certification election. Shall SIGAW's case prosper or not? Why? (5%).

SUGGESTED ANSWER:

No, SIGAW's case will not prosper. The application of technicalities of procedural requirements in certification election disputes will serve no lawful objective or purpose. It is a statutory policy that no obstacles should be placed on the holding of a certification election, (*Samahang ng Manggagawa sa Pacific Plastic vs. Laguesma* 267 SCRA 203 (1997) and that the law is indisputably partial to the holding of a certification election. (*Western Agusan vs. Trajano*, 196 SCRA 622 (1991). At any rate, UNIDAD completed all the requirements for union registration on July 14, 2001, and legitimate union status was accorded on July 15, 2000, or at least ten (10) days before the scheduled date for holding the certification Election.

Self-Organization; Certification Election; Unorganized Establishment (2003)

There are instances when a certification election is mandatory. What is the rationale for such a legal mandate?

SUGGESTED ANSWER:

According to the Labor Code, in any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by a legitimate labor organization. In the above-described situation, a certification election is made mandatory because if there is no certified bargaining agent as determined by a certification election, there could be no collective bargaining in the said unorganized establishment

Self-Organization; Gov't Employees (2004)

B. Because of alleged "unfair labor practices" by the management of GFI System, a government-owned and controlled financial corporation, its employees walked out from their jobs and refused to return to work until the management would grant their union official recognition and start negotiations with them.

The leaders of the walk-out were dismissed, and the other participants were suspended for sixty days. In arguing their case before the Civil Service Commission, they cited the principle of social justice for workers and the right to self-organization and collective action, including the right to strike. They claimed that the Constitution shielded them from any penalty because their walk-out was a concerted action pursuant to their rights guaranteed by the basic law. Is the position taken by the walk-out leaders and participants legally correct? Reason briefly. (5%)

SUGGESTED ANSWER:

The position taken by the walk-out leaders and participants is not legally correct. They are government employees, and as such, they do not have the right to strike. According to the actual wording of Section 3 of Article XIII of the Constitution, the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities including the right to strike in accordance with law." Thus, the last clause of the above-quoted provision of the Constitution makes it very clear: the right to strike is not constitutional, it is statutory because the right should be "in accordance with law". And there is as yet no law giving government employees the right to strike.

ANOTHER SUGGESTED ANSWER:

NO. What Art. XIV, Sec. 3 of the 1987 Constitution guarantees is "the right to strike in accordance with law." Assuming that what we have is a chartered government-owned and controlled corporation, they cannot, under EO 180 and related jurisprudence, stage such walk-out which is basically a case of strike.

Even if GFI was organized under the corporation law, still no such walk-out is allowed without the employees' complying with the requirements of a valid strike, among which is that said strike or walkout should be validly grounded on a (a) deadlock in collective bargaining, or (b) unfair labor practice, either of which is not present here.

Self-Organization; Gov't Employees (2009)

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.

[c] Government employees have the right to organize and join concerted mass actions without incurring administrative liability. (1%)

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 the 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* [2004]).

Self-Organization; Philhealth; Gov't Employees (2014)

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. (4%)

(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, Art. 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 v. Alcala, GR Nos. 109406, 110642, 111494, 112056, 119597, [1998]).

Self-Organization; Right to Self-Organization of Coop Employees (2002)

Do employees of a cooperative have a right to form a union? Explain briefly. (2%)

SUGGESTED ANSWER:

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)]

Self-Organization; Agency Fee (2009)

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.

[e] Agency fees cannot be collected from a non-union member in the absence of a written authorization signed by the worker concerned. (1%)

SUGGESTED ANSWER:

FALSE. Agency fees 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).

Self-organization; Agency Fee (2010)

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%)

SUGGESTED ANSWER:

NO. The fee exacted from A takes the form of an AGENCY FEE. This is sanctioned by Art. 248 (e) of the Labor Code.

The collection of agency fee in an amount equivalent to union dues and fees from employees who are not union members is recognized under Art. 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 [2008]).

Self-Organization; Union Dues vs. Agency Fees (2015)

(c) Distinguish between "union dues" and "agency fees." (2%)

SUGGESTED ANSWER:

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 accepts the benefits under the CBA may be assessed agency fees. Their check-off authorization is not required.

Self Organization; Union Dues; Assessment (2002)

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.

Self Organization; Unions; Assessments (2001)

(b) What requisites must a Union comply with before it can validly impose special assessments against its members for incidental expenses, attorney's fees, representation expenses and the like? (3%).

SUGGESTED ANSWER:

The Labor Code (in Art. 241(n)) provides that "no special assessments or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose."

ANOTHER SUGGESTED ANSWER:

In the case of ABS-CBN Employees Supervisors Union vs. ABS-CBN Broadcasting Corp., and Union Officers, G.R. No. 106518, March 11, 1999, the Supreme Court ruled that the following are the requisites:

(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 minutes of the meeting; and
(3) Individual written authorization for check-off duly signed by the employee concerned. (See also: Gabriel vs. Secretary of Labor, G.R. No. 115949, March 16* 2000).

Self Organization; Unions; Financial Records (2001)

(a) Under what conditions may the Secretary of Labor or his duly authorized representative inquire into the financial activities or legitimate labor organizations? (2%).

SUGGESTED ANSWER:

The Labor Code (in Art. 274), the Secretary of Labor and Employment or his duly authorized representative is empowered to inquire into the financial activities of legitimate labor organizations upon the filing of a complaint under oath and duly supported by the written consent of at least twenty (20%) percent of the total membership of the labor organization concerned and to examine their books of accounts and other records.

Self Organization; Unions; Membership; Dismissal in Bad Faith (2002)

A On what ground or grounds may a union member be expelled from the organization? (3%)

B. May the general manager of a company be held jointly and severally liable for backwages of an illegally dismissed employee? (2%)

SUGGESTED ANSWER:

A. 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.

ANOTHER SUGGESTED ANSWER:

Whenever appropriate for any violation of the rights as:

- a) Refusal to pay union dues and special assessments;
- b) Disloyalty to the union; and
- c) Violation of the constitution and by-laws of the union.

SUGGESTED ANSWER:

B. 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 *respondeat superior*. In case of illegal dismissal, corporate directors and officers are solidarity 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)]

Self-Organization; Coverage (2002)

Mang Bally, owner of a shoe repair shop with only 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:

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 (1999)]. 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}

Self-Organization; Dismissal due to Union Activities (2004)

A, B, C and D (treasurer, accountant, elementary department Principal, and secretary of the Director, respectively), regular employees of a private educational institution, were administratively charged for their participation in a picket held in front of the campus after office hours. Several faculty members, non-academic staff and students joined the peaceful prayer rally organized by disgruntled employees to protest certain alleged abuses of the incumbent School Director. Subsequently, the rank-and-file employees succeeded in forming the first and only union of the School. During the investigation, the administration discovered that two (2) days prior to the rally, A, B, C and D attended the meeting of the School's employees' association which planned the protest activity. Two well-known organizers/leaders of a national labor federation were also present. A, B, C and D were dismissed by the School on the ground of violating the Labor Code which prohibits managerial employees to "join, assist or form any labor organization". Is the contention of the School tenable? Is the dismissal of A, B, C and D valid? Explain. (5%)

SUGGESTED ANSWER:

The dismissal of A, B, C and D on the ground that they violated the Labor Code provision which states that managerial employees "are not eligible to join, assist or form any labor organization" is not valid. The Labor Code does not provide for any sanction for the aforesaid acts. These acts could not be considered as just cause for the termination of employment, either.

ANOTHER SUGGESTED ANSWER:

The dismissal of the managerial employees is invalid. The dismissal of the management employees because of union activities, no matter how erroneous or tenuous may be the basis of the exercise, is a violation of the constitutional and statutory guaranteed rights of self-organization, and an act of unfair labor practice. (Sec. 3, Art. XIII, Constitution; Art. 243, Labor Code. See also Art. 248 (a), Labor Code).

Self-Organization; Right to Join (2000)

(1) Do workers have a right not to join a labor organization? (3%)

(2) Do the following workers have the right to self-organization? Reasons/basis (2%)

a. Employees of non-stock, non-profit organizations?

b. Alien employees?

SUGGESTED ANSWER:

(1) Yes, workers decide whether they will or will not become members of a labor organization. That's why a union's constitution and by-laws need the members' adoption and ratification. Moreover, if they are members of a religious group whose doctrine forbids union membership, their right not to be compelled to become union members has been upheld. However, if the worker is not a "religious objector" and there is a union security clause, he may be required to join the union if he belongs to the bargaining unit. [Reyes v. Trajano, 209 SCRA 484 (1992)].

(2)(i) Even employees of non-stock non-profit organizations have the right to self-organization. This is explicitly provided for in Art. 243 of the Labor Code. A possible exception, however, are employee-members of non-stock non-profit cooperatives.

(ii) ALIEN EMPLOYEES with valid work permits in RP may exercise the right to self-organization on the basis of parity or reciprocity, that is, if Filipino workers in the aliens' country are given the same right. (Art. 269, Labor Code).

Self-organization; Cooperative Member & Shareholder; No Right to Join (2010)

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%)

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 collectively with himself and his co-owners" (Cooperative Rural Bank of Davao City, Inc. v. Calleja [1988]; San Jose City – Electric Service Cooperative Inc. v. Ministry of Labor [1989]).

ULP; Violation of CBA (2013)

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

maintaining that he will personally remit his dues to the union.

(A) Would the NTC management commit unfair labor practice if it desists from checking off Pablo's union dues for lack of individual authorization from Pablo? (4%)

SUGGESTED ANSWER:

No. Under R.A. 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.

ANOTHER SUGGESTED ANSWER:

No. Check-offs in truth impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by the 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 [1996]).

(B) Can the union charge Pablo with disloyalty for refusing to allow the check off of his union dues and, on this basis, ask the company to dismiss him from employment? (4%)

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 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).

Self-organization; Globe Doctrine (2007)

a. Explain the Globe Doctrine.

SUGGESTED ANSWER:

The Globe Doctrine refers to the method of determining the will or desire of the employees which is an important factor in determining the appropriate bargaining unit. The best way to determine such preference is through referendum or plebiscite. (Globe Machine & Stamping Company, 3 NLRB 294 [1987]).

Self-organization; Community of Interest Rule (2007)

Explain the Community of Interest Rule.

SUGGESTED ANSWER:

The community of interest rule states that the employees within an appropriate bargaining unit must have commonality of collective bargaining interests as well as substantial mutual interests in terms of employment and working conditions as evidenced by the type of work they perform. (San Miguel Corporation v. Laguesma [1994]).

ALTERNATIVE SUGGESTED ANSWER:

Under the Community of Interest Rule, groups having substantial similarity of work and duties or similarity of working conditions, shall constitute the appropriate bargaining unit. (Rothenberg, Labor Relations, pp. 490-491).

ULP; Awards of Damages (2001)

(b) "A", an employee, sued company "B" for unfair labor practice, illegal dismissal and damages as a consequence thereof. The Arbiter granted A's prayer for reinstatement, backwages, and included an award for attorney's fees. On appeal to the NLRC, the Commission affirmed the Arbiter's decision but deleted the award for attorney's fees since fees were not claimed in A's complaint. Who was correct, the Arbiter or the NLRC? Why? (2%)

SUGGESTED ANSWER:

The NLRC was correct in deleting the award for attorney's fees if an employee did not include attorney's fees among his claims and, therefore, did not give any evidence to support the payment of attorney's fees.

ANOTHER SUGGESTED ANSWER:

The decision of the Labor Arbiter to award attorney's fees even if the same is not claimed is correct. Article 2208 of the New Civil Code allows the award of attorney's fees when the defendant's act or omission has compelled the plaintiff to litigate or incur expenses to protect his interest. Attorney's fees may be considered as a part of an equitable relief awarded in the concept of damages.

(c) Would your answer be different if the attorney's fees awarded by the Arbiter was over fifteen percent of the total award? Why? (1%)

SUGGESTED ANSWER:

An award of attorney's fees which is over fifteen percent of the total award is not in conformity with the provision of the Labor Code (Art. 111(a)) that in cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

ULP; Contracting Out Labor (2001)

(a) Company "A" contracts out its clerical and janitorial services. In the negotiations of its CBA, the union insisted that, henceforth, the company may no longer engage in contracting out these types of services, which services the union claims to be necessary in the company's business, without prior consultation. Is the union's stand valid or not? For what reason(s)? (2%)

SUGGESTED ANSWER:

The union's stand is not valid. It is part of management prerogative to contract out any work, task, job or project except that it is an unfair labor practice to contract out services or functions performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization. (Art. 248(c) of the Labor Code)

ANOTHER SUGGESTED ANSWER:

The union's stand that there must be a prior consultation by the employer with the union before contracting out can be effected is valid. Article XIII, Section 3 of the Constitution, and Article 255 of the Labor Code guarantee the right of workers to participate in policy and decision making processes which affect their rights and benefits. Job contracting will undoubtedly and directly affect their rights, benefits and welfare. *Philippine Airlines vs. NLRC*, 255 SCRA 301 (1993), and *Manila Electric Company vs. Quisumbing*, 302 SCRA 173 (1999).

ULP; Rights & Obligations; Workers' Association (2004)

A. Around 100 workers of a mill in a coconut plantation organized themselves for the purpose of promoting their common interest and welfare. The workers' association prepared a petition for increasing the daily pay of its members in compliance with minimum wage rates for their sector in the region, and for granting benefits to which they are entitled under the law. However, the workers became restless and anxious after the owner-manager threatened them with mass lay-off if the association would press for their demands. Most of its members have worked in the mill for 10 to 15 years with no improvement in working conditions and monetary benefits. The leaders of the workers' association approached you and asked: what legal steps could they take to protect their security of tenure? What advice could you give them? (5%)

SUGGESTED ANSWER:

I would advise them to register the workers' association with the Department of Labor and Employment. Then, have the workers' association file a ULP case against the employer.

ANOTHER SUGGESTED ANSWER:

The workers are entitled to the constitutional (Art. XIII, Sec. 3, 1987 Constitution) and statutory (Art. 279, Labor Code) guarantees of security of tenure. When this right to security of tenure is violated, an action for illegal dismissal is an available remedy. If they are dismissed because of union activities, an action for unfair labor practice can be filed (Sec. 3, Art. XIII, Constitution; Art. 243, Labor Code.) If successful, the workers will be entitled to full backwages, including money value of benefits, and reinstatement without loss of seniority (Art. 279, Labor Code).

ULP; Subject to Criminal Prosecution (2005)

Is the commission of an unfair labor practice by an employer subject to criminal prosecution? Please explain your answer briefly. (3%)

SUGGESTED ANSWER:

Yes, because unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment. (Article 247, Labor Code; See also B.P. Big. 386 as amended by R.A. No. 6715). However, the

criminal aspect can only be filed when the decision of the labor tribunals, finding the existence of unfair labor practice, shall have become final and executory.

ULP; Jurisdiction Over the Criminal & Civil Aspect (2007)

Discuss in full the jurisdiction over the civil and criminal aspects of a case involving an unfair labor practice for which a charge is pending with the Department of Labor and Employment. (5%)

SUGGESTED ANSWER:

Jurisdiction over ULP which are also criminal offenses initially lies with the Labor Arbiters. No criminal prosecution can be instituted without final judgment that a ULP has in fact been committed. The administrative findings are neither binding in the criminal case nor available as evidence of guilt, but merely prove procedural compliance.

In a labor dispute involving national interest, the Secretary of Labor under 263(g) may take cognizance of the civil or administrative aspect of the labor case, depriving the Labor Arbiter from taking cognizance of the unfair labor practice case. After finality of judgment finding ULP, the criminal aspect can be instituted before the prosecutor.

ULP; Criminal Aspect vis-a-vis Administrative Proceedings (2009)

[c] The Labor Arbiter found management guilty of unfair labor practice for the unlawful dismissal of Johnny. The decision became final. Thereafter, the NMMR filed a criminal case against the Manager of Manila Restaurant. Would the Labor Arbiter's finding be sufficient to secure the Manager's conviction? Why or why not? (2%)

SUGGESTED ANSWER:

No. The administrative proceedings shall not be binding on the criminal case or be considered as evidence of guilt, but merely as proof of compliance with the requirements to file the said criminal case for the commission of an unfair labor practice.

ULP; Violation of CBA (2009)

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.

[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 Art. 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 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 Art. 248(i) and Art. 261 of the Labor Code.

ULP; Violation of CBA (2015)

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. (4%)

SUGGESTED ANSWER:

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).

ULP; Jurisdiction; Labor Arbiter (2012)

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%)

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 Art. 247 of the Labor Code. Under Art. 247, "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 v. Lazaro [1988]. Besides, what the parties have is a labor dispute as defined in Art. 212(l) 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 case.

(Note: problem previously given in 1997 Bar Exam)

ULP; Runaway Shop (2009)

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%)

[c] A runaway shop is an act constituting unfair labor practice.

SUGGESTED ANSWER:

FALSE. A runaway shop is not automatically an unfair labor practice. It is 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 provision 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. *; Labor Code, Arts. 243, 244, & 245; Caltex Filipino Managers, etc. V. CIR, 44 SCRA 350 [1972]).

Voluntary Arbitration; Settling Illegal Dismissal Case (2015)

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? (3%)

SUGGESTED ANSWER:

a. 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, Art. 262 of the Labor Code authorizes a voluntary arbitrator to hear and decide by agreement of the parties, all other labor disputes.

Voluntary Arbitration; Efficacy Over Compulsory Arbitration (2015)

B. XYZ Company and XYZ Employees Union (XYZEU) reached 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? (4%)

SUGGESTED ANSWER:

b(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.

b(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 year 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 case where the company is unwilling, the EBR (and only in 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.

TERMINATION OF EMPLOYMENT

Backwages (2002)

A. 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:

A. 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)]

Backwages; Basis (2001)

What economic components constitute backwages for a rank and file employee? Are these components equally applicable to a managerial employee? (5%)

SUGGESTED ANSWER:

The Labor Code (Art. 279) provides that an employee who is unjustly dismissed from work is entitled to reinstatement and also to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to his actual reinstatement. An employee is entitled to all the above benefit regardless of whether he is a rank-and-file employee or a managerial employee. However, backwages may also include the 13th month pay which are paid to rank-and-file employees, as well as benefits arising from a CBA given only to employees in the bargaining unit. Managerial employees cannot be given the same since they are ineligible to join a labor organization.

Backwages; Basis (2001)

"A" was hired by company "B" in January 1980 until A was illegally dismissed on April 30, 1990 as found by a Labor Arbiter who ordered reinstatement and full backwages from April 30, 1990 until A's reinstatement. The Arbiter's decision was promulgated on April 29, 1995. B appealed claiming, among others, that the award for backwages was excessive in that it went beyond three-year rule set forth in Mercury Drug v. CIR (56 SCRA 696). Is B's contention tenable? Why? (5%)

SUGGESTED ANSWER:

No, the contention of "B" is not tenable. Rep. Act No. 6715, which was enacted in 1989, in effect set aside the three-year rule set forth in Mercury Drug vs. CIR (56 SCRA 696) when it provided that the full backwages that an unjustly dismissed employee shall receive shall be computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The word "actual" was inserted in the law by Rep. Act No. 6715. Thus, in accordance with the aforesaid law, an unjustly dismissed employee shall receive his full backwages computed from the time his compensation was withheld from him up to the time of his actual reinstatement even if this period is more than three years.

ANOTHER SUGGESTED ANSWER:

No, the contention of "B" is not tenable. The Supreme Court (In Ferrer vs. NLRC, July 5, 1993) abandoned the Mercury Drug Rule and in 1996 Bustamante vs. NLRC, 265 SCRA 61 the Supreme Court said: [Quoting Article 279 of the Labor Code] Under the above quoted provision, it became mandatory to award backwages to illegally dismissed regular employees. The law specifically declared that the award of backwages was to be computed from the time compensation was withheld from the employee up to the time of his reinstatement. xxx The clear legislative intent of the amendment in RA No. 6715 is to give more benefits to the workers than was previously given them under the Mercury Drug rule. In other words, the provision calling for "full backwages" to illegally dismissed employees is clear, plain and free from ambiguity, and, therefore, must be applied without attempted or strained interpretation.

Backwages; Basis (2001)

(a) "A", an employee of Company "B", was found to have been illegally dismissed and was ordered to be reinstated and paid backwages from the time of dismissal until actual reinstatement. The case was elevated all the way to the Supreme Court. By the time the Supreme Court's decision became final and executory, B had closed down and was in the process of winding up. Nonetheless, B paid A his backwages and separation pay. A complained that B's computation was erroneous in that A's allowances was not included. Is A correct in his claim? For what reason(s)? (2%).

SUGGESTED ANSWER:

A is correct. After its amendment by Rep. Act No. 6715, the backwages that an employee who has been unjustly dismissed is entitled to receive is not limited to his full backwages but also includes his allowances and the other benefits or their monetary equivalent.

ANOTHER SUGGESTED ANSWER:

In the case of Consolidated Rural Bank vs. NLRC, G.R. No. 123810, January 20, 1999, the Supreme Court ruled that allowances of the employee should be included in the computation of backwages.

Dismissal; Authorized Causes (2002)

B. 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.

Dismissal; Authorized Causes vs. Just Cause (2004)

What are the authorized causes for a valid dismissal by the employer of an employee? Why are they distinct from the just causes? (5%)

SUGGESTED ANSWERS:

The AUTHORIZED CAUSES for a valid dismissal are the following:

1. installation of labor-saving devices
2. redundancy
3. retrenchment to prevent losses
4. the closing or cessation of operation of the establishment or undertaking

The authorized causes for a valid dismissal are distinct from just causes because where the dismissal of an employee is based on just causes, these just causes are acts committed by the employee which provide the basis for his dismissal. On the other hand, where the dismissal is based on authorized causes, these authorized causes are the results of the proper exercise by the employer of his management prerogatives. If a valid dismissal is based on just causes, there is no liability on the part of the employer, although sometimes, financial assistance to be given to the dismissed employee is asked of the employer. If a valid dismissal is based on authorized causes, the employer has to pay separation pay except in case of closure or cessation of operation due to serious business losses or financial reverses.

Dismissal; Authorized Causes; Closure & Cessation (2001)

Company "A" was engaged in the manufacture of goods using the by-products of coconut trees and employed some fifty workers who lived in the coconut plantation in Quezon Province. The land upon which A conducted its operation was subjected to land reform under R.A. 6657 for distribution to the tenants and residents of the land. Consequently, A had to close its operations and dismiss its workers. The union representing the employees demanded that A pay the dismissed workers separation pay under Art. 283 of the Labor Code that requires, among others, the payment of separation pay to employees in cases of "closing or cessation of operations of the establishment or undertaking". Is the union's claim correct or not? Why? (5%)

SUGGESTED ANSWER:

The union's claim is not correct. In the case of National Federation of Labor vs. NLRC, G.R. No. 127718, March 2, 2000, the Supreme Court ruled that there is no obligation to pay separation pay if the closure is not a unilateral and voluntary act of the employer. In the question, the closure was brought about not by a unilateral and voluntary act of the employer but due to the act of government in the implementation of the Comprehensive Agrarian Reform Law.

Dismissal; Authorized Causes; Closure & Cessation of Business; Old Age (2006)

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

1. Is the closure allowed by law? (2.5%)

2. Are the employees entitled to separation benefits? (2.5 %)

SUGGESTED ANSWER:

If closure is due to old age —

1. YES, it is allowed by law. The employer may go out of business by closing the same regardless of his reasons, if done in good faith and due to causes beyond his control. (LVN Pictures Employees and Workers Association v. LVN Pictures, No. L-23495, September 30, 1970; J.A.T. General Services v. NLRC, No. L-26432, September 30, 1970; Alabang Country Club, Inc. v. NLRC, G.R. No. 157611, August 9, 2005)

2. YES. One month pay, or one-half month pay for every year of service, a fraction of at least 6 months or more equivalent to one year, whichever is higher. (Catatista v. NLRC, GR. No. 102422, August 3, 1995).

Dismissal; Authorized Causes; Closure & Cessation of Business; Separation Pay (2006)

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.

1. As counsel for the corporation, what steps will you take prior to its closure? (2.5%)

SUGGESTED ANSWER:

1. Steps to take prior to closure:

a) Written Notice to DOLE 30 days prior to the intended date of termination, showing a bona fide reason for closure;
b) Written Notice to employees 30 days prior to the intended date of termination (Catatista v. NLRC, GR. No. 102422, Aug. 3 1995).

2. Are the employees entitled to separation pay? (2.5%)

SUGGESTED ANSWER:

2. NO, Art. 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious business losses or financial reverses (North Davao Mining and Development Corp. v. NLRC, G.R. No. 112546, March 13, 1996), except if the CBA provides otherwise (JAKA Foods v. Pacot, G.R. No. 151378, Mar. 28, 2005).

Dismissal; Authorized Causes; Closure of Business; Requirements; Separation Pay (2012)

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%)

SUGGESTED ANSWER:

I will serve a written notice to 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 provide proof of ABC's serious business losses or financial reverses. (Balasbas v. NLRC [1992]).

b. Are the employees entitled to separation pay? (2%)

SUGGESTED ANSWER:

No. Where the closure is due to serious business losses, no separation pay is required. (North Davao Mining Corp. V. NLRC [2004]).

c. Is the closure allowed by law? (2%)

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 operations to simply maintain the workers in employment. (San Pedro Hospital of Digos v. Secretary of Labor [1996]; Espina v. CA [2007]).

d. Are the employees entitled to separation benefits? (2%)

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 pay 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).

(Note: problem previously given in 2006 Bar Exam)

Dismissal; Authorized Causes; Downsizing Employees (2001)

Soon after the Asian meltdown began in October 1997, ABC Realty and Management Corporation undertook a downsizing program and terminated nearly a third of its regular workforce. The affected employees questioned their termination arguing that the action was precipitate in that ABC had not proved that it sustained any losses. Is the claim of the employees correct? Explain your answer, (3%).

SUGGESTED ANSWER:

The claim of the employees may or may not be correct. When the Corporation undertook its "downsizing" program, it may have terminated its employees on either one of two grounds, namely, redundancy or retrenchment. For REDUNDANCY, there is no requirement of losses, whereas in retrenchment, substantial losses, actual or anticipated, is a requirement. (Article 283, Labor Code). In Atlantic Gulf and Pacific Company vs. NLRC, G.R. No. 127516. May 28, 1999, the Supreme Court ruled: "... it is necessary to distinguish redundancy from retrenchment... Redundancy exists when the services of an employee are in excess of what is required by an enterprise. RETRENCHMENT on the other hand, ... is resorted to primarily to avoid or minimize business losses." In Escareal vs. NLRC, 213 SCRA 472 (1992), the Supreme Court ruled that the law does not require financial loss as a basis for redundancy.

Dismissal; Authorized Causes; Redundancy (2000)

a) Can redundancy exist where the same is due to the company's failure to properly forecast its manpower requirements? (3%)

b) Can redundancy exist where the work performed by twelve (12) workers can be performed as efficiently by ten

(10) workers by increasing the speed of a machine without detriment to the health and safety of the workers? (3%)

SUGGESTED ANSWER:

a) Yes, REDUNDANCY exists when a position has become an excess or superfluous which, in turn, may be caused by reorganization, closure of a section or department, or adoption of labor-saving arrangements. Poor forecasting does not invalidate redundancy. Forecasting after all is not fail-free. [Wiltshire File Co., Inc. v. NLRC. 193 SCRA 665 (1991)].

b) Yes, redundancy can exist where work efficiency has been improved mechanically thus resulting in excessive or superfluous manpower. [Wiltshire File Co., Inc. v. NLRC, 193 SCRA 665(1991)].

Dismissal; Authorized Causes; Retrenchment & Redundancy (2001)

(a) What conditions must prevail and what requirements, if any, must an employer comply with to justify/effect a valid retrenchment program? (2%).

SUGGESTED ANSWER:

In the case of Asian Alcohol Corp. vs. NLRC, G.R. No. 131108, March 25, 1999, the Supreme Court stated that the requirements for a valid retrenchment must be proved by clear and convincing evidence:

(1) that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but SUBSTANTIAL, SERIOUS, ACTUAL and REAL or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) that the employer served WRITTEN NOTICE both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) that the employer pays the retrenched employees SEPARATION PAY equivalent to one month pay or at least one month pay for every year of service, whichever is higher;

(4) that the employer exercises its prerogative to retrench employees in GOOD FAITH for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

(5) that the employer used FAIR and REASONABLE CRITERIA in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

(b) What conditions must prevail and what requirements, if any, must an employer comply with to justify/effect a valid redundancy program? (2%).

SUGGESTED ANSWER:

In the case of Asian Alcohol Corp. (supra), the Supreme Court stated that REDUNDANCY exists when the service capability of the work is in excess of what is reasonably needed to meet the demands on the enterprise. A REDUNDANT POSITION is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business dropping of a particular line

previously manufactured by the company or phasing out of a service activity previously undertaken by the business. Under these conditions, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.

For the implementation of a redundancy program to be valid, the employer must comply with the following REQUISITES:

(1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service whichever is higher;

(3) good faith in abolishing the redundant positions; and

(4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.

Dismissal; Authorized Causes; Retrenchment (2003)

Daisy's Department Store hired Leo as a checker to apprehend shoplifters. Leo later became Chief of the Checkers Section and acquired the status of a regular employee. By way of a cost-cutting measure, Daisy's decided to abolish the entire Checkers Section. The services of Leo, along with those of his co-employees working in the same section, were terminated on the same day. A month after the dismissal of Leo, Daisy's engaged the services of another person as an ordinary checker and with a salary much lower than that which Leo used to receive. Given the above factual settings (nothing more having been established), could the dismissal of Leo be successfully assailed by him?

SUGGESTED ANSWER:

Yes. Given the factual setting in the problem, and since "nothing more (have) been established", the dismissal of Leo can be successfully assailed by him. This is so because the burden of proof is upon the employer to show compliance with the following requisites for reduction of personnel:

1. Losses or expected losses should be substantial and not merely de minimis;

2. The expected losses must be reasonably imminent, and such imminence can be perceived objectively and in good faith by the employer.

3. It must be necessary and likely to prevent the expected losses. The employer must have taken other measures to cut costs other than labor costs; and

4. Losses if already realized, or the expected losses must be proved by sufficient and convincing evidence. (Lopez Sugar Corp. v. Federation of Sugar Workers. 189 SCRA 179(1990).

Moreover, the notice requirements to be given by Daisy's Department Store to DOLE and the employees concerned 30 days prior to the intended date of termination, as well as the requisite separation pay, were not complied with.

ANOTHER SUGGESTED ANSWER:

Yes. The authorized cause to dismiss due to redundancy or retrenchment under Art. 283 of the Labor Code has been disproved by Daisy's engaging the services of a

substitute checker at a salary much lower than that which Leo used to receive. Also, it appears that the one (1) month notice rule required in said law was not complied with. Such being the case, the twin requirements for a valid dismissal under Arts. 277 (b) and 283 of the Code have clearly not been complied with. That no separation pay was paid Leo, in violation of Art. 283 of the Code, his dismissal can all the more be successfully assailed.

Dismissal; Authorized Causes; Retrenchment (2014)

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? (4%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

I will decide in favor of the chambermaids. Art. 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.

Dismissal; Authorized Causes; Seniority Rule (2001)

(c) Is the SENIORITY RULE or "last in first out" policy to be strictly followed in effecting a retrenchment or redundancy program? (1%).

SUGGESTED ANSWER:

Again, in Asian Alcohol Corp., the Supreme Court stated that with regard the policy of "first in, last out" in choosing which positions to declare as redundant or whom to retrench to prevent further business losses, there is no law that mandates such a policy. The reason is simple enough. A host of relevant factors come into play in determining cost efficient measures and in choosing the employees who will be retained or separated to save the company from closing shop. In determining these issues, management plays a pre-eminent role. The characterization of positions as redundant is an exercise of business judgment on the part of the employer. It will be upheld as long as it passes the test of arbitrariness.

Dismissal; Authorized Causes; Sickness (2004)

A. Gabriela Liwanag has been working as bookkeeper at Great Foods, Inc., which operates a chain of high-end restaurants throughout the country, since 1970 when it was still a small eatery at Binondo. In the early part of the year 2003, Gabriela, who was already 50 years old, reported for work after a week-long vacation in her province. It was the height of the SARS (Severe Acute Respiratory Syndrome) scare, and management learned that the first confirmed SARS death case in the Philippines, a "balikbayan" nurse from Canada, is a townmate of Gabriela. Immediately, a memorandum was issued by management terminating the services of Gabriela on the ground that she is a probable carrier of SARS virus and that her continued employment is prejudicial to the health of her co-employees. Is the action taken by the employer justified? (5%)

SUGGESTED ANSWER:

The employer's act of terminating the employment of Gabriela is not justified. There is no showing that said employee is sick with SARS, or that she associated or had contact with the deceased nurse. They are merely townmates. Furthermore, there is no certification by a competent public health authority that the disease is of such a nature or such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. (Implementing Rules, Book VI, Rule 1, Sec. 8, Labor Code).

Dismissal; Constructive Dismissal; Floating Status (2004)

RS, a security guard, filed a complaint for illegal dismissal against Star Security Agency. He alleged he was constructively dismissed after ten years of service to the Agency. Having been placed on "off-detail" and "floating status" for 6 months already, he claimed the Agency just really wanted to get rid of him because it required him to take a neuro-psychiatric evaluation test by Mahusay Medical Center. RS said he already submitted the result of his evaluation test by Brent Medical Clinic as precondition to a new assignment, but the report was rejected by the Agency. RS added that Mahusay Medical Center had close ties with Star's president. It could manipulate tests to favor only those guards whom the Agency wanted to retain. Star defended its policy of reliance on Mahusay Medical Center because it has been duly accredited by the Philippine National Police. It is not one of those dubious testing centers issuing ready-made reports. Star cited its sad experience last year when a guard ran amuck and shot an employee of a client-bank. Star claimed management prerogative in assigning its guards, and prayed that RS' complaint be dismissed. What are the issues? Identify and resolve them. (5%)

SUGGESTED ANSWER:

The facts in the question raise these issues:

1. When RS was placed on "off-detail" or "floating status" for more than six months, can RS claim that he was terminated?
2. Is there a valid reason for the termination of RS?

On the first issue, based on prevailing jurisprudence, RS can be considered as terminated because he has been placed on "off detail" or "floating status" for a period which

is more than six (6) months. On the second issue, it is true that disease is a ground for termination. But the neuro-psychiatric evaluation test by the Mahusay Medical Center is not the certification required for disease to be a ground for termination. The Rules and Regulations implementing the Labor Code require a certification by a 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.

ANOTHER SUGGESTED ANSWER:

The issues involved are as follows:

1. Is there constructive dismissal?

2. Is there a valid exercise of management prerogative?

On the first issue, there is constructive dismissal. RS cannot be placed on "off-detail" and "floating status" indefinitely. If it lasts for more than six (6) months, RS shall be deemed to have been constructively dismissed thus entitling him to separation benefits. (*Superstar Security Agency v. NLRC*, 184 SCRA 74, [1990]). On the second issue, there is no valid exercise of management prerogative. Star's claim of management prerogative in assigning its guards cannot be exercised to defeat or circumvent RS' right to security of tenure.

Dismissal; Construtive Dismissal (2013)

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? (4%)

SUGGESTED ANSWER:

No. It is not legally 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* [2007]).

ANOTHER SUGGESTED ANSWER:

No. Under Art. 233 of the Labor Code, the reinstatement order of the Labor Arbiter which is immediately executory

even pending appeal, should pertain to restoration of status quo ante.

(B) Advise Bobby on the best course of action to take under the circumstances. (4%)

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.

Dismissal; Construtive Dismissal (2014)

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? (4%)

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. Art. 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 temporary displacement. Since, the suspension of work lasted more than six months, there is now constructive dismissal (*Sebuguero v. NLRC*, 245 SCRA 532 [1995]).

Dismissal; Damages Recoverable (2001)

What damages can an illegally dismissed employee collect from his employer? (2%).

SUGGESTED ANSWER:

An illegally dismissed employee may collect from his employer ACTUAL or COMPENSATORY damages, MORAL damages and EXEMPLARY damages, as well as attorney's fees as damages.

ANOTHER SUGGESTED ANSWER:

Moral and exemplary damages are only proper where the employee has been harassed and arbitrarily terminated by the employer, *Nueva Ecija vs. Electric Cooperative Employees Association* (G.R. No. 116066, January 24, 2000; *Cruz vs. NLRC*, G.R. No. 16384, February 7, 2000; *Philippine Aeolus etc., vs. Chua* (G.R. No. 124617, April 28, 2000; and *Lucas vs. Royo*, G.R. No. 136185, October 30, 2000).

(b) May the Labor Arbiter, NLRC or Court of Appeals validly award attorney's fees in favor of a complainant even if not claimed or proven in the proceedings? Why? (3%).

SUGGESTED ANSWER:

A Labor Arbiter, NLRC and Court of Appeals may validly award attorney's fees in favor of a complainant only if the claimant claimed and proved that he is entitled to attorney's fees.

ANOTHER SUGGESTED ANSWER:

Article 2208 of the New Civil Code allows the award of attorney's fees when the defendant's act or omission has compelled the plaintiff to litigate or incur expenses to protect his interest. Attorney's fees may be considered as a

part of an equitable relief awarded in the concept of damages.

Dismissal; Due Process; Requirements (2006)

Inday was employed by Herrera Home Improvements, Inc. (Herrera Home) as interior decorator. During the first year of her employment, she did not report for work for one month. Hence, her employer dismissed her from the service. She filed with the Labor Arbiter a complaint for illegal dismissal alleging she did not abandon her work and that in terminating her employment, Herrera Home deprived her of her right to due process. She thus prayed that she be reinstated to her position. Inday hired you as her counsel. In preparing the position paper to be submitted to the Labor Arbiter, explain the standards of due process which should have been observed by Herrera Home in terminating your client's employment. (5%)

SUGGESTED ANSWER:

The Labor Code provides the following procedure to be observed in terminating the services of an employee based on just causes as defined in Art. 283 of the Code:

a. A written notice must be served on the employee specifying grounds for termination and giving him opportunity to answer; The employee shall be given ample opportunity to defend himself, with or without the assistance of counsel; and c) A written notice of termination indicating the grounds to justify his termination (Agabon v. NLRC, G.R. No. 158693, 17 November 2004).

Dismissal; Due Process Requirements (2012)

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%)

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 v. Liberty Cotton Mills [1979]).

Dismissal; Procedural Requirements (2009)

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 *Prez v. Philippine Telegraph and Telephone Company* [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.

Dismissal; Just Cause; Independent Contractor (2005)

Antonio Antuquin, a security guard, was caught sleeping on the job while on duty at the Yosi Cigarette Factory. As a result, he was dismissed from employment by the Wagan Security Agency, an independent contractor. At the time of his dismissal, Antonio had been serving as a watchman in the factory for many years, often at stretches of up to 12 hours, even on Sundays and holidays, without overtime, nighttime and rest day benefits. He thereafter filed a complaint for illegal dismissal and non-payment of benefits against Yosi Cigarette Factory, which he claimed was his actual and direct employer. As the Labor Arbiter assigned to hear the case, how would you correctly resolve the following: (6%)

(a) Antonio's charge of illegal dismissal;

SUGGESTED ANSWER:

This is a case involving permissible job contracting. Antonio's charge of illegal dismissal against Yosi Cigarette Factory will not prosper. Wagan Security Agency, an independent contractor, is Antonio's direct employer. Yosi is only Antonio's indirect employer. By force of law, there is in reality no employer-employee relationship between Yosi and Antonio. (*Baguio v. NLRC*, G.R. Nos. 79004-08, October 4, 1991)

(b) Antonio's claim for overtime and other benefits.

SUGGESTED ANSWER:

I will dismiss Antonio's claim for overtime and other benefits for lack of merit as against Yosi. In legitimate job contracting, the principal employer (Yosi) becomes jointly and severally liable with the job contractor (Wagan) only for the payment of the employee's (Antonio) wages whenever the contractor fails to pay the same. Other than that, the principal employer (Yosi) is not responsible for any other

claim made by the employee (Antonio). (San Miguel Corp. v. MAERC Integrated Services, Inc., G.R. No. 144672, July 10, 2003)

Dismissal; Just Cause; Probationary Employees; Rights (2006)

During their probationary employment, eight (8) employees were berated and insulted by their supervisor. In protest, they walked out. The supervisor shouted at them to go home and never to report back to work. Later, the personnel manager required them to explain why they should not be dismissed from employment for abandonment and failure to qualify for the positions applied for. They filed a complaint for illegal dismissal against their employer. As a Labor Arbiter, how will you resolve the case? (10%)

SUGGESTED ANSWER:

As a Labor Arbiter I will resolve the case in favor of the eight (8) probationary employees due to the following considerations:

1. Probationary employees also enjoy security of tenure (Biboso v. Victoria Milling, G.R. No. L- 44360, March 31, 1977).
 2. In all cases involving employees on probationary status, the employer shall make known to the employee at the time he is hired, the standards by which he will qualify for the positions applied for.
 3. The filing of the complaint for illegal dismissal effectively negates the employer's theory of abandonment (Rizada v. NLRC, G.R. No. 96982, September 21, 1999).
 4. The order to go home and not to return to work constitutes dismissal from employment.
 5. The eight (8) probationary employees were terminated without just cause and without due process
- In view of the foregoing, I will order reinstatement to their former positions without loss of seniority rights with full backwages, plus damages and attorney fees.

Dismissal; Just Causes (2001)

"A" worked for company "B" as a rank and file employee until April 1990 when A's services were terminated due to loss of confidence in A. However, before effecting A's dismissal, B accorded A due process including full opportunity to answer the charges against him in the course of the investigation. Was B justified in dismissing A after the investigation? Why? (5%)

SUGGESTED ANSWER:

In the case of PLDT vs. NLRC (G.R. No. 106947, February 11, 1999), the Supreme Court ruled that the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned must be one holding a position of trust and confidence. Rank-and-file employees may only be dismissed for loss of confidence if the same is because of a willful breach of trust by a rank and file employee of the trust reposed in him by his employer or duly authorized representative (Art. 282(c), Labor Code).

ANOTHER SUGGESTED ANSWER:

"B" is justified in dismissing "A" for loss of confidence after according him the right to procedural due process. However, the following guidelines must be observed, as ruled in Nokom vs. NLRC, G.R. No. 140034, July 18, 2000:

1. loss of confidence should not be simulated;

2. it should not be used as subterfuge for causes which are improper, illegal or unjustified;
3. it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and
4. it must be genuine, not a mere after thought to justify their action

Dismissal; Just Causes vs. Authorized Causes (2000)

Distinguish between dismissal of an employee for just cause and termination of employment for authorized cause. Enumerate examples of just cause and authorized cause. (5%)

SUGGESTED ANSWER:

Dismissal for a JUST CAUSE is founded on faults or misdeeds of the employee. Separation pay, as a rule, will not be paid. Examples: serious misconduct, willful disobedience, commission of crime, gross and habitual neglect, fraud and other causes analogous to the foregoing. (Art. 282, Labor Code). Termination for AUTHORIZED CAUSES are based on business exigencies or measures adopted by the employer, not constituting faults of the employee. Payment of separation pay at varying amounts is required. Examples: redundancy, closure, retrenchment, installation of labor saving device and authorized cause. (Art. 283-284, Labor Code)

Dismissal; Just Causes; Commission of a Crime Against Employer (2014)

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? (4%)

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 Art. 282, now Art. 295 (d) of the Labor Code.

Dismissal; Just Causes; Disobedience (2003)

Oscar Pimentel was an agent supervisor, rising from the ranks, in a corporation engaged in real estate. In order to promote the business, the company issued a memorandum to all agent supervisors requiring them to submit a feasibility study within their respective areas of operation. All agent supervisors complied except Oscar. Reminded by the company to comply with the memorandum, Oscar explained that being a dropout in school and uneducated, he would be unable to submit the required study. The company found the explanation unacceptable and terminated his employment. Aggrieved, Oscar filed a complaint for illegal dismissal against the company. Decide the case.

SUGGESTED ANSWER:

For failure to comply with the memorandum to submit a feasibility study on his area of operation, Oscar can not be terminated (presumably for insubordination or willful

disobedience) because the same envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, or lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. In the case at bar, at least two requisites are absent, namely: (1) Oscar did not willfully disobey the memorandum with a perverse attitude; and (2) the directive to make a feasibility study did not pertain to his duties. Hence, the termination from employment of Oscar Pimentel is not lawful.

Dismissal; Just Cause; Willful Disobedience (2008)

No. XII. Arnaldo, President of "Bisig" Union in Femwear Company, readied himself to leave exactly at 5:00 p.m. which was the end of his normal shift to be able to send off his wife who was scheduled to leave for overseas. However, the General Manager required him to render overtime work to meet the company's export quota. Arnaldo begged off, explaining to the General Manager that he had to see off his wife who was leaving to work abroad. The company dismissed Arnaldo for insubordination. He filed a case for illegal dismissal. Decide (6%)

SUGGESTED ANSWER:

Compulsory overtime work may be required when the completion or continuation of work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer (Art. 89, Par. E, Labor Code; Section 10, Rule I, Book III, Implementing Rules). On the other hand, dismissal for willful disobedience of the employer's lawful orders, requires that: (a) the assailed conduct must have been willful or intentional, characterized by a —wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to his duties (Dimabayao v. NLRC, G.R. No. 122178, February 25, 1999; Alcantara, Jr. v. CA, G.R. No. 143397, August 06, 2002). Although the order to render overtime is valid, Arnaldo should not be dismissed because he was motivated by his honest belief that the order unreasonably prevented him from sending off his wife who was leaving for overseas.

While the circumstances do not justify his violation of the order to render overtime, they do not justify Arnaldo's dismissal either (Alcantara, Jr. v. CA, G.R. No. 143397, August 06, 2002).

Dismissal; Just Cause; Misconduct (2009)

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.

[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%)

SUGGESTED ANSWER:

No, 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 behaviour.

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 [2007]), and indicates that he has become unfit to continue working for his employer. (Torreda v. Toshiba Info. Equipment, Inc.. Phils. [2007]).

Dismissal; Just Cause; Misconduct (2013)

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. (4%)

SUGGESTED ANSWER:

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

Art. 282 of the Labor Code provides that an employer may terminate an employment for any serious misconduct or wilful 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, wilful 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;
2. Connected with the work of the employee.

ANOTHER SUGGESTED ANSWER:

Art. 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 the penalty of dismissal from service may be meted out to the erring employee. (Cosmos Bottling Corp. v. Fermin [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? (4%)

SUGGESTED ANSWER:

The offense committed by Jose did not relate to the performance of his duties. For misconduct or improper behaviour to be a just cause for dismissal, it (a) must be serious; (b) must relate to the performance of the employee's duties; (c) must show that the employee has become unfit to continue working for the employer.

On the basis of the foregoing 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 [2008]).

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

Dismissal; Just Cause; Misconduct (2014)

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? (4%)

SUGGESTED ANSWER:

I will dismiss the case. ADB enjoys immunity from suit (DFA v. NLRC, GR No. 113191, [1996]).

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 the 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 employees 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, GR No. 158693, [2004]).

Dismissal; Payroll Reinstatement (2005)

(c) What is meant by "payroll reinstatement" and when does it apply? (4%)

SUGGESTED ANSWER:

"PAYROLL REINSTATEMENT" is one where an employee is paid his monthly salary without making him perform actual work. It applies in termination cases where the labor court declares the dismissal illegal and orders reinstatement of the employee, but the employer does not want to actually or physically reinstate him and instead, at the employer's option, merely reinstates the employee in the payroll pending appeal.

Dismissal; Payroll Reinstatement (2009)

Alexander, a security guard of Jaguar Security Agency (JSA), could not be given any assignment because no client would accept him. He had a face only a mother could love. After six (6) months of being on "floating" status, Alexander sued JSA for constructive dismissal. The Labor Arbiter upheld Alexander's claim of constructive dismissal and ordered JSA to immediately reinstate Alexander. JSA appealed the decision to the NLRC. Alexander sought immediate enforcement of the reinstatement order while the appeal was pending.

JSA hires you as lawyer, and seeks your advice on the following:

[c] If the order of reinstatement is being enforced, what should JSA do in order to prevent reinstatement? (2%)

SUGGESTED ANSWER:

The employer cannot prevent reinstatement but may, however, opt for reinstatement of the employee in the payroll of the company without requiring him to report back to his work (Zamboanga City Water District v. Buat [1994]).

Dismissal; Requisites; Reinstatement

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. Will the complaint of Juan Dukha for illegal dismissal prosper? Explain.

SUGGESTED ANSWER:

Yes, there may be just cause for terminating Juan Dukha. But he was not accorded the required due process of law.

ALTERNATIVE ANSWER:

The complaint of Juan Dukha for illegal dismissal will prosper in the sense that the complaint will be heard by a

Labor Arbiter. His being barred from entering company premises is tantamount to dismissal. In the hearings, the employer will have the burden of proving that there is just cause for terminating Juan, possibly on the basis of willful breach of trust. On the other hand, Juan will be given the opportunity to prove that his failure to remit his collection is not because of dishonesty,

2. Assuming that he cannot be reinstated, what right can he immediately assert against his employer? Explain.

SUGGESTED ANSWER:

Assuming that Juan cannot be reinstated because there is just cause for his dismissal, he would nevertheless be entitled to an indemnity from his employer, because he was denied due process of law by said employer.

ALTERNATIVE ANSWER:

Juan can pursue the case of illegal dismissal before a Labor Arbiter where he will assert the right to defend himself, i.e., to explain his failure to remit his collections.

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.

Dismissal; Reinstatement (2009)

Alexander, a security guard of Jaguar Security Agency (JSA), could not be given any assignment because no client would accept him. He had a face only a mother could love. After six (6) months of being on "floating" status, Alexander sued JSA for constructive dismissal. The Labor Arbiter upheld Alexander's claim of constructive dismissal and ordered JSA to immediately reinstate Alexander. JSA appealed the decision to the NLRC. Alexander sought immediate enforcement of the reinstatement order while the appeal was pending.

JSA hires you as lawyer, and seeks your advice on the following:

[a] Because JSA has no client who would accept Alexander, can it still be compelled to reinstate him pending appeal even if it has posted an appeal bond? (2%)

SUGGESTED ANSWER:

Yes. The posting of the bond of the employer does not have the effect of staying the execution of the reinstatement aspect of the decision of the Labor Arbiter (Pioneer Texturizing Corp. V. NLRC [1997]).

ANOTHER SUGGESTED ANSWER:

Yes. The JSA can be compelled to reinstate Alexander, pending appeal of the decision of the Labor Arbiter to the NLRC, even if JSA post a bond.

Art. 223. Appeal. Xxx in any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned shall be immediately executory, even pending appeal and the posting of a bond.

Dismissal; Reinstatement & Backwages (2009)

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.

[b] Is Alfredo entitled to reinstatement and full backwages? Why or why not? (3%)

SUGGESTED ANSWER:

It depends. If the dismissal was without just cause and without due process, the dismissal of the employee is patently illegal. If the dismissal was for just cause but without due process, the dismissal is valid and the employer is only liable to pay indemnity in the form of nominal damages (Agabon v. NLRC [2004]).

Dismissal; Reinstatement and Backwages (2009)

[a] 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%)z

SUGGESTED ANSWER:

Yes. Baldo is entitled to reinstatement. Although he shall be entitled to backwages during the period of his detention, but only from the time the company refused to reinstate him. (Magtoto v. NLRC [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.

Dismissal; Reinstatement & Backwages (2012)

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.

b. What are the liabilities of Dana Films and MMFF to the dismissed employees, if any? (5%)a.

SUGGESTED ANSWER:

Dana Films is obliged to (1) reinstate the illegally dismissed employees to their former positions without reduction in rank, seniority and salary; and to (2) jointly and severally pay the dismissed employees backwages, without any reduction in pay or qualification. (Amada Rice v. NLRC [1988]).

Dismissal; Non-compliance by Er to Reinstatement Order (2007)

Discuss briefly the instances when non-compliance by the employer with a reinstatement order of an illegally dismissed employee is allowed. (5%)

SUGGESTED ANSWER:

When reinstatement is no longer feasible due to strained Er-Ee relationship, bona fide closure of business, valid abolition of position, health and/or age reasons, separation pay in lieu of reinstatement may be allowed.

Dismissal; Just Cause; Loss of Trust and Confidence (2009)

[b] 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%)

SUGGESTED ANSWER:

Domingo as bus conductor holds a position wherein he was reposed with the employer's trust and confidence. In *Bristol Myers Squibb (Phils.) v. Baban* [2008], the Court established a second class of positions of trust that involve rank-and-file employees who, in the normal and routine exercises 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 *Ectuban v. Sulpicio Lines* [2005], the Court held that where the amount involved is minuscule, an employee may not be dismissed for loss of trust and confidence.

Dismissal; Reinstatement Order Immediately Executory (2009)

Alexander, a security guard of Jaguar Security Agency (JSA), could not be given any assignment because no client would accept him. He had a face only a mother could love. After six (6) months of being on "floating" status, Alexander sued JSA for constructive dismissal. The Labor Arbiter upheld Alexander's claim of constructive dismissal and ordered JSA to immediately reinstate Alexander. JSA appealed the decision to the NLRC. Alexander sought immediate enforcement of the reinstatement order while the appeal was pending.

JSA hires you as lawyer, and seeks your advice on the following:

[b] Can the order of reinstatement be immediately enforced in the absence of a motion for the issuance of a writ of execution? (2%)

SUGGESTED ANSWER:

Yes. In *Pioneer Texturizing Corp. V. NLRC* [1997], the Court held that an award or order of reinstatement is self-executory and does not require a writ of execution to implement and enforce it. To require the application for issuance of a writ of execution as prerequisite for the execution of a reinstatement award would certainly betray and run counter to the very object and intent of Article 223 of the Labor Code (on the immediate execution of a reinstatement order).

ANOTHER SUGGESTED ANSWER:

The decision to reinstate pending appeal is not self-executory. A motion for a writ of execution can be enforced because an employee needs the assistance of the NLRC Sheriff to enforce the Order.

Dismissal; Separation Pay; Backwages (2002)

Lyric Theater Corp. issued a memorandum prohibiting all ticket sellers from encashing any check from their cash collections and requiring them instead to turn over all cash collections to the management at the end of the day. In violation of this memorandum, Melody, a ticket seller, encashed five (5) checks from her cash collection. Subsequently the checks were dishonored when deposited in the account of Lyric Theater. For this action, Melody was placed under a 20-day suspension and directed to explain why she should not be dismissed for violation of the company's memorandum. In her explanation, she admitted having encashed the checks without the company's permission. While the investigation was pending, Melody filed a complaint against Lyric Theater for backwages and separation pay. The Labor Arbiter ordered Lyric Theater to pay Melody P115,420.79 representing separation pay and backwages. The NLRC affirmed the ruling of the Labor Arbiter. Is the ruling of the NLRC correct? Explain briefly. (5%)

SUGGESTED ANSWER:

The ruling of the NLRC affirming the Labor Arbiter's decision ordering Lyric Theater to pay P115,420.79 representing separation pay and backwages is wrong. The Labor Arbiter's decision is wrong because:

a) It is premature. There was still no termination. All that was done by the employer (Lyric Theater) was to place the employee (Melody) under a 20-day suspension, meanwhile directing her to explain why she should not be dismissed for violation of company's memoranda.

b) The order for Lyric Theater to pay separation pay has no factual basis. Separation pay is to be paid to an employee who is terminated due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment undertaking. None of these events has taken place. Neither is separation pay here in lieu of reinstatement. Melody is not entitled to

reinstatement because there is a just cause for her termination.

c) The order for Lyric Theater to pay backwages has no factual basis. If after investigation, Lyric Theater dismisses Melody, there is just cause for such termination. There is willful disobedience by the employee of the lawful orders of her employer in connection with her work. She did not just violate the lawful order of the employer. She violated it five times. Melody did not give any justifiable reason for violating the company's memorandum prohibiting the encashment of checks. [Jo Cinema Corp. v. Avellana, GR No. 132837, June 28, 2001]

Dismissal; Separation Pay (2009)

[a] Cite four (4) instances when an illegally dismissed employee may be awarded separation pay in lieu of reinstatement. (3%)

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 reasons 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.

Dismissal; Overseas Worker (2010)

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 Almeda 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 un-prescribed 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 Almeda II was 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.

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 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.

ANOTHER SUGGESTED 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.

Dismissal; Refusal of a Promotion (2014)

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: (6%)

(A) whether he has a cause of action

SUGGESTED ANSWER:

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., GR No. L-51182 [1983]).

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

SUGGESTED ANSWER:

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

SUGGESTED ANSWER:

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.

Dismissal; Refusal of Promotion (2015)

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? (4%)

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.

Dismissal; Criminal Aspect; Conviction Not A Requisite (2015)

Rico has a temper and, in his work as Division Manager of Matatag Insurance, frequently loses his temper with his staff. One day, he physically assaults his staff member by slapping him. The staff member sues him for physical injuries. Matatag Insurance decides to terminate Rico, after notice and hearing, on the ground of loss of trust and confidence. Rico claims that he is entitled to the presumption of innocence because he has not yet been convicted. Comment on Matatag's action in relation to Rico's argument. (4%)

SUGGESTED ANSWER:

Matatag Insurance does not have to wait 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.

Employee; Contractual Employees; Seafarers (2002)

Tomas and Cruz have been employed for the last 22 years in various capacities on board the ships of BARKO Shipping Company. Their employment was made through a local manning company. They have signed several ten (10) month employment contracts with BARKO Shipping. The NLRC ruled that they were contractual employees and that their employment was terminated each time their contracts expired is the ruling of the NLRC correct? Explain your answer fully. (5%)

SUGGESTED ANSWER:

Yes. A contract of employment for a definite period terminates by its own terms at the end of such period. Since Tomas and Cruz signed ten (10)- month contracts, their employment terminates by its own terms at the end of each ten (10)-month period. The decisive determinant in term employment should not be the activities that the

employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of their employment relation (not the character of his duties as being "usually necessary or desirable in the usual business of the employer"). Stipulation in the employment contracts providing for "term employment" or "fixed period employment" are valid when the period are agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure exerted on the employee; and when such stipulations were not designed to circumvent the laws on security of tenure. [*Brent School v. Zamora*, 181 SCRA 702 (1990)]

Moreover, in *Brent School v. Zamora*, supra, the Supreme Court stated that Art. 280 of the Labor Code does not apply to overseas employment. In *Pablo Coyoca v. NLRC*, 243 SCRA 190, (1995), the Supreme Court also held that a seafarer is not a regular employee and Filipino seamen are governed by the rules and regulations governing overseas employment and the said rules do not provide for separation or termination pay. From the foregoing cases, it is clear that seafarers are considered contractual employees. They cannot be considered as regular employees under Art 280 of the Labor Code. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Art 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. We need not depart from the rulings of this court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers. [*Douglas Millares v. NLRC*, et. al. 328 SCRA 79, (2000)] Therefore, Tomas and Cruz are contractual employees. The ruling of the NLRC is correct.

ANOTHER SUGGESTED ANSWER:

No. The ruling of the NLRC is not correct. Such repeated re-hiring, which continued for twenty years cannot but be appreciated as sufficient evidence of the necessity and indispensability of petitioner's service to the [employer's] trade. Verily, as petitioners had rendered 20 years of service, performing activities that were necessary and desirable in the trade (of the employer), they are, by express provision of Art. 280 of the Labor Code, considered regular employees. [*Millares v. NLRC*, 328 SCRA 79 (2000)]

Employee; Contractual Worker (2014)

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 number of 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? (4%)

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 expiration of the contract. (Millares, e.al v. NLRC, 385 SCRA 306 [2002]).

Employee; Contractual Worker vs. Casual Worker (2005)

How is the project worker different from a casual or contractual worker? Briefly explain your answers.

SUGGESTED ANSWER:

A "CONTRACTUAL WORKER" is a generic term used to designate any worker covered by a written contract to perform a specific undertaking for a fixed period. On the other hand, a "PROJECT WORKER" is used to designate workers in the construction industry, hired to perform a specific undertaking for a fixed period, co-terminus with a project or phase thereof determined at the time of the engagement of the employee. (Policy Instruction No. 19, DOLE) In addition, to be considered a true project worker, it is 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, G.R. No. 114733, January 2, 1997) In contrast, there is no such requirement for an ordinary contractual worker.

ALTERNATIVE ANSWER:

A PROJECT WORKER performs job that is necessary and desirable to the nature of the business of the employer. On the other hand, a CASUAL WORKER performs job that is not necessary or desirable to the nature of the business of the employer. (Art. 280, Labor Code) A project worker becomes a regular employee if the employer fails to submit as many reports to the DOLE on terminations as there were projects actually finished. (Audion Electric Co. v. NLRC, G.R. No. 106648, June 17, 1999) On the other hand, a casual worker becomes a regular employee if he has rendered service for at least one (1) year whether the same is continuous or broken. (Art. 280, Labor Code)

Employee; Casual employee; Carpenter (2007)

A carpenter is employed by a private university in Manila. Is the carpenter a regular or a casual employee? Discuss fully. (5%)

SUGGESTED ANSWER:

The carpenter is a casual employee. Under the 'reasonable or casual connection' rule, the carpenter's work is not usually necessary and desirable in the usual trade or business of the employer university.

ALTERNATIVE SUGGESTED ANSWER:

If the employment of the carpenter is occasional or sporadic and brief in nature, his employment is casual, because the work he is performing is not in the usual course of the school's trade or business. However, if the carpenter has rendered services for at least one year, whether continuous or broken, he becomes a regular

employee by operation of law, with respect to the activity for which he is employed. His employment shall continue while such activity exists. (Art. 280, Labor Code; See also Phil. Geothermal, Inc. V. NLRC [1990]; Kimberly Independent Labor Union, etc. V. Drilon [1990]).

Employee; Probationary Employees (2001)

What limitations, if any, do the law and jurisprudence impose on an employer's right to terminate the services of a probationary employee? (2%)

SUGGESTED ANSWER:

The Labor Code [in Art. 281] provides that 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. If the probationary employee is being terminated for just cause, he must, of course, be given due process before his termination,

Employee; Project Employees vs. Casual Employees (2005)

Mariano Martillo was a mason employed by the ABC Construction Company. Every time that ABC had a project, it would enter into an employment contract with Martillo for a fixed period that coincided with the need for his services, usually for a duration of three to six months. Since the last project involved the construction of a 40-storey building, Martillo was contracted for 14 months. During this period, ABC granted wage increases to its regular employees, composed mostly of engineers and rank-and-file construction workers as a result of the just concluded CBA negotiations, feeling aggrieved and discriminated against, Martillo and other similarly-situated project workers demanded that increases be extended to them, inasmuch as they should now be considered regular employees and members of the bargaining unit. Briefly explain your answers. (6%)

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

SUGGESTED ANSWER:

The demand is without legal basis. The simple fact that the employment of petitioners as project employees had gone beyond one (1) year does not detract from, or legally dissolve, their status as project employees. The second paragraph of Article 280 of the Labor Code, providing that an employee who has served for at least one (1) year shall be considered a regular employee, relates to casual employees, not to project employees. (ALUTUCP v. NLRC, G.R. No. 109902, August 2, 1994) In the case of Mercado, Sr. v. NLRC, G.R. No. 79869, September 5, 1991, the Supreme Court ruled that the proviso in the second paragraph of Article 280 of the Labor Code relates only to casual employees and is not applicable to those who fall within the definition of said Article's first paragraph, i.e., project employees. The familiar rule is that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, unless there is clear legislative intent to the contrary. No such intent is observable in Article 280 of the Labor Code.

ALTERNATIVE ANSWER:

If I were ABC's legal counsel, I will argue that the project workers are not regular employees but fixed-term employees. Stipulation in employment contracts providing for term employment or fixed period were agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure, being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. (Pangilinan v. General Milling Corp., G.R. No. 149329, July 12, 2004)

Employee; Project Employee; Termination of Employment (2009)

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%)

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 (Filipinas Pre-Fabricated Building Systems v. Puente [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.

Employee; Regular Employee; Constructive Dismissal (2005)

Kitchie Tempo was one of approximately 500 production operators at HITEC Semiconductors, Inc., and export-oriented enterprise whose business depended on orders for computer chips from overseas. She was hired as a contractual employee four years ago. Her contracts would be for a duration of five (5) months at a time, usually after a

one-month interval. Her re-hiring was contingent on her performance for the immediately preceding contract. Six months after the expiration of her last contract, Kitchie went to HITEC's personnel department to inquire why she was not yet being recalled for another temporary contract. She was told that her performance during her last stint was "below average." Since there was no union to represent her, Kitchie seeks your advice as a labor lawyer about her chances of getting her job back. What will your advice be? (5%)

SUGGESTED ANSWER:

The repeated rehiring and the continuing need of Kitchie's services for 4 years are sufficient evidence of the necessity and indispensability of her services to HITEC's business or trade. (Magsalin v. National Organization for Working Men, et al., G.R. No. 148492, May 9, 2003) Where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the employment as regular with respect to such activity and while such activity exists. (Paguio v. NLRC, G.R. No. 147816, May 9, 2003) Hence, Kitchie is considered a regular employee of HITEC and as such, she cannot be terminated except for cause and only after due process.

ALTERNATIVE ANSWER:

I will advise Kitchie to file a case of constructive dismissal with the Regional Arbitration branch of the NLRC having territorial jurisdiction over the workplace of the complainant because the constant re-hiring of Kitchie makes her a regular employee.

Employee; Regular Employee; (2008)

No. IV. Super Comfort Hotel employed a regular pool of "extra waiters" who are called or asked to report for duty when the Hotel's volume of business is beyond the capacity of the regularly employed waiters to undertake. Pedro has been an "extra waiter" for more than 10 years. He is also called upon to work on weekends, on holidays and when there are big affairs at the hotel. What is Pedro's status as an employee under the Labor Code? Why? Explain your answer fully. (6%)

SUGGESTED ANSWER:

Pedro has acquired the status of a regular employee. Pedro has engaged to perform activities which are necessary or desirable to the usual business or trade of the employer. Moreover, Pedro has been an —extra waiterll for more than 10 years. Any employer who has rendered service for one year, whether continuous or broken, shall be considered a regular employee with respect to the activities of which he is employed and his employment shall continue while such activity exists (Art. 280, Labor Code).

Employee; Regular Employee (2015)

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? (4%)

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 for dismissal on that ground do not appear to have been complied by the employer here.

Employee; Regular vs. Project Employees (2002)

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)]

Employee; Fixed-term Employees (2008)

No. III. a. 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, were 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.

Employee; Fixed-term Employees; Seafarers (2009)

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.

[a] Seafarers who have worked for twenty (20) years on board the same vessel are regular employees. (1%)

SUGGESTED ANSWER:

FALSE. Seafarers as overseas Filipino workers are fixed-terms employees whose discontinued 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 v. NLRC (2004).

The day after 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. 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 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 will decide the case in favor of Lina, et al. In the case of PNOC-Energy Development Corporation v. NLRC, G.R. No. 97747, March 31, 1993, the Supreme Court set down the criteria under which fixed contracts of employment do not circumvent the security of tenure, to wit: (1) The fixed period of employment was knowingly and voluntarily agreed upon, without any force, duress or improper pressure upon the employee and absent any other circumstances vitiating his consent; or (2) It satisfactorily appears that the employer and employees dealt with each other on more or less equal terms with no moral dominance over the employee. Lina, et. al., are not on equal terms with their employers and did not agree to a 5-month contract. The scheme of SDS to prevent workers from acquiring regular employment, violates security of tenure and contrary to public policy. (Pure Foods Corporation v. NLRC, G.R. No. 122653, December 12, 1997; cited in Philips Semiconductors [Phil.], Inc. v. Fadriquela, G.R. No. 141717, April 14, 2004).

Employee; Fixed-term Employees (2014)

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 onemonth interval. Her re-hiring was contingent on her performance for the

immediately preceding contract. Six (6) months after the expiration of her last contract, Lucy went to Hambergis personnel department to inquire why she was not yet being recalled to work. She was told that her performance during her last contract was "below average." Lucy seeks your legal advice about her chances of getting her job back. What will your advice be? (4%)

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 Corp. v. CA, 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 5 months at a time, for 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 under said law. (Magsalin, et.al v. NOWM, GR No. 148492, [2003]).

Employee; Regular Seasonal Employee (2010)

A was hired to work 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%)

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 retaliation to the usual trade or business of the employer (Pier 8 Arrastre & Stevedoring Services, Inc., et.al. v. Jeff B. Baclo [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 [2005]).

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

Prescriptive period; Illegal dismissal (2002)

A. State your agreement or disagreement with the following statement and explain your answer briefly:

A criminal case filed against an employee does not have the effect of suspending or interrupting the running of the

prescriptive period for the filing of an action for illegal dismissal (2%)

B. State your agreement or disagreement with the following statement and explain your answer briefly: The period of prescription in Article 291 of the Labor Code applies only to money claims so that the period of prescription for other cases of injury to the rights of employees is governed by the Civil Code. Thus, an action for reinstatement for injury to an employee's rights prescribes in four (4) years as provided in Article 1146 of the Civil Code. (3%)

SUGGESTED ANSWER:

A. I agree. The two (2) cases, namely: the criminal case where the employee is the accused; and the case for illegal dismissal, where the employee would be the complainant, are two (2) separate and independent actions governed by different rules, venues, and procedures. The criminal case is within the jurisdiction of the regular courts of law and governed by the rules of procedure in criminal cases. The action for the administrative aspect of illegal dismissal would be filed with the NLRC and governed by the procedural rules of the Labor Code.

ANOTHER SUGGESTED ANSWER:

I agree. An action for illegal dismissal is an administrative case which is entirely separate and distinct from a criminal action. Each may proceed independently of each other. The right to file an action for illegal dismissal is not dependent upon the outcome of the criminal case. Guilt or innocence in the criminal case is not determinative of the existence of a just or authorized cause for a dismissal. [Pepsi-Cola Bottling Co. v. Guanzon 172 SCRA 571(1989)]

SUGGESTED ANSWER:

B. I agree with the statement. A case of illegal dismissal filed by an employee who has been terminated without a just or authorized cause is not a money claim covered by Art. 291 of the Labor Code. An employee who is unjustly dismissed from work is entitled to reinstatement and to his backwages. A case of illegal dismissal is based upon an injury to the right to security of tenure of an employee. Thus, in accordance with Art 1146, it must be instituted within four years. [Callanta v. Carnation Phil. 145 SCRA 268(1986); Baliwag Transit v. Ople 171 SCRA 250(1989); International Harvester Macleod, Inc. v. NLRC, 200 SCRA 817(1991)]

Resignation; Validity of Quitclaims (2010)

TRUE OR FALSE. Deeds of release, waivers and quitclaims are always valid and binding. Explain your answer briefly (2%)

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.

ANOTHER SUGGESTED ANSWER:

FALSE. Not all deeds of release, waivers and quitclaims are valid and binding. The Supreme Court, in Periquet v. NLRC [2007] and affirmed in Salgus Corporation v. Court of Appeals [2007], provided the following guideposts in

determining the validity of such release, waivers, and quitclaims:

"Not all waivers and quitclaims are invalid 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."

Resignation; Voluntary & Quitclaims (2010)

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 is valid or not. Explain. (3%)

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 disfavour 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 (Fransisco Soriano, Jr. v. NLRC [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 the kind of proof required that will show he was defrauded, his consent vitiated, and therefore the termination of his employment illegal.

ANOTHER SUGGESTED 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 reopening of the business under another name is an indication of bad faith and fraud.

Retirement; Optional Retirement (2005)

(1) Ricky Marvin had worked for more than ten (10) years in IGB Corporation. Under the terms of the personnel policy on retirement, any employee who had reached the age of 65 and completed at least ten (10) years of service would be compulsorily retired and paid 30 days' pay for every year of service. Ricky Marvin, whose immigrant visa to the USA had just been approved, celebrated his 60th birthday recently. He decided to retire and move to California where the son who petitioned him had settled. The company refused to grant him any retirement benefits on the ground that he had not yet attained the compulsory retirement age of 65 years as required by its personnel policy; moreover, it did not have a policy on optional or early retirement. Taking up the cudgels for Ricky Marvin, the union raised the issue in the grievance machinery as stipulated in the CBA. No settlement was arrived at, and the matter was referred to voluntary arbitration. If you were the Voluntary Arbitrator, how would you decide? Briefly explain the reasons for your award. (5%)

SUGGESTED ANSWER:

I will decide the case in accordance with the Retirement Law. (R.A. No. 7641) Under the law, Ricky Marvin is entitled to Optional Retirement at age 60 since he has served the Company for at least 5 years, in fact 10 years already. He will also receive 22.5 days for every year of service. (Capitol Wireless v. Confesor, G.R. No. 117174, November 13, 1996)

Retirement; When Due (2007)

a. As a rule, when is retirement due?

SUGGESTED ANSWER:

As a rule, optional retirement is due at the age of 60 and compulsory retirement at age 65, with at least 5 years of service (R.A. 7641)) or as may be provided for in the CBA or company retirement program.

b. When is retirement due for underground miners?

SUGGESTED ANSWER:

Optional retirement is due for underground miners upon reaching the age of 50 years or more and compulsory retirement at age 60, provided he has served at least 5 years as such. (R.A. 8558).

Retirement; Retirement Pay (2001)

B. Ukol was compulsorily retired by his employer, Kurot Bottling Corporation, upon the former's reaching 65 years of age, having rendered 30 years of service. Since there was no CBA, B. Ukol was paid his retirement benefits computed 15 days' pay for every year of service, based on B. Ukol's highest salary during each year of his employment. Not satisfied, B. Ukol filed action with the Arbitration Branch of the NLRC claiming that is retirement benefits were not computed properly. Is B. Ukol's claim meritorious? What are the components of his retirement benefits? (2%),

SUGGESTED ANSWER:

Ukol's claim is meritorious. His retirement benefit is to be computed in accordance with Article 287, which reads: "In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee may retire ... and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six months being considered as one whole year. The same Article then explains that the term one-half (1/2) month salary means fifteen days plus onetwelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. The components of retirement pay are:

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

(b) What exception(s) do(es) the law on retirement benefits provide(s) if any? (3%).

SUGGESTED ANSWER:

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of the provision on retirement benefits in the Labor Code. Also, where there is a retirement plan of the employer that grants more than what the Labor Code grants.

Retirement; Retirement Pay; Taxi Driver (2012)

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.

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%)

SUGGESTED ANSWER:

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

Retirement; Retirement Pay (2013)

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? (4%)

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 [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? (4%)

SUGGESTED ANSWER:

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

SOCIAL LEGISLATIONS

Employment Compensation Act; Permanent Total Disability Benefits; Requirements (2013)

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 MIV 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 redeployment. 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. (8%)

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 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; an exception to Art. 280 (now Art. 286) of the Labor Code. Hence, the complaint for illegal dismissal will not prosper.

Employment Compensation Act; Permanent Disability Benefits; Tuberculosis (2015)

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? (2%)

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) 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? (2%)

SUGGESTED ANSWER:

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.

ALTERNATIVE ANSWER:

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, Feb. 26, 2014). Thus, if in his opinion, national interest is not involved, the company cannot insist that he assume jurisdiction.

Portability Provisions of RA 7699 (2005)

How are the "portability" provisions of Republic Act No. 7699 beneficial or advantageous to SSS and GSIS members in terms of their creditable employment services in the private sector or the government, as the case may be, for purposes of death, disability or retirement? Please explain your answer briefly. (3%)

SUGGESTED ANSWER:

Portability provisions of R.A. No. 7699 shall benefit a covered worker who transfers employment from one sector to another or is employed in both sectors, whose creditable services or contributions in both systems credited to his service or contribution record in each of the system and shall be totaled for purposes of old-age, disability, survivorship and other benefits. (Sec. 3, R.A. No. 7699) The "portability" provisions of R.A. No. 7699 allow the transfer of funds for the account and benefit of the worker who transfers from one system to another. This is advantageous to the SSS and GSIS members for purposes of death, disability or retirement benefits. In the event the employees transfer from the private sector to the public sector, or vice-versa, their creditable employment services and contributions are carried over and transferred as well.

Portability Provisions of RA 7699 (2014)

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? (4%)

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 totaled 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.

GSIS; Coverage (2009)

[a] State briefly the compulsory coverage of the Government Service Insurance Act. (2%)

SUGGESTED ANSWER:

The ff. 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.

GSIS; Benefits (2004)

B. Atty. CLM, a dedicated and efficient public official, was the top executive of a government owned and controlled corporation (GOCC). While inspecting an ongoing project in a remote village in Mindanao, she suffered a stroke and since then had been confined to a wheelchair. At the time she stopped working because of her illness in line of duty, Atty. CLM was only sixty years old but she had been an active member of the GSIS for thirty years without any break in her service record. What benefits could she claim from the GSIS? Cite at least five benefits. (5%)

SUGGESTED ANSWER:

The benefits Atty. CLM could claim from the GSIS are:

- (1) Employees compensation which shall include both income and medical and related benefits, including rehabilitation;
- (2) Temporary total disability benefit;
- (3) Permanent total disability benefit;
- (4) Separation benefit; and
- (5) Retirement benefit.

GSIS; Death Benefits; Dependent; 24-hour Duty Rule (2005)

Odeck, a policeman, was on leave for a month. While resting in their house, he heard two of his neighbors fighting with each other. Odeck rushed to the scene intending to pacify the protagonists.

However, he was shot to death by one of the protagonists. Zhop, a housemaid, was Odeck's surviving spouse whom he had abandoned for another woman years back. When she learned of Odeck's death, Zhop filed a claim with the GSIS for death benefits. However, her claim was denied because: (a) when Odeck was killed, he was on leave; and (b) she was not the dependent spouse of Odeck when he died. Resolve with reasons whether GSIS is correct in denying the claim. (5%)

SUGGESTED ANSWER:

Yes, because under the law, a dependent is one who is a legitimate spouse living with the employee. (Article 167[i], Labor Code) In the problem given, Zhop had been abandoned by Odeck who was then living already with another woman at the time of his death. Moreover, Odeck was on leave when he was killed. The 24-hour duty rule does not apply when the policeman is on vacation leave. (*Employees' Compensation Commission v. Court of Appeals*, G.R. No. 121545, November 14, 1996) Taking together jurisprudence and the pertinent guidelines of the ECC with respect to claims for death benefits, namely:

- (a) that the employee must be at the place where his work requires him to be;
- (b) that the employee must have been performing his official functions; and
- (c) that if the injury is sustained elsewhere, the employee must have been executing an order for the employer, it is not difficult to understand then why Zhop's claim was denied by the GSIS. (*Tancinco v. Government Service Insurance System*, G.R. No. 132916, November 16, 2001)

In the present case, Odeck was resting at his house when the incident happened; thus, he was not at the place where his work required him to be. Although at the time of his death Odeck was performing a police function, it cannot be said that his death occurred elsewhere other than the place where he was supposed to be because he was executing an order for his employer.

ALTERNATIVE ANSWER:

GSIS is correct in denying the claim not on the grounds provided in the problem but for the reason that uniformed members of the PNP are not covered by R.A. No. 8291 or the GSIS Law of 1997.

GSIS; Death Benefits; Dependent; 24-Hour Duty Rule (2015)

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? (3 %)

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.

Maternity Benefits (2000)

Ms. Sara Mira is an unwed mother with three children from three different fathers. In 1999, she became a member of the Social Security System. In August 2000, she suffered a miscarriage, also out of wedlock, and again by a different father. Can Ms. Mira claim maternity benefits under the Social Security Act of 1997? Reason. (5%)

SUGGESTED ANSWER:

Yes, she can claim maternity benefit. Entitlement thereto is not dependent on the claimant's being legally married. (Sec. 14-A, Social Security Act of 1997).

Maternity Benefits (2010)

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%)

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 100% of her average salary credit for 78 days, provided she notifies her employer of her pregnancy and the probable date of her childbirth, among others (See Sec. 14-A, R.A. 8282).

The same maternity benefits are ensured by Sec. 22 (b) (2) of the Magana Carta of Women. (R.A. 9710)

Maternity Benefits (2015)

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? (3%)

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.

Maternity Leave (2007)

AB, single and living-in with CD (a married man), is pregnant with her fifth child. She applied for maternity leave but her employer refused the application because she is not married. Who is right? Decide. (5%)

SUGGESTED ANSWER:

While maternity leave is rightfully denied, the employer's reason is misplaced. The SSS law does not require marriage for entitlement. However, since AB is already pregnant with fifth child, she can no longer claim for maternity leave benefits.

Paternity Leave (2002)

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.

Paternity Leave; Maternity Leave (2005)

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 coemployee, 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 the 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. (6%)

(a) Whose contention is correct, Weto or the HRD manager?

SUGGESTED ANSWER:

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. Jovy is 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. No. 8187) To deny Weto this benefit would be to defeat the rationale for the law. Moreover, the case of Weto is a gray area and the doubt should be resolved in his favor.

ALTERNATIVE ANSWER:

Weto's contention is correct. R.A. No. 8187 provides that paternity leave of (7) days with full pay shall be granted to all married employees in the private and public sectors for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting. With the death of Weto's first wife, the first (4) deliveries provided by law, shall apply to the new legitimate spouse of Weto with whom he is cohabiting.

ANOTHER ALTERNATIVE ANSWER:

Since R.A. No. 8282 is silent on the matter, the doubt should be resolved in favor of the second wife.

(b) Is Jovy entitled to maternity leave benefits?

Yes, Jovy's maternity benefit is personal to her and she is entitled under the law to avail herself of the same for the first four times of her deliver. (R.A. No. 8282)

Paternity Leave; Maternity Leave (2013)

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? (4%)

SUGGESTED ANSWER:

Assuming she is employed, Tammy is entitled to a special leave benefit of two (2) months with full pay (Gynecological Leave) pursuant to R.A. 9710 or the Magna Carta of Women. She can also claim Sickness Leave benefit in accordance with the SSS Law.

(B) What can Roger- Tammy's 2nd husband and the father of her two (2) younger children - claim as benefits under the circumstances? (4%)

SUGGESTED ANSWER:

Under R.A. 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.

SSS; Compulsory Coverage (2000)

The Collective Bargaining Agreement of the Golden Corporation Inc. and the Golden Corporation Workers Union provides a package of welfare benefits far superior in comparison with those provided for in the Social Security Act of 1997. The welfare plan of the company is funded solely by the employer with no contributions from the employees. Admittedly, it is the best welfare plan in the Philippines. The company and the union jointly filed a petition with the Social Security System for exemption from coverage. Will the petition for exemption from coverage prosper? Reason. (5%)

SUGGESTED ANSWER:

No, because coverage under the SSS is compulsory where employer-employee relations exist. However, if the private plan is superior to that of the SSS, the plan may be integrated with the SSS plan. Still, it is integration and not exemption from SSS law. (Philippine Blooming Mills Co., Inc. v. Social Security System, 17 SCRA 107(1966); RA. No. 1161 as amended by RA No. 8282).

SSS; Compulsory Coverage (2002)

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 (60) 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.

ANOTHER SUGGESTED ANSWER:

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 from 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.

SSS; Compulsory Coverage (2009)

[b] Can a member of a cooperative be deemed an employee for purposes of compulsory coverage under the Social Security Act? Explain. (2%)

SUGGESTED ANSWER:

Yes, an employee of a cooperative, not over sixty (60) years of age is, under the SSS law subject to compulsory coverage. Section 8 (d) defines an employee as "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."

SSS; Monthly Contribution (2008)

No. VII. 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, payment of SSS monthly contribution is compulsory and cannot be waived. To grant Tito's request will violate the SSS law and expose me to the risk of punishment of fine or imprisonment or both at the discretion of the Court (Sec. 9, Social Security Act, R.A. 8282).

SSS; Remittance of Premium by Labor-Only Contractor (2008)

No. IX. Assume that in Problem 5, Mario, an RSC member disgusted with the non-payment of his night shift differential and overtime pay, filed a complaint with the DOLE Regional Office against RSC and PizCorp. After inspection, it was found that indeed Mario was not getting his correct differential and overtime pay and that he was declared an SSS member (so that no premiums for SSS membership were ever remitted). On this basis, the Regional Director issued a compliance order holding PizCorp and RSC solidarily liable for the payment of the correct differential and overtime pay and ordering PizCorp to report Mario for membership with SSS and remit overdue SSS premiums. Who has the obligation to report the RSC members for membership with the SSS, with the concomitant obligation to remit SSS premiums? Why? (6%)

SUGGESTED ANSWER:

Since RSC is a —labor-Only contractor and, therefore, considered a mere agent of PizCorp. PizCorp, as the real employer, has the legal obligation to report the RSC members as its employees for membership with the SSS and remit its premium.

SSS; Money Claims (2008)

No. VIII. Carol de la Cruz is the secretary of the proprietor of an auto dealership in Quezon City. She resides in Caloocan City. Her office hours start at 8 a.m. and end at 5 p.m. On July 30, 2008, at 7 a.m. while waiting for public transport at Rizal Avenue Extension as has been her routine, she was sideswiped by a speeding taxicab resulting in her death. The father of Carol filed a claim for employee's compensation with the Social Security System. Will the claim prosper? Why? (6%)

SUGGESTED ANSWER:

Yes, under the —Going-To-And-Coming-From-Rule, the injuries (or death, as in this case) sustained by an employee —going to and coming from his place of work are compensable (Bael v. Workmen's Compensation Commission, G.R. No. L-42255, January 31, 1977).

SSS; Prescriptive Period; Benefit Claims (2001)

(b) In 1960, Juan hired Pablo to drive for the former's lumber company. In 1970, Pablo got sick and was temporarily laid-off. In 1972, Pablo recovered and resumed working for the same lumber company, now run by Juan's wife since Juan had already passed away. In 1996, Pablo retired. When Pablo applied for retirement benefits with the SSS that same year, he discovered that the lumber company never enrolled him as an employee, much less remitted his contributions that were deducted from his salary. The lumber company agreed to pay for Pablo's contributions plus penalties but maintained that most of Pablo's claims had already prescribed under Art. 1150 of the Civil Code. (Art. 1150 provides "The time for prescription of all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought."). Is the Lumber company's contention correct? Why? (3%),

SUGGESTED ANSWER:

The lumber company's contention is not correct. The Social Security Law (in Sec. 22(b) provides that the right to institute the necessary action against an employer may be commenced within twenty (20) years from the time the delinquency is known or the assessment is made by the SSS, or from the time the benefit accrues, as the case may be.