



LABOR LAW

BAR QUESTIONS & ANSWERS

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I. General Provisions

A. Basic policy on labor

1. What is the quantum of evidence required in labor case? (2012 Bar Question)

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

SUGGESTED ANSWER:

(B) Such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

2. The constitution promotes the principle of shared responsibility between workers and employers, preferring the settlement of disputes through: (2011 Bar Question)

- a. compulsory arbitration.
- b. collective bargaining.
- c. voluntary modes, such as conciliation and mediation.
- d. labor-management councils.

SUGGESTED ANSWER :

(C) voluntary modes, such as conciliation and mediation.

B. Construction in favor of labor

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

SUGGESTED ANSWER:

The reversal is not correct. In controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreement and writings, should be resolved in the former's favor [*Lepanto Consolidated Mining Company v. Dumapis*, G.R. No. 163210, August 13, 2008]. There appears to be serious doubts in the evidence on record as to the factual basis of the charges against Procopio.

These doubts should be resolved in his favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor [*Asuncion v. NLRC*, G.R. No. 129329, July 31, 2001].

ALTERNATIVE ANSWER:

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

4. **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. (2009 Bar Question)**

SUGGESTED ANSWER:

The NLRC is not correct. It is a well settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scale of justice must be tilted in favor of the latter. 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. Under the Labor Code, “in any proceeding before the Commission....the rules of evidence prevailing in Courts of law....shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law and procedure, all in the interest of due process.” The Arbiter correctly applied the Labor Code in evaluating the evidence presented.

C. Constitutional and Civil Code provisions relating to Labor Law

5. **Mr. Del Carmen, unsure if his foray into business (messengerial service catering purely to law firms) would succeed but intending to go long-term if he hurdles the first year, opted to open his operations with one-year contracts with two law firms although he also accepts messengerial service requests from other firms as their orders come. He started with one permanent secretary and six (6) messengers on a one-year, fixed-term contract. (2013 Bar Question)**

Is the arrangement legal from the perspective of labor standards? (1%)

- a. No, because the arrangement will circumvent worker’s right to security of tenure.
- b. No. If allowed, the arrangement will serve as starting point in weakening the security of tenure guarantee.
- c. Yes, if the messengers are hired through a contractor.
- d. Yes, because the business is temporary and the contracted undertaking is specific and time-bound.

- e. No, because the fixed-term provided is invalid.

UPDATED ANSWER:

The correct answer should be: valid with respect to the permanent secretary. In relation to the messengers, it would depend if the requirements under *Brent School v. Zamora* [G.R. No. L-48494 February 5, 1990] were fulfilled i.e. fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any 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. If these requirements are present, then the arrangement with the messengers is valid.

6. Which of the following is correct with respect to the extent of the application of security of tenure? (2012 Bar Question)
- a. It applies to managerial and to all rank-and-file employees if not yet regular, but not to management trainees
 - b. It applies to managerial and to all rank-and-file employees including those under probation
 - c. It applies to seasonal and project employees, if they are hired repeatedly;
 - d. It applies to all kinds of employees except those employed on a part-time basis.

SUGGESTED ANSWERS:

(B) It applies to managerial and to all rank-and-file employees including those under probation.

BASIS:

(A) -- it is not true that trainees are not covered as there is nothing to indicate the absence or presence of an employment relationship; (C) This is true: but the SC has also recognized the security of tenure of project and seasonal for the duration of the project or season, respectively, even without being rehired; (D) Part time employees also have security of tenure.

7. Which is not a constitutional right of the worker? (2012 Bar Question)
- a. The right to engage in peaceful concerted activities
 - b. The right to enjoy security of tenure
 - c. The right to return on investment;
 - d. The right to receive a living wage.

SUGGESTED ANSWER:

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

8. For labor, the Constitutionally adopted policy of promoting social justice in all phases of national development means (2011 Bar Question)
- a. the nationalization of the tools of production.
 - b. the periodic examination of laws for the common good.
 - c. the humanization of laws and equalization of economic forces.
 - d. the revision of laws to generate greater employment.

SUGGESTED ANSWER:

(C) the humanization of laws and equalization of economic forces.

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

SUGGESTED ANSWER:

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

1. All workers shall have the right to peaceful concerted activities, including the right to strike in accordance with law.
 2. They shall be entitled to a living wage.
 3. They shall participate in policy and decision making processes affecting their rights and benefits as may be provided by law.
 4. The state shall promote the principle of shared responsibility between workers and employers.
10. In her State of the Nation Address, the President stressed the need to provide an investor-friendly business environment so that the country can compete in the global economy that now suffers from a crisis bordering on recession. Responding to the call, Congress passed two innovative legislative measures, namely: (1) a law abolishing the security of tenure clause in the Labor Code; and (2) a law allowing contractualization in all areas needed in the employer's business operations. However, to soften the impact of these new measures, the law requires that all employers shall obtain mandatory unemployment insurance coverage for all their employees. The constitutionality of the two (2) laws is challenged in court. As judge, how will you rule? (5%) (2009 Bar Question)

SUGGESTED ANSWER:

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

The second innovative measure, on a law allowing contractualization in all areas needed in the employer's business operations, is constitutional as it does not violate any provision in the constitution. In particular, workers have the right to security of tenure even if employed through third parties. Their employment may be terminated only with just or authorized cause and after observance of procedural due process.

The mandate of the law for employers to obtain unemployment insurance for all their employees is also valid for being an exercise of police power to protect the general welfare of workers.

11. 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%) (2008 Bar Question)

SUGGESTED ANSWER:

The workers' right to participate in policy and decision making processes of the establishment where they are employed in so far as said processes affect their rights, benefits and welfare as embodied in Section 3 of Article XIII of the Constitution is reiterated in Article 267 of the Labor Code where it is provided that for the purpose of implementing such right, workers and employers may form labor management councils provided that the representatives of workers in such labor management councils shall be elected by the

majority of all the employees in said establishment. It is clear from the aforementioned Article of the Labor Code that the right of workers to participate in policy and decision making processes as provided in Article XIII, Section 3 of the Constitution does not include membership in the Board of Directors of a Corporation but this could be the proper subject of a Collective Bargaining Agreement.

ANOTHER SUGGESTED ANSWER:

In one case, the Supreme Court recognized the right of the union to participate in policy formulation and decision-making process on matters affecting the Union members' rights, duties and welfare. However, the Court held that such participation of the union in committees of employer Meralco is not in the nature of a co-management control of the business of Meralco. Impliedly, therefore, workers' participatory right in policy and decision-making processes does not include the right to put a union member in the Corporation's Board of Directors. [*Manila Electric Company v. Quisumbing*, G.R. No. 127598, January 27, 1999]

12. What is the principle of codetermination? (2007 Bar Question)

SUGGESTED ANSWER:

The principle of codetermination is one which grants to the workers the right to participate in policy and decision-making processes affecting their rights and benefits. [*Article XIII, Section 3 of the Philippine Constitution and Article 267, Labor Code*]

FIRST ALTERNATIVE ANSWER:

By the principle of codetermination, the workers have a right to participate in the decision making process of employers on matters affecting their rights and benefits, through collective bargaining agreements, grievance machineries, voluntary modes of settling disputes and conciliation proceedings mediated by government.

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

SUGGESTED ANSWER:

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

II. Pre-Employment

1. 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 files a complaint against Mam-manu alleging that the pre-employment qualifications violate relevant provisions of the Labor Code and are against public policy. Is the contention of Ingga tenable? Why? (5%) (2012 Bar Question)

SUGGESTED ANSWER:

Yes. The requirement that applicants be single violates the provision in the Labor Code which makes it unlawful for an employer to require as a condition of employment that a woman employee shall not get married. [*Article 134, Labor Code*]

The requirement that applicants must not be more than 24 years old violates the law which makes it unlawful for an employer to “require the declaration of age or birth date during the application process.” [*Republic Act No. 10911, Section 5*] The situation described does not fall in any of the law’s exceptions as it is not justified as a “bona fide occupational qualification,” where the particular requirements of the job justify it. The said requirement is not valid because it does not reflect an inherent quality that is reasonably necessary for a satisfactory job performance. [*PT&T vs. NLRC, GR No. 118978, May 23, 1997 citing 45A Am. Jur. 2d, Job Discrimination, Sec. 506, p. 486*].

A. Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)

2. 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%) (2015 Bar Question)

B. When does the recruitment of workers become an act of economic sabotage?

SUGGESTED ANSWERS:

A. No. The Labor Code mandates that 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 [*Article 27, Labor Code*]. Since only 70% of its authorized capital stock is owned by Filipinos, Rocket Corporation cannot validly engage in recruitment and placement of workers, locally and overseas.

B. Under RA 8042, illegal recruitment is considered economic sabotage if it is committed by a syndicate or is large scale in scope. It is syndicated illegal recruitment if the illegal recruitment is carried out by three (3) or more conspirators; and it is large scale in scope when it is committed against three (3) more persons, individually or as a group. [*Section 6(m), Republic Act No. 8042*]

3. Which phrase is the most accurate to complete the statement – A private employment agency is any person or entity engaged in the recruitment and placement of workers: (2012 Bar Question)
- for a fee, which is charged directly from the workers.
 - for a fee, which is charged directly from employers.
 - for a fee, which is charged directly or indirectly from workers, employers or both.
 - for a fee, which is charged from workers or employers, which covers both local and overseas employment.

SUGGESTED ANSWER:

(c) for a fee, which is charged directly or indirectly from workers, employers or both [*Article 13 (c), Labor Code*]

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

(b) The POEA Administrator [*RA 10022; 2016 Rules and Regulations Governing the Recruitment and Employment of Seafarers*].

SUGGESTED ALTERNATIVE ANSWER:

(c) A and B concurrently: [*Transaction Overseas Corp. vs. Sec. of Labor, G.R. No. 109583, Sept. 5, 1997*]

(a) The Secretary of Labor and Employment;

(b) The POEA Administrator.

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

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

SUGGESTED ANSWER:

(B) It promotes and facilitates re-integration of migrants into the national mainstream.

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

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

(1) A can file a complaint for Recruitment Violation for XYZ's failure to deploy him within the prescribed period without any valid reason, a ground for the imposition of administrative sanctions against XYZ. [*Section 121, Rule II, Part V of the 2016 POEA Rules on Employment of Seafarers*]

(2) A can file a case for illegal recruitment under Section 6(L) of Rep. Act No. 8042.

(3) Last, A may file a complaint for breach of contract and claim damages before the NLRC. Section 10 of Rep. Act No. 8042 conferred jurisdiction on the Labor Arbiter by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. [*Santiago vs. CF Sharp Crew Management, G.R. No. 162419, July 10, 2007*].

1. Illegal recruitment and other prohibited activities

a. Elements

7. Which of the following is an essential element of illegal recruitment? (2011 Bar Question)

- a. The recruiter demands and gets money from the recruit but issues no receipt
- b. The recruiter gives the impression that he is able to send the recruit abroad
- c. The recruiter has insufficient capital and has no fixed address.
- d. The recruiter has no authority to recruit.

SUGGESTED ANSWER:

(B) The recruiter gives the impression that he is able to send the recruit abroad

8. Which of the following conditions justifies a licensed employment agency to charge and collect fees for employment assistance? (2011 Bar Question)

- a. The recruit has submitted his credentials to the employment agency
- b. The POEA has approved the agency's charges and fees
- c. The agency's principal has interviewed the applicant for the job.
- d. The worker has obtained employment through the agency's efforts

UPDATED SUGGESTED ANSWER:

According to Section 50 (a)(2), Rule III of the 2016 POEA Rules on Employment of Seafarers, the only fees chargeable to a seafarer are: documentation costs of all statutory requirements such as, but not limited to, passport, seafarer's identification and record book (SIRB), NBI/police/barangay clearance, Seafarer's Registration Certificate (SRC) and birth certificate. However, if the employee falls under the 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers, such workers may be charged a placement fee pursuant to Section 51, Rule V.

b. Types of illegal recruitment

9. Discuss the types of illegal recruitment under the Labor Code. (2007 Bar Question)

SUGGESTED ANSWER:

Under the Labor Code, illegal recruitment refers to any recruitment activity undertaken by non-licensees or non-holders of authority. It includes the acts of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring, referrals, contract services and advertising [*Article 13(b), Articles 34 & 38, Labor Code*].

Illegal recruitment under the Labor Code also refers to the commission of particular prohibited acts whether undertaken by non-licensees or non-holders of authority.

There are two types of illegal recruitment, particularly simple illegal recruitment and illegal recruitment which is considered as an offense involving economic sabotage. Illegal recruitment as an offense involving economic sabotage is committed under the following qualifying circumstances, to wit:

When illegal recruitment is committed by a syndicate, that is when it is carried out by a group of three (3) or more persons conspiring and/or confederating with one another; or

When illegal recruitment is committed in large scale that is when it is committed against three (3) or more persons whether individually or as a group.

ALTERNATIVE ANSWER:

Under the Labor Code, illegal recruitment refers to any recruitment activity undertaken by non-licensees or non-holders of authority. It includes the acts of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring, referrals, contract services and advertising [*Article 13(b), Articles 34 & 38, Labor Code*].

The following prohibited acts are also considered acts of illegal recruitment when undertaken by non-licensees or non-holders of authority:

- Charging or accepting directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- Furnishing or publishing any false notice or information or document in relation to recruitment or employment;
- Giving any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under this Code;
- Inducing or attempting to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment
- Influencing or attempting to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- Engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- Obstructing or attempting to obstruct inspection by the Secretary of Labor or by his duly authorized representatives;
- Failing to file reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the secretary of labor;
- Becoming an officer or member of the Board of any corporation engaged in travel agency or to be engaged direct or indirectly in the management of a travel agency; and
- Withholding or denying travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this code and its implementing rules and regulations. (RA 8042, Migrant Workers & Overseas Filipinos Act of 1995)

There are two types of illegal recruitment, particularly simple illegal recruitment and illegal recruitment which is considered as an offense involving economic sabotage. Illegal recruitment as an offense involving economic sabotage is committed under the following qualifying circumstances, to wit:

When illegal recruitment is committed by a syndicate, that is when it is carried out by a group of three (3) or more persons conspiring and/or confederating with one another; or

When illegal recruitment is committed in large scale that is when it is committed against three (3) or more persons whether individually or as a group.

c. Illegal recruitment vs. estafa

2. Liability of local recruitment agency and foreign employer

10. A was approached for possible overseas deployment to Dubai by X, an interviewer of job applicants for Alpha Personnel Services, Inc., an overseas recruitment agency. X required A to

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

A. May X be held criminally liable for illegal recruitment? Explain.

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. Chondury*, G.R. No. 129577-80, February 15, 2000]. The fault not being attributable to him, he may be considered to have apparent authority to represent Alpha on recruitment for overseas employment.

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

SUGGESTED ANSWER:

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

- 11. A was recruited to work abroad by Speedy Recruitment Agency as a technician for a Saudi Arabian construction firm, with a monthly salary of \$650.00. When she got to the construction site, the employer compelled her to sign another contract that referred her to another employer for a salary of \$350.00. She worked for the second employer and was paid \$350.00 until her two-year contract expired. Upon her return to the Philippines, she filed a case against the agency and the two employers. May the agency validly raise the defense that it was not privy to the transfer of A to the second employer? Explain. (3%) (2010 Bar Question)**

SUGGESTED ANSWER:

No. Speedy's obligation to A is joint and several with the principal employer [*Sec. 10, Rep. Act No. 8042*].

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

a. Solidary liability

- 12. Andrew Manning Agency (AMA) recruited Feliciano for employment by Invictus Shipping, its foreign principal. Meantime, AMA and Invictus Shipping terminated their agency agreement. Upon his repatriation following his premature termination, Feliciano claimed from AMA and Invictus Shipping the payment of his salaries and benefits for the unserved portion of the contract.**

AMA denied liability on the ground that it no longer had an agency agreement with Invictus Shipping. Is AMA correct? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

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

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

13. What is the nature of the liabilities of the local recruitment agency and its foreign principal? (2012 Bar Question)

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

SUGGESTED ANSWER:

(d) Local agency is jointly liable with the foreign principal; severance of the relations between the local agent and the foreign principal does not affect the liability of the local recruiter. [Section 10, second paragraph, RA 8042]

b. Theory of imputed knowledge

3. Termination of contract of migrant worker without just or valid cause

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

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

SUGGESTED ANSWER:

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

15. Celia, an OFW that Moonshine Agency recruited and deployed, died in Syria, her place of work. Her death was not work-related, it appearing that she had been murdered. Insisting that she committed suicide, the employer and the agency took no action to ascertain the cause of death and treated the matter as a “closed case.” The worker's family sued both the employer and the agency for moral and exemplary damages. May such damages be awarded? (2011 Bar Question)
- a. Yes, the agency and the employer's uncaring attitude makes them liable for such damages.
 - b. Yes, but only the principal is liable for such damages since the agency had nothing to do with Celia's death.
 - c. No, since her death is not at all work-related.
 - d. No, since her death is not attributable to any act of the agency or the employer.

SUGGESTED ANSWER:

A. [*Becmen Service Exporter and Promotion Inc v Spouses Simplicio et al GR No. 182978-79 April 7, 2009*]

16. Philworld, a POEA-licensed agency, recruited and deployed Mike with its principal, Delta Construction Company in Dubai for a 2-year project job. After he had worked for a year, Delta and Philworld terminated for unknown reason their agency agreement. Delta stopped paying Mike's salary. When Mike returned to the Philippines, he sued both Philworld and Delta for unpaid salary and damages. May Philworld, the agency, be held liable? (2011 Bar Question)
- a. No, since Philworld, the recruitment agency, is not the employer liable for unpaid wages.
 - b. Yes, since the agency is equally liable with the foreign principal despite the termination of their contract between them.
 - c. Yes, since the law makes the agency liable for the principal's malicious refusal to pay Mike's salary.
 - d. No, since Mike did not get paid only after Delta and Philworld terminated their contract.

SUGGESTED ANSWER:

B. Yes, since the agency is equally liable with the foreign principal despite the termination of their contract between them.

4. Ban on direct hiring

17. As a rule, direct hiring of migrant workers is not allowed. What are the exceptions? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

The following are exempted from the ban on direct hiring:

- a) Members of the diplomatic corps;
- b) International organizations;
- c) Heads of state and government officials with the rank of at least deputy minister; or
- d) Other employers as may be allowed by the Secretary of Labor and Employment, such as:
 1. Those provided in (a), (b) and (c) who bear a lesser rank, if endorsed by the POLO, or Head of Mission in the absence of the POLO;
 2. Professionals and skilled workers with duly executed/authenticated contracts containing terms and conditions over and above the standards set by the POEA. The number of professional and skilled Overseas Filipino Workers hired for the first time by the employer shall not exceed five (5). For the purpose of determining the number, workers hired as a group shall be counted as one; or
 3. Workers hired by a relative/family member who is a permanent resident of the host country. [2016 Revised POEA Rules And Regulations Governing The Recruitment And Employment Of Land based Overseas Filipino Workers]

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

SUGGESTED ANSWER:

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

B. Employment of non-resident aliens

19. Phil, a resident alien, sought employment in the Philippines. The employer, noticing that Phil was a foreigner, demanded that he first secures an employment permit from the DOLE. Is the employer correct? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

c) The employer is not correct. Resident foreign nationals are exempted from securing an employment permit. [DOLE Department Order No. 75-06].

III. Labor Standards

A. Conditions of employment

1. Coverage

1. The following are excluded from the coverage of Title I, Book II of Labor Code of the Philippines (Conditions of Employment) except: (2012 Bar Question)
 - a. Field personnel;
 - b. Supervisors;
 - c. Managers;
 - d. Employees of government-owned and controlled corporations.

SUGGESTED ANSWER:

(B) Supervisors [*Article 82, Labor Code*]

2. Hours of work

a. Normal hours of work; hours worked

2. Which of the following is not compensable as hours worked? (2012 Bar Question)
 - a. Travel away from home;
 - b. Travel from home to work;
 - c. Working while on call;
 - d. Travel that is all in a day's work.

SUGGESTED ANSWERS:

(A) Travel away from home. [*Article 84, Labor Code*]
b) Travel from home to work.

3. Work may be performed beyond eight (8) hours a day provided that: (2012 Bar Question)
 - a. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 25% thereof
 - b. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 30% thereof
 - c. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 20% thereof.
 - d. None of the above

SUGGESTED ANSWER:

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

4. Pol requested Obet, a union officer and concurrently chairman of the company's Labor-Management Council, to appeal to the company for a recomputation of Pol's overtime pay. After

5 p.m., his usual knock-off time, Obet spent two hours at the Personnel Office, reconciling the differing computations of Pol's overtime. Are those two hours compensable? (2011 Bar Question)

- a. Yes, because Obet performed work within the company premises
- b. No, since Obet's action has nothing to do with his regular work assignment
- c. No, because the matter could have been resolved in the labor-management council of which he is the chairman.
- d. Yes, because the time he spent on grievance meetings is considered hours worked.

SUGGESTED ANSWER:

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

b. Meal periods

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

6. The meal time (lunch break) for the dining crew in Glorious Restaurant is either from 10 a.m. to 11 a.m. or from 1:30 p.m. to 2:30 p.m., with pay. But the management wants to change the mealtime to 11: a.m. to 12 noon or 12:30 p.m. to 1:30 p.m., without pay. Will the change be legal? (2011 Bar Question)
- a. Yes, absent an agreement to the contrary, the management determines work hours and, by law, meal break is without pay.
 - b. No, because lunchbreak regardless of time should be with pay.
 - c. Yes, the management has control of its operations.
 - d. No, because existing practice cannot be discontinued unilaterally.

SUGGESTED ANSWER:

A. Yes, absent an agreement to the contrary, the management determines work hours and, by law, meal break is without pay.

c. Night-shift differential

d. Overtime work

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

SUGGESTED ANSWER:

No. A change in work schedule is a management prerogative of LKG. The decision whether to allow overtime work or not is within management prerogative. Thus, Carding has no cause of action against LKG even if the hours of his overtime are decreased.

The Labor Code does not guarantee Carding a certain number of hours of overtime work [*Article 97, Labor Code*]. In one case, the Supreme Court held that the basis of overtime claim is an employee's having been "permitted to work" [*Manila Jockey Employees' Union v. Manila Jockey Club, G.R. No. 167760, March 7, 2007*]. Otherwise, as in this case, such is not demandable.

8. **May the employer and employee stipulate that the latter's regular or basic salary already includes the overtime pay, such that when the employee actually works overtime he cannot claim overtime pay? (2012 Bar Question)**
- Yes, provided there is a clear written agreement knowingly and freely entered into by the employees;
 - Yes, provided the mathematical result shows that the agreed legal wage rate and the overtime pay, computed separately, are equal to or higher than the separate amounts legally due;
 - No, the employer and employee cannot stipulate includes the overtime pay;
 - A and B

SUGGESTED ANSWER:

(D) A and B.

9. **The following are instances where an employer can require an employee to work overtime, except: (2012 Bar Question)**
- In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;
 - When the country is at war or when other national or local emergency has been declared by the national assembly or the chief executive;
 - When there is urgent work to be performed on machines, installations, or equipment or some other cause of similar nature;
 - Where the completion or contribution of the work started before the eight hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

SUGGESTED ANSWER:

(A) In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;

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

- a. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 25% thereof
- b. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 30% thereof;
- c. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 20% thereof;
- d. None of the above.

SUGGESTED ANSWER:

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

11. In a scenario like typhoon Ondoy, who may be required by the employer to work overtime when necessary to prevent loss of life or property? (2011 Bar Question)

- a. Health personnel
- b. Employees with first aid training
- c. Security and safety personnel
- d. Any employee

SUGGESTED ANSWER:

(D) Any employee

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

NO. Undertime is not off-set by overtime. *[Article 88, Labor Code]*

13. 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.

xxx

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

SUGGESTED ANSWER:

True. As a general rule, overtime compensation cannot be waived, whether expressly or impliedly; and stipulation to the contrary is against the law. [*Pampanga Sugar Dev. Co., Inc. v. CIR*, G.R. No. L-13178, March 25, 1961]

e. Computation of additional compensation (rates only); facilities vs. supplements

14. 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. (2013 Bar Question)

Is the company's position legally correct? (8%)

SUGGESTED ANSWER:

No. The following requisites for facilities to form part of wages were not complied with:

- proof that such facilities are customarily furnished by the trade;
- the provision of deductible facilities is voluntarily accepted by the employee;
- 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*, G.R. No. 157634, May 16, 2005]

3. Weekly rest periods

15. The provisions of the Labor Code on the Working Conditions and Rest Periods of employees are inapplicable to the following employees, except: (2012 Bar Question)
- a. A supervisor in a fast food chain;
 - b. A family driver;
 - c. A laborer without any fixed salary, but receiving a compensation depending upon the result of his work;
 - d. A contractual employee

SUGGESTED ANSWER:

(d) A contractual employee

SUGGESTED ANSWER:

(b) A family driver

BASIS:

as family drivers are not considered as “kasambahay”

16. An employer may require an employee to work on the employee's rest day (2011 Bar Question)

- a. to avoid irreparable loss to the employer.
- b. only when there is a state of calamity.
- c. provided he is paid an extra of at least 50% of his regular rate.
- d. subject to 24-hour advance notice to the employee.

SUGGESTED ANSWER:

A. to avoid irreparable loss to the employer.

4. Holidays

17. Which of the following is not a regular holiday? (2012 Bar Question)

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

SUGGESTED ANSWER:

(c) Father's Day [*Article 94 (c), Labor Code*]

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

SUGGESTED ANSWER:

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

SUGGESTED ALTERNATIVE ANSWER:

No, because employees have a right to receive their regular daily wage during regular holidays. [*Article 94, Labor Code, and a carenderia is not in the category of an excluded retail or service establishment*].

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

- a. His regular daily wage multiplied by 200% plus 30% of the 200%
- b. His regular daily wage multiplied by 200%

- c. His regular daily wage plus 200%
- d. His daily regular wage

SUGGESTED ANSWER:

(A) His regular daily wage multiplied by 200% plus 30% of the 200

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

SUGGESTED ANSWER:

YES. A is entitled to holiday pay equivalent to two hundred percent (200%) of his regular daily wage for the two successive holidays that he worked [Section 6[a], Rule IV, Book III of the Omnibus Rules implementing the Labor Code]. Under the Rules Implementing the Labor Code, all covered employees shall be entitled to the benefit provided herein when they are on leave of absence with pay.

5. Service incentive leaves

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

Is the union demand meritorious? (2013 Bar Question)

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

SUGGESTED ANSWER:

(C) No, because Zeta already complies with the law.

BASIS:

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

21. Which type of employee is entitled to a service incentive leave? (2012 Bar Question)

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

SUGGESTED ANSWER:

(D) Part-time workers [*Article 82, Labor Code*]

22. If not used by the end of the year, the service incentive leave shall be (2011 Bar Question)

- a. carried over to the next year.
- b. converted to its money equivalent.
- c. forfeited.
- d. converted to cash and paid when the employee resigns or retires.

SUGGESTED ANSWER:

(B) converted to its money equivalent.

6. Service charges**23. Ricardo operated a successful Makati seafood restaurant patronized by a large clientele base for its superb cuisine and impeccable service. Ricardo charged its clients a 10% service charge and distributed 85% of the collection equally among its rank-and-file employees, 10% among managerial employees, and 5% as reserve for losses and break ages. Because of the huge volume of sales, the employees received sizeable shares in the collected service charges.**

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

Will the case prosper? (2013 Bar Question)

- a. Yes, because the employees are not receiving equal treatment in the distribution of service charge benefits.
- b. Yes, because the law provides that the 85% employees' share in the service charge collection should be equally divided among all the employees, in this case, among the Cebu and Makati employees alike.
- c. No, because the employees in Makati are not similarly situated as the Cebu employees with respect to cost of living and conditions of work.
- d. No, because the service charge benefit attaches to the outlet where service charges are earned and should be distributed exclusively among the employees providing service in the outlet.
- e. No, because the market and the clientele the two branches are serving, are different.

SUGGESTED ANSWER:

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

ANOTHER SUGGESTED ANSWER:

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

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

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

- a. I would advise them to file a complaint for unlawful diminution of service charge benefits and for payment of differentials.
- b. I would advise them to file a complaint for illegal transfer because work in Cebu is highly prejudicial to them in terms of convenience and service charge benefits.
- c. I would advise them to file a complaint for discrimination in the grant of service charge benefits.
- d. I would advise them to accept their Cebu training assignment as an exercise of the company's management prerogative.
- e. I would advise them to demand the continuation of their Makati-based benefits and to file a complaint under (B) above if the demand is not heeded.

SUGGESTED ANSWER:

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

25. How often should the collected service charges be distributed to employees in hotels and restaurants? (2011 Bar Question)
- a. Every end of the month
 - b. Every two weeks
 - c. Every week
 - d. At the end of each work day

SUGGESTED ANSWER:

B. Every two weeks

7. 13th month pay

26. Who among the following is not entitled to 13th month pay? (2012 Bar Question)
- a. Stephanie, a probationary employee of a cooperative bank who rendered six (6) months of service during the calendar year before filing her resignation;
 - b. Rafael, the Secretary of a Senator
 - c. Selina, a cook employed by and who lives with an old maid and who also tends the sari-sari store of the latter;
 - d. Roger, a house gardener who is required to report to work only thrice a week.

SUGGESTED ANSWER:

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

B. Wages

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

(a) Is the wage order subject to the approval of the National Wages and Productivity Commission before it takes effect? (2017 Bar Question)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

(b) The law mandates that no petition for wage increase shall be entertained within a period of 12 months from the effectivity of the wage order. Under what circumstances may the Kilusang Walang Takot, a federation of labor organizations that publicly and openly assails the wage order as blatantly unjust, initiate the review of the wage increases under the wage order without waiting for the end of the 12-month period? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

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

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

- a. monthly salary only.
- b. monthly salary plus sales commissions.
- c. monthly salary plus sales commissions, plus cost of living allowance.
- d. monthly salary plus sales commissions, plus cost of living allowance and representation allowance.

SUGGESTED ANSWER:

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

29. Robert, an employee of ABC Company, is married to Wanda. One day, Wanda visited the company office with her three (3) emaciated minor children, and narrated to the Manager that Robert had been squandering his earnings on his mistress, leaving only a paltry sum for the support of their children. Wanda tearfully pleaded with the Manager to let her have one half of Robert's pay every payday to ensure that her children would at least have food on the table. To support her please,

Wanda presented a Kasulatan signed by Robert giving her one half of his salary, on the condition that she would not complain if he stayed with his mistress on weekends.

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

- a. No, because an employer is prohibited from interfering with the freedom of its employees to dispose of their wages.
- b. Yes, because of Robert's signed authorization to give Wanda one half of his salary.
- c. No, because there is no written authorization for ABC Company to release Robert's salary to Wanda.
- d. Yes, because it is Robert's duty to financially support his minor children.
- e. No, because Robert's Kasulatan is based on an illegal consideration and is of doubtful legal validity.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

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

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

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

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

SUGGESTED ANSWER:

(d) I would not give him any legal advice because he is not my client.

ALTERNATIVE ANSWER:

(a) I would advise him to write management directly and inquire about the benefits he can expect if he resigns.

31. How many years of service is the underground mine employee required to have rendered in order to be entitled to retirement benefits? (2012 Bar Question)
- a. 5;
 - b. 10;
 - c. 15;
 - d. 20.

SUGGESTED ANSWER:

(a) 5 [*Article 302 of the Labor Code*]

32. A wage order may be reviewed on appeal by the National Wages and Productivity Commission under these grounds, except: (2012 Bar Question)
- a. grave abuse of discretion;
 - b. non-conformity with prescribed procedure;
 - c. questions of law;
 - d. gross under or over-valuation.

SUGGESTED ANSWER:

(d) gross under or over-valuation.

1. Payment of wages

33. 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?

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

SUGGESTED ANSWERS:

(a) Yes, Albert should be considered a regular employee. Under the law, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer. Since Albert was performing the same work as before, his work is necessary or desirable to Beta's business and thus regular.

(b) No, he is not entitled. The law provides that an employee may retire upon reaching the age of 60 years but not beyond 65 years. Since Albert is beyond 65 years, he is not entitled to retirement benefits anymore. Another reason justifying the denial of Albert's claim for retirement benefits is that he already received his retirement pay when he turned 65 years old.

ALTERNATIVE ANSWER FOR (B)

Yes, he is entitled to additional retirement benefits. Under the law, an employee is entitled to retirement benefits after 60 years of age if he has rendered at least 5 years in the establishment. There is no prohibition against receiving retirement benefits another time provided that the employee rendered 5 years of service. Granting retirement benefits to Albert is also consistent with the aim of labor laws to favor the worker in pursuit of social justice.

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

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

- a. Yes, but only to one month pay.
- b. No, because she was not a regular employee.
- c. Yes, at the same rate as regular employees.
- d. No, because retirement pay is deemed included in her contracted per piece pay.
- e. No, because homeworkers are not entitled to retirement pay.

SUGGESTED ANSWER:

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

35. The following are exempt from the rules on minimum wages, except: (2012 Bar Question)
- a. Household or domestic helpers;
 - b. Homeworkers engaged in needle work;
 - c. Workers in duly registered establishment in the cottage industry;
 - d. Workers in the duly registered cooperative.

SUGGESTED ANSWER:

(b) Homeworkers engaged in needle work

36. The Labor Code on retirement pay expands the term "one-half (1/2) month salary" because it means (2011 Bar Question):

- a. 15 days' pay plus 1/12th of the 13th month pay and 1/12th of the cash value of service incentive leave.

- b. 15 days' pay plus 1/12th of the 13th month pay and the cash equivalent of five days service incentive leave.
- c. 15 days' pay plus a full 13th month pay.
- d. 15 calendar days' pay per year of service plus allowances received during the retirement year.

SUGGESTED ANSWER:

(b) 15 days' pay plus 1/12th of the 13th month pay and the cash equivalent of five days service incentive leave. [*Article 302, Labor Code*]

37. The union's by-laws provided for burial assistance to the family of a member who dies. When Carlos, a member, died, the union denied his wife's claim for burial assistance, compelling her to hire a lawyer to pursue the claim. Assuming the wife wins the case, may she also claim attorney's fees? (2011 Bar Question)
- a. No, since the legal services rendered has no connection to CBA negotiation.
 - b. Yes, since the union should have provided her the assistance of a lawyer.
 - c. No, since burial assistance is not the equivalent of wages.
 - d. Yes, since award of attorney's fee is not limited to cases of withholding of wages.

SUGGESTED ANSWER:

(d) Yes, since award of attorney's fee is not limited to cases of withholding of wages.

38. "Piece rate employees" are those who are paid by results or other non-time basis. As such they are NOT entitled to overtime pay for work done beyond eight hours if: (2011 Bar Question)
- a. their workplace is away from the company's principal place of work.
 - b. they fail to fill up time sheets.
 - c. the product pieces they do are not countable.
 - d. the piece rate formula accords with the labor department's approved rates.

SUGGESTED ANSWER:

(d) the piece rate formula accords with the labor department's approved rates.

39. 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. (2010 Bar Question)

SUGGESTED ANSWER:

I will grant the prayer of A.

Under the law, field personnel refers to non agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Therefore, payment on commission basis alone does not prove that A is a field personnel. There must be proof that A is left to perform his work unsupervised by his employer. Otherwise, he is not a field personnel, thus entitled to commutable service incentive leave (SIL) credits [*Auto Bus v. Bautista, G.R. No. 156367, May 16, 2005*].

His action has not yet prescribed. In one case [*Auto Bus v. Bautista (supra.)*], the Supreme Court held that the 3 year prescriptive period in Article 306 commences from the time the employer refuses to pay the monetary equivalent of the SIL after a demand is made for it to be commuted or upon the employee's services as the case may be. In the situation described, the prescriptive period for A's cause of action starts when the employer refused his claim that his SIL benefits be commuted.

ALTERNATIVE ANSWER:

I will rule in favor of the bus company.

While A is not a field personnel, given the lack of showing that his hours or work can be determined with certainty, A's claim has prescribed. This is because the claim was filed after five (5) years from date of negotiation. The Labor Code provides that all money claims arising from employer-employee relations occurring during the effectivity of the Code shall be filed within three (3) years from that time the cause of action has accrued, otherwise, they shall be forever barred [*Article 291, Labor Code*].

- 40. 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. (2010 Bar Question)**

SUGGESTED ANSWER:

I will rule in favor of A.

Even if food and lodging were provided and considered as facilities by the employer, the employer could not deduct such facilities from its workers' wages without compliance with law. [*Mayon Hotel & Restaurant v. Adana, G.R. No. 157634, May 16, 2005*]

In one case, the Supreme Court held that the employer simply cannot deduct the value from the employee's wages without satisfying the following: (a) proof that such facilities are customarily furnished by the trade; (b) the provision of deductible facilities is voluntarily accepted in writing by the employee; and (c) the facilities are charged at fair and reasonable value. [*Mabeza v. NLRC, G.R. No. 118506, April 18, 1997*]

2. Prohibitions regarding wages

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

SUGGESTED ANSWER:

No. the arrangement is not allowed. The models are Benito's employees. As such, their services require compensation in legal tender [*Article 102, Labor Code*]. The three sets of clothes, regardless of value, are in kind; hence, the former's compensation is not in the form prescribed by law.

ANOTHER SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

The models are not employees but are independent contractors as there is no indication that any of the elements of employment is present. Therefore, Article 102 of the Labor Code does not apply. The payment does not have to be in legal tender and may be a subject of contractual agreement by the parties.

42. Corporation X is owned by L's family. L is the President. M, L's wife, occasionally gives loans to employees of Corporation X. It was customary that loan payments were paid to M by directly deducting from the employees' monthly salary. Is this practice of directly deducting payments of debts from the employee's wages allowed? (2012 Bar Question)
- Yes, because where the employee is indebted to the employer, it is sanctioned by the law on compensation under Article 1706 of the Civil Code;
 - Yes, because it has already become customary such that no express authorization is required;
 - No, because an employee's payment of obligation to a third person is deductible from the employee's wages if the deduction is authorized in writing;
 - No, because Article 116 of the Labor Code absolutely prohibits the withholding of wages and kickbacks. Article 116 provides for no exception.

SUGGESTED ANSWER:

(c) No, because an employee's payment of obligation to a third person is deductible from the employee's wages if the deduction is authorized in writing;

43. Which of the following is not a valid wage deduction? (2012 Bar Question)

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

SUGGESTED ANSWER:

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

3. Wage distortion; concept

44. In what instances do labor arbiters have jurisdiction over wage distortion cases? (2012 Bar Question)
- When jurisdiction is invoked by the employer and employees in organized establishments;
 - When the case is unresolved by Grievance Committee;

- c. After the panel of voluntarily arbitrators has made a decision and the same is contested by either party;
- d. In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMB.

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

(c) Settlement of the dispute through voluntary arbitration in case of failure to resolve dispute through CBA dispute mechanism [*Article 124, Labor Code*].

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

SUGGESTED ANSWER:

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

No. the existence of wage distortion is not a valid ground for staging a strike because the Labor Code provides for a specific method or procedure for correcting wage distortion [*Article 124, Labor Code*]. In this situation, any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration.

47. What procedural remedies are open to workers who seek correction of wage distortion? (2009 Bar Question)

SUGGESTED ANSWER:

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

1. Organized establishment - follow the grievance procedure as provided for in the CBA, ending in voluntary arbitration.
2. Unorganized establishments - employer and workers, with the aid of the NCMB shall endeavor to correct the wage distortion, and if they fail, to submit the issue to the NLRC for compulsory arbitration. [*Article 124, Labor Code*]

4. Non-diminution of benefits

48. 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. (2015 Bar Question)

SUGGESTED ANSWER:

Katrina's objection is justified.

Having enjoyed the across-the-board bonuses, Katrina has earned a vested right. Hence, none of them can be withheld or reduced. In the problem, the company has not proven its alleged losses to be substantial. Permitting reduction of pay at the slightest indication of losses is contrary to the policy of the State to afford full protection to labor and promote full employment. [*Linton Commercial Co. v. Hellera*, G.R. No. 163147 : October 10, 2007]

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

51. R was employed as an instructor of Cruz College located in Santiago City, Isabela. Pursuant to a stipulation in R's employment contract that the college has the prerogative to assign R in any of its branches or tie-up schools as the necessity demands, the college proposed to transfer him to Ilagan, a nearby town. R filed a complaint alleging constructive dismissal since his re-assignment will entail an indirect reduction of his salary or diminution of pay considering that additional allowance will not be given to cover for board and lodging expenses. R, however, failed to prove that allowances were given in similar instances in the past. Is R's contention that he will suffer constructive dismissal in view of the alleged diminution of benefit correct? (2012 Bar Question)
- a. Yes, such transfer should require an automatic additional allowance; the non-granting of said allowance amounts to a diminution of benefit;
 - b. No, R failed to present evidence that the college committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Hence, there is no violation of the rule against diminution of pay;
 - c. No, R's re assignment did not amount to constructive dismissal because the college has the right to transfer R based on contractual stipulation;
 - d. B and C.

SUGGESTED ANSWER:

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

52. X Company's CBA grants each employee a 14th month year-end bonus. Because the company is in financial difficulty, its head wants to negotiate the discontinuance of such bonus. Would such proposal violate the "non-diminution rule" in the Labor Code? (2011 Bar Question)
- a. No, but it will certainly amount to negotiating in bad faith.
 - b. Yes since the rule is that benefits already granted in a CBA cannot be withdrawn or reduced.
 - c. No, since the law does not prohibit a negotiated discontinuance of a CBA benefit.
 - d. Yes, since such discontinuance will cancel the enjoyment of existing benefits.

SUGGESTED ANSWER:

(c) No, since the law does not prohibit a negotiated discontinuance of a CBA benefit.

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

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

SUGGESTED ANSWER:

(b) No, since the erroneous computation has ripened into an established, non-withdrawable practice.

ALTERNATIVE ANSWER:

(c) Yes, an error is not a deliberate decision, hence may be rectified.

C. Leaves

1. Service incentive leave

54. 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. (2012 Bar Question)

a. Is Dennis entitled to 13th month pay and service leave incentive pay? Explain.

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, the law excludes from the obligation of 13th Month Pay "Employers of those who are paid on xxx boundary basis" [*Sec. 3 (e) of the Rules and Regulations Implementing P.D. 851*]. On the other hand, "employees whose performance is unsupervised by the employer" are not entitled to Service Incentive Leave [*Sec. 1 (d), Rule V, Book III of the Omnibus Rules provides that those*]. A taxi driver paid under the Boundary System is an "unsupervised" employee.

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

SUGGESTED ANSWER:

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

55. Which type of employee is entitled to a service incentive leave? (2012 Bar Question)

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

SUGGESTED ANSWER:

(D) Part-time workers [*Article 82, Labor Code*]

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

- a. Yes, the reason being purely personal, approval depends on the employer's discretion and is without pay.
- b. No, as victim of physical violence of her husband, she is entitled to five days paid leave to attend to her action against him.
- c. No, the employer must grant the request but the leave will be without pay.
- d. Yes, since she is not yet a permanent employee.

SUGGESTED ANSWER:

(b) No, as victim of physical violence of her husband, she is entitled to five days paid leave to attend to her action against him.

2. Maternity leave

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

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

SUGGESTED ANSWER:

Tammy may avail of 105 days of maternity leave, assuming she is employed [*R.A. 11210*]. Tammy may also be entitled to a special leave benefit of two months with full pay (Special Leave Benefit) pursuant to RA 9710 or the Magna Carta of Women. If she does not claim maternity leave benefits, she may claim Sickness Leave Benefit in accordance with the SSS Law.

3. Paternity leave

58. 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.

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

SUGGESTED ANSWER:

Under RA 8187 or the Paternity Leave Act of 1996, Roger can claim paternity leave of seven (7) days with full pay if he is lawfully married to Tammy and cohabiting with her at the time of the miscarriage. In the situation described, he has not yet exceeded 4 children and can thus avail of paternity leave.

59. H files for a seven-day paternity leave for the purpose of lending support to his wife, W, who suffered a miscarriage through intentional abortion. W also filed for maternity leave for five weeks. H and W are legally married but the latter is with her parents, which is a few blocks away from H's house. Which of the following statements is the most accurate? (2012 Bar Question)
- a. Paternity leave shall be denied because it does not cover aborted babies;
 - b. Paternity leave shall be denied because W is with her parents;
 - c. Maternity leave shall be denied because it does not cover aborted babies;
 - d. Maternity leave shall be denied because grant of paternity leave bars claim for maternity leave.

SUGGESTED ANSWER:

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

60. To avail himself of paternity leave with pay, when must the male employee file his application for leave? (2011 Bar Question)
- a. Within one week from the expected date of delivery by the wife.
 - b. Not later than one week after his wife's delivery or miscarriage.
 - c. Within a reasonable time from the expected deliver date of his wife.
 - d. When a physician has already ascertained the date the wife will give birth.

SUGGESTED ANSWER:

(c) Within a reasonable time from the expected deliver date of his wife.

61. Which of the following is NOT a requisite for entitlement to paternity leave? (2011 Bar Question)
- a. The employee is cohabiting with his wife when she gave birth or had a miscarriage.
 - b. The employee is a regular or permanent employee.
 - c. The wife has given birth or suffered a miscarriage.
 - d. The employee is lawfully married to his wife.

SUGGESTED ANSWER:

(b) The employee is a regular or permanent employee.

4. Solo parent leave

62. Of the four definitions below, which one does NOT fit the definition of “solo parent” under the Solo Parents Welfare Act? (2011 Bar Question)

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

UPDATED ANSWER:

No correct answer.

5. Leave benefits for women workers under RA 9710 and RA 9262**D. Special groups of employees****1. Women****a. Discrimination****b. Stipulation against marriage**

63. 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? (2012 Bar Question)

SUGGESTED ANSWER:

Yes. The requirement that applicants be single violates the Labor Code provision which makes it unlawful for an employer to require as a condition of employment that a woman employee shall not get married. [*Article 134, Labor Code*]

The requirement that applicants must not be more than 24 years old violates the law which makes it unlawful for an employer to “require the declaration of age or birth date during the application process.” [*Republic Act No. 10911 Section 5*] The situation described does not fall in any of the law’s exceptions as it is not justified as a “bona fide occupational qualification,” where the particular requirements of the job justify

it. The said requirement is not valid because it does not reflect an inherent quality that is reasonably necessary for a satisfactory job performance. [*PT&T vs. NLRC, GR No. 118978, May 23, 1997 citing 45A Am. Jur. 2d, Job Discrimination, Sec. 506, p. 486*].

c. Prohibited acts

d. Sexual harassment (RA 7877)

64. In a work-related environment, sexual harassment is committed when: (2011 Bar Question)

- a. the offender has authority, influence, or moral ascendancy over his subordinate victim.
- b. the victim's continued employment is conditioned on sexual favor from her.
- c. the female victim grants the demand for sexual favor against her will.
- d. the victim is not hired because she turned down the demand for sexual favor.

SUGGESTED ANSWER:

(b) the victim's continued employment is conditioned on sexual favor from her.

2. Minors (RA 7610, as amended by RA 9231)

65. 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? (2012 Bar Question)

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, theater, radio, television or other forms of media is essential xxx" [*Section 12, RA 7610, as amended by RA 9231*].

66. In what situation is an employer permitted to employ a minor? (2012 Bar Question)

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

UPDATED ANSWER:

No correct answer.

BASIS: On (D), Sec 12-D of RA 9231 prohibits employment of children when work:

“Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations.”

67. Iya, 15 years old, signed up to model a clothing brand. She worked from 9 am to 4 pm on weekdays and 1 pm to 6 pm on Saturdays for two (2) weeks. She was issued a child working permit under RA 9231. Which of the following statements is the most accurate? (2012 Bar Question)
- Working permit for Iya’s employment is not required because the job is nit hazardous;
 - Her work period exceeds the required working hours for children aged 15 years old;
 - To require a 15-year old to work without obtaining the requisites working permit is a form of child labor;
 - Iya, who was engaged in a work that is not child labor, is a working child.

SUGGESTED ANSWER:

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

3. Kasambahay (RA 10361)

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

SUGGESTED ANSWER:

Soledad’s defense is meritorious. The Kasambahay Law 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. [*Sec. 4(d), Kasambahay Law (RA 10361)*]

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

SUGGESTED ANSWER:

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

the personal comfort and enjoyment of her employer's family but to attend to other employees who teach and live inside the campus.

70. What is the nature of employment of househelpers? (2012 Bar Question)

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

UPDATED ANSWER:

There is no correct answer among the choices given.

BASIS:

RA 10361 (2012) provides that a Kasambahay may be terminated for cause, or when the period of employment expires, or by notice 5 days before the intended termination of the service.

71. Which of the following statements is the most accurate? (2012 Bar Question)

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

SUGGESTED ANSWER:

(d) Domestic helpers in the personnel service of another are not entitled to 13th month pay.

NOTE: The question has been rendered obsolete by RA 10361 which entitles Kasambahays to 13th month pay.

72. 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 househelper?
- 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 in a commercial establishment. Is the claim of the driver valid? (2012 Bar Question)

SUGGESTED ANSWER:

- (a) No, as family drivers are explicitly excluded from the definition of a "kasambahay." (*Implementing Rules and Regulations of RA No. 10361*)

- (b) Yes, as during said days, he works as a regular employee in his employer's boutique in a mall. Under the law, all employees are entitled to at least minimum wage. None of the exceptions to the payment of minimum wage are indicated here.

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

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

SUGGESTED ANSWER:

- (a) No, since a domestic helper cannot be required to work more than ten hours a day.

NOTE: The answer given has been rendered obsolete by RA 10361. A kasambahay shall be entitled to an aggregate daily rest period of eight (8) hours per day.

74. Is it correct to say that under Philippine law a househelper has no right to security of tenure? (2011 Bar Question)

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

SUGGESTED ANSWER:

- (a) No, since a househelper can be dismissed only for just cause or when his agreed period of employment ends.

NOTE: The answer given has been rendered obsolete by RA 10361. A kasambahay may be terminated for cause, or when the period of employment expires, or by notice 5 days before the intended termination of the service.

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

- a. an indemnity equivalent to 15 days' pay plus compensation already earned.
- b. a separation pay equivalent to one month's pay per year of service.
- c. a separation pay equivalent to one-half month's pay per year of service.
- d. 15 days' pay as indemnity plus wages lost from dismissal to finality of decision.

SUGGESTED ANSWER:

- (A) an indemnity equivalent to 15 days' pay plus compensation already earned.

NOTE: RA 10361 provides: If the domestic worker is unjustly dismissed, the domestic worker shall be paid the compensation already earned plus the equivalent of fifteen (15) days work by way of indemnity.

4. Homeworkers

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

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

SUGGESTED ANSWER:

(c) the workers are under very little supervision in the performance or method of work.

5. Night workers

6. Apprentices and learners

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

SUGGESTED ANSWER:

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

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

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

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

78. Which is a characteristic of the learner? (2012 Bar Question)

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

SUGGESTED ANSWER:

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

79. What is not a prerequisite for a valid apprenticeship agreement? (2012 Bar Question)

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

SUGGESTED ANSWER:

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

80. A handicapped worker may be hired as apprentice or learner, provided: (2011 Bar Question)

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

SUGGESTED ANSWER:

- (c) does not impede job performance in the operation for which he is hired.

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

- a. In highly technical industries, apprenticeship can exceed 6 months; learnership can exceed one year.
- b. Apprenticeship cannot exceed 6 months; learnership can.
- c. Apprenticeship shall not exceed six months; while learnership shall not exceed three months.
- d. The law lets the employer and the apprentice agree on the apprenticeship period; but the law fixes learnership period at six months in non-technical industries.

SUGGESTED ANSWER:

- (c) Apprenticeship shall not exceed six months; while learnership shall not exceed three months.

82. Although both are training programs, apprenticeship is different from learnership in that (2011 Bar Question)

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

SUGGESTED ANSWER:

(c) in learnership, the employer undertakes to make the learner a regular employee; in apprenticeship, no such undertaking.

7. Persons with Disabilities

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

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

SUGGESTED ANSWER:

(d) Psychological Deficiency [*Article 78, Labor Code*]

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

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

SUGGESTED ANSWER:

(a) At least 20% discount on purchase of medicines in all drugstores [*R.A. No. 7277, Magna Carta of PWDs*]

a. Discrimination

85. The minimum wage prescribed by law for persons with disability is _____. (2013 Bar Questions)

- a. 50% of the applicable minimum wage
- b. 75% of the applicable minimum wage
- c. 100% of the applicable minimum wage
- d. the wage that the parties agree upon, depending on the capability of the disabled.
- e. the wage that the parties agree upon, depending on the capability of the disabled, but not less than 50% of the applicable minimum wage

SUGGESTED ANSWER:

(b) 75% of the applicable minimum wage.

SUGGESTED ALTERNATIVE ANSWER:

(c) 100% of the applicable minimum wage

BASIS: R.A. No. 7277, the Magna Carta for PWD prohibits discrimination based on disability.

a. *Incentives for employers*

86. What is the financial incentive, if any, granted by law to SPQ Garments whose cutters and sewers in its garments-for-export operations are 80% staffed by deaf-mute workers? (2013 Bar Question)
- Additional deduction from its gross income equivalent to 25% of amount paid as salaries to persons with disability.
 - Additional deduction from its gross income equivalent to 50% of the direct costs of the construction of facilities for the use of persons with disability.
 - Additional deduction from its net taxable income equivalent to 5% of its total payroll.
 - Exemption from real property tax for one (1) year of the property where facilities for persons with disability have been constructed.
 - The annual deduction under (A), plus a one-time deduction under (B).

SUGGESTED ANSWER:

(a) Additional deduction from its gross income equivalent to 25% of amount paid as salaries to persons with disability. [*Magna Carta for Disabled Persons*]

IV. Social Welfare Legislation

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

SUGGESTED ANSWER:

Yes. Under the Portability Law [*R.A. 7699*], 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.

88. Under the Limited Portability law, funds from the GSIS and the SSS maybe transferred for the benefit of a worker who transfers from one system to the other. For this purpose, overlapping periods of membership shall be: (2011 Bar Question)
- credited only once.
 - credited in full.
 - proportionately reduced.
 - equally divided for the purpose of totalization.

SUGGESTED ANSWER:

(a) credited only once.

A. SSS Law (RA 8282)

1. Coverage and exclusions

1. Gene is a married regular employee of Matibay Corporation. The employees and Matibay Corporation had an existing CBA that provided for funeral or bereavement aid of P15,000.00 in case of the death of a legal dependent of a regular employee. His widowed mother, who had been living with him and his family for many years, died; hence, he claimed the funeral aid. Matibay Corporation denied the claim on the basis that she had not been his legal dependent as the term legal dependent was defined by the Social Security Law.
 - a. Who may be the legal dependents of Gene under the Social Security Law?
 - b. Is Gene entitled to the funeral aid for the death of his widowed mother? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWERS:

- (a) The legal dependents of Gene are the following: 1) the legal spouse entitled by law to receive support from the member; 2) the legitimate, legitimated or legally adopted, and illegitimate child who is unmarried, not gainfully employed, and has not reached 21 years of age, or if over 21 years of age, he is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally; and 3) the parent who is receiving regular support from the member. *[Section 8(e) of Rep. Act No. 11199]*
 - (b) Gene would be entitled to the funeral aid under the CBA for the death of his widowed mother because the latter is a legitimate parent wholly dependent upon him for regular support for many years. As held in a case, the coverage of the term “legal dependent” in a stipulation in a CBA granting funeral or bereavement benefits to a regular employee for the death of a legal dependent, if the CBA is silent about it, is to be construed as similar to the meaning that contemporaneous social legislation have set. This is because the terms of such social legislation are deemed incorporated in or adopted by the CBA *[Philippines Journalists, Inc. v. Journal Employees Union et al., G.R. No. 192601, June 03, 2013]*.
2. Baldo, a farm worker on pakyaw basis, had been working on Dencio’s land by harvesting abaca and coconut, processing copra, and clearing weeds from year to year starting January 1993 up to his death in 2007. He worked continuously in the sense that it was done for more than one harvesting season.
 - a. Was Dencio required to report Baldo for compulsory social security coverage under the SSS law? Explain.
 - b. What are the liabilities of the employer who fails to report his employee for social security coverage? Explain. (2016 Bar Question)

SUGGESTED ANSWERS:

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

- (b) The employer is subject to the following liabilities: It shall be punished by a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years, or both, at the discretion of the court: *Provided*, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed or to deduct contributions from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years. (*Section 28(e), Republic Act No. 11199*)

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

- a. **Is there an employer-employee relationship between Nico and Ador? (2015 Bar Question)**

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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)? (2015 Bar Question)**

SUGGESTED ANSWER:

Yes, coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers. [*Section 9, Social Security Law (Republic Act No. 11199)*]

ANOTHER SUGGESTED ANSWER:

If Ador is self-employed, yes. [*Section 9-A, Social Security Law (Republic Act No. 11199)*]

4. **Which of the following is not considered an employer by the terms of the Social Security Act? (2012 Bar Question)**
- A self-employed person;**
 - The government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the government;**
 - A natural person, domestic or foreign, who carries on an undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment;**
 - A foreign corporation.**

SUGGESTED ANSWER:

(b) The government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the government [*Section 8 (c), Social Security Law (Republic Act. No. 11199)*].

5. Jennifer, a receptionist at Company X, is covered by the SSS. She was pregnant with her fourth child when she slipped in the bathroom of her home and had a miscarriage. Meanwhile, Company X neglected to remit the required contributions to the SSS. Jennifer claims maternity leave benefits and sickness benefits. Which of these two may she claim? (2012 Bar Question)
- a. None of them;
 - b. Either one of them;
 - c. Only maternity leave benefits;
 - d. Only sickness benefits.

SUGGESTED ANSWER:

(c) Only maternity leave benefits [*Section 5(3), Republic Act No. 11210 (2018)*]

2. Dependents and beneficiaries

3. Benefits

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

UPDATED SUGGESTED ANSWER:

Yes. Maternity leave shall be granted to female workers in every instance of pregnancy, miscarriage or emergency termination of pregnancy, regardless of frequency: *Provided*, That for cases of miscarriage or emergency termination of pregnancy, sixty (60) days maternity leave with full pay shall be granted. [*Section 3, Republic Act No. 11210*]

B. GSIS Law (RA 8291)

1. Coverage and exclusions

2. Dependents and beneficiaries

3. Benefits

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

SUGGESTED ANSWER:

No. The GSIS is not correct. Luis, a policeman, just like a soldier, is covered by the 24-Hour Duty Rule. He is deemed on round-the-clock duty unless on official leave, in which case his death outside performance of official peace-keeping mission will bar death claim. In this case, Luis was not on official leave and he died in the performance of a peace-keeping mission. Therefore, his death is compensable.

C. Disability and death benefits

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

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

SUGGESTED ANSWER:

(c) The ailment or sickness is not classified as an occupational disease [*Jebens Maritime, Inc., Dec. 14, 2011; Juala vs. ECC, GR. No. 57623, March 29, 1984*].

9. Which of the following injuries/death is not compensable? (2012 Bar Question)

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

SUGGESTED ANSWER:

(b) Injuries received by a janitor at a Union election meeting;

1. Labor Code

10. Rosa was granted vacation leave by her employer to spend three weeks in Africa with her family. Prior to her departure, the General Manager of the company requested her to visit the plant of a client of the company in Zimbabwe in order to derive best manufacturing practices useful to the company. She accepted the request because the errand would be important to the company and Zimbabwe was anyway in her itinerary. It appears that she contracted a serious disease during the trip. Upon her return, she filed a claim for compensation, insisting that she had contracted the disease while serving the interest of her employer.

Under the Labor Code, the sickness or death of an employee, to be compensable, must have resulted from an illness either definitely accepted as an occupational disease by the Employees' Compensation Commission, or caused by employment subject to proof that the risk of contracting the same is increased by working conditions.

Is the serious disease Rosa contracted during her trip to Africa compensable? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

For sickness and the resulting disability to be compensable, the sickness must be the result of an occupational disease listed under Annex A of the Amended Rules on Employees' Compensation with the condition set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working condition. The burden of proof is upon Rosa. No proof was presented by Rosa to substantiate the foregoing. Moreover, it is required that the sickness and the resulting injury must have arisen out of or in the course of employment. In the present case, Rosa contracted the disease while on vacation leave. Consequently, the disease contracted by her in Africa during her vacation leave is not compensable [*Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission et al.*, G.R. No. L-26341, November 27, 1968].

ALTERNATIVE ANSWER:

Yes, although Rosa's leave of absence was approved, she was merely on a partial vacation due to the business assignment that her employer gave her to visit the plant of a client in Zimbabwe to derive best manufacturing practices useful to the company; thus, she had to go and observe said activity beneficial to her employer in the performance of her assigned task. As she contracted the disease during her trip, the same must be construed as work-related.

2. POEA-Standard Employment Contract

11. 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.
- 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?
 - Due to his prolonged illness, Victor was unable to work for more than 120 days. Will this entitle him to claim total permanent disability benefits? (2015 Bar Question)

SUGGESTED ANSWER:

- TB is listed under the law as a work-related disease [*Section 32-A of the POEA-SEC*]. 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.
- SUGGESTED ANSWER:** Yes. The Supreme Court has held that a total disability is considered permanent if it lasts continuously for more than 120 days and renders the employee unable to pursue his usual work or earn from it. [*Fil-Star Maritime Corp., et.al. vs. Hanziel Rosete*, G.R. No. 192686, November 23, 2011]

ALTERNATIVE SUGGESTED ANSWER:

No as it has not yet exceeded 240 days. The Supreme Court has held that a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either

fitness to work or the existence of a permanent disability. [*Magsaysay Maritime Corporation and/or Westfal-Larsen Management A/S vs. Oberto Lobusta, G.R. No. 177578, January 25, 2012*]

12. 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), AMOSUP, and Meritt Shipping. Both the 2001 POEA-SEC and the CBA commonly provide that the same mode and procedures for claiming disability benefits. Cesar's last contract (for nine months) expired on July 15, 2013.

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

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

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

SUGGESTED ANSWER:

- a. Does the Labor Arbiter have jurisdiction to decide the case?
- b. Did Cesar submit to a post-employment examination within 3 days upon his return? This is a mandatory requirement; otherwise, Cesar will forfeit his right to claim benefits.
- c. Is Dr. Sales the company-designated physician? The company-designated physician is the one who initially determines compensability.
- d. Was Cesar assessed by Dr. Sales (if he is the company physician) within 120 days?
- e. 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.
- f. 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.
- g. 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.
- h. In the matter of the complaint for illegal dismissal: There is none because Cesar disembarked on a "finished contract".
- i. Seafarers are contractual employees, for a fixed term, governed by the contract they sign; exception to Article 280 (now Article 286) of the Labor Code. Hence, the complaint for illegal dismissal will not prosper.

V. Labor Relations

A. Right to self-organization

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

OLPCS-TELU subsequently filed a petition for certification election among the teaching and non-teaching personnel of OLPCS before the Bureau of Labor Relations (BLR) of the Department of Labor and Employment (DOLE). The Med-Arbiter subsequently granted the petition and ordered the conduct of a joint certification election for the teaching and non-teaching personnel of OLPCS. May OLPCS-TELU be considered a legitimate labor organization? (2014 Bar Question)

SUGGESTED ANSWER:

Yes. The facts of the case concede that OLPCS-TELU “is a legitimate labor organization”. Teaching and non-teaching personnel may belong to one union. However, they are considered as separate bargaining units. [*Holy Child Catholic School v Hon. Sto. Tomas*, GR No. 179146, July 23, 2013]

2. Which of the following groups does not enjoy the right to self-organization? (2014 Bar Question)
 - a. those who work in a non-profit charitable institution
 - b. those who are paid on a piece-rate basis
 - c. those who work in a corporation with less than 10 employees
 - d. those who work as legal secretaries

SUGGESTED ANSWER:

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

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

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

- a. It can still represent these members in grievance committee meetings.
- b. It can collect agency fees from its members within the bargaining unit.
- c. It can still demand meetings with the company on company time.
- d. As a legitimate labor organization, it can continue to represent its members on non- CBA-related matters.
- e. None of the above.
- f. All of the above.

SUGGESTED ANSWER:

(d) As a legitimate labor organization, it can continue to represent its members on non- CBA-related matters.

4. Which of the following is a right and/or condition of membership in a labor organization? (2012 Bar Question)
- No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;
 - The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization;
 - No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity.
 - All of the above

SUGGESTED ANSWER:

(d) All of the above [*Articles 250 (a) (b) and (e) of the Labor Code, respectively*]

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

SUGGESTED ANSWER:

Yes. The GROs worked under the direct supervision of the Club Manager for a substantial period of time. Hence, under the Labor Code, with or without compensation, the GROs are to be deemed employees [*Article 136, Labor Code*]. 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. [*Section 3, Article XIII, Constitution; Article 243, Labor Code*]

SUGGESTED ALTERNATIVE ANSWER:

No. While the GROs are considered employees of Juicy Bar and Night Club by fiction of law for purposes of labor and social legislation (*Article. 136, Labor Code*), the Labor Code however excludes “ambulant, intermittent and itinerant workers xxx and those without any definite employers” such as the GROs here, from exercising “the right to self-organization xxx for purposes of collective bargaining” [*Article 253, Labor Code*]. They can only “form labor organization for their mutual aid and protection”.

6. It is defined as any union or association of employees which exists in whole or in part for the purpose of collective bargaining with employers concerning terms and conditions of employment. (2012 Bar Question)
- Bargaining representative;
 - Labor organization;

- c. Legitimate labor organization;
- d. Federation.

SUGGESTED ANSWER:

(b) Labor organization [*Article 219 (g), Labor Code*]

7. Of the four grounds mentioned below, which one has been judicially affirmed as justification for an employee's refusal to follow an employer's transfer order? (2011 Bar Question)
- a. A transfer to another location is not in the employee's appointment paper.
 - b. The transfer deters the employee from exercising his right to self-organization.
 - c. The transfer will greatly inconvenience the employee and his family.
 - d. The transfer will result in additional housing and travel expenses for the employee.

SUGGESTED ANSWER:

(b) The transfer deters the employee from exercising his right to self-organization

8. The Securities and Exchange Commission approved a merger that allowed Broad Bank to absorb the assets and liabilities of EBank. Broad Bank also absorbed EBank's rank-and-file employees without change in tenure, salary, and benefits. Broad Bank was unionized but EBank was not. The Broad Bank bargaining union requested the management to implement the union security clause in their CBA by requiring the ex-EBank employees to join the union. Does the union security clause in the Broad Bank CBA bind the ex-EBank employees? (2011 Bar Question)
- a. No, since the ex-EBank employees were not yet Broad Bank employees when that CBA was entered into.
 - b. No, Broad Bank's absorption of ex-EBank employees was not a requirement of law or contract; hence, the CBA does not apply.
 - c. Yes, Broad Bank's absorption of ex-EBank employees automatically makes the latter union members of Broad Bank's bargaining union.
 - d. Yes, since the right not to join a labor union is subordinate to the policy of unionism that encourages collective representation and bargaining.

SUGGESTED ANSWER:

(d) Yes, since the right not to join a labor union is subordinate to the policy of unionism that encourages collective representation and bargaining.

1. Coverage

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

SUGGESTED ANSWER:

George, as a general rule, is prohibited by the Labor Code from giving any donation, grant or other form of assistance, in cash or in kind, directly or indirectly to the Union [*Article 270(a), Labor Code*]. 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.

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

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWERS:

(c) The inclusion of members outside the bargaining unit [*Article 256, Labor Code, as amended*].

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

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

SUGGESTED ANSWERS:

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

2. Ineligibility of managerial employees; right of supervisory employees

13. Section 255 of the Labor Code recognizes three categories of employees, namely: managerial, supervisory, and rank-and-file.

- a. Give the characteristics of each category of employees, and state whether the employees in each category may organize and form unions. Explain your answer. (2017 Bar Question)

SUGGESTED ANSWERS:

Managerial employees – those vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall employees [Article 219, par. m, Labor Code] Managerial employees cannot join, assist or form unions [Article 255, Labor Code].

Supervisory employees – those who, in the interest of management, effectively recommend such managerial actions if the exercise of such authority is not merely routine or clerical in nature, but requires use of independent judgment [Article 219, par. m, Labor Code]. Supervisory employees are not eligible for membership in a labor organization of rank-and-file employees but may join, assist, or form separate labor organizations of their own [Article 255, Labor Code].

Rank-and-file employees – all other employees not falling within the definition of “managerial” or “supervisory” employees are considered rank-and-file employees [Article 219, par. m, Labor Code]. Rank-and-file employees have the right to form, join or assist unions of their own choosing [Article 253, Labor Code].

- 14. May confidential employees who assist managerial employees, and who act in a confidential capacity or have access to confidential matters being handled by persons exercising managerial functions in the field of labor relations form, or assist, or join labor unions? Explain your answer. (2017 Bar Question)**

SUGGESTED ANSWER:

No, these confidential employees cannot form, assist, or join labor unions. The exclusion from bargaining units of employees who, in the general course of their duties, become aware of management policies relating to labor relations is founded upon the “confidential employee rule”. The rationale behind this rule is that employees should not be placed in a position involving a potential conflict of interests. Management should not be required to handle labor relation matters through employees who are represented by the union with which the company is required to deal and who in the normal performance of their duties may obtain advance information of the company’s position with regard to contract negotiations, the disposition of grievances or other labor relations matters. [*San Miguel Corporation Supervisor and Exempt Employees Union v. Laguesma*, G.R. No. 110399, August 15, 1997]

ALTERNATIVE ANSWER:

No. Under the doctrine of necessary implication, the same reason for the disqualification of managerial employees applies to confidential employees. [*Pepsi-Cola Products Phil. Inc. v. Sec. of Labor*, G.R. No. 96663, August 10, 1999].

3. Effect of inclusion as employees outside of the bargaining unit

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

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

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

- b. No, because the grounds for the dismissal of a petition for certification election do not include mixed membership in one union.
- c. No, because a final order of cancellation of union registration is required before a petition for certification election may be dismissed on the ground of lack of legal personality of the union.
- d. No, because Delta Company, did not have the legal personality to participate in the certification election proceedings and to file a motion to dismiss based on the legitimacy status of the petitioning union.

SUGGESTED ANSWER:

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

ALTERNATIVE SUGGESTED ANSWER:

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

4. Non-abridgement

16. Philhealth is a government-owned and controlled corporation employing thousands of Filipinos. Because of the desire of the employees of Philhealth to obtain better terms and conditions of employment from the government, they formed the Philhealth Employees Association (PEA) and demanded Philhealth to enter into negotiations with PEA regarding terms and conditions of employment which are not fixed by law. (2014 Bar Question)

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

SUGGESTED ANSWER:

Yes. Employees of Philhealth are allowed to self-organize under the Constitution which recognizes the rights of all workers to self-organization and collective bargaining [*Section 8, Article III and Section 3, Article XIII, 1987 Constitution; Article 254, Labor Code*]. However, members of the civil service cannot negotiate matters which involve such items as increase in salary, allowances, travel expenses and other benefits provided by law. [*Article 291, 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 ANSWERS:

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

17. A group of 15 regular rank-and-file employees of Bay Resort formed and registered an independent union. On hearing of this, the management called the officers to check who the union members were. It turned out that the members included the probationary staff, casuals, and the employees of the landscape contractor. The management contends that inclusion of non-regulars and employees of a contractor makes the union's composition inappropriate and its registration invalid. Is this correct? (2011 Bar Question)

- a. Yes, union membership should be confined to direct-hired employees of the company.
- b. Yes, the “community of interest” criterion should be observed not only in the composition of a bargaining unit but also in the membership of a union.
- c. Yes, a union must have community of interest; the non-regulars do not have such interest.
- d. No, union membership may include non-regulars since it differs from membership in a bargaining unit.

SUGGESTED ANSWER:

(d) No, union membership may include non-regulars since it differs from membership in a bargaining unit.

18. Executive Order No. 180, which protects government employees, does NOT apply to “high-level employees,” namely, (2011 Bar Question)

- a. presidential appointees.
- b. those performing policy-determining functions, excluding confidential employees and supervisors.
- c. confidential employees and those performing policy-determining functions.
- d. elective officials.

SUGGESTED ANSWER:

(c) confidential employees and those performing policy-determining functions.

19. Government employees may elect a union as their exclusive representative but this right is not available to: (2011 Bar Question)

- a. regular employees in government instrumentalities and agencies.
- b. employees of government-owned and -controlled corporations without original charters.
- c. employees of government-owned-or-controlled corporations with original charters.
- d. employees of provincial and local government units.

SUGGESTED ANSWER:

(b) employees of government-owned and -controlled corporations without original charters.

20. The existing collective bargaining unit in Company X includes some fifty “secretaries” and “clerks” who routinely record and monitor reports required by their department heads. Believing that these secretaries and clerks should not be union members because of the confidential nature of their work, the management discontinued deducting union dues from their salaries. Is the management’s action legal? (2011 Bar Question)

- a. No, only managers are prohibited from joining unions; the law does not bar “confidential employees” from joining unions.
- b. No, “confidential employees” are those who assist persons who formulate, determine, or enforce management policies in the field of labor relations.
- c. Yes, secretaries and clerks of company executives are extensions of the management and, therefore, should not join the union.
- d. No, “confidential” employees are those who handle executive records and payroll or serve as executive secretaries of top-level managers.

SUGGESTED ANSWER:

(b) No, “confidential employees” are those who assist persons who formulate, determine, or enforce management policies in the field of labor relations.

B. Bargaining unit

21. Differentiate a “labor organization” from a “legitimate labor organization.” (2011 Bar Question)

- a. While the employees themselves form a “labor organization,” a “legitimate labor organization” is formed at the initiative of a national union or federation.
- b. While the members of a “labor organization” consists only of rank and file employees, a “legitimate labor organization” consists of both supervisory and rank and file employees.
- c. While a “labor organization” exists for a lawful purpose, a “legitimate labor organization” must, in addition, be registered with the labor department.
- d. While the officers in a “labor organization” are elected in an informal way, the officers in “legitimate labor organization” are formally elected according to the union's constitution and by-laws.

SUGGESTED ANSWER:

(c) While a “labor organization” exists for a lawful purpose, a “legitimate labor organization” must, in addition, be registered with the labor department.

22. During the CBA negotiation the management panel proposed a redefinition of the “rank-and-file” bargaining unit to exclude “HR Specialist” in the human resource department and “Analyst” in the research and development department. The union panel objected since those affected have already been included in the bargaining unit covered by the existing CBA and so could no longer be excluded. Is the union correct in insisting that their exclusion would amount to bad faith on the part of the management panel? (2011 Bar Question)

- a. No, efforts to modify an existing CBA do not constitute bad faith if such modification does not diminish employment benefits.
- b. Yes, the proposed exclusion amounts to management’s violation of its duty to bargain because it disregards the bargaining history between the parties.
- c. Yes, once the coverage of the bargaining unit has been contractually defined, it can no longer be redefined.
- d. No, bargaining history is not the only factor that determines the coverage of the bargaining unit; seeking its redefinition is not negotiating in bad faith.

SUGGESTED ANSWER:

(d) No, bargaining history is not the only factor that determines the coverage of the bargaining unit; seeking its redefinition is not negotiating in bad faith.

23. Rank-and-file workers from Peacock Feathers, a company with 120 employees, registered their independent labor organization with the Department of Labor and Employment (DOLE) Regional Office. Management countered with a petition to cancel the union’s registration on the ground that the minutes of ratification’ of the union constitution and-by-laws submitted to the DOLE were fraudulent. Specifically, management presented affidavits of ten (10) out of forty (40) individuals named in the list of union members who participated in the ratification, alleging that they were not present at the supposed January 1, 2010 meeting held for the purpose. The union

argued that the stated date of the meeting should have read “January 11, 2010,” instead of “January 1, 2010”, and that, at any rate, the other thirty (30) union members were enough to register a union. Decide with reason. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Petition for cancellation is dismissed. It has been held that 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. In the situation described, the indicated date of the meeting is purely a typographical error as admitted by the union itself. There was no willful or deliberate intention to defraud the union members that will vitiate their consent to the ratification. [*Marivasa Siam Ceramics v. Secretary*, G.R. NO. 183317, December 21, 2009].

Also, 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 [*Article 240, Labor Code*].

C. Bargaining representative

24. The modes of determining the exclusive bargaining agent of the employees in a business are:

- a. voluntary recognition;
- b. certification election; and
- c. consent election.

Explain how they differ from one another. (2012 Bar Question)

SUGGESTED ANSWER:

- (a) Voluntary Recognition: An employer may voluntarily recognize the representation status of a labor union if the establishment is unorganized and has only one legitimate labor organization. Such voluntary recognition, accompanied by supporting documents, should be submitted to the Regional Office, which issued the labor union's certificate of registration.

UPDATED ANSWER: Voluntary recognition by the employer is no longer sanctioned by the Labor Code and its Rules. The labor union must instead seek SEBA Certification.

NOTE: This has already been repealed by DO No. 40-I-15 which instituted a procedure for a request for certification as SEBA.

- (b) Certification Election: This is the process by which a legitimate labor organization or the employer may file a petition for certification election to determine the choice of an exclusive collective bargaining agent of the employees. A med-arbiter shall automatically order a certification election by secret ballot when a petition is filed (1) in an unorganized establishment or (2) in an organized establishment where the petition is supported by at least 25% of all employees in the bargaining unit. To have a valid certification election, at least a majority of all eligible votes in the bargaining unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all employees in the unit.
- (c) Consent Election: Similar to a certification election proceeding, consent election is the process of determining through secret ballot the sole and exclusive bargaining agent of employees in an appropriate collective bargaining unit for purposes of collective bargaining or negotiations. This process, however, differs from a certification election as this is voluntarily agreed upon by the parties,

with or without the DOLE's intervention. In such a case, the med-arbiter need not issue a formal order calling for such an election. The minutes of the agreement and records of the case are forwarded to the Regional Director for implementation of the consent election.

25. "Powersa", a labor federation, after having won in a certification election held in the company premises, sent a letter to respondent company reminding it of its obligation to recognize the local union the federation represents and to enter into a CBA with the local union. Respondent Company replied that though it is willing, the rank-and-file employees had already lost interest in joining the local union as they had dissolved it. "Powersa" argued that since it won in a certification election, it can validly perform its function as a bargaining agent and represent the rank-and-file employees despite the union's dissolution.

Is the argument of "Powersa" tenable? Decide with reasons. (2008 Bar Question)

SUGGESTED ANSWER:

No, it is not. If indeed the local union was dissolved in accordance with the above provision of law, the argument of "Powersa" is not tenable. This is so because "Powersa" only had the status of an agent, while the local union remained the basic unit of the association [*Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.*, G.R. No. L-33987, May 31, 1979; cited in *Filipino Pipe and Foundry Corp. v. NLRC*, G.R. No. 115180, November 16, 1999].

ANOTHER SUGGESTED ANSWER:

No it is not. Local unions do not owe their creation and existence to the national federation to which they are affiliated, but to the will of their members. Under the Labor Code, the act of voluntary dissolution constitutes a ground for cancellation for union registration [*Article 247, Labor Code*]. Hence, the collective bargaining agent's legal personality has been extinguished, with Powersa reduced to being an agent without a principal.

D. Rights of labor organizations

26. Liwayway Glass had 600 rank-and-file employees. Three rival unions A, B, and C – participated in the certification elections ordered by the Med-Arbiter. 500 employees voted. The unions obtained the following votes: A-200; B-150; C-50; 90 employees voted "no union"; and 10 were segregated votes. Out of the segregated votes, four (4) were cast by probationary employees and six (6) were cast by dismissed employees whose respective cases are still on appeal. (2014 Bar Question)
- 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?
 - Was there a valid election?
 - Should Union A be declared the winner?
 - Suppose the election is declared invalid, which of the contending unions should represent the rank-and-file employees?
 - 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. "[a]ll employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the issuance of the order granting the conduct of a certification election shall be eligible to vote. An employee who has been dismissed from work but has

- contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.” [Rule IX, Section 5 of DOLE Department Order 40-03]
- b. Yes. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes [Article 266, Labor Code]. In the instant case, 500 out of 600 rank-and-file employees voted.
 - c. No. The Labor Code provides that the Labor Union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit [Article 266, 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. None of them should represent the rank-and-file employees [Article 265, Labor Code].
 - e. Yes. The Labor Code provides that the Labor Union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit [Article 266, 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.
- 27. Samahang East Gate Enterprises (SEGE) is a labor organization composed of the rank-and-file employees of East Gate Enterprises (EGE), the leading manufacturer of all types of gloves and aprons. EGE was later requested by SEGE to bargain collectively for better terms and conditions of employment of all the rank-and-file employees of EGE. Consequently, EGE filed a petition for certification election before the Bureau of Labor Relations (BLR). During the proceedings, EGE insisted that it should participate in the certification process. EGE reasoned that since it was the one who filed the petition and considering that the employees concerned were its own rank-and-file employees, it should be allowed to take an active part in the certification process. Is the contention of EGE proper? Explain. (2014 Bar Question)**

SUGGESTED ANSWER:

No. An employer is a mere bystander in certification elections, whether the petition for certification election is filed by said employer or a legitimate labor organization [Article 271, Labor Code]. The employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election.

- 28. At what particular point does a labor organization acquire a legal personality? (2012 Bar Question)**
- a. On the date the agreement to organize the union is signed by the majority of all its members
 - b. On the date that the application for registration is duly filed with the Department of Labor
 - c. On the date appearing on the Certificate of Registration
 - d. On the date the Certificate of Registration is actually issued

SUGGESTED ANSWER:

(d) On the date the Certificate of Registration is actually issued [Article 240, Labor Code]

- 29. What is the rule on the "equity of the incumbent"? (2015 Bar Question)**

SUGGESTED ANSWER:

The Equity of the Incumbent rule has it that all existing federations or national unions, possessing all qualifications of a legitimate labor organization and none of the grounds for cancellation of registration, 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. (Article 249 of the Labor Code)

1. Check off, assessments, and agency fees

30. 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. (2015 Bar Question)

A. Are LFEU's claims correct? Explain. (4%) (See ULP under Collective Bargaining)

SUGGESTED ANSWER:

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 and 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*, G.R. No. 174912, July 24, 2013].

B. Distinguish between a "closed shop" clause and a "maintenance of membership" clause. (2%) (See Collective Bargaining)

SUGGESTED ANSWER:

In a "closed shop" clause, all members of the bargaining unit are required to be members of the bargaining agent at the time of hiring. They must remain members of good standing during the period of employment as a condition of continued employment. Maintenance of membership clause, on the other hand, requires all employees who are already members of the bargaining agent to maintain their membership of good standing, as a condition of continued employment. But employees who are not members of the bargaining agent are not required to join the bargaining agent.

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

SUGGESTED ANSWER: 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 [*Article 250(o), 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. Only non-union members who accept the benefits under the CBA may be assessed agency fees [*Article 259(e), Labor Code*]. Their authorization for check-off is not required.

31. 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 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 member's salaries defined amounts of union dues and other fees. Pablo refused to issue an authorization to the company for the check-off his dues, maintaining that he will personally remit his dues to the union. (2013 Bar Question)

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?

SUGGESTED ANSWER:

No. Under the law, violation of the Collective Bargaining Agreement, to be an unfair labor practice, must consist of a flagrant and malicious refusal to comply with the economic provisions of the CBA.

ALTERNATIVE ANSWER:

No. Check-offs impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by management at the instance of the union 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.

32. A is employed by XYZ Company where XYZ Employees Union (XYZ-EU) is the recognized exclusive bargaining agent. Although A is a member of rival union XYR-MU, he receives the benefits under the CBA that XYZ-EU had negotiated with the company. XYZ-EU assessed A a fee equivalent to the dues and other fees paid by its members but A insists that he has no obligation to pay said dues and fees because he is not a member of XYZ-EU and he has not issued an authorization to allow the collection. Explain whether his claim is meritorious. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

No. The fee exacted from A takes the form of an agency fee which is allowed under the Labor Code [Article 259(e), Labor Code]. The collection of agency fees in an amount equivalent to union dues and fees from employees who are not union members is recognized by law. 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. [Del Pilar Academy v. Del Pilar Academy Employees Union, G.R. No. 170112, April 30, 2008]

33. 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%)

Agency fees cannot be collected from a non-union member in the absence of a written authorization signed by the worker concerned. (2009 Bar Question)

SUGGESTED ANSWER:

False. Agency fee can be collected from a union member even without his prior written authorization as long as he receives the benefits of a CBA, and is a member of the appropriate bargaining unit. [Arts. 248(e) and 241(o), Labor Code].

2. Collective bargaining

34. 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. (2015 Bar Question)

A. Are LFEU's claims correct? Explain. (4%) (See ULP under Collective Bargaining)

SUGGESTED ANSWER:

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 and 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*, G.R. No. 174912, July 24, 2013].

B. Distinguish between a "closed shop" clause and a "maintenance of membership" clause. (2%) (See Collective Bargaining)

SUGGESTED ANSWER:

In a "closed shop" clause, all members of the bargaining unit are required to be members of the bargaining agent at the time of hiring. They must remain members of good standing during the period of employment as a condition of continued employment. Maintenance of membership clause, on the other hand, requires all employees who are already members of the bargaining agent to maintain their membership of good standing, as a condition of continued employment. But employees who are not members of the bargaining agent are not required to join the bargaining agent.

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

SUGGESTED ANSWER: 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 [*Article 250(o), 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. Only non-union members who accept the benefits under the CBA may be assessed agency fees [*Article 259(e), Labor Code*]. Their authorization for check-off is not required.

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

expired, and the union had already consumed their union leave under the CBA. Who is correct? (1%) (2013 Bar Question)

- a. The company is correct because the CBA has expired; hence it is no longer bound to provide union leave.
- b. The company is correct because the union has already consumed the allotted union leave under the expired CBA.
- c. The union is correct because it is still the bargaining representative for the next two (2) years.
- d. The union is correct because union leaves are part of the economic terms and continue to govern until new terms are agreed upon.
- e. They are both wrong.

SUGGESTED ANSWER:

(a) The company is correct because the CBA has expired; hence it is no longer bound to provide union leave; or (c) The union is correct because it is still the bargaining representative for the next two (2) years.

NOTE: There are arguments to be made for answers (a) and (c).

36. The Company and Triple-X Union, the certified bargaining agent of rank-and file employees, entered into a Collective Bargaining Agreement (CBA) effective for the period January 1, 2002 to December 31, 2007. For the 4th and 5th years of the CBA, the significant improvements in wages and other benefits obtained by the Union were: 1) Salary increases of P1,000 and P1,200 monthly, effective January 1, 2006 and January 1, 2007, respectively; 2) Vacation Leave and Sick Leave were adjusted from 12 days to 15 days annually for each employee; 3) Medical subsidy of P3,000 per year for the purchase of medicines and hospitalization assistance of P10,000 per year for actual hospital confinement; 4) Rice Subsidy of P600 per month, provided the employee has worked for at least 20 days within the particular month; and 5) Birthday Leave with Pay and Birthday Gift of P1,500.

As early as October 2007, the Company and the Union started negotiations to renew the CBA. Despite mutual good faith and earnest efforts, they could not agree. However, no union filed a petition for certification election during the freedom period. On March 30, 2008, no CBA had been concluded. Management learned that the Union would declare a bargaining deadlock on the next scheduled bargaining meeting. As expected, on April 3, 2008, the Union declared a deadlock. In the afternoon of the same day, management issued a formal announcement in writing, posted on the bulletin board, that due to the CBA expiration on December 31, 2007, all fringe benefits contained therein are considered withdrawn and can no longer be implemented, effective immediately. x x x x x x x x

[d] If you were the lawyer for the union, what legal recourse or action would you advise? Reasons. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No. Pending renewal of the CBA, the parties are bound to keep the status quo and to treat the terms and conditions embodied therein still in full force and effect, until a new agreement is reached by the union and management. This is part and parcel of the duty to bargain collectively in good faith [*Article 264, the Labor Code*].

SUGGESTED ALTERNATIVE ANSWER:

I will advise the Union to continue negotiations with the aid of the NCMB [*Article 261, Labor Code*] consistent with the policy for settling disputes by conciliation and mediation. I will also tell the Union that

it can, alternatively, file a complaint for unfair labor practice, i.e., violation of an economic provision, gross and serious in character under Articles 259(i) because under Article 264 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.

37. 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 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. (2012 Bar Question)

- 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 be done consistent with due process. The company's dismissal of its workers without giving them the benefit of a hearing, and without inquiring from the workers on the cause of their expulsion as union members, constitute bad faith. [*Liberty Cotton Mills Workers Union, et. al. vs. Liberty Cotton Mills, Inc. et. al.*, GR No. L-33987, May 31, 1979].

- b) What are the liabilities of Dana Films and MMFF to the dismissed employees, if any? (5%)

SUGGESTED ANSWER:

Dana Films is obliged (1) to reinstate the illegally dismissed employees to their former positions without reduction in rank, seniority and salary; and (2) to jointly and severally pay the dismissed employees backwages, without any reduction in pay or qualification. [*Amada Rice v. NLRC*, GR No. 68147, June 30, 1988].

38. The CBA for the period January 2007 to December 2009 granted the employees a P40 per day increase with the understanding that it is creditable as compliance to any future wage order. Subsequently, the regional wage board increased by P20 the minimum wage in the employer's area beginning January 2008. The management claims that the CBA increase may be considered compliance even if the Wage Order itself said that "CBA increase is not creditable as compliance to the Wage Order." Is the management's claim valid? (2011 Bar Question)

- a. Yes, since creditability of the CBA increase is the free and deliberate agreement and intention of the parties.
- b. Yes, since the Wage Order cannot prejudice the management's vested interest in the provisions of the CBA.
- c. No, disallowing creditability of CBA pay increase is within the wage board's authority.
- d. (D) No, the CBA increase and the Wage Order are essentially different and are to be complied with separately.

SUGGESTED ANSWER:

(A) Yes, since creditability of the CBA increase is the free and deliberate agreement and intention of the parties.

39. The employees' rights to organize and to bargain collectively are means of exercising the broader right to participate in policy or decision-making processes. The employees' right to participate in policy and decision making processes is available (2011 Bar Question)
- if a labor-management council exists.
 - if a labor-management council does not exist.
 - if a union exists and it agrees to the creation of a labor-management council.
 - whether or not a labor-management council exists.

SUGGESTED ANSWER:

(D) whether or not a labor-management council exists.

40. ABC company and U labor union have been negotiating for a new Collective Bargaining Agreement (CBA) but failed to agree on certain economic provisions of the existing agreement. In the meantime, the existing CBA expired. The company thereafter refused to pay the employees their midyear bonus, saying that the CBA which provided for the grant of midyear bonus to all company employees had already expired. Are the employees entitled to be paid their midyear bonus? Explain your answer. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, 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 [*Article 264, Labor Code*]. Although a CBA has expired, it continues to have legal effects as between the parties until a new CBA has been entered into. [*MERALCO v. Hon. Sec. of Labor, G.R. No. 91902, May 20, 1991 citing National Congress of Unions in the Sugar Industry of the Philippines v. Ferrer-Calleja, G.R. No. 89609, January 27, 1992*].

41. Explain the automatic renewal clause of collective bargaining agreements. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

The automatic renewal clause of Collective Bargaining Agreements means that although a CBA has expired, it continues to have legal effects as between the parties until a new CBA has been entered into [*Pier 8 Arrastre & Stevedoring Services, Inc. v. Roldan-Confessor, G.R. No. 110854, February 13, 1995*]. This is so because the law makes it a duty of the parties to keep the status quo and to continue in full effect the terms and conditions of the existing agreement until a new agreement is reached by the parties [*Article 264, Labor Code*].

E.Unfair Labor Practices

42. Forbes Country Club (Club) owns a golf course and has 250 rank-and-file employees who are members of the Forbes Country Club Union (Union). The Club has a CBA with the Union and one of the stipulations is a Union Security Clause, which reads: "All regular rank-and-file employees who are members of the union shall keep their membership in good standing as a condition for their continued employment during the lifetime of this agreement."

Peter, Paul and Mary were the Treasurer, Assistant Treasurer, and Budget Officer of the Union, respectively. They were expelled by the Board of Directors of the Union for malversation. The Union then demanded that the Club dismiss said officials pursuant to the Union Security Clause that required maintenance of union membership. The Club required the three officials to show

cause in writing why they should not be dismissed. Later, the Club called the three Union officials for a conference regarding the charges against them. After considering the evidence submitted by the parties and their written explanations, the Club dismissed the erring officials. The dismissed officials sued the Club and the Union for illegal dismissal because there was really no malversation based on the documents presented and their dismissal from the Union was due to the fact that they were organizing another union. (2016 Bar Question)

[a] Is the dismissal of Peter, Paul and Mary by the Club valid? (2.5%)

SUGGESTED ANSWER:

The dismissal of Peter, Paul and Mary is valid as it was made pursuant to a union security clause contained in the Collective Bargaining Agreement between the management and the union. In terminating employees by reason of union security clause, what the employer needs to determine and prove are: a) that the union security clause is applicable, b) that the union is requesting for the enforcement of the union security clause and c) that there are sufficient evidence to support the decision of the union to expel the employee from the union [*Picop Resources v. Tanila, G.R No. 160828, August 9, 2010*]. In the case at bar, the union demanded the dismissal of Peter, Paul and Mary after they were expelled from the union. The Club then afforded them due process by ordering them to show cause in writing why they should not be dismissed. Thereafter, a conference was held in their behalf. Having complied with all the requirements mentioned, it can be said that the dismissal of Peter, Paul and Mary was made validly.

[b] If the expulsion by the Union was found by the Labor Arbiter to be baseless, is the Club liable to Peter, Paul and Mary? Explain. (2.5%)

SUGGESTED ANSWER:

No. Provided that the Club complied in good faith with the requirements of procedural due process before dismissing Peter, Paul and Mary, it is held free from any liability should the expulsion be subsequently proven to be baseless.

ALTERNATIVE ANSWER:

Yes, the Club can be held liable to Peter, Paul and Mary. The subsequent finding that the expulsion was baseless shows that the employer did not fulfill its obligation to ensure that the employees' expulsion was supported by a valid cause. The employer's obligation under a union security clause must be complied with consistent with substantial and procedural due process.

1. Nature, aspects

43. Which of the following acts is NOT considered unfair labor practice? (2011 Bar Question)

- a. Restraining employees in the exercise of the right to self-organization.
- b. Union's interference with the employee's right to self-organization.
- c. Refusal to bargain collectively with the employer.
- d. Gross violation of the collective bargaining agreement by the union.

SUGGESTED ANSWER:

(B) Union's interference with the employee's right to self-organization.

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

x x x x x

[a] A runaway shop is an act constituting unfair labor practice. (2009 Bar Question)

SUGGESTED ANSWER:

False. A runaway shop is not automatically an unfair labor practice. It is an unfair labor practice only if the relocation that brought about the runaway shop is intended against a union or the workers' right to self-organization rather than for business reasons.

ALTERNATIVE 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 inherent anti-union bias of the employer. The provisions of Article 259[a] should be broadly and liberally interpreted to achieve the policy objective of the law to enhance the workers' right to self-organization and collective bargaining [*Constitution, Article XIII, Section 3 and Article III, Section 8; Labor Code, Article 258, 259 (e); Caltex Filipino Managers, etc. v. CIR, G.R. Nos. L-30632-33, April 11, 1972*]

45. 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. (2007 Bar Question)

SUGGESTED ANSWER:

Unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State. The civil aspect of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fee and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters. However, no criminal prosecution shall be instituted without a final judgment, finding that an unfair labor practice was committed, having been first obtained in the administrative proceeding. During the pendency of such administrative proceeding, the running of the period for prescription of the criminal offense herein penalized shall be interrupted. The final judgment in the administrative proceeding shall not be binding in the criminal case nor be considered as evidence of guilt but merely as proof of compliance of the requirements set forth by law. [*Article 258, Labor Code*]

2. By employers

46. 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%) (2013 Bar Question)

SUGGESTED ANSWER:

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

However, the charge of the union on the diminution of benefits (violation of Article 100 of the Labor Code) appears to be meritorious. Since three years have already elapsed, the overtime at rate of 35% has ripened into practice and policy, and cannot anymore be removed unilaterally [*Sevilla Trading v. Semana, G.R. No. 152456, April 28, 2004*]. The grant of this benefit is deliberate, consistent and practiced over a long period of time.

47. The following are unfair labor practices of employers, except: (2012 Bar Question)

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

UPDATED ANSWER: No correct answer.

3. By labor organizations**F. Peaceful concerted activities****1. Strikes**

- 48. Given that the liability for an illegal strike is individual, not collective, state when the participating union officers and members may be terminated from employment because of the illegal strike. Explain your answer. (4%) (2017 Bar Question)**

SUGGESTED ANSWER:

When a strike is declared illegal because of non-compliance with statutory or contractual requirements or because of the use of unlawful means, the consequence is loss of employment status of the officers of the union who knowingly participated in the illegal strike. Ordinary union members will lose their employment status only if they participated in the commission of illegal acts during the strike, thus, mere union membership does not result in automatic loss of employment as a result of an illegal strike [*Articles 278-279 of the Labor Code; Pepsi-Cola Union v. NLRC, Pepsi-Cola Union v. NLRC, G.R. No. L-58341, June 29, 1982; Solidbank Corp. v. Solidbank Union, G.R. No. 159460, November 15, 2010*].

- 49. A sympathetic strike is stoppage of work to make common cause with other strikers in another establishment or business. Is the sympathetic strike valid? Explain your answer. (1%) (2017 Bar Question)**

SUGGESTED ANSWER:

A sympathetic strike is not valid. It is illegal because the strikers have no direct grievance against their own employer; that is, no labor dispute exists between the strikers and the employer.

50. Due to business recession, Ballistic Company retrenched a part of its workforce. Opposing the retrenchment, some of the affected employees staged a strike. Eventually, the retrenchment was found to be justified, and the strike was declared illegal; hence, the leaders of the strike, including the retrenched employees, were declared to have lost their employment status. Are the striking retrenched employees still entitled to separation pay under Sec. 298 (283) of the Labor Code despite the illegality of their strike? Explain your answer. (2%) (2017 Bar Question)

SUGGESTED ANSWER:

No. The Supreme Court has ruled that if the strike staged by the union is declared illegal, the union officers and members are considered validly dismissed from employment for committing illegal acts during the illegal strike. The striking retrenched union officials and members who were found guilty of having staged an illegal strike, which constituted serious misconduct, will not be entitled to separation pay [*C. Alcantara & Sons, Inc. v. Court of Appeals*, G.R. No. 155109, March 14, 2012 citing *Toyota Motors Phils. Corp. Workers Association v. NLRC*, G.R. Nos. 158786 & 158789, October 19, 2007].

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

The Secretary of Labor declined to assume jurisdiction, finding that the dispute was not one that involved national interest. LB then proceeds to terminate all of the members of the bargaining agent on the ground that it was unlawful to: (1) barricade the management panel in the building, and (2) participate in an illegal strike. (2015 Bar Question)

[a] Was AILU justified in declaring a strike without a strike vote and a notice of strike? Why or why not? (3%)

SUGGESTED ANSWER:

No. First, a Notice of Strike is always required before a strike may be staged – be it grounded on bargaining deadlock or unfair labor practice [*Article 278(c), Labor Code*]. Second, the Supreme Court already held that while a union 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, the Labor Code requires that a strike vote be undertaken through a secret ballot and approved by a majority of the total union membership in the bargaining unit [*Article 278(f), Labor Code*]. 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:

The refusal of the Secretary to assume jurisdiction is valid. The Labor Code leaves it to his sound discretion to determine if national interest is involved [*Article 278(g), Labor Code*]. Assumption power is full and complete. It is also plenary and discretionary [*Philtranco Service Enterprises, Inc. v. Philtranco Workers Union-AGLO, G.R. No. 180962, February 26, 2014*]. Thus, if in his opinion national interest is not involved, then the company cannot insist that he assume jurisdiction.

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

SUGGESTED ANSWER:

No, the employer must first comply with the requirements of procedural due process or, in this case, the twin notice rule. The employer must furnish the employee with two written notices before the termination of employment can be effected based on illegality of the strike: (1) the first appraises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.

52. The procedural requirements of a valid strike include: (2014 Bar Question)

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

SUGGESTED ANSWER:

(B) notice of strike filed at least 15 days before a ULP-grounded strike or at least 30 days prior to the deadlock in a bargaining-grounded strike [*Article 278 (c), Labor Code*]

SUGGESTED ALTERNATIVE ANSWERS:

(C) majority of the union membership must have voted to stage the strike with notice thereon furnished to the National Conciliation and Mediation Board (NCMB) at least 24 hours before the strike vote is taken [*Article 278 (f), Labor Code*].

(D) strike vote results must be furnished to the NCMB at least seven (7) days before the intended strike [*Article 278 (f), Labor Code*].

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

(a) Can Lazo Corporation refuse to admit the strikers?

SUGGESTED ANSWER:

No. The Commission of illegal acts during a strike does not automatically bring about loss of employment status. Procedural due process must first be observed by the employer before any dismissal can be made. [*Stanford Marketing Corp. v. Julian*, G.R. No. 145496, February 24, 2004].

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

SUGGESTED ANSWER:

Yes, provided that the dismissal is for cause and is done after procedural due process is observed. While the employer must accept back strikers who return to work without condition, the company retains the prerogative to dismiss employees for cause and after complying with the twin notice rule.

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

SUGGESTED ANSWERS:

It depends. Under the Labor Code, mere participation of a worker in a legal 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 [*Article 279(a), Labor Code*]. As such, those who did not commit any illegal act cannot be dismissed. However, those who are found to have committed illegal acts may be declared to have lost his employment.

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

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

SUGGESTED ANSWER:

(c) Yes, because workers who go on strike do not lose their employment status

55. When there is no recognized collective bargaining agent, can a legitimate labor organization validly declare a strike against the employer? (1%) (2013 Bar Question)

- a. Yes, because the right to strike is guaranteed by the Constitution and cannot be denied to any group of employers.
- b. No, because only an exclusive bargaining agent may declare a strike against the employer.
- c. Yes, because the right to strike is a basic human right that the country's international agreements and the International Labor Organization recognize.
- d. Yes, but only in case of unfair labor practice.
- e. No, in the absence of a recognized bargaining agent, the worker's recourse is to file a case before the Department of Labor and Employment.

SUGGESTED ANSWER:

(D) [Article 278 (c), Labor Code]

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

SUGGESTED ANSWER:

Yes, it was a strike as there was a temporary stoppage of work by the employees' concerted action arising from a labor dispute.

No, it was not a valid activity [*Airline Pilots Association of the Phils. vs. CIR*, G.R. No. L-33705, April 15, 1977; and *First City Interlink Transportation vs. Roldan Confessor*, G.R. No. 106316, May 5, 1997]. For a strike to be valid, a notice of strike must be filed and the appropriate cooling off period observed. Also, a strike vote must be conducted before a strike may be conducted.

57. Which of the following is NOT a valid reason for a strike? (2012 Bar Question)

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

SUGGESTED ANSWER:

(b) There is prevailing intra-union dispute

58. Where there is a bargaining deadlock, who may file a notice of strike? (2011 Bar Question)

- a. The majority members of the bargaining unit.
- b. The recognized bargaining agent.
- c. Any legitimate labor organization in the employer's business.
- d. The majority members of the bargaining union.

SUGGESTED ANSWER:

(B) The recognized bargaining agent.

59. 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: (2008 Bar Question)

[a] Was there a strike? (4%)

SUGGESTED ANSWER:

Yes, it was a strike as there was a temporary stoppage of work by the employees' concerted action arising from a labor dispute.

SUGGESTED ALTERNATIVE ANSWER:

Yes, there was a strike. The "continuing protest rally against the company's alleged unfair labor practices" constitutes a "temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. It has recently been held that a strike comes in varied forms, from "slowdowns, mass leaves, sit downs" to other "similar activities." [*Santa Rosa Coca-Cola Plant Employees Union, et al. vs. Coca-Cola Bottlers Phils., Inc.*, G.R. Nos. 164302-03, January 24, 2007], the Supreme Court clarified that a protest rally which results in temporary stoppage of work by the concerted action of employees, as a result of a labor or industrial dispute, is clearly a case of strike.

[b] Were the employees simply exercising their constitutional right to petition for redress of their grievances? (3%)

SUGGESTED ANSWER:

No. After the issuance of a return to work order based on the assumption powers of the Secretary of Labor [*Article 278(g), Labor Code*], the strike was already taken outside of the employees' constitutionally protected right to engage in peaceful concerted activities for redress of their grievances. The workers have the obligation to comply with the return to work order arising from the exercise by the Secretary of his authority to assume jurisdiction over the labor dispute.

[c] What are the consequences, if any of the acts of the employees? (3%)

SUGGESTED ANSWER:

The consequences of defiance of the Return to Work Order include loss of employment of all those who participated in the illegal activity. It was illegal for the workers to have continued their strike activity even after the issuance of the return to work order. In one case, the Supreme Court ruled: "A strike undertaken despite the Secretary's issuance of an assumption or certification order becomes a prohibited activity, and thus illegal, under Article 264(a) of the Labor Code. The union officers who knowingly participate in that illegal strike are deemed to have lost their employment status the union members, including union officers, who commit specific illegal acts or who knowingly defy a return to work order are also deemed to have lost their employment status." [*Philcom Employees Union v. Philippine Global Communication* (495 SCA 214[2006])]

- 60. 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 supervisors? Decide. (6%) (2008 Bar Question)

SUGGESTED ANSWER:

No. I will apply the “No Work No Pay” principle. The supervisors are not entitled to their money claim for unpaid salaries, as they should not be compensated for services skipped during the strike of the rank-and-file union. The rule governing the relation between labor and capital, or management and employee of a “fair day’s wage for a fair day’s labor” remains the basic factor in determining employees’ wages [*Aklan Electric Cooperative, Inc. v. NLRC*, G.R. No. 121439, January 25, 2000].

- 61. Some officers and rank-in- 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. (2007 Bar Question)**

SUGGESTED ANSWER:

I will advise the employer that not all the strikers can be dismissed. Any union officer who knowingly participates in an illegal strike maybe declared to have lost his employment status but a worker who is not a union officer may be declared to have also lost his employment status only if he commits illegal acts during a strike. [*Article 279 (a), Labor Code*]

2. Picketing

- 62. Asia Union (Union) is the certified bargaining agent of the rank-and-file employees of Asia Pacific Hotel (Hotel).The Union submitted its Collective Bargaining Agreement (CBA) negotiation proposals to the Hotel. Due to the bargaining deadlock, the Union, on December 20, 2014, filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB). Consequently, the Union conducted a Strike Vote on January 14, 2015, when it was approved. The next day, waiters who are members of the Union came out of the Union office sporting closely cropped hair or cleanly shaven heads. The next day, all the male Union members came to work sporting the same hair style. The Hotel prevented these workers from entering the premises, claiming that they violated the company rule on Grooming Standards.**

On January 16, 2015, the Union subsequently staged a picket outside the Hotel premises and prevented other workers from entering the Hotel. The Union members blocked the ingress and egress of customers and employees to the Hotel premises, which caused the Hotel severe lack of manpower and forced the Hotel to temporarily cease operations resulting to substantial losses. On January 20, 2015, the Hotel issued notices to Union members, preventively suspending them and charging them with the following offenses: (1) illegal picket; (2) violation of the company rule on Grooming Standards; (3) illegal strike; and (4) commission of illegal acts during the illegal strike. The Hotel later terminated the Union officials and members who participated in the strike. The Union denied it engaged in an illegal strike and countered that the Hotel committed an unfair labor practice (ULP) and a breach of the freedom of speech. (2016 Bar Question)

[a] Was the picketing legal? Was the mass action of the Union officials and members an illegal strike? Explain. (2.5%)

SUGGESTED ANSWER:

The picket was illegal. The right to picket as a means of communicating the facts of a labor dispute is a phase of freedom of speech guaranteed by the constitution (*De Leon v. National Labor Union 100 Phil 789 [1957]*). But this right is not absolute. The Labor Code provides that no person engaged in picketing shall obstruct the free ingress to or egress from the employer’s premises for lawful purposes or obstruct public

thoroughfares [Article 279 (e), Labor Code]. The acts of the union members in blocking the entrance and exit of the hotel which caused it to shut down temporarily makes the picket illegal.

The actions of all the union members in cropping or shaving their head is deemed an illegal strike. In a similar case, the Supreme Court ruled that the act of the Union was not merely an expression of their grievance or displeasure but was, indeed, a calibrated and calculated act designed to inflict serious damage to the hotel's grooming standards which resulted in the temporary cessation and disruption of the hotel's operations. This should be considered as an illegal strike. [National Union of Workers in the Hotel Restaurant and Allied Industries (NUWHRAINAPL-IUF) Dusit Hotel Nikko Chapter v. Court of Appeals, G.R. No. 153942, November 11, 2008]

ALTERNATIVE ANSWER:

As regards the shaving of heads by the union members, this mass action was not an illegal strike as the employees did not stop work. It was the Hotel administration which prevented them from entering the hotel premises. A strike is defined as a temporary stoppage of work by the employees' concerted action arising from a labor dispute. As there is no stoppage of work by the employees here, there is not strike.

[b] Rule on the allegations of ULP and violation of freedom of speech. Explain. (2.5%)

SUGGESTED ANSWER:

The Hotel is not guilty of ULP. The act of the hotel is an act of self-preservation. The law in protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer. The right of the employer to dismiss its erring employees is a measure of self-protection [Filipro v. NLRC, G.R. No. 70546, October 16, 1966]. The power to dismiss an employee is a recognized prerogative that is inherent in the employee's right to freely manage and regulate its business [Philippine Singapore Transport Service v. NLRC, G.R. No. 95449 [1997]]. The hotel is not guilty of violating the union member's right to freedom of speech because such right is not absolute; it is subject to regulation so that it may not be injurious to the right of another or to society. The union member's act of cropping or shaving their heads caused substantial losses to the hotel caused by the cessation of its operations. The Supreme Court in one case held that the union's violation of the hotel grooming standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the hotel and was, therefore, not a protected action. The physical appearance of the hotel employees directly reflect the character and well-being of the hotel, being a five-star hotel that provides service to topnotch clients.

ALTERNATIVE ANSWER:

Yes. The Hotel is guilty of Unfair Labor Practice under the Labor Code, specifically "To interfere with, restrain or coerce employees in the exercise of their right to self-organization" [Article 259(a), Labor Code]. The act of the Hotel in preventing the employees from entering the work premises constitutes this unfair labor practice.

3. Lockouts

4. Assumption of jurisdiction by the DOLE Secretary

63. Several employees and members of Union A were terminated by Western Phone Co. on the ground of redundancy. After complying with the necessary requirements, the Union staged a strike and picketed the premises of the company. The management then filed a petition for the Secretary of Labor and Employment to assume jurisdiction over the dispute. Without the benefit of a hearing, the Secretary issued an Order to assume jurisdiction and for the parties to revert to the status quo ante litem. (2010 Bar Question)

[a] Was the order to assume jurisdiction legal? Explain. (2%)

SUGGESTED ANSWER:

Yes. The Secretary of Labor and Employment has plenary power to assume jurisdiction under the Labor Code [Article 278(g), Labor Code]. When in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor may assume jurisdiction over the dispute and decide it or certify it to the NLRC for compulsory arbitration. This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests [Steel Corporation v. SCP Employees Union, G.R. Nos. 169829-30 : April 16, 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 [Article 263(g), Labor Code; Sec. 15, Rule XXII, Dept. Order No. 40-G-03].

SUGGESTED ALTERNATIVE ANSWER:

No, as Western Phone Co is not considered as part of an industry indispensable to the national interest. These industries have been identified under the Rules Implementing the Labor Code to include:

- (1) hospital sector;
- (2) electric power industry;
- (3) water supply services, to exclude small water supply services such as bottling and refilling stations;
- (4) air traffic control; and
- (5) such other industries as maybe recommended by the National Tripartite Industrial Peace Council (TIPC)

[Article 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 Article 278(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 fails to maintain status quo or the terms and conditions prevailing before the strike.

64. A is a member of the labor union duly recognized as the sole bargaining representative of his company. Due to a bargaining deadlock, 245 members of the 500-strong union voted on March 13, 2010 to stage a strike. A notice of strike was submitted to the National Conciliation and Mediation Board on March 16, 2010. Seven days later or on March 23, 2010, the workers staged a strike in the course of which A had to leave and go to the hospital where his wife had just delivered a baby. The union members later intimidated and barred other employees from entering the work premises, thus paralyzing the business operations of the company. A was dismissed from employment as a consequence of the strike. (2010 Bar Question)

[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 [*See Article 263(f), Labor Code; Section 11, Rule XXII, Dept. Order No. 40-03*]. Also, the strike was illegal due to the non-observance of the 30-day cooling off period by the union [*Article 278(c), Labor Code*]. rights of employees to self-organization [*Club Filipino, Inc. v. Bautista, G.R. No. 168406, July 13, 2009*].

[b] Was A's dismissal valid? Why or why not? (3%)

SUGGESTED ANSWER:

No, the Labor Code distinguishes the effects of illegal strikes between ordinary workers and union officers who participate therein [*Article 264, Labor Code*]. 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, G.R. No. 139940 : September 19, 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, G.R. No. 168406, July 13, 2009*].

65. 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: (2008 Bar Question)

[a] Was there a strike? (4%)

SUGGESTED ANSWER:

Yes, there was a strike. The "continuing protest rally against the company's alleged unfair labor practices" constitutes a "temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. It has recently been held that a strike comes in varied forms, from "slowdowns, mass leaves, sit downs" to other "similar activities." [*Santa Rosa Coca-Cola Plant Employees Union, et al. vs. Coca-Cola Bottlers Phils., Inc., G.R. Nos. 164302-03, January 24, 2007*], the Supreme Court clarified that a protest rally which results in temporary stoppage of work by the concerted action of employees, as a result of a labor or industrial dispute, is clearly a case of strike.

[b] Were the employees simply exercising their constitutional right to petition for redress of their grievances? (3%)

SUGGESTED ANSWER:

No. After the issuance of a return to work order based on the assumption powers of the Secretary of Labor under the Labor Code [*Article 278(g)*], the strike was already taken outside of the employees' constitutionally protected right to engage in peaceful concerted activities for redress of their grievances. The workers have the obligation to comply with the return to work order arising from the exercise by the Secretary of his authority to assume jurisdiction over the labor dispute.

5. Injunctions

66. 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. (2015 Bar Question)

[a] Is NNN's remedy correct? Why or why not? (3%)

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

The NLRC may issue an injunctive writ to enjoin an illegal activity [*Article 279, Labor Code*]; as an ancillary remedy to avoid irreparable injury to the rights of a party in an ordinary labor dispute [*Rule X, 2011 NLRC Rules of Procedure, as amended*]; and to correct the Labor Arbiter's grave abuse of discretion [*Rule XII of the 2011 NLRC Rules of Procedure, as amended*].

Moreover, for labor injunction to issue, it must be proven that:

- a. The prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained;
- b. Substantial and irreparable injury to the complainant's property will follow;
- c. Greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- d. Complainant has no adequate remedy at law; and
- e. Public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. [*Article 255(e), Labor Code*]

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

SUGGESTED ANSWER:

As to jurisdiction, the Labor Arbiter can hear and resolve cases under Article 217 (old) of the Labor Code, money claims under Sec. 7 of RA No. 10022, and referred wage distortion disputes in unorganized establishments, as well as the enforcement of compromise agreements pursuant to the 2011 NLRC Rules of Procedure, as amended. On the other hand, the NLRC reviews decisions rendered by the LA, decisions or orders rendered by the RD under Article 129 of the Labor Code, and conducts compulsory arbitration in certified cases.

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

67. **Luningning Foods engaged the services of Lamitan Manpower, Inc., a bona fide independent contractor, to provide “tasters” that will check on food quality. Subsequently, these “tasters” joined the union of rank-and-file employees of Luningning and demanded that they be made regular employees of the latter as they are performing functions necessary and desirable to operate the company’s business. Luningning rejected the demand for regularization. On behalf of the “tasters”, the union then filed a notice of strike with the Department of Labor and Employment (DOLE). In response, Luningning sought a restraining order from the Regional Trial Court (RTC) arguing that the DOLE does not have jurisdiction over the case since it does not have an employer-employee relationship with the employees of an independent contractor. If you were the RTC judge, would you issue a restraining order against the union? (2014 Bar Question)**

SUGGESTED ANSWER:

No. Labor Code is clear that no temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as provided in Article 218 and 225 of the same Code [*Article 266, Labor Code*]. A labor dispute exists regardless if the parties are in an employment relationship. Under the law, a labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

VI. Post-Employment

1. **When the employer or his representative hurls serious insult on the honor or person of the employee, the law says that the employee (2011 Bar Question)**
 - a. may leave work after at least a five-day notice to the employer
 - b. may leave work at any time and file for constructive dismissal.
 - c. may leave work without giving a 30-day notice to the employer.
 - d. may abandon his job at once.

SUGGESTED ANSWER:

(C) may leave work without giving a 30-day notice to the employer.

A. Employer-employee relationship

2. **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 every time she left for Miami. Macapagal Shipping paid for**

Lina's round-trip travel expenses from Manila to Miami. Because of a food poisoning incident which happened during her last cruise assignment, Lina was not re-hired. Lina claims she has been illegally terminated and seeks separation pay. If you were the Labor Arbiter handling the case, how would you decide? (2014 Bar Question)

SUGGESTED ANSWER:

I will dismiss Lina's complaint. Lina is a contractual employee and the 10 month duration of her employment is a valid provision as Lina entered into it voluntarily and with the parties dealing with each other on equal terms. The expiration of the term in her contract is a valid cause for the termination of her employment. *[Millares, et al. v. NLRC, G.R. No. 110524, July 29, 2002]*.

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

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

SUGGESTED ANSWER:

Yes all the elements 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 is an independent contractor for Don Luis does not exercise control over Lando's means and method in tending to the former's garden.

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

SUGGESTED ANSWER:

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

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 the Civil Code *[Article 1713, Civil Code]*, does not make Lando an employee under the Labor Code and Social Security Act.

- 4. 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 autoshop 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 was still 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 Inggü correct? Explain briefly. (5%) (2012 Bar Question)

SUGGESTED ANSWER:

Yes. Inggü is an employee of the Pit Stop because all elements of employment are present. These are:

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 Inggü has his own tools, or equipment so as to qualify him as an independent contractor.

On the other hand, Inggü is not a partner. 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 [*Article 1767, Civil Code*]. Not one of these circumstances is present in this case. No written agreement exists to prove the partnership between the parties. Inggü 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 GR No. 142293, February 27, 2003*].

1. Tests to determine existence

5. **Marcel was the Vice President for Finance and Administration and a member of the Board of Directors of Mercedes Corporation. He brought a complaint for illegal suspension and illegal dismissal against Mercedes Corporation, which moved to dismiss the complaint on the ground that the complaint pertained to the jurisdiction of the RTC due to the controversy being intra-corporate based on his positions in the corporation. Marcel countered that he had only been removed as Vice President for Finance and Administration, not as a member of the Board of Directors. He also argued that his position was not listed as among the corporate offices in Mercedes Corporation's by-laws. Is the argument of Marcel correct? Explain your answer. (2.5%) (2017 Bar Question)**

SUGGESTED ANSWER:

Yes, Marcel's argument is correct. His complaint should not be dismissed. His removal as Vice-President for Finance and Administration is a termination of an employee by an employer because his position is not listed among the corporate offices in the company's by-laws. It is not an intra-corporate dispute. As terminations of employment are within the jurisdiction of the Labor Arbiter, Marcel's complaint for illegal suspension and illegal dismissal should not be dismissed. [*Real v. Sangu Philippines, Inc. et al., G.R. No. 168757, January 19, 2011*].

ALTERNATIVE ANSWER:

Yes, Marcel's argument is correct. Only corporate officers such as the president, secretary, treasurer, and such other officers as may be provided in the by-laws of the corporation are subject to the jurisdiction of the RTC. Corporate officers are those whose position is a creation of the corporate charter or by laws and whose election is by virtue of the acts of the Board of Directors [*Cosare vs. Broadcom Asia, Inc. G.R. No. 201298, February 5, 2014*].

6. **Dr. Crisostomo entered into a retainer agreement with AB Hotel and Resort whereby he would provide medical services to the guests and employees of AB Hotel and Resort, which, in turn, would provide the clinic premises and medical supplies. He received a monthly retainer fee of P60,000.00, plus a 70% share in the service charges from AB Hotel and Resort's guests availing**

themselves of the clinic's services. The clinic employed nurses and allied staff, whose salaries, SSS contributions and other benefits he undertook to pay. AB Hotel and Resort issued directives giving instructions to him on the replenishment of emergency kits and forbidding the clinic staff from receiving cash payments from the guests. In time, the nurses and the clinic staff claimed entitlement to rights as regular employees of AB Hotel and Resort, but the latter refused on the ground that Dr. Crisostomo, who was their employer, was an independent contractor. Rule, with reasons. (4%) (2017 Bar Questions)

SUGGESTED ANSWER:

I will rule that the nurses and clinic staff are employed by Dr. Crisostomo, not by AB Hotel and Resort. Applying the four fold test to determine employment shows that the real employer of the nurses and the clinic staff is Dr. Crisostomo and not AB Hotel and Resort.

- (1) the selection and engagement of the nurses and clinic staff were made by Dr. Crisostomo;
- (2) their wages were paid by Dr. Crisostomo. As a matter of fact, SSS contributions were paid by him also.
- (3) Although Dr. Crisostomo did not actually exercise the power of dismissal, it is clear that as the doctor, he has the control of his employees' conduct in the dispensing of medical services to the guests and personnel of the resort. The fact that AB Hotel and Resort gave instructions to him regarding replenishment of emergency kits and forbidding his staff from receiving cash payments from guests is of no consequence. They are nothing more but guidelines which will not create an employer-employee relationship [*Insular Life v. NLRC*, G.R. No. 84484, November 15, 1989].

ALTERNATIVE ANSWER:

I will rule that the nurses and clinic staff are employed by the resort. It has been held that the power of control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee. It is enough that the employer has the right to wield that power. In the situation described, the resort had the power of control over the nurses and the staff because it gave instructions to the doctor regarding replenishment of emergency kits and forbidding his staff from receiving cash payments from guests. It also appears that the resort was the one who selected the staff of the clinic, not Dr. Crisostomo. The power of selection of the employee is another factor which determines the employment relationship. Such power is present in the hands of AB Hotel and Resort.

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

[b] Applying the tests to determine the existence of an employer-employee relationship, is a jeepney driver operating under the boundary system an employee of his jeepney operator or a mere lessee of the jeepney? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWERS:

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

A. Four-fold Test:

1. The selection and engagement of the employees;
2. The payment of wages
3. The power of dismissal; and
4. The power to control the employees' conduct both as to the ends and the means to achieve those ends. [*The Manila Hotel Corp. v. NLRC*, G.R. No. 120077, October 13, 2000].

The most important test is the element of control, which has been defined as the “right to control not only the end to be achieved but also the means to be used in reaching such end” [*LVN Pictures v. Philippine Musicians Guild*, G.R. No. L-12582, January 28, 1961].

B. Economic reality Test:

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

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

8. **Matibay Shoe and Repair Store, as added service to its customers, devoted a portion of its store to a shoe shine stand. The shoe shine boys were tested for their skill before being allowed to work and given ID cards. They were told to be present from the opening of the store up to closing time and were required to follow the company rules on cleanliness and decorum. They bought their own shoe shine boxes, polish, and rags. The boys were paid by their customers for their services but the payment is coursed through the store’s cashier, who pays them before closing time. They were not supervised in their work by any managerial employee of the store but for a valid complaint by a customer or for violation of any company rule, they can be refused admission to the store. Were the boys employees of the store? Explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

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

The first element is present, as Matibay Shoe allowed shoe shine boys in its shoe shine stand to render services that are desirable in the line of business of Matibay Shoe. In issuing ID’s to the shoe shine boys, the same signifies that they can represent themselves as part of the work force of Matibay Shoe. The second element is also present. Requiring the customers to pay through the Matibay Shoe’s cashier signifies that their services were not engaged by the customers. Equally important, it was Matibay Shoe which gave the shoe shine boys their daily wage. The third element is satisfied. Requiring the shoe shine boys to be present from store opening until store closing and to follow company rules on cleanliness and decorum shows that they cannot conduct their activity anywhere else but inside the store of Matibay Shoe, hence, their means and methods of accomplishing the desired services for the customers of Matibay Shoe was controlled by it. Lastly, the fourth element is made apparent when Matibay Shoe barred the shoe shine boys from continuing with their work-related activity inside its establishment.

ALTERNATIVE ANSWER:

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

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

Furthermore, using the control test, the boys have exclusive power over the means and method by which the shoe shining activity is to be conducted. The fact that Matibay Shoe required the shoe shine boys to be present from store opening until store closing and to follow company rules on cleanliness and decorum does not constitute control as these are mere guidelines regarding the ends but not the means of the work involved.

9. **Zienna Corporation (Zienna) informed the Department of Labor and Employment Regional Director of the end of its operations. To carry out the cessation, Zienna sent a Letter Request for Intervention to the NLRC for permission and guidance in effecting payment of separation benefits for its fifty (50) terminated employees. Each of the terminated employees executed a Quitclaim and Release before Labor Arbiter Nocomora, to whom the case was assigned. After the erstwhile employees received their separation pay, the Labor Arbiter declared the labor dispute dismissed with prejudice on the ground of settlement. Thereafter, Zienna sold all of its assets to Zandra Company (Zandra), which in turn hired its own employees. Nelle, one of the fifty (50) terminated employees, filed a case for illegal dismissal against Zienna. She argued that Zienna did not cease from operating since the corporation subsists as Zandra. Nelle pointed out that aside from the two companies having essentially the same equipment, the managers and owners of Zandra and Zienna are likewise one and the same. For its part, Zienna countered that Nelle is barred from filing a complaint for illegal dismissal against the corporation in view of her prior acceptance of separation pay. (2016 Bar Question)**

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

SUGGESTED ANSWER:

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

10. **Gregorio was hired as an insurance underwriter by the Guaranteed Insurance Corporation (Guaranteed). He does not receive any salary but solely relies on commissions earned for every insurance policy approved by the company. He hires and pays his own secretary but is provided free office space in the office of the company. He is, however, required to meet a monthly quota of twenty (20) insurance policies, otherwise, he may be terminated. He was made to agree to a Code of Conduct for underwriters and is supervised by a Unit Manager. (2016 Bar Question)**

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

SUGGESTED ANSWER:

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

[b] Suppose Gregorio is appointed as Unit Manager and assigned to supervise several underwriters. He holds office in the company premises, receives an overriding commission on the

commissions of his underwriters, as well as a monthly allowance from the company, and is supervised by a branch manager. He is governed by the Code of Conduct for Unit Managers. Is he an employee of Guaranteed? Explain. (2.5%)

SUGGESTED ANSWERS:

Yes, Gregorio is an employee. In this case, the elements of the four fold test are present. These are: (a) the selection and engagement of Gregorio; (b) the payment of wages; (c) the employer's power to control Gregorio's conduct; and (d) the power of dismissal or discipline Gregorio. The most important element, control, is seen in the supervision of the branch manager over him. Also, Gregorio's inclusion within the Code of Conduct of the company's employees shows control not only of the ends of his work but of the means to achieve those ends.

11. **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. (2015 Bar Question)**

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

SUGGESTED ANSWER:

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 displaced employees [*Peñafrancia Tours and Travel Transport, Inc., v. Sarmiento*, G.R. No. 178397, October 20, 2010]. 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 sale of company stocks. The Supreme Court has held 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 [*SME Bank v. De Guzman*, G.R. No. 184517, October 8, 2013]. 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, 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 ANSWERS:

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 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.

12. **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. (2015 Bar question)

(a) Is there an employer-employee relationship between Nico and Ador? (4%) (2015 Bar Question)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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%) (2015 Bar Question)

SUGGESTED ANSWER:

Yes, coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers [*Section 9, Social Security Law* (Republic Act No. 11199)].

ANOTHER SUGGESTED ANSWER:

If Ador is self-employed, yes. [*Section 9-A, Social Security Law* (Republic Act No. 11199)]

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

- a. No, they are Reach-All's employees since it has control over their work performance.
- b. Yes, since they receive training from the pharmaceutical companies regarding the products they will promote.
- c. No, since they are bound by the agency agreement between Reach-All and the pharmaceutical companies.
- d. Yes, since Reach-All does not qualify as independent contractor employer, its clients being the source of the employees' salaries.

SUGGESTED ANSWER:

(A) No, they are Reach-All's employees since it has control over their work performance.

14. Of the four tests below, which is the most determinative of the status of a legitimate contractor-employer? (2011 Bar Question)

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

SUGGESTED ANSWER:

(D) The contractor has direct control over the employees' manner and method of work performance.

2. Kinds of employment

15. Luningning Foods engaged the services of Lamitan Manpower, Inc., a bona fide independent contractor, to provide "tasters" that will check on food quality. Subsequently, these "tasters" joined the union of rank-and-file employees of Luningning and demanded that they be made regular employees of the latter as they are performing functions necessary and desirable to operate the company's business. Luningning rejected the demand for regularization. On behalf of the "tasters", the union then filed a notice of strike with the Department of Labor and Employment (DOLE). In response, Luningning sought a restraining order from the Regional Trial Court (RTC) arguing that the DOLE does not have jurisdiction over the case since it does not have an employer-employee relationship with the employees of an independent contractor. If you were the RTC judge, would you issue a restraining order against the union? (2014 Bar Question)

SUGGESTED ANSWER:

No. The Labor Code is clear that no temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as provided in Article 218 and 225 of the same Code [*Article 266, Labor Code*]. A labor dispute exists regardless if the parties are in an employment relationship. Under the law, a labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

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

SUGGESTED ANSWER:

(B) Job contractors

a. Regular

17. Under the Labor Code on Working Conditions and Rest Periods, a person hired by a high company official but paid for by the company to clean and maintain his staff house is regarded as (2011 Bar Question)
- a. a person rendering personal service to another.
 - b. a regular company employee.
 - c. a family member.
 - d. domestic helper.

SUGGESTED ANSWER:

(B) a regular company employee.

b. Casual

18. Albert and four others signed employment contracts with Reign Publishers from January 1 to March 31, 2011 to help clear up encoding backlogs. By first week of April 2011, however, they remained at work. On June 30 Reign's manager notified them that their work would end that day. Do they have valid reason to complain? (2011 Bar Question)
- a. No, since fixed term employment, to which they agreed, is allowed.
 - b. Yes, their job was necessary and desirable to the employer's business and, therefore, they are regular employees.
 - c. Yes, when they worked beyond March without an extended fixed term employment contract, they became regular employees.
 - d. No, since the 3-month extension is allowed in such employment.

SUGGESTED ANSWER:

(C) Yes, when they worked beyond March without an extended fixed term employment contract, they became regular employees.

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

SUGGESTED ANSWER:

No, Marciano's claim is not tenable. Seafarers are contractual employees for a fixed term, governed by the contracts they sign. It has been held that seafarers are contractual employees, not regular employees, notwithstanding performance of usually necessary and desirable functions which exceed one year or continuous rehiring. [*Brent School v. Zamora*, G.R. No. L-48494, February 5, 1990; *Coyoca v. NLRC*, G.R. No. 113658, March 31, 1995; and *Millares v. NLRC*, G.R. No. 110524 - July 29, 2002]

20. 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%) (2015 Bar Question)

SUGGESTED ANSWER:

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. It has been held that when workers are rehired repeatedly under fixed term employment contracts, said workers will be deemed as regular employees [*GMA Network Inc v Carlos Pabriga*, G.R. No. 176419, November 27, 2013]. As a regular employee, Don Don can only be dismissed with just cause. His dismissal based on "poor performance" is not valid and constitutes illegal dismissal.

c. Probationary

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

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

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

The SFH President asks you, being the hospital's counsel, which of these two (2) options is the legal and proper way of terminating Amaya: a) terminate her for a just cause under Article 288 of the Labor Code (Termination by Employer); or b) terminate her for violating her probationary contract. Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

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

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

d. Project

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

During the implementation of the works contract, Axis suffered financial difficulties and was not able to pay Mario Brothers its past billings. As a result, the three (3) employees were not paid their

salaries for two (2) months and their 13th month pay. Because Axis cannot pay, Mario Brothers cancelled the contract and laid off Tristan, Arthur, and Jojo. The 3 employees sued Mario Brothers and Axis for illegal dismissal, unpaid wages, and benefits. (2016 Bar Question)

[a] Mario Brothers claims the 3 workers are project employees. It explains that the agreement is, if the works contract is cancelled due to the fault of the client, the period of employment is automatically terminated. Is the contractor correct? Explain. (2.5%)

SUGGESTED ANSWER:

No. The requirements to qualify an employment as project-based was set by the Supreme Court in one case as follows:

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

Mario Brothers failed to comply with both requirements; hence, Tristan, Arthur and Jojo are its regular employees. The cancellation of its contract with Axis did not result to the termination of employment of Tristan, Arthur and Jojo. [*GMA Network, Inc v. Pabriga*, (G.R. No. 176419, November 27, 2013)]

[b] Can Axis be made solidarily liable with Mario Brothers to pay the unpaid wages and 13th month pay of Tristan, Arthur, and Jojo? Explain. (2.5%)

SUGGESTED ANSWER:

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

e. Seasonal

- 23. 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. (2012 Bar Question)**

[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, the law excludes from the obligation of 13th Month Pay "Employers of those who are paid on xxx boundary basis" [*Sec. 3 (e) of the Rules and Regulations Implementing P.D. 851*]. On the other hand, "employees whose performance is unsupervised by the employer" are not entitled to Service Incentive Leave [*Sec. 1 (d), Rule V, Book III of the Omnibus Rules*]. A taxi driver paid under the Boundary System is an "unsupervised" employee whose hours of work cannot be determined with reasonable certainty.

[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 to 13th month pay and SIL, his retirement pay should be computed solely on the basis of his salary. [*R&E Transport v. Latag*, G.R. No. 155214, February 13, 2004]

3. Legitimate sub-contracting v. labor-only contracting

24. 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 LA, XYZ was able to prove that it had substantial capital of Three Million Pesos. The LA 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 LA ruling valid? Explain (5%) (2012 Bar Question)

SUGGESTED ANSWER:

Yes, the presumption is that a contractor is a labor-only contractor unless it is shown that it has substantial capital and substantial investment in the form of tools, equipment, machineries, work premises, and the like. Besides, what the Labor Code defines is Labor-Only Contracting and not Job-Contracting [*Article 106, Labor Code*]. In mandating that “there 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.

ALTERNATIVE ANSWER:

No, the LA’s ruling is void. The Labor Code provides that the contractor has *substantial capital OR investment* [*Article 106, Labor Code*]. 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.

25. Distinguish Labor-Only contracting and Job-Only contracting. (5%) (2012 Bar Question)

SUGGESTED ANSWER:

1. They are defined differently:

Labor-only contracting:

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

Legitimate Job Contracting:

The contractor has substantial capital and investment in the form of tools, equipment, etc. and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the

principal in all matters connected with the performance of the work except as to the results thereof. [*Escasinas vs. Shangri-la's Mactan Island Resort*, G.R. NO. 178827, March 4, 2009].

2. Labor-Only Contracting is prohibited while Job Contracting is allowed by law.
3. 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. 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.
4. The liability of the principal in Job-Only contracting vis-à-vis employees of job-contractor is for a limited purpose only, e.g. wages and violation of labor standard laws; whereas, the liability of the principal in Labor-Only contracting is for a comprehensive purpose and, therefore, the principal becomes solidarily with the labor-only contractor for all the rightful claims of the employees.

a. Elements

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

SUGGESTED ANSWER:

1. They are defined differently:

Labor-only contracting:

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

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The contractor has substantial capital and investment in the form of tools, equipment, etc. and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. [*Escasinas vs. Shangri-la's Mactan Island Resort*, G.R. NO. 178827, March 4, 2009].

2. Labor-Only Contracting is prohibited while Job Contracting is allowed by law.
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4. The liability of the principal in Job-Only contracting vis-à-vis employees of job-contractor is for a limited purpose only, e.g. wages and violation of labor standard laws; whereas, the liability of the principal in Labor-Only contracting is for a comprehensive purpose and, therefore, the principal becomes solidarily with the labor-only contractor for all the rightful claims of the employees.

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

Empire then entered into an agreement for manpower supply with Wave Human Resources (Wave). Wave owns its condo office, owns equipment for the use by the TMRs, and has assets amounting to P1,000,000.00. Wave provided the supervisors who supervised the TMRs, who, in turn, received orders from the Marketing Director of Empire. In their agreement, the parties stipulated that Wave shall be liable for the wages and salaries of its employees or workers, including benefits, and protection due them, as well as remittance to the proper government entities of all withholding taxes, Social Security Service, and Philhealth premiums, in accordance with relevant laws.

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

When the TMRs' 5-month contracts with Wave were about to expire, they sought renewal thereof, but were refused. Their contracts with Wave were no longer renewed as Empire hired another agency. This prompted them to file complaints for illegal dismissal, regularization, non-payment of service incentive leave and 13th month pay against Empire and Wave. (2016 Bar Question)

[a] Are the TMRs employees of Empire? (2.5%)

SUGGESTED ANSWER:

Yes. From the time Empire contracted the services of Style, both engaged in labor-only contracting. It has been ruled that where any of the following elements is present, there is labor-only contracting:

- (1) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- (2) The contractor does not exercise the right to control over the performance of the work of the contractual employee. [*BPI Employees Union-Davao City-FUBU v. BPI*, G.R. No. 174912, July 24, 2013]

The first element is present here, as Style has no substantial capital or investment in engaging in the supply of services contracted out by Empire which is directly related to the marketing and promotion of its clothing line.

The second element is present as it is inevitable for Empire to direct the activities of the TMRs to properly market and promote its product line. The subsequent contract of Empire with Wave did not affect the regular employment of the TMRs with Empire as, through the Marketing Director of Empire, the TMRs were under the control of Empire. Thus, the five-month employment contract entered into by the TMRs with Wave did not divest them of their regular employment status with Empire. In addition, such scheme undermined the security of tenure of the TMRs which is constitutionally guaranteed, hence, the contract of the TMRs with Wave is void.

[b] Were the TMRs illegally dismissed by Wave? (2.5%)

SUGGESTED ANSWER:

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

28. 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%) (2015 Bar Question)

SUGGESTED ANSWER:

Yes. People Plus is a labor-only-contractor because it does not have substantial capital required by law. It also does not carry on an independent business in which it uses its own investment in the form of tools, equipment, machineries or work premises. Hence, it is just an agent or recruiter of workers who perform work directly related to the trade of Star Crafts. Since the two elements of labor-only contracting are present, Star Crafts is considered as the employer of the supplied workers.

b. Trilateral relationship

29. Tower Placement Agency supplies manpower to Lucas Candy Factory to do work usually necessary for work done at its factory. After working there for more than two years under the factory manager's supervision, the workers demanded that Lucas extend to them the same employment benefits that their directly hired workers enjoyed. Is their demand valid? (2011 Bar Question)
- a. Yes, since it was Lucas that actually hired and supervised them to work at its factory.
 - b. No, since the agency workers are not employees of the client factory.
 - c. Yes, since they have been working at the factory in excess of two years.
 - d. No, since it was the placement agency that got them their jobs.

SUGGESTED ANSWER:

(a) Yes, since it was Lucas that actually hired and supervised them to work at its factory.

c. Solidary liability

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

If the Labor Arbiter rules in favor of the complainants, choose the statement that best describes the extent of liabilities of Constant and Able. (1%) (2013 Bar Question)

- a. Constant and Able should be held solidarily liable for the unpaid wages and benefits, as well as backwages and separation pay, based on Article 109 of the Labor Code which provides that “every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code.”
- b. Constant and Able should be held solidarily liable for the unpaid wages and benefits, and should order Constant, as the worker’s direct employer, to be solely liable for the backwages and separation pay.
- c. Constant and Able should be held solidarily liable for the unpaid wages and benefits and the backwages since these pertain to labor standards benefits for which the employer and contractor are liable under the law, while Constant alone — as the actual employer — should be ordered to pay the separation pay.
- d. Constant and Able should be held solidarily liable for the unpaid wages and benefits, and Constant should be held liable for their backwages and separation pay unless Able is shown to have participated with malice or bad faith in the workers’ dismissal, in which case both should be held solidarily liable.
- e. The above statements are all inaccurate.

SUGGESTED ANSWER:

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

31. Is the contractor a necessary party in a case where labor contracting is the main issue and labor-only contracting is found to exist? (2012 Bar Question)
 - a. Yes, the contractor is necessary in the full determination of the case as he is the purported employer of the worker;
 - b. Yes, no full remedy can be granted and executed without impleading the purported contractor;
 - c. No, the contractor becomes a mere agent of the employer-principal in labor contracting;
 - d. No, the contractor has no standing in a labor contracting case.

SUGGESTED ANSWERS:

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

32. K is a legitimate contractor hired by G for six (6) months. On the third month, G remitted to K the salaries and wages of the employees. However, K absconded with the money leaving the employees unpaid. The disgruntled employees demanded from G the payment of their salaries. Is G liable? (2012 Bar Question)
 - a. No, because G has already remitted the employees’ salaries to K, validly excusing G from liability;
 - b. Yes, because he is jointly and solidarily liable for whatever monetary claims the employees may have against K;
 - c. Yes, because of the principle of "a fair day’s wage for a fair day’s work";
 - d. B and C.

SUGGESTED ANSWER:

(b) Yes, because he is jointly and solidarily liable for whatever monetary claims the employees may have against K. [*Article 106, Labor Code*]

SUGGESTED ALTERNATIVE ANSWER:

(d) B and C.

B. Termination by employer

33. 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 for in their employment contracts. After six months, the bank terminated their employment on the ground that their contract has expired. This prompted the workers to file with the labor arbiter a complaint for illegal dismissal. Will their action prosper? Why or why not? (5%) (2012 Bar Question)

SUGGESTED ANSWER:

No. An employment contract with a fixed term terminates by its own terms at the end of such period. The same is valid if the contract was entered into by the parties on equal footing and the period specified was not designed to circumvent the security of tenure of the employees. [*Brent School v. Zamora, G.R. No. L-48494, February 5, 1990*]

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

SUGGESTED ANSWERS:

(A) whether he has a cause of action

Lionel has a cause of action; he was illegally dismissed. An employee can only be dismissed for just or authorized cause and only after procedural due process is observed. Refusal of a promotion is not a just or authorized cause for termination of employment. There is no law that compels an employee to accept promotion [*Dosch v. NLRB, et al., G.R. No. L-51182, July 5, 1983*]. Also, the employer did not observe the requirements of procedural due process which include two written notices to the employee and a chance for the employee to be heard.

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

No, as a foreign national, Lionel needed an alien permit before he could be employed in the Philippines. It has been held that an alien who did not acquire the required permit to work in the Philippines before being employed in the Philippines cannot seek relief from Philippine courts. [*WPP Marketing Communications, Inc.*]

et al. vs. Jocelyn M. Galera/Jocelyn M. Galera vs. WPP Marketing Communications, Inc. et al., G.R. No. 169207/G.R. No. 169239, March 25, 2010]

(C) what are his chances of winning

Lionel has very little chance of winning given that the Supreme Court has held that an alien who did not acquire the required permit to work in the Philippines before being employed in the Philippines cannot seek relief from Philippine courts.

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

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

SUGGESTED ANSWER:

(a) Serious Misconduct [*Tirazona vs. PET, Inc., G.R. No. 169712, March 14, 2008*], (b) Gross and habitual neglect of duties, and (d) Fraud or willful breach of trust

1. Just causes

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

SUGGESTED ANSWER:

The Labor Code provides for the termination of the services of an employee for just causes [*Article 296, Labor Code*]. An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
 - b. Gross and habitual neglect by the employee of his duties;
 - c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
 - d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
 - e. Other causes analogous to the foregoing.
- 37. Tess, a seamstress at Marikit Clothing Factory, became pregnant. Because of morning sickness, she frequently absented herself from work and often came to the factory only four (4) days a week. After two (2) months, the personnel manager told her that her habitual absences rendered her practically useless to the company and, thus, asked her to resign. She begged to be retained, citing her pregnancy as reason for her absences. Tess asked for leave of absence but her request was denied. She went on leave nevertheless. As a result, she was thus dismissed for going on leave without permission of management.**

Tess filed a complaint for illegal dismissal. The company's defense: she was legally dismissed because of her numerous absences without leave and not because of her pregnancy. On the other hand, Tess argues that her dismissal was an act of discrimination, based as it was on her

pregnancy which the company treated as a disease. Whose position is meritorious-the company's or Tess'? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The position of the company has no merit. Under the law, it shall be unlawful for any employer to discharge a woman on account of her pregnancy or while on leave due to her pregnancy [*Article 137 of the Labor Code*]. The denial by the employer of Tess' request for leave of absence is unreasonable given her pregnancy and her inability to report for work.

However, the position of Tess is also not meritorious given that there is no discrimination in the acts committed by the employer. There is also nothing which shows that her pregnancy was treated as a form of disease.

However, the dismissal remains illegal since the dismissal of Tess was clearly on account of her absences related to her pregnancy. This is prohibited by law.

- 38. Jim is the holder of a certificate of public convenience for a jeepney. He entered into a contract of lease with Nick, whereby they agreed that the lease period is for one (1) year unless sooner terminated by Jim for any of the causes laid down in the contract. The rental is thirty thousand pesos (P30,000.00) monthly. All the expenses for the repair of the jeepney, together with expenses for diesel, oil and service, shall be for the account of Nick. Nick is required to make a deposit of three (3) months to answer for the restoration of the vehicle to its good operating condition when the contract ends. It is stipulated that Nick is not an employee of Jim and he holds the latter free and harmless from all suits or claims which may arise from the implementation of the contract. Nick has the right to use the jeepney at any hour of the day provided it is operated on the approved line of operation.**

After five (5) months of the lease and payment of the rentals, Nick became delinquent in the payment of the rentals for two (2) months. Jim, as authorized by the contract, sent a letter of demand rescinding the contract and asked for the arrearages. Nick responded by filing a complaint with the NLRC for illegal dismissal, claiming that the contract is illegal and he was just forced by Jim to sign it so he can drive. He claims he is really a driver of Jim on a boundary system and the reason he was removed is because he failed to pay the complete daily boundary of one thousand (P1,000.00) for 2 months due to the increase in the number of tricycles. (2016 Bar Question)

[a] Jim files a motion to dismiss the NLRC case on the ground that the regular court has jurisdiction since the agreement is a lease contract. Rule on the motion and explain. (2.5%)

SUGGESTED ANSWER:

The motion to dismiss should be denied. Aside from the fact that a motion to dismiss is not allowed before the labor arbiter, it remains that the allegations of Nick's complaint determine the jurisdiction of the arbiter. Under the law, termination disputes such as Nick's claim for illegal dismissal are within the exclusive and original jurisdiction of the labor arbiters.

The Supreme Court has held jeepney drivers as employees of the owner of the jeepney. [*Jardin, et al. v. NLRC, G.R. No. 119268. February 23, 2000*]

[b] Assuming that Nick is an employee of Jim, was Nick validly dismissed?

SUGGESTED ANSWER:

No. Under the law, an employee's employment can only be terminated based on just or authorized cause and only after procedural due process is observed. In the case described, no cause under the Labor Code exists. Also, the requirements of procedural due process which include two written notices to the employee and a chance to be heard before being terminated are all absent. Without these requirements, Nick's dismissal is illegal.

- 39. Dion is an Accounting Supervisor in a trading company. He has rendered exemplary service to the company for 20 years. His co-employee and kumpadre, Mac, called him over the phone and requested him to punch his (Mac's) daily time card as he (Mac) was caught in a monstrous traffic jam. Dion acceded to Mac's request but was later caught by the Personnel Manager while punching Mac's time card. The company terminated the employment of Dion on the ground of misconduct. Is the dismissal valid and just? Explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

SUGGESTED ALTERNATIVE ANSWER:

I will decide in favor of Luisa, by granting nominal damages. To clarify, however, Luisa's dismissal is not illegal, for it has been held that failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency, as in this case, may constitute just cause for dismissal [*Illuminada, Buiser, et. al. v. Leogardo, Jr.*, G.R. No. L-63316, July 31, 1984]. Nonetheless, the employer's failure to comply with the procedure prescribed by law in terminating the services of the employee warrants the payment of nominal damages of Php30,000.00 [*Agabon v. NLRC*, G.R. No. 158693, November 17, 2004].

41. Lanz was a strict and unpopular Vice-President for Sales of Robinsons 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. Robinsons decided to terminate Lanz for committing a potential crime and other illegal acts prejudicial to business. Can Lanz be legally terminated by the company on these grounds? (2014 Bar Question)

SUGGESTED ANSWER:

Yes. The acts committed by Lanz constitute serious misconduct which is a just cause to terminate employment. For an act to be considered as serious misconduct, the employee must first, have committed misconduct or an improper or wrong conduct. And second, the misconduct or improper behavior is: (1) serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer. All these are present in the situation described, especially when Lanz shouted invectives against Lee and even called the latter a “brown monkey.”

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

In this situation, LMN's employees are entitled to _____ as separation pay. (1%) (2013 Bar Question)

- a. one-half month pay for every year of service
- b. one month pay for every year of service
- c. one-half month pay
- d. one month pay
- e. no separation pay at all

SUGGESTED ANSWER:

(e) no separation pay at all

43. 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%) (2013 Bar Question)

SUGGESTED ANSWER:

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

The Labor Code provides that an employer may terminate an employment for any serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representatives in connection with his work. [*Article 297, Labor Code*]

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

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

ALTERNATIVE ANSWER:

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. [*Article 297(e), Labor Code*]

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*, G.R. No. 193676/194303 [2012]]. Similarly, Jose’s offense perpetrated against his co-employees, Erica and Paolo, can be considered as a case analogous to serious misconduct.

(B) Assuming this time that Magna dismissed Jose from employment for cause and you are the *lanyer of Jose*, how would you argue the position that Jose’s dismissal was illegal? (4%) (2013 Bar Question)

SUGGESTED ANSWER:

The offense committed by Jose did not relate to the performance of his duties. For misconduct or improper behavior to be a just cause for dismissal, it (a) must be serious; (b) must relate to the performance of the employee’s duties; and (c) must show that the employee has become unfit to continue working for the employer.

On the basis of the 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*, G.R. No. 168637/ 170684 [2008]]

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

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

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

SUGGESTED ANSWER:

(b) A written notice to the DOLE at least thirty (30) days before the effectivity of termination;

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

- a. Void for denial of due process; hence, the employee should be reinstated;
- b. Void for lack. of due process, the employee should be paid full backwages;
- c. Valid, for the dismissal is with just/authorized cause, but the employer shall be liable for nominal damages;

- d. Valid, even if due process is not observed, hence reinstatement should not be ordered.

SUGGESTED ANSWER:

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

46. 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. (2012 Bar Question)

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

SUGGESTED ANSWER:

I will serve a written notice on both the workers and the Regional Office of the Department of Labor and Employment, at least one (1) month before the intended date of closure [*Article 298, Labor Code*]; and (2) provide proof of ABC's serious business losses or financial reverses [*Balasbas v. NLRC*, GR No. 85286, August 24, 1992].

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

SUGGESTED ANSWER:

No. Where closure is due to serious business losses, no separation pay is required. [*North Davao Mining Corp. v. NLRC*, G.R. No. 112546, March 13, 1996; *JAT General Services vs. NLRC*, G.R. No. 148340, January 26, 2004]

- c) If the reason for the closure is due to old age of the brothers and sisters 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 operating to simply maintain the workers in employment. [*San Pedro Hospital of Digos v. Secretary of Labor*, GR No. 104624, October 11, 1996; *Espina vs. CA*, G.R. NO. 164582, March 28, 2007]

- d) Are the employees entitled to separation benefits? (3%)

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 [*Article 298, Labor Code*].

47. Bugoy, an employee with only six (6) months of service, was dismissed due to redundancy. He is, under Art. 298 of the Labor Code, entitled to a separation pay of: (2012 Bar Question)

- a. One (1) month pay;
- b. One (1) year pay, Art. 283 of the Labor Code being explicit that "a fraction of at least six (6) months shall be considered one (1) whole year";
- c. Six (6) months pay;

- d. One (1) year and six (6) months pay, as Art. 4 of the Labor Code mandates that "(a)ll doubts in the implementation and interpretation of this Code xxx shall be resolved in favor of labor".

SUGGESTED ANSWER:

(a) One (1) month pay [*Article 298, Labor Code*]

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

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

SUGGESTED ANSWER:

(c) It should not be used as a subterfuge for causes which are improper, illegal or unjustified [*Solid Development Corp. Workers Association vs. Solid Development Corp., G.R. No. 165995, August 14, 2007*]

49. Which is NOT a guideline for the dismissal of an employee on the ground of "loss of confidence"? (2011 Bar Question)

- a. Loss of confidence may not be arbitrarily invoked in the face of overwhelming evidence to the contrary.
- b. Loss of confidence as cause of dismissal should be expressly embodied in written company rules.
- c. The employee holds a position of trust and confidence.
- d. Loss of confidence should not be simulated nor a mere afterthought to justify earlier action taken in bad faith.

SUGGESTED ANSWER:

(b) Loss of confidence as cause of dismissal should be expressly embodied in written company rules.

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

- a. No, "loss of confidence" as reason for dismissal does not apply to rank and file employees.
- b. No, "loss of confidence" applies only to confidential positions.
- c. Yes, "loss of confidence" is broad enough to cover all dishonest acts of employee.
- d. Yes, "loss of confidence" applies to employees who are charged with the care and custody of the employer's property.

SUGGESTED ANSWER:

(d) Yes, "loss of confidence" applies to employees who are charged with the care and custody of the employer's property.

51. An employee is NOT entitled to "financial assistance" in cases of legal dismissal when the dismissal (2011 Bar Question)

- a. is based on an offense reflecting the depraved character of the employee.
- b. is based on serious misconduct or breach of the employer's trust.
- c. is grounded on any of the just causes provided by the Labor Code.
- d. when the employee has less than 10 years of service.

SUGGESTED ANSWER:

(c) is grounded on any of the just causes provided by the Labor Code.

2. Authorized causes

- 52. Hagibis Motors Corporation (Hagibis) has 500 regular employees in its car assembly plant. Due to the Asian financial crisis, Hagibis experienced very low car sales resulting to huge financial losses. It implemented several cost-cutting measures such as cost reduction on use of office supplies, employment hiring freeze, prohibition on representation and travel expenses, separation of casuals and reduced work week. As counsel of Hagibis, what are the measures the company should undertake to implement a valid retrenchment? Explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

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

To justify retrenchment, losses must be: (1) substantial and not merely *de minimis* in extent, (2) reasonably imminent, (3) reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. [*Manatad v. Philippine Telegraph and Telephone Corporation*, G.R. No. 172363, March 7, 2008].

Hagibis should use fair and reasonable criteria, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers in ascertaining who would be dismissed and who would be retained among the employees.

- 53. Luisa Court is a popular chain of motels. It employs over 30 chambermaids who, among others, help clean and maintain the rooms. These chambermaids are part of the union rank-and-file employees which has an existing collective bargaining agreement (CBA) with the company. While the CBA was in force, Luisa Court decided to abolish the position of chambermaids and outsource the cleaning of the rooms to Malinis Janitorial Services, a bona fide independent contractor which has invested in substantial equipment and sufficient manpower. The chambermaids filed a case of illegal dismissal against Luisa Court. In response, the company argued that the decision to outsource resulted from the new management's directive to streamline operations and save on costs. If you were the Labor Arbiter assigned to the case, how would you decide? (2014 Bar Question)**

SUGGESTED ANSWER:

I will decide in favor of the chambermaids. 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" [*Article 259(c), Labor Code*]. Luisa Court's abolition and act of outsourcing the chambermaids' position are clearly acts of illegal dismissal.

SUGGESTED ALTERNATIVE ANSWER:

I will decide in favor of Luisa Court. It is within management prerogative to farm out any of the company activities [*BPI Employees Union-Davao City-FUBU (BPIEU-Davao City- FUBU) v. Bank of the Philippine Islands, et al.*, G.R. No. 174912, July 23, 2013].

54. Venus Department Store decided to contract out the security services that its 10 direct-hired full-time security guards provided. The company paid the men separation pay. With this move, the Store was able to cut costs and secure efficient outside professional security services. But the terminated security guards complained of illegal dismissal, claiming that regular jobs such as theirs could not be contracted out. Will their complaint prosper? (2011 Bar Question)
- No. The management has the right to contract out jobs to secure efficient and economical operations.
 - Yes. They should be reinstated or absorbed by the security agency as its employees.
 - No. They are estopped from demanding reinstatement after receiving their separation pay.
 - Yes. The company cannot contract out regular jobs such as they had.

SUGGESTED ANSWER:

(a) No. The management has the right to contract out jobs to secure efficient and economical operations.

55. A golf and country club outsourced the jobs in its food and beverage department and offered the affected employees an early retirement package of 1 ½ month's pay for each year of service. The employees who accepted the package executed quitclaims. Thereafter, employees of a service contractor performed their jobs. Subsequently, the management contracted with other job contractors to provide other services like the maintenance of physical facilities, golf operations, and administrative and support services. Some of the separated employees who signed quitclaims later filed complaints for illegal dismissal. Were they validly dismissed? (2011 Bar Question)
- Yes. The jobs were given to job contractors, not to labor-only contractors, and the dismissed employees received higher separation pay than the law required.
 - No. The outsourcing and the employment termination were invalid since the management failed to show that it suffered severe financial losses.
 - No. Since the outsourcing of jobs in several departments entailed the separation of many employees, the club needed the Secretary of Labor's approval of its actions.
 - No. Since the outsourced jobs were held by old-time regular employees, it was illegal for the club to terminate them and give the jobs to others.

SUGGESTED ANSWER:

(a) Yes. The jobs were given to job contractors, not to labor-only contractors, and the dismissed employees received higher separation pay than the law required.

56. Sampaguita Company wants to embark on a retrenchment program in view of declining sales. It identified five employees that it needed to separate. The human resource manager seems to recall that she has to give the five employees and the DOLE a 30-day notice but she feels that she can give a shorter notice. What will you advise her? (2011 Bar Question)
- Instead of giving a 30-day notice, she can just give a 30-day advanced salary and make the separation effective immediately.
 - So long as she gave DOLE a 30-day prior notice, she can give the employees a shorter notice.

- c. The 30-day advance notice to the employee and the DOLE cannot be shortened even with a 30-day advance salary.
- d. She can give a shorter notice if the retrenchment is due to severe and substantial losses.

SUGGESTED ANSWER:

(c) The 30-day advance notice to the employee and the DOLE cannot be shortened even with a 30-day advance salary.

57. A sugar mill in Laguna, capitalized at P300 million, suffered a P10,000.00 loss last year. This year it dismissed three young female employees who gave birth in the last three years. In its termination report to DOLE, the sugar mill gave as reason for the dismissal “retrenchment because of losses.” Did it violate any law? (2011 Bar Question)

- a. Yes, the law on retrenchment, the sugar mill’s losses not being substantial.
- b. Yes, the law against violence committed on women and children.
- c. No, except the natural law that calls for the protection and support of women.
- d. No, but the management action confirms suspicion that some companies avoid hiring women because of higher costs.

SUGGESTED ANSWER:

(a) Yes, the law on retrenchment, the sugar mill’s losses not being substantial.

3. Due process**a. Twin-notice requirement**

58. Give the procedure to be observed for validly terminating the services of an employee based on a just cause? (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Procedural due process mandates that the twin requirements of written notice and hearing should be present. The two notices are as follows:

The first written notice is given to the employee and specifies the ground or grounds of termination and gives the employee a reasonable opportunity within which to explain his side. It should contain a detailed narration of facts and circumstances that will serve as basis for the charge or specific causes or ground for termination against the employee as well as the possible sanctions which the employee faces.

The second written notice is given to the employee and informs the employee that upon due consideration of all the circumstances there is cause to justify his termination.

59. Pedro, a bus driver of Biyahe sa Langit Transport, was involved in a collision with a car, damaging the bus. The manager accused him of being responsible for the damage and was told to submit his written explanation within 48 hours. Pedro submitted his explanation within the period. The day after, Pedro received a notice of termination stating that he is dismissed for reckless driving resulting to damage to company property, effective immediately. Pedro asks you, as his counsel, if the company complied with the procedural due process with respect to dismissal of employees. (2016 Bar Question)

[a] Explain the twin notice and hearing rule. (2.5%)

SUGGESTED ANSWER:

The twin notice and hearing rule mandates that at least two written notices are given to the employee and a hearing conducted before an employee is terminated from employment. The two notices are as follows:

The first written notice is given to the employee and specifies the ground or grounds of termination and gives the employee a reasonable opportunity, at least 5 working days, within which to explain his side. It should contain a detailed narration of facts and circumstances that will serve as basis for the charge or specific causes or ground for termination against the employee as well as the possible sanctions which the employee faces.

A hearing is only necessary if it was asked or requested by an employee. In case it was requested, a summary hearing must be done by the employer where the employee must be afforded the opportunity to adduce evidence and present witnesses in his behalf.

The second written notice is given to the employee and informs the employee of the employer's decision, stating the facts, the analysis of the evidence and statement of witnesses and the law or policy which led to the decision.

[b] Did the Biyahe sa Langit Transport comply with the prior procedural requirements for dismissal? (2.5%)

SUGGESTED ANSWER:

No. The notice given by Biyahe sa Langit Transport did not give Pedro a minimum period of five (5) days to submit a written explanation. He was given only 48 hours to submit the same. The fact that he met the deadline did not cure the lapse committed by Biyahe sa Langit Transport. There being a violation of procedural due process, Biyahesa Langit Transport becomes liable for nominal damages even, assuming that there was a valid ground for dismissal.

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

- a. there is a strained employer-employee relationship
- b. the position of the employee no longer exists
- c. the employer's business has been closed
- d. the employee does not wish to be reinstated.

SUGGESTED ANSWER:

(b) the position of the employee no longer exists, (c) the employer's business has been closed, (d) the employee does not wish to be reinstated

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

- a. No, the employee's written explanation and written explanation of the other employees were sufficient basis for the employer to terminate his employment;
- b. Yes, because the employer did not abide by the two-notice rule;

- c. Yes, because he was not properly afforded the chance to explain his side in a conference;
- d. No, because the written notice of the cause of dismissal afforded him ample opportunity to be heard and defend himself, and the written notice of the decision to terminate him which states the reasons therefor, complies with the two-notice rule.

SUGGESTED ANSWER:

(d) No, because the written notice of the cause of dismissal afforded him ample opportunity to be heard and defend himself, and the written notice of the decision to terminate him which states the reasons therefor, complies with the two-notice rule.

62. An employee proved to have been illegally dismissed is entitled to reinstatement and full backwages computed on the basis of his (2011 Bar Question)

- a. basic salary plus the regular allowances and the thirteenth month pay.
- b. basic salary plus the salary CBA increases during the pendency of his case.
- c. basic salary plus the increases mandated by wage orders issued during the pendency of his case.
- d. basic salary at the time of dismissal.

SUGGESTED ANSWER:

(a) basic salary plus the regular allowances and the thirteenth month pay.

63. The employees' union in San Joaquin Enterprise continued their strike despite a return to work order from the Secretary of Labor. Because of this defiance, the employer dismissed the strikers. But the Labor Arbiter declared as illegal the dismissal of those whose commission of unlawful acts had not been proved. They were ordered immediately reinstated. The employer refused, however, to reinstate them on the ground that the rule on immediate reinstatement applies only to terminations due to just or authorized causes. Is the employer's refusal justified? (2011 Bar Question)

- a. No, every employee found to have been illegally dismissed is entitled to immediate reinstatement even pending appeal.
- b. Yes. The employer's refusal is legal and justified as a penalty for defying the secretary's lawful order.
- c. Yes, the rule on immediate reinstatement does not apply to employees who have defied a return-to-work order.
- d. No. The dismissal of the employees was valid; reinstatement is unwarranted.

SUGGESTED ANSWER:

(a) No, every employee found to have been illegally dismissed is entitled to immediate reinstatement even pending appeal.

b. Hearing**C. Termination by employee****1. Resignation versus constructive dismissal**

D. Preventive Suspension

64. 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%) (2015 Bar Question)

SUGGESTED ANSWER:

No. The preventive suspension of Karina is not valid. The employer may place an employee under preventive suspension if his/her continued employment would pose a serious and imminent threat to the life or property of the employer or of his/her co-employees. These requirements are not present here.

E. Reliefs from illegal dismissal

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

SUGGESTED ANSWER:

I will rule in favor of the employees. JKL factory merely suspended its operations as a result of the fire that gutted its factory. Article 301 of the Labor Code states that an employer may bona fide suspend the operation of its business for a period not exceeding six (6) months. In such a case, there would be no termination of the employment of the employees, but only a temporary displacement. Since, the suspension of work lasted more than six months, there is now constructive dismissal [*Sebuguero v. NLRC*, G.R. No. 115394 September 27, 1995].

F. Money claims arising from employer-employee relationship

66. Juanito initiated a case for illegal dismissal against Mandarin Company. The Labor Arbiter decided in his favor and ordered his immediate reinstatement with full backwages and without loss of seniority and other benefits. Mandarin Company did not like to allow him back in its premises to prevent him from influencing his co-workers to move against the interest of the company; hence, it directed his payroll reinstatement and paid his full backwages and other benefits even as it appealed to the NLRC.

A few months later, the NLRC reversed the ruling of the Labor Arbiter and declared that Juanito's dismissal was valid. The reversal ultimately became final.

May Mandarin Company recover the backwages and other benefits paid to Juanito pursuant to the decision of the Labor Arbiter in view of the reversal by the NLRC? Rule, with reasons. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

Mandarin cannot recover the backwages and other benefits paid to Juanito. The decision of the Labor Arbiter insofar as the reinstatement aspect is concerned is immediately executory pending appeal [*Felix v. Enertech Systems Industries Inc.*, G.R. No. 142007, March 28, 2001]. In fact, in one case, it was held that the order of the Labor Arbiter is self-executory; hence, it is the obligation of Mandarin to immediately admit Juanito back to work or reinstate him in the payroll [*Pioneer Texturizing v. NLRC*, G.R. No. 118651, October 16, 1997].

When Mandarin appealed the Labor Arbiter's decision to the NLRC, the employer-employee relationship between the former and Juanito never ceased; and his employment status remained uncertain until the NLRC reversed the decision, which became final.

Thus, the reinstatement salaries due to Juanito were, by their nature, payment of unworked backwages. These were salaries due to him because he was prevented from working despite the finding of the Labor Arbiter that he had been illegally dismissed. [*Wenphil v. Abing and Tuason*, G.R. No. 207983, April 7, 2014]

- 67. In a case for illegal dismissal and non-payment of benefits, with prayer for Damages, Apollo was awarded the following: 1) P200,000.00 as backwages; 2) P80,000.00 as unpaid wages; 3) P20,000.00 as unpaid holiday pay; 4) P5,000.00 as unpaid service incentive leave pay; 5) P50,000.00 as moral damages; and 6) P10,000.00 as exemplary damages. Attorney's fees of ten percent (10%) of all the amounts covered by items 1 to 6 inclusive, plus interests of 6% per annum from the date the same were unlawfully withheld, were also awarded. (2016 Bar Question)**

[a] Robbie, the employer, contests the award of attorney fees amounting to 10% on all the amounts adjudged on the ground that Article 111 of the Labor Code authorizes only 10% "of the amount of wages recovered". Rule on the issue and explain. (2.5%)

SUGGESTED ANSWER:

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

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

[b] Robbie likewise questions the imposition of interests on the amounts in question because it was not claimed by Apollo, and the Civil Code provision on interests does not apply to a labor case. Rule on the issue and explain. (2.5%)

SUGGESTED ANSWER:

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

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

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

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

As the company's retained legal counsel, how will you respond to Hector? (1%) (2013 Bar Question)

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

SUGGESTED ANSWER:

(d) I would not give him any legal advice because he is not my client.

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

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

Will the complaint prosper? (1%) (2013 Bar Question)

- a. Yes, because no just or authorized cause existed for the termination of her probationary employment.
- b. Yes, because under the Labor Code, Aleta became a regular employee after 6 months and she may not only be dismissed for cause.
- c. No, because there was no dismissal to speak of. Her employment was automatically terminated upon the expiration of her year-to-year fixed term employment.
- d. No, because BM Institute may dismiss its faculty members at will in the exercise of academic freedom.
- e. No, because Aleta was still on probationary employment.

SUGGESTED ANSWER:

(a) Yes, because no just or authorized cause existed for the termination of her probationary employment. [*Yolanda Mercado v. AMA Computer College*, G. R. No. 183572 [2010]]

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

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

SUGGESTED ANSWER:

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

G. Retirement

71. 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. (2012 Bar Question)

a. Is Dennis entitled to 13th month pay and service leave incentive pay? Explain.

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, the law excludes from the obligation of 13th Month Pay "Employers of those who are paid on xxx boundary basis" [*Sec. 3 (e) of the Rules and Regulations Implementing P.D. 851*]. On the other hand, "employees whose performance is unsupervised by the employer" are not entitled to Service Incentive Leave [*Sec. 1 (d), Rule V, Book III of the Omnibus Rules provides that those*]. A taxi driver paid under the Boundary System is an "unsupervised" employee.

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

SUGGESTED ANSWER:

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

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

Is she entitled to retirement pay from PQR? (1%) (2013 Bar Question)

- a. Yes, but only to one month pay.
- b. No, because she was not a regular employee.
- c. Yes, at the same rate as regular employees.
- d. No, because retirement pay is deemed included in her contracted per piece pay.
- e. No, because homeworkers are not entitled to retirement pay.

SUGGESTED ANSWER:

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

73. 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?
- b. Is he entitled to additional retirement benefits for the additional service he rendered after age 65? (2013 Bar Questions)

SUGGESTED ANSWERS:

(a) Yes, Albert should be considered a regular employee. Under the law, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer. Since Albert was performing the same work as before, his work is necessary or desirable to Beta's business and thus regular.

(b) No, he is not entitled. The law provides that an employee may retire upon reaching the age of 60 years but not beyond 65 years. Since Albert is beyond 65 years, he is not entitled to retirement benefits anymore. Another reason justifying the denial of Albert's claim for retirement benefits is that he already received his retirement pay when he turned 65 years old.

ALTERNATIVE ANSWER FOR (B):

Yes, he is entitled to additional retirement benefits. Under the law, an employee is entitled to retirement benefits after 60 years of age if he has rendered at least 5 years in the establishment. There is no prohibition against receiving retirement benefits another time provided that the employee rendered 5 years of service. Granting retirement benefits to Albert is also consistent with the aim of labor laws to favor the worker in pursuit of social justice.

74. How many years of service is the underground mine employees required to have rendered in order to be entitled to retirement benefits? (2012 Bar Question)
- a. 5;
 - b. 10;
 - c. 15;
 - d. 20.

SUGGESTED ANSWER:

(a) 5. [*Article 302, Labor Code*]

75. The Labor Code on retirement pay expands the term "one-half ($\frac{1}{2}$) month salary" because it means (2011 Bar Question)
- a. 15 days' pay plus $\frac{1}{12}$ th of the 13th month pay and $\frac{1}{12}$ th of the cash value of service incentive leave.
 - b. 15 days' pay plus $\frac{1}{12}$ th of the 13th month pay and the cash equivalent of five days service incentive leave.
 - c. 15 days pay plus a full 13th month pay.

- d. 15 calendar days' pay per year of service plus allowances received during the retirement year.

SUGGESTED ANSWER:

(b) 15 days' pay plus 1/12th of the 13th month pay and the cash equivalent of five days service incentive leave.

VII. Management Prerogative

1. 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 overall sales performance for the year, the company unilaterally decided to pay only a one month bonus in 2013. Is Lito's employer legally allowed to reduce the bonus? (2014 Bar Question)

SUGGESTED ANSWER:

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

SUGGESTED ALTERNATIVE ANSWER:

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

A. Discipline

2. 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%) (2015 Bar Question)

SUGGESTED ANSWER:

Matatag Insurance does not have to await the result of the criminal case before exercising its prerogative to dismiss. The employer may dismiss an employee for a just cause based on substantial evidence which is not the same as in a criminal case which needs proof beyond reasonable doubt to support a conviction. Hence, Rico's conviction need not precede the employee's dismissal.

B. Transfer of employees

3. 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. (2013 Bar Question)

A) Is Bobby's reinstatement pending appeal legally correct? (4%)

SUGGESTED ANSWER:

No. It is not legally correct. 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. Also, 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*, G.R. No. 159919, August 8, 2007]

ALTERNATIVE ANSWER:

No. Under Article 229 of the Labor Code, the reinstatement order of the Labor Arbiter which is immediately executory even pending appeal, should pertain to restoration to status quo ante. In the situation described, the reinstatement of Bobby ought to be to his former position which is in Tarlac.

B) Advise Bobby on the best course of action to take under the circumstances. (4%)

SUGGESTED ANSWER:

Bobby may file a complaint for constructive dismissal as his continued employment has become impossible, unreasonable, or unlikely, because of clear discrimination, insensibility, or disdain by the employer.

4. 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 %) (2015 Bar Question)

SUGGESTED ANSWER:

I will advise Din Din to file a complaint for illegal dismissal. Under the law, 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 one case, 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 [*Pfizer Inc. v. Velasco* G.R. No. 177467, March 9, 2011]. Hence, Din Din's dismissal is illegal.

C. Productivity standard**D. Bonus****E. Change of working hours**

5. 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%) (2015 Bar Question)

SUGGESTED ANSWER:

No. A change in work schedule is a management prerogative of LKG. The decision whether to allow overtime work or not is within management prerogative. Thus, Carding has no cause of action against LKG even if the hours of his overtime are decreased.

The Labor Code does not guarantee Carding a certain number of hours of overtime work [*Article 97, Labor Code*]. In fact, the Supreme Court held in one case that the basis of overtime claim is an employee's having been "permitted to work" [*Manila jockey Employees' Union v. Manila Jockey Club*, G.R. NO. 167760, March 7, 2007]. Otherwise, as in this case, such is not demandable.

F. Bona Fide Occupational Qualifications**G. Post-employment restrictions**

6. What are the requisites of a valid quitclaim? (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The requisites of a valid quitclaim are:

1. a fixed amount as full and final compromise settlement;
2. the benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount;

3. a statement that the employer has clearly explained to the employees in English, Filipino, or in the dialect known to the employees and that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law, and
4. a statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat, violence, intimidation, or undue influence exerted on their person.

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

VIII. Jurisdiction and Reliefs

A. Labor Arbiter

1. Inngo is a drama talent hired on a per drama “participation basis” by DJN Radio Company. He worked from 8:00 a.m. until 5:00 p.m., six days a week, on a gross rate of P80.00 per script, earning an average of P20,000.00 per month. Inngo filed a complaint before the Department of Labor and Employment (DOLE) against DJN Radio for illegal deduction, non-payment of service incentive leave, and 13th month pay, among others. On the basis of the complaint, the DOLE conducted a plant level inspection.

The DOLE Regional Director issued an order ruling that Inngo is an employee of DJN Radio, and that Inngo is entitled to his monetary claims in the total amount of P30,000.00. DJN Radio elevated the case to the Secretary of Labor who affirmed the order. The case was brought to the Court of Appeals. The radio station contended that there is no employer-employee relationship because it was the drama directors and producers who paid, supervised, and disciplined him. Moreover, it argued that the case falls under the jurisdiction of the NLRC and not the DOLE because Inngo’s claim exceeded PS,000.00. (2016 Bar Question)

- a) May DOLE make a prima facie determination of the existence of an employer-employee relationship in the exercise of its visitorial and enforcement powers? (2.5%)

SUGGESTED ANSWER:

Yes. The DOLE has the power to determine the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power. If there is employer-employee relationship, the DOLE exercises jurisdiction to the exclusion of NLRC. If there is no employer-employee relationship, the jurisdiction is with the NLRC. However, the findings of the DOLE may still be questioned through a petition for certiorari under Rule 65 of the Rules of Court. [*People’s Broadcasting Service vs. The Secretary of the Department of Labor and Employment*, G.R. No. 179652, March 6, 2012]

- b) If the DOLE finds that there is an employee-employer relationship, does the case fall under the jurisdiction of the Labor Arbiter considering that the claim of Inngo is more than P5,000.00. Explain. (2.5%)

SUGGESTED ANSWER:

No. In jurisprudence, the visitorial and enforcement powers of the Secretary, exercised through his representatives, encompass compliance with all labor standards laws and other labor legislation, regardless of the amount of the claims filed by workers; thus, even claims exceeding P5,000.00. [*Meteoro v. Creative Creatures, Inc.*, G.R. No. 171275, July 13, 2009]

2. 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. (2015 Bar Question)

- a) As the Labor Arbiter assigned to this case, how would you resolve the jurisdiction question. (3%)

SUGGESTED ANSWER:

The Labor Arbiter has jurisdiction over Carlo's illegal dismissal complaint as he was hired by Mario on a "salary and commission" basis. In jurisprudence, it was held that a worker who is paid on a salary plus commission basis is an employee [*Grepalife v. Judico*, G.R. No. 73887, December 21, 1989]. While regular courts have jurisdiction over Mario's corporate act of severing ties with Carlo, the Labor Arbiter has jurisdiction over Carlo's illegal dismissal complaint [*Article 217 A-2(2), Labor Code*].

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

SUGGESTED ANSWER:

Generally, corporate officers are not 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].

3. Lincoln was in the business of trading broadcast equipment used by television and radio networks. He employed Lionel as his agent. Subsequently, Lincoln set up Liberty Communications to formally engage in the same business. He requested Lionel to be one of the incorporators and assigned to him 100 Liberty shares. Lionel was also given the title Assistant Vice-President for Sales and Head of Technical Coordination. After several months, there were allegations that Lionel was engaged in "under the table dealings" and received "confidential commissions" from Liberty's clients and suppliers. He was, therefore, charged with serious misconduct and willful breach of trust, and was given 48 hours to present his explanation on the charges. Lionel was unable to comply with the 48- hour deadline and was subsequently barred from entering company

premises. Lionel then filed a complaint with the Labor Arbiter claiming constructive dismissal. Among others, the company sought the dismissal of the complaint alleging that the case involved an intra-corporate controversy which was within the jurisdiction of the Regional Trial Court (RTC).

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

SUGGESTED ANSWER:

I will deny the motion to dismiss. "Corporate officers" are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws. The Corporation Code enumerates three specific officers that in law are considered as corporate officers – the president, secretary and the treasurer. Lincoln is not one of them. There is likewise no showing that his position as Assistant Vice-President is a corporate officer in the company's by-laws. The Labor Arbiter therefore, has jurisdiction over the case [*Article 224 (a) (2), Labor Code*].

4. 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 for in their employment contracts. After six months, the bank terminated their employment on the ground that their contract has expired. This prompted the workers to file with the labor arbiter a complaint for illegal dismissal. Will their action prosper? Why or why not? (5%) (2012 Bar Question)

SUGGESTED ANSWER:

No. An employment contract with a fixed term terminates by its own terms at the end of such period. The same is valid if the contract was entered into by the parties on equal footing and the period specified was not designed to circumvent the security of tenure of the employees. [*Brent School v. Zamora, G.R. No. L-48494, February 5, 1990*]

5. On August 01, 2008, Y, a corporation engaged in the manufacture of textile garments, entered into a collective bargaining agreement with Union X in representation of the rank-and-file employees of the corporation. The CBA was effective up to June 20, 2011. The contract had an automatic renewal clause which would allow the agreement after its expiry date to still apply until both parties would have been able to execute a new agreement. On May 10, 2011, Union X submitted to Y's management their proposals for the negotiation of a new CBA. The next day, Y suspended negotiations with Union X since Y had entered into a merger with Z, a corporation also engaged in the manufacture of textile garments. Z assumed all the assets and liabilities of Y. Union X filed a complaint with the Regional Trial Court for Specific Performance and damages with a prayer for preliminary injunction against Y and Z and Z filed a Motion to Dismiss based on lack of jurisdiction. Rule on the Motion to Dismiss. (5%) (2012 Bar Question)

SUGGESTED ANSWER:

The Motion to Dismiss must be granted. The claim against Y and Z consists mainly of the civil aspect of the unfair labor practice charge referred to in Article 258 of the Labor Code which provides that "the civil aspects of all cases involving unfair labor practices, which may include claims for damages and other affirmative relief, shall be under the jurisdiction of the labor arbiters" [*National Union of Bank Employees vs. Lazaro GR No. 56431, January 19, 1988*]. Besides, what the parties have is a labor dispute as defined in the Labor Code "regardless of whether the disputants stand in the proximate relation of employer and employee" [*Article 219(1), Labor Code*].

6. The decision of the Labor Arbiter in a labor dispute is: (2012 Bar Question)
- immediately executory;
 - requires a writ of execution;
 - immediately executory insofar as the reinstatement of the employee is concerned;
 - stayed by the appeal of the employer and posting of appeal bond.

SUGGESTED ANSWER:

(c) immediately executory insofar as the reinstatement of the employee is concerned [*Article 229, Labor Code*]

7. In what instances do labor arbiters have jurisdiction over wage distortion cases? (2012 Bar Question)
- When jurisdiction is invoked by the employer and employees in organized establishments;
 - When the case is unresolved by Grievance Committee;
 - After the panel of voluntarily arbitrators has made a decision and the same is contested by either party;
 - In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMB.

SUGGESTED ANSWER:

(d) In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMB [*Article 124, Labor Code*]

8. Is a termination dispute a grievable issue? (2012 Bar Question)
- Yes, if the dismissal arose out of the interpretation or Implementation of the CBA;
 - No, once there's actual termination, the issue is cognizable by a Labor Arbiter;
 - Yes, it is in the interest of the parties that the dispute be resolved on the establishment level;
 - No, a voluntary arbitrator must take cognizance once termination is made effective

SUGGESTED ANSWER:

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

9. This process refers to the submission of the dispute to an impartial person for determination on the basis of the evidence and arguments of the parties. The award is enforceable to the disputants. (2012 Bar Question)
- Arbitration;
 - Mediation;
 - Conciliation;
 - Reconciliation.

SUGGESTED ANSWER:

(a) Arbitration.

10. Who has jurisdiction over a money claim instituted by an overseas Filipino worker? (2012 Bar Question)
- a. Labor Arbiter;
 - b. National Labor Relations Commission;
 - c. Labor Arbiter concurrently with the regular courts.;
 - d. National Labor Relations Commission concurrently with the regular courts.

SUGGESTED ANSWER:

(a) Labor Arbiter [*Section 10, Republic Act No. 8042*]

11. Pedring, Daniel, and Paul were employees of Delibakery who resigned from their jobs but wanted to file money claims for unpaid wages and 13th month pay. Pedring's claim totals P20,000.00, Daniel's P3,000.00, and Paul's P22,000.00. Daniel changed his mind and now also wants reinstatement because he resigned only upon the instigation of Pedring and Paul. Where should they file their claims? (2011 Bar Question)
- a. With the DOLE regional director for Pedring and Paul's claims with no reinstatement; with the labor arbiter for Daniel's claim with reinstatement.
 - b. With the Office of the Regional Director of the Department of Labor for all claims to avoid multiplicity of suits.
 - c. With a labor arbiter for all three complainants.
 - d. With the DOLE Regional Director provided they are consolidated for expediency.

SUGGESTED ANSWER:

(c) With a labor arbiter for all three complainants.

12. Quiel, a househelper in the Wilson household since 2006, resigned from his job for several reasons. One reason was the daily 12-hour workday without any rest day. When he left his job he had unpaid wages totaling P13,500.00 which his employer refused to pay. He wants to claim this amount though he is not interested in getting back his job. Where should he file his claim? (2011 Bar Question)
- a. He should file his claim with the DSWD, which will eventually endorse it to the right agency
 - b. Since he has no interest in reinstatement, he can file his claim with the office of the regional director of the Department of Labor.
 - c. He should file his claim exceeding P5,000.00 with the office of the labor arbiters, the regional arbitrators representing the NLRC.
 - d. He should go to the Employee's Compensation Commission.

SUGGESTED ANSWER:

C. He should file his claim exceeding P5,000.00 with the office of the labor arbiters, the regional arbitrators representing the NLRC.

UPDATED ANSWER:

Under the Kasambahay Law (R.A. No. 10361), the complaint should be filed with the regional director.

13. 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. (2009 Bar Question)

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

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. The law reads:

"Money Claims.- Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages." [*Section. 10, Republic Act No. 8042*]

[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.

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

14. Can a dispute falling within the exclusive jurisdiction of the Labor Arbiter be submitted to voluntary arbitration? Why or why not? (3%). (2008 Bar Question)

SUGGESTED ANSWER:

Yes. A labor dispute falling within the exclusive jurisdiction of a Labor Arbiter may be submitted to voluntary arbitration. Any or all disputes under the exclusive and original jurisdiction of the Labor Arbiter, may be submitted for voluntary arbitration by a Voluntary Arbitrator by agreement of the parties. [*Article 275, Labor Code*]

15. Cite two instances when an order of execution may be appealed. (2007 Bar Question)

SUGGESTED ANSWER:

An Order of Execution may be appealed:

1. Where the Order of Execution varies or goes beyond the terms of the judgment it seeks to enforce or the terms of the judgment are ambiguous [*DBP v. Union Bank*, G.R. No. 155838, January 13, 2004];
2. Where the implementation of the Order was irregular [*Metrobank v. C.A.*, G.R. No. 110147, April 17, 2001].

ALTERNATIVE ANSWER:

1. When its execution becomes impossible or unjust, it may be modified or altered on appeal or harmonize the same with justice and the facts. [*Torres v. NLRC*, G.R. No. 107014, April 12, 2000].
2. Supervening events may warrant modification in the execution of the judgment, as when reinstatement is no longer possible because the position was abolished as a cost-cutting measure due to losses. [*Abalos v. Philex Mining Corp.*, G.R. No. 140374, November 27, 2002].

16. May a decision of the Labor Arbiter, which has become final and executory be novated through a compromise agreement of the parties? (2007 Bar Question)

SUGGESTED ANSWER:

Yes. Although the Labor Code requires the Labor Arbiter to exert all efforts to amicably settle the case before him “on or before the first hearing” [*Article 227, Labor Code*], it must be noted that neither the Labor Code nor its implementing rules as well as the NLRC Rules prohibit the amicable settlement of cases during the pendency of the proceedings or after a judgment is issued thereupon.

The established rule is that the compromise agreement or amicable settlement may still be made even after the judgment has become final and executory.

FIRST ALTERNATIVE ANSWER:

Yes, provided that the same is not unconscionable, and the agreement was approved by the Labor Arbiter, the NLRC or the Court of Appeals, before whom the case is pending.

SECOND ALTERNATIVE ANSWER:

Yes, provided that the new agreement is not tainted with fraud, duress or undue influence.

17. Procedurally, how do you stay a decision, award or order of the Labor Arbiter? Discuss fully. (2007 Bar Question)

SUGGESTED ANSWER:

Decisions, awards, or orders of the Labor Arbiter may be stayed by the filing of an appeal to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.

In case of appeal of a LA’s judgment involving a monetary award, it may only be stayed upon the posting of a 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. [*Article 229, Labor Code*]

ALTERNATIVE ANSWER:

By perfecting an appeal, through the filing an Appeal Memorandum within 10 days from receipt of such decision, verified by the appellant and accompanied by his certification of non-forum shopping, proof of service on the other party, proof of payment of the appeal fee and cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from. Reinstatement is immediately executory. *[Article 229, Labor Code]*

- 18. 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. (2007 Bar Question)**

SUGGESTED ANSWER:

Yes. Non-lawyers can appear before the NLRC or Labor Arbiters

1. if they represent themselves,
2. if they represent their legitimate labor organization or members thereof,
3. if they are duly accredited members of the legal aid office recognized by the DOJ or IBP *[Article 228, Labor Code]*.

Non-lawyers cannot charge attorney's fees because the latter presuppose the existence of attorney-client relationship which exists only if the representative is a lawyer. *[PAFLU v. BISCOP, G.R. No. L-23959, November 29, 1971]*

ALTERNATIVE ANSWER:

Yes, non-lawyers may appear before the labor arbiter or the NLRC but only in the following instances:

1. if they represent themselves, or
2. if they represent their organization or members thereof *[Article 228, Labor Code]*, provided that he presents a verified certification from the said organization that he is properly authorized;
3. he is duly accredited member of any legal aid office duly recognize by the DOJ or the IBP *[Kamlaon Construction Enterprises v. NLRC, G.R. No. 126625, September 18, 1997]*.

Non-lawyers cannot charge attorney's fees because the latter presuppose the existence of attorney-client relationship which exists only if the representative is a lawyer *[PAFLU v. BISCOP, G.R. No. L-23959, November 29, 1971]*.

B. National Labor Relations

- 19. The jurisdiction of the National Labor Relations Commission does not include: (2014 Bar Question)**
- a. exclusive appellate jurisdiction over all cases decided by the Labor Arbiter
 - b. exclusive appellate jurisdiction over all cases decided by Regional Directors or hearing officers involving the recovery of wages and other monetary claims and benefits arising from employer-employee relations where the aggregate money claim of each does not exceed five thousand pesos (Php5,000)
 - c. original jurisdiction to act as a compulsory arbitration body over labor disputes certified to it by the Regional Directors
 - d. power to issue a labor injunction

SUGGESTED ANSWER:

(c) original jurisdiction to act as a compulsory arbitration body over labor disputes certified to it by the Regional Directors [*Article 129, Labor Code*].

20. Jim is the holder of a certificate of public convenience for a jeepney. He entered into a contract of lease with Nick, whereby they agreed that the lease period is for one (1) year unless sooner terminated by Jim for any of the causes laid down in the contract. The rental is thirty thousand pesos (P30,000.00) monthly. All the expenses for the repair of the jeepney, together with expenses for diesel, oil and service, shall be for the account of Nick. Nick is required to make a deposit of three (3) months to answer for the restoration of the vehicle to its good operating condition when the contract ends. It is stipulated that Nick is not an employee of Jim and he holds the latter free and harmless from all suits or claims which may arise from the implementation of the contract. Nick has the right to use the jeepney at any hour of the day provided it is operated on the approved line of operation.

After five (5) months of the lease and payment of the rentals, Nick became delinquent in the payment of the rentals for two (2) months. Jim, as authorized by the contract, sent a letter of demand rescinding the contract and asked for the arrearages. Nick responded by filing a complaint with the NLRC for illegal dismissal, claiming that the contract is illegal and he was just forced by Jim to sign it so he can drive. He claims he is really a driver of Jim on a boundary system and the reason he was removed is because he failed to pay the complete daily boundary of one thousand (P1,000.00) for 2 months due to the increase in the number of tricycles. (2016 Bar Question)

[a] Jim files a motion to dismiss the NLRC case on the ground that the regular court has jurisdiction since the agreement is a lease contract. Rule on the motion and explain. (2.5%)

SUGGESTED ANSWER:

The motion to dismiss should be denied. Aside from the fact that a motion to dismiss is not allowed before the labor arbiter, it remains that the allegations of Nick's complaint determine the jurisdiction of the arbiter. Under the law, termination disputes such as Nick's claim for illegal dismissal are within the exclusive and original jurisdiction of the labor arbiters.

The Supreme Court has held jeepney drivers as employees of the owner of the jeepney. [*Jardin, et al. v. NLRC, G.R. No. 119268, February 23, 2000*]

[b] Assuming that Nick is an employee of Jim, was Nick validly dismissed?

SUGGESTED ANSWER:

No. Under the law, an employee's employment can only be terminated based on just or authorized cause and only after procedural due process is observed. In the case described, no cause under the Labor Code exists. Also, the requirements of procedural due process which include two written notices to the employee and a chance to be heard before being terminated are all absent. Without these requirements, Nick's dismissal is illegal.

21. The Secretary of Labor and Employment or his duly authorized representative, including labor regulations officers, shall have access to employer's records and premises during work hours. Why is this statement an inaccurate statement of the law? (2011 Bar Question)

- a. Because the power to inspect applies only to employer records, not to the premises.
- b. Because only the Secretary of Labor and Employment has the power to inspect, and such power cannot be delegated.
- c. Because the law allows inspection anytime of the day or night, not only during work hours.
- d. Because the power to inspect is already delegated to the DOLE regional directors, not to labor regulations officers.

SUGGESTED ANSWER:

(c) Because the law allows inspection anytime of the day or night, not only during work hours.

22. Jose Lovina had been member of the board of directors and Executive Vice President of San Jose Corporation for 12 years. In 2008, the San Jose stockholders did not elect him to the board of directors nor did the board reappoint him as Executive Vice President. He filed an illegal dismissal complaint with a Labor Arbiter. Contending that the Labor Arbiter had no jurisdiction over the case since Lovina was not an employee, the company filed a motion to dismiss. Should the motion be granted? (2011 Bar Question)

- a. No, the Labor Arbiter has jurisdiction over all termination disputes.
- b. Yes, it is the NLRC that has jurisdiction over disputes involving corporate officers.
- c. No, a motion to dismiss is a prohibited pleading under the NLRC Rules of Procedure.
- d. Yes, jurisdiction lies with the regular courts since the complainant was a corporate officer.

SUGGESTED ANSWER:

(d) Yes, jurisdiction lies with the regular courts since the complainant was a corporate officer.

C. Judicial review of labor rulings

D. Bureau of Labor Relations

23. Which of the following is cognizable by the Bureau of Labor Relations Med-Arbiters? (2012 Bar Question)
- a. Unfair labor practice for violation of the CBA filed by the Workers Union of Company X against Company X;
 - b. Claim for back wages filed by overseas contract worker Xena against her Saudi Arabian employer;
 - c. Contest for the position of MG Union President brought by Ka Joe, the losing candidate in the recent union elections;
 - d. G contesting his removal as Chief Executive Officer of Company Z.

SUGGESTED ANSWER:

(c) Contest for the position of MG Union President brought by Ka Joe, the losing candidate in the recent union elections. [*Article 232, Labor Code*]

E. National Conciliation and Mediation Board

24. How sacrosanct are statements/data made at conciliation proceedings in the Department of Labor and Employment? What is the philosophy behind your answer? (2007 Bar Question)

SUGGESTED ANSWER:

It is sacrosanct as privilege communication. This is so because information and statements at conciliation proceedings cannot be used as evidence in the NLRC. Conciliators and similar officials cannot testify in any court or body regarding any matter taken up at conciliation proceedings conducted by them. [*Article 239, Labor Code*]

This is to enable the conciliator to ferret out all the important facts of the controversy which the parties may be afraid to divulge if the same can be used against them.

25. Distinguish the terms “conciliation,” “mediation” and “arbitration”. (3%) (2010 Bar Question)**SUGGESTED ANSWER:**

(1) Conciliation is the process of dispute management whereby parties in dispute are brought together for the purpose of: (1) amicably settling the case upon a fair compromise; (2) determining the real parties in interest; (3) defining and simplifying the issues in the case; (4) entering into admissions or stipulations of facts; and (5) threshing out all other preliminary matters [*Section 3, Rule V, 2005 NLRC Rules of Procedure*].

(2) Mediation is a voluntary process of settling dispute whereby the parties elect a mediator to facilitate the communication and negotiation between the parties in dispute for the purpose of assisting them in reaching a compromise [*Sec. 3(q), Rep. Act No. 9285 or the Alternative Dispute Resolution Law*].

(3) Arbitration is a system of dispute settlement that may be compulsory or voluntary, whereby the parties are compelled by the government, or agree to submit their dispute before an arbiter, with the intention to accept the resolution of said arbiter over the dispute as final and binding on them [*Luzon Development Bank v. Association of Luzon Development Employees, G.R. No. 120319, October 6, 1995*].

In this jurisdiction, compulsory arbitration in labor disputes are submitted to a labor arbiter, whose powers and functions are clearly defined under the Labor Code [*Article 224(a), 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 the Labor Code [*Article 273-275, Labor Code*].

F. DOLE Regional Directors

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

a) Was *Liwanag* Corporation's action valid?

SUGGESTED ANSWER:

No. *Liwanag* Corporation cannot outrightly declare the defiant strikers to have lost their employment status. The strikers are entitled to due process protection under the Labor Code [*Article 292(b), Labor Code*]. Nothing in the Code authorizes immediate dismissal of those who commit illegal acts during a strike [*Stamford Marketing Corp. v. Julian, G.R. NO. 145496, February 24, 2004; Suico v. NLRC, G.R. No. 146762, January 30, 2007*].

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

SUGGESTED ANSWER:

File a case for illegal dismissal [*Article 224 (a) (2), Labor Code*].

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

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

SUGGESTED ANSWER:

(b) DOLE Regional Director. [*Kasambahay Law, Republic Act No. 10361*]

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

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

SUGGESTED ANSWER:

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

29. 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 grounds, 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 of 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%) (2013 Bar Question)

SUGGESTED ANSWER:

No. The power of the Secretary of Labor under Article 278(g) is plenary. He can rule on all issues, questions or controversies arising from the labor dispute, including the legality of the strike, even those over which the Labor Arbiter has exclusive jurisdiction. [*Bagong Pagkakaisa ng mga Manggagawa sa Triumph International v. Secretary*, G.R. Nos. 167401 and 167407, July 5, 2010]

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

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

SUGGESTED ANSWER:

(c) The issues raised should have been verifiable during the inspection. [*SSK Parts Corporation vs. Camas*, G.R. No. 85934, January 30, 1990; *Article. 128 (b), Labor Code*].

31. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)

x x x x x x x x x x x

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 standards laws can be exercised even when the individual claims exceed P5,000.00. The authority under Article 128 may be exercised regardless of the monetary value involved.

G.DOLE Secretary

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

- a. Yes, he can file an appeal before the Court of Appeals via a Petition for Certiorari under rule 65;

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

SUGGESTED ANSWERS:

(a) Yes, he can file an appeal before the Court of Appeals via a Petition for Certiorari under rule 65. [*NFL vs. Laguesma*, G.R. No. 123426 March 10, 1999]

- 33. Savoy Department Store (SDS) adopted a policy of hiring salesladies on five-month cycles. At the end of a saleslady's five-month term, another person is hired as replacement. Salesladies attend to store customers, wear SDS uniforms, report at specified hours, and are subject to SDS workplace rules and regulations.**

Those who refuse the 5-month employment contract are not hired. The day after the expiration of her 5-month engagement, Lina wore her SDS white and blue uniform and reported for work but was denied entry into the store premises. Agitated, she went on a hunger strike and stationed herself in front of one of the gates of SDS. Soon thereafter, other employees whose 5-month term had also elapsed joined Lina's hunger strike. (2008 Bar Question)

(a) 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 in favor of Lina, et. al. In jurisprudence, 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. [*PNOC-Energy Development Corporation v. NLRC*, G.R. No. 97747, March 31, 1993]

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]

(b) 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:

I will deny the letter-request of SDS because its business is not indispensable to the national interest. Although the Secretary of Labor has a wide latitude of discretion in deciding whether or not to assume

jurisdiction over a labor dispute or certify the same to the NLRC for compulsory arbitration, SDS's business is clearly not one which is indispensable to the national interest. Moreover, the grounds relied upon by SDS, to wit: "eyesore and disruptive of its business", betrays the weakness of its case.

Also, as Secretary of Labor, I could not assume jurisdiction over the hunger strike, simply because there is no strike to speak of. Lina and the others had already been terminated when they staged their concerted action, hence there was no temporary stoppage of work at SDS.

(c) 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 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 representative 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 [*Article 128, Labor Code; V.L. Enterprises and/or Visitacion v. CA, G.R. No. 167512, March 12, 2007*].

H. Grievance machinery

- 34. Company C, a toy manufacturer, decided to ban the use of cell phones in the factory premises. In the pertinent Memorandum, management explained that too much texting and phone-calling by employees disrupted company operations. Two employees-members of Union X were terminated from employment due to violation of the memorandum-policy. The union countered with a prohibitory injunction case (with prayer for the issuance of a temporary- restraining order) filed with the Regional Trial Court, challenging the validity and constitutionality of the cell phone ban. The company filed a motion to dismiss, arguing that the case should be referred to the grievance machinery pursuant to an existing Collective Bargaining Agreement with Union X, and eventually to Voluntary Arbitration. Is the company correct? Explain. (3%) (2010 Bar Question)**

SUGGESTED ANSWER:

Yes. Termination cases arising in or resulting from the interpretation and implementation of collective bargaining agreements, and interpretation and enforcement of company personnel policies which were initially processed at the various steps of the plant-level Grievance Procedures under the parties collective bargaining agreements, fall within the original and exclusive jurisdiction of the voluntary arbitrator [*Article 224 (c) and Article 274 of the Labor Code*].

ALTERNATIVE ANSWER:

No. The Regional Trial Court has jurisdiction to hear and decide the prohibitory injunction case filed by Union X against Company C to enjoin the latter from implementing the memorandum-policy against use

of cell phones in the factory. What is at issue is the union'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 [*Haliguesla v. PAL*, G.R. No. 172013, October 2, 2009].

I. Voluntary arbitration

35. State the jurisdiction of the Voluntary Arbitrator, or Panel of Voluntary Arbitrators in labor disputes? (4%) (2017 Bar Question)

SUGGESTED ANSWER:

The jurisdiction of the Voluntary Arbitrator, or Panel of Voluntary Arbitrators in labor disputes is provided in the Labor Code [*Article 274, Labor Code*]. The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article.

Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

ALTERNATIVE ANSWER:

Under the Labor Code, the jurisdiction of Voluntary Arbitrators or Panel of Voluntary Arbitrators are:

- a) original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement [*Article 274, Labor Code*];
- b) those arising from the interpretation or enforcement of company personnel policies [*Id.*];
- c) upon agreement of the parties, jurisdiction to hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks [*Article 275, Labor Code*].

36. (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%) (2015 Bar Question)

SUGGESTED ANSWER:

The agreement is valid because the preferred mode of settling labor disputes is through voluntary modes, like voluntary arbitration. The agreement is consistent with Sec. 3, Art. XIII of the Constitution. Moreover, the Labor Code authorizes a voluntary arbitrator to hear and decide by agreement of the parties, all other labor disputes [*Article 275, Labor Code*].

(B) XYZ Company and XYZ Employees Union (XYZEU) reach a deadlock in their negotiation for a new collective bargaining agreement (CBA). XYZEU files a notice of strike; XYZ Company proposes to XYZEU that the deadlock be submitted instead to voluntary arbitration.

If you are counsel for XYZEU, what advice would you give the union as to the: (1) propriety of the request of XYZ Company, and (2) the relative advantages/disadvantages between voluntary arbitration and compulsory arbitration? (4%) (2015 Bar Question)

SUGGESTED ANSWER:

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.

The advantages of voluntary arbitration are:

1. the parties' dispute is heard and resolved by a person whom both parties have chosen as their arbitrator; hence, likely to be impartial;
2. 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
3. in the event of a challenge, the decision is elevated to the CA and then to the SC, i.e., less one layer of appeal because the NLRC is out of the way.

The disadvantages of voluntary arbitration are:

1. 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
2. in case of enforcement of judgment, the Voluntary Arbitrator has no sheriff to enforce it.

The advantages of compulsory arbitration are:

1. subject to pre-litigation mediation, a case can be initiated through the filing of a verified complaint by a union member, unlike in voluntary arbitration where the Voluntary Arbitrator acquires jurisdiction primarily through a submission agreement. In a case where the company is unwilling, the EBR (and only the EBR) may serve a notice to arbitrate; hence, a union member may be left out in the process if the EBR does not serve that notice;
2. a monetary award is secured with the employer's appeal bond; and;
3. there is a system of restitution in compulsory arbitration.

The disadvantages of compulsory arbitration are:

1. State interference with the affairs of labor and management is maximized, disregarding the inter-party nature of the relationship; and
2. The system of appeals entails a longer process.

37. **The State has a policy of promoting collective bargaining and voluntary arbitration as modes of settling labor disputes. To this end, the voluntary arbitrator's jurisdiction has not been limited to interpretation and implementation of collective bargaining agreements and company personnel policies. It may extend to "all other labor disputes," provided (2011 Bar Question)**

- a. the extension does not cover cases of union busting.
- b. the parties agreed to such extended jurisdiction.
- c. the parties are allowed to appeal the voluntary arbitrator's decision.
- d. the parties agreed in their CBA to broaden his jurisdiction.

SUGGESTED ANSWER:

(b) the parties agreed to such extended jurisdiction.

38. **The parties to a labor dispute can validly submit to voluntary arbitration _____. (1%) (2013 Bar Question)**

- a. any disputed issue they may agree to voluntarily arbitrate
- b. only matters that do not fall within the exclusive jurisdiction of the Labor Arbiter

- c. any disputed issue but only after conciliation at the National Conciliation and Mediation Board fails
- d. any disputed issue provided that the Labor Arbiter has not assumed jurisdiction over the case on compulsory arbitration
- e. only matters relating to the interpretation or implementation of a collective bargaining agreement.

SUGGESTED ANSWER:

- (a) any disputed issue they may agree to voluntarily arbitrate.

BASIS: Article 275 of the Labor Code. The Voluntary Arbitrator, upon agreement of the parties, can assume jurisdiction over the dispute.

39. Can a dispute falling within the jurisdiction of a voluntary arbitrator be submitted to compulsory arbitration? Why or why not? (3%) (2008 Bar Question)

SUGGESTED ANSWER:

A dispute falling within the jurisdiction of a voluntary arbitrator can be submitted to compulsory arbitration. This situation can arise when the Secretary of Labor and Employment has assumed jurisdiction over a labor dispute in an industry indispensable to the national interest. In the foregoing situation, in accordance with applicable Supreme Court decisions, the Secretary of Labor and Employment shall also assume jurisdiction over subsequent labor cases involving the same establishment, including those that maybe resolved by a Voluntary Arbitrator.

ALTERNATIVE SUGGESTED ANSWER:

No. A dispute falling within the jurisdiction of a Voluntary Arbitrator cannot be submitted for compulsory arbitration. Under the Labor Code, only the following disputes can be submitted for compulsory arbitration:

1. Labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest; and
2. Strikes and lockouts in hospitals, clinics, and similar medical institutions. [*Article 278(g), Labor Code*]

40. What issues or disputes may be the subject of voluntary arbitration under the Labor Code? (4%) (2008 Bar Question)

SUGGESTED ANSWER:

Disputes or issues subject to Voluntary Arbitration:

1. all unresolved grievances arising from the implementation or interpretation of the CBA after exhaustion of the grievance procedure;
2. all unresolved grievances arising from the implementation or interpretation of company personnel policies;
3. all wage distortion issues arising from the application of any wage orders in organized establishments;
4. all unresolved grievances arising from the interpretation and implementation of productivity incentive programs under R.A. 6971;
5. upon agreement of the parties, all other labor disputes including unfair labor practices and bargaining deadlocks.

J. Prescription of actions

1. Money claims

41. If he has money claims against DEF Corp., he can make the claim without any legal bar within _____. (1%) (2013 Bar Question)
- a. three (3) years
 - b. four (4) years
 - c. five (5) years
 - d. six (6) years
 - e. ten (10) years

SUGGESTED ANSWER:

(a) three (3) years. [*Article 297, Labor Code*]

2. Illegal dismissal

42. He can file a complaint for illegal dismissal without any legal bar within _____. (2013 Bar Question)
- a. three (3) years
 - b. four (4) years
 - c. five (5) years
 - d. six (6) years
 - e. ten (10) years

SUGGESTED ANSWER:

(b) four (4) years. [*Article 1146, Civil Code*]

3. Unfair labor practice

4. Offenses under the Labor Code

43. What is the prescriptive period of all criminal offenses penalized under the Labor Code and the Rules Implementing the Labor Code? (2012 Bar Question)
- a. 3 years;
 - b. 4 years;
 - c. 5 years;
 - d. 10 years.

SUGGESTED ANSWER:

(a) 3 years [*Article 290, Labor Code*]

5. Illegal recruitment

FREQUENTLY ASKED TOPICS (2007 - 2017)

TOPIC				No. of Times Asked
JURISDICTION AND RELIEFS	Labor Arbiter			18
POST-EMPLOYMENT	Termination by employer	Just causes		16
LABOR RELATIONS	Peaceful concerted activities	Strikes		12
POST-EMPLOYMENT	Employer-employee relationship	Tests to determine existence		10
GENERAL PROVISIONS	Constitutional and Civil Code provisions relating to Labor Law			8
LABOR STANDARDS	Wages	Payment of wages		8
LABOR RELATIONS	Right to self-organization			8
LABOR RELATIONS	Rights of labor organizations	Collective bargaining		8
LABOR STANDARDS	Conditions of employment	Hours of work	Overtime work	7
LABOR STANDARDS	Wages			6
LABOR STANDARDS	Wages	Non-dimution of benefits		6
LABOR STANDARDS	Special groups of employees	<i>Kasambahay</i> (RA 10361)		6
LABOR STANDARDS	Special groups of employees	Apprentices and learners		6
POST-EMPLOYMENT	Termination by employer	Authorized causes		6
POST-EMPLOYMENT	Termination by employer	Due process	Twin-notice requirement	6
POST-EMPLOYMENT	Retirement			6
JURISDICTION AND RELIEFS	DOLE Regional Directors			6
JURISDICTION AND RELIEFS	Voluntary arbitration			6
PRE-EMPLOYMENT	Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)	Illegal recruitment and other prohibited activities		5
SOCIAL WELFARE LEGISLATION	SSS Law (RA 8262)	Coverage and exclusions		5
LABOR RELATIONS	Right to self-organization	Non-abridgement		5
POST-EMPLOYMENT	Money claims arising from employer-employee relationship			5
LABOR STANDARDS	Conditions of employment	Holidays		4
LABOR STANDARDS	Leaves	Paternity leave		4
LABOR RELATIONS	Right to self-organization	Coverage		4

FREQUENTLY ASKED TOPICS (2007 - 2017)

LABOR RELATIONS	Rights of labor organizations			4
LABOR RELATIONS	Rights of labor organizations	Check off, assessments, and agency fees		4
JURISDICTION AND RELIEFS	National Labor Relations Commission			4
PRE-EMPLOYMENT	Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)	Termination of contract of migrant worker without just or valid cause		3
LABOR STANDARDS	Conditions of employment	Hours of work	Normal hours of work; hours worked	3
LABOR STANDARDS	Conditions of employment	Service incentive leaves		3
LABOR STANDARDS	Conditions of employment	Service charges		3
LABOR STANDARDS	Wages	Prohibitions regarding wages		3
LABOR STANDARDS	Wages	Wage distortion; concept		3
LABOR STANDARDS	Leaves	Service incentive leave		3
LABOR STANDARDS	Special groups of employees	Minors (RA 7610, as amended by RA 9232)		3
LABOR RELATIONS	Bargaining unit			3
LABOR RELATIONS	Unfair Labor Practices	Nature, aspects		3
LABOR RELATIONS	Peaceful concerted activities	Assumption of jurisdiction by the DOLE Secretary		3
POST-EMPLOYMENT	Employer-employee relationship			3
POST-EMPLOYMENT	Employer-employee relationship	Kinds of employment	Casual	3
POST-EMPLOYMENT	Employer-employee relationship	Legitimate subcontracting vs. labor-only contracting	Elements	3
POST-EMPLOYMENT	Employer-employee relationship	Legitimate subcontracting vs. labor-only contracting	Solidary liability	3
POST-EMPLOYMENT	Termination by employer			3
GENERAL PROVISIONS	Basic policy on labor			2
GENERAL PROVISIONS	Construction in favor of labor			2

FREQUENTLY ASKED TOPICS (2007 - 2017)

PRE-EMPLOYMENT	Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)	Illegal recruitment and other prohibited activities	Elements	2
PRE-EMPLOYMENT	Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)	Liability of local recruitment agency and foreign employer		2
PRE-EMPLOYMENT	Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)	Liability of local recruitment agency and foreign employer	Solidary liability	2
PRE-EMPLOYMENT	Recruitment and placement of local and migrant workers (Labor Code and RA 8042, as amended by RA 10022)	Ban on direct hiring		2
LABOR STANDARDS	Conditions of employment	Hours of work	Meal periods	2
LABOR STANDARDS	Conditions of employment	Weekly rest periods		2
LABOR STANDARDS	Special groups of employees	Persons with Disabilities		2
SOCIAL WELFARE LEGISLATION	SSS Law (RA 8262)			2
SOCIAL WELFARE LEGISLATION	Disability and death benefits			2
SOCIAL WELFARE LEGISLATION	Disability and death benefits	POEA-Standard Employment Contract		2
LABOR RELATIONS	Bargaining representative			2
LABOR RELATIONS	Unfair Labor Practices			2
LABOR RELATIONS	Unfair Labor Practices	By employers		2
LABOR RELATIONS	Peaceful concerted activities	Injunctions		2
POST-EMPLOYMENT	Employer-employee relationship	Kinds of employment		2
POST-EMPLOYMENT	Employer-employee relationship	Legitimate subcontracting vs. labor-only contracting		2
MANAGEMENT PREROGATIVE	Transfer of employees			2

FREQUENTLY ASKED TOPICS (2007 - 2017)

JURISDICTION AND RELIEFS	National Conciliation and Mediation Board			2
JURISDICTION AND RELIEFS	DOLE Secretary			2