A Compilation of the

Questions and Suggested Answers

In the

PHILIPPINE BAR EXAMINATIONS 2007-2013

In

LABOR LAW

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ANSWERS TO BAR EXAMINATION QUESTIONS by the UP LAW COMPLEX (2007, 2009, 2010) &

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FOREWORD

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The Authors.

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General Principles

Constitutional Provisions on Labor (2009)

No. II. a. Enumerate at least four (4) policies enshrined in Section 3, Article XIII of the Constitution that are not covered by Article 3 of the Labor Code on declaration of basic policy. (2%)

SUGGESTED ANSWER:

Four (4) policies enshrined in Section 3, 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,

(2) Including the right to strike in accordance with the law

(3) They shall be entitled to a living wage

(4) They shall participate in policy and decision making processes affecting their rights and benefits as may be provided by law.

(5) The state shall promote the principle of shared responsibility between workers and employers.

Constitutional Provision; Codetermination (2007)

No. I. a. What is the principle of codetermination?

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 (Art. 255, 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.

SECOND ALTERNATIVE ANSWER:

Codetermination is a term identified with workers' participation in the determination of business policy. Under the German model, the most common form of codetermination, employees of some firms are allocated control rights by law, in the form of board seats. It is based on the conviction that democratic legitimacy cannot be confined to government but must apply to all sectors

of society. Besides corporate control rights, the German system deals with dual channels of representation of employees by unions (at the industry-wide, and microeconomic level) and works councils (at the firm level).

Constitutional Provision; Right to Security of Tenure (2009)

No. XII. 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%)

<u>SUGGESTED ANSWER:</u>

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

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

Interpretation of Labor Laws (2009)

No. II. b. Clarito, an employee of Juan, was dismissed for allegedly stealing Juan's wristwatch. In the illegal dismissal case instituted by Clarito, the Labor Arbiter, citing Article 4 of the Labor Code, ruled in favor of Clarito upon finding Juan's testimony doubtful. On appeal, the NLRC reversed the Labor Arbiter holding that Article 4 applies only when the doubt involves "implementation and interpretation" of the Labor Code provisions. The NLRC explained that the doubt may not necessarily be resolved in favor of labor since this case involves the application of the Rules on Evidence, not the Labor Code. Is the NLRC correct? Reasons. (3%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Rights of the Employer; Management Prerogative; Overtime Work (2013)

No. V. Cris filed a complaint for illegal dismissal against Baker Company. The Labor Arbiter dismissed the complaint but awarded Cris financial assistance. Only the company appealed from the Labor Arbiter's ruling. It confined its appeal solely to the question of whether financial assistance could be awarded. The NLRC, instead of ruling solely on the appealed issue, fully reversed the Labor Arbiter's decision; it found Baker Company liable for illegal dismissal and ordered the payment of separation pay and full backwages.

Through a petition for certiorari under Rule 65 of the Rules of Court, Baker Company

challenged the validity of the NLRC ruling. It argued that the NLRC acted with grave abuse of discretion when it ruled on the illegal dismissal issue, when the only issue brought on appeal was the legal propriety of the financial assistance award.

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

Decide the case. (8%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Rights of the Employer; Management Prerogative; Suspension of Business Operation (2012)

No. VIII. c. 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.

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, G.R. No. 104624, October 11, 1996; Espina v. CA, 519 SCRA 327 [2007])

Rights of the Employer; Management Prerogative; Right to Transfer Employee (2013)

No. IV. a. 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.

Is Bobby's reinstatement pending appeal legally correct? (4%)

SUGGESTED ANSWER:

No, it is not legally correct. The transfer of an employee ordinarily lies within the ambit of management prerogatives. But like other rights, there are limits thereto. This managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play. Thus, the transfer of Bobby form Tarlac to Makati must be done in good faith, and it must not be unreasonable, inconvenient or prejudicial to the employee. For another, the reinstatement of Bobby ought to be to his former position, much akin to return to work order, i.e., to restore the status quo in the work place (Composite Enterprises v. Capamaroso, 529 SCRA 470 [2007]).

ALTERNATIVE ANSWER:

No, under article 223 of the Labor Code, the reinstatement order of the Labor Arbiter is immediately executor even pending appeal, should pertain to restoration to status quo ante.

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

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

After 5 years as a flight steward, Santos began struggling with his weight; he weighed 200 lbs., 30 pounds over the prescribed maximum weight. The Airline gave him a one-year period to attain the prescribed weight, and enrolled him in several weight reduction programs. He consistently failed to meet his target. He was given a 6-month grace period, after which he still failed to meet the weight limit. FSC thus sent him a Notice of

Administrative Charge for violation of company standards on weight requirements. He stated in his answer that, for medical reasons, he cannot have a rapid weight loss. A clarificatory hearing was held where Santos fully explained his predicament. The explanation did not satisfy FSA and so it decided to terminate Santos's service for violation of company standards.

Santos filed a complaint for illegal dismissal, arguing that the company's weight requirement policy is unreasonable and that his case is not a disciplinary but a medical issue (as one gets older, the natural tendency is to grow heavier). FSA defended its policy as a valid exercise of management prerogative and from the point of view of passenger safety and extraordinarydiligence required by law of common carriers; it also posited that Santos failure to achieve his ideal weight constituted gross and habitual neglect of duty, as well as willful disobedience to lawful employer orders. The Labor Arbiter found the dismissal illegal for there was neither gross and habitual neglect of duty nor willful disobedience.

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

SUGGESTED ANSWER:

Yes, the Labor Arbiter is correct.

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

Jurisdiction

Bureau of Labor Relations; Compromise Agreement (2007)

No. VII. a. May the NLRC or the courts take jurisdictional cognizance over compromise agreements/settlements involving labor matters? (5%)

SUGGESTED ANSWER:

No, any compromise agreement, including those involving labor standards laws, voluntary agreed upon by the parties with the assistance of the

Bureau or the regional office of the Department of labor, shall be final and biding upon the parties. The national Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion (Art. 227, Labor Code).

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

No. III. c. Savoy Department Store (SDS) adopted a policy of hiring salesladies on five-month cycles. At the end of a saleslady's five-month term, another person is hired as replacement. Salesladies attend to store customers, were SDS uniforms, report at specified hours, and are subject to SDS workplace rules and regulations. Those who refuse the 5-month employment contract are not hired.

The day after expiration of her 5-month engagement, Lina wore her SDS white and blue uniform and reported for work but was denied entry into the store premises. Agitated, she went on a hunger strike and stationed herself in front of one of the gates of SDS. Soon thereafter, other employees whose 5-month term had also elapsed, joined Lina's hunger strike.

Assume that no fixed-term worker complained, yet in a routine inspection a labor inspector of the Regional Office of the Labor Code's security of tenure provisions and recommended to the Regional Director the issuance a compliance order. The Regional Director adopted the recommendation and issued a compliance order. Is the compliance order valid? Explain your answer. (3%)

<u>SUGGESTED ANSWER:</u>

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.

<u>ALTERNATIVE ANSWER:</u>

Yes, the Compliance Order is valid because the Secretary of Labor and Employment or his duly authorized representatives has the power to issue compliance orders to give effect to the labor standards based on the findings of labor employment and enforcement officers or industrial safety engineers

made during inspection. The Secretary ot his duly authorized representatives may issue writs of execution to the appropriate authority for the enforcement of their orders (Art. 128, Labor Code; V.L. Enterprises and/or Visitacion v. CA, G.R. No. 167512, March 12, 2007).

DOLE Regional Director; Visitorial and Enforcement Power; Money Claims (2009)

No. I. a. 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. (5%)

SUGGESTED ANSWER:

TRUE. The visitorial and enforcement power of the DOLE Regional Director to order and enforce compliance with labor standards laws can be exercised even when the individual claims exceeds P5,000.00 the authority under Article 128 may be exercised regardless of the monetary value involved. Under Article 129, however the authority is only for claims not exceeding P5,000.00 per claimant.

Labor Arbiter; Appeals (2007)

No. VI. Procedurally, how do you stay a decision, award or order of the Labor Arbiter? Discuss fully. (5%)

SUGGESTED ANSWER:

Decisions, awards, or orders of the Labor Arbiter may be stayed by filing 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 (Art. 223, 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 Non-Forum Certification, 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 of the judgment appeal from

Reinstatement is immediately executor (Art. 223, Labor Code).

Labor Arbiter; Compromise Agreement (2007)

No. XIII. May a decision of the Labor Arbiter which has become final and executory be novated through a compromise agreement of the parties? (5%)

SUGGESTED ANSWER:

Yes, although Article 221 of the Labor Code requires the Labor Arbiter to exert all efforts to amicably settle the case before him "on or before the first hearing", it must be noted that neither the Labor Code nor its implementing rule as well as the NLRC Rules prohibit the amicable settlement of cases during the pendency of the proceeding 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 executor. Settlement of case is encourage abs authorized by law. Article 2040 of the Civil Code impliedly authorizes this. It is even encourage by express provision of law.

FIRST ALTERNATTIVE 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.

Labor Arbiter; Execution Order; Appeal (2007)

No. XII. b. Cite two instances when an order of execution may be appealed. (5%)

SUGGETED 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, 419 SCRA 131 [2004]);

(2) Where the implementation of the Order was irregular (Metrobank v. C.A. 356 SCRA 563 [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, 339 SCRA 311 [2001]).

(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., 393 SCRA 134 [2000]).

Labor Arbiter; Execution, Orders or Awards (2007)

No. XII. a. How do you execute a labor judgment which, on appeal, had become final and executory? Discuss fully. (5%)

<u>SUGGESTED ANSWER:</u>

Execution shall issue upon an order, resolution or decision that finally disposes of the action or proceedings after the counsel of record and the parties shall have been furnished with copies of the decision in accordance with these Rules but only after the expiration of the period of appeal if no appeal has been duly perfected.

The Labor Arbiter, the Regional Director, or his duly authorized hearing officer of origin shall, *motu proprio* or upon motion of any interested party, issue a writ of execution on a judgment only within five (5) years from the date it becomes final and executory, so requiring the sheriff or duly deputized officer to execute the same. No motion for execution shall be entertained nor a writ be issued unless the labor Arbiter is in possession of the records of the case which shall include an entry of judgment in case of appeal except hat, as provided for in Section 10 Rule VI, and in those cases where partial execution is allowed by law, the Labor Arbiter shall restrain duplicate original copies thereof for the purpose of its immediate enforcement.

Labor Arbiter; Labor Disputes; Barangay Lupong Tagapamayapa (2007)

No. XVII. P.D. 1508 requires the submission of disputes before the *Barangay Lupong Tagapamayapa* prior to the filing of cases with the courts or other government bodies. May this decree be used to defeat a labor case filed directly with the Labor Arbiter? Discuss fully. (5%)

<u>SUGGESTED ANSWER:</u>

No. Requiring conciliation of labor dispute before the Barangay Lupon Tagapamayapa would defeat the salutary purposes of the law. Instead of simplifying labor proceedings designed at expeditious settlement or referral to

the proper courts or office to decide it finally, the conciliation of the issues before the Barangay Lupong Tagapamayapa would only duplicate the conciliation proceedings and would unduly delay the disposition of labor cases (Montoya v. Escayo, 171 SCRA 446 [1989]).

FIRST ALTERNATIVE ANSWER:

No, because under Article 217 of the Labor Code, the Labor Arbiter exercises original and exclusive jurisdiction to hear and decide cases involving all workers, whether agricultural or non-agricultural.

SECOND ALTERNATIVE ANSWER:

P.D. 1508 does not apply to labor dispute because labor cases have their own grievance and mediation processes.

Labor Arbiter; Money Claims (2009)

No. III. a. Richie, a driver-mechanic, was recruited by Supreme Recruiters (SR) and its principal, Mideast Recruitment Agency (MRA), to work in Qatar for a period of two (2) years. However, soon after the contract was approved by POEA, MRA advised SR to forego Richie's deployment because it had already hired another Filipino driver-mechanic, who had just completed his contract in Qatar. Aggrieved, Richie filed with the NLRC a complaint against SR and MRA for damages corresponding to his two years' salary under the POEA-approved contract.

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

The Labor Arbiter has no jurisdiction over the case; (2%)

SUGGESTED ANSWER:

The Labor Arbiter has jurisdiction. Section 10, R.A. No. 8042, reads:

"Money Claims. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer – employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages."

ALTERNATIVE ANSWER:

The Labor Arbiter has no jurisdiction over the case. The failure to deploy a worker within the prescribed period without valid reason is a recruitment

violation under the jurisdiction of the POEA.

Labor Arbiter; Reinstatement Pending Appeal (2009)

No. VIII. a. Alexander, a security guard of Jaguar Security Agency (JSA), could not be given any assignment because no client would accept him. He had a face only a mother could love. After six (6) months of being on "floating" status, Alexander sued JSA for constructive dismissal. The Labor Arbiter upheld Alexander's claim of constructive dismissal and ordered JSA to immediately reinstate Alexander. JSA appealed the decision to the NLRC. Alexander sought immediate enforcement of the reinstatement order while the appeal was pending.

JSA hires you as lawyer, and seeks your advice on the following:

Because JSA has no client who would accept Alexander, can it still be compelled to reinstate him pending appeal even if it has posted an appeal bond? (2%)

SUGGESTED ANSWER:

No, the posting of the bond of the employer does not have the effect of staying the execution of the reinstatement aspect of the decision of the Labor Arbiter (*Pioneer Texturizing Corp. v. NLRC*,280 SCRA 806 [1997]).

ALTERNATIVE ANSWER:

Yes, JSA can be compelled to reinstate Alexander, pending appeal of the decision of the Labor Arbiter to the NLRC, even if JSA post a bond.

"Art. 223. Appeal xxx In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned shall be immediately executor, even pending appeal and the posting of a bond.

Labor Arbiter; ULP; Damages and Reliefs (2012)

No. III. a. On August 01, 2008, Y, a corporation engaged in the manufacture of textile garments, entered into a collective bargaining agreement with Union X in representation of the rank and-file employees of the corporation. The CBA was effective up to June 20, 2011. The contract had an automatic renewal clause which would allow the agreement after its expiry date to still apply until both parties would have been able to execute a new agreement. On May 10, 2011, Union X submitted to Y's management their proposals for the negotiation of a new CBA. The next day, Y

suspended negotiations with Union X since Y had entered into a merger with z,· a corporation also engaged in the manufacture of textile garments. Z assumed all the assets and liabilities of Y. Union X filed a complaint with the Regional Trial Court for specific performance and damages with a prayer for preliminary injunction against Y and Z and Z filed a Motion to Dismiss based on lack of jurisdiction. Rule on the Motion to Dismiss. (5%)

SUGGESTED ANSWER:

The Motion to Dismiss must be granted. The claim against Y and Z consisits mainly of the civil aspect of the unfair labor practice charge referred to in Article 247 of the Labor Code. Under Article 247 of the Code, "the civil aspects of all cases involiving unfair labor practices, which may include claims for damages and other affirmative relief, shall be under the jurisdiction of the labor arbiters." (National Union of Bank Employees v. Lazaro, G.R. No. 56431, ajnuary 19, 1988). Besides, what the aprties have is a labor dispute as defined in Article 212 (I) of the Labor Code "regardless of whether the disputants stand in the proximate relation of employer abd employee". Being so, the RTC is prohibited by Art. 254 of the Code from excercising jurisdiction over the case.

Labor Arbiter; Voluntary Arbitration (2008)

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

SUGGESTED ANSWER:

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

Nat'l Labor Relations Commission (2013)

No. V. Cris filed a complaint for illegal dismissal against Baker Company. The Labor Arbiter dismissed the complaint but awarded Cris financial assistance. Only the company appealed from the Labor Arbiter's ruling. It confined its appeal solely to the question of whether financial assistance could be awarded. The NLRC, instead of ruling solely on the appealed issue, fully reversed the Labor Arbiter's decision; it

found Baker Company liable for illegal dismissal and ordered the payment of separation pay and full backwages.

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

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

Decide the case. (8%)

<u>**SUGGESTED ANSWER:**</u>

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

<u>**ALTERNATIVE ANSWER:**</u>

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

Sec. of Labor; Assumption over Labor Dispute (2013)

No. VII. Philippine Electric Company is engaged in electric power generation and distribution. It is a unionized company with Kilusang Makatao as the union representing its rank-and-file employees. During the negotiations for their expired collective bargaining agreement (CBA), the parties duly served their proposals and counter-proposals on one another. The parties, however, failed to discuss the merits of their proposals and counter-proposals in any formal negotiation meeting because their talks already bogged down on the negotiation ground rules, i.e., on the question of how they would conduct their negotiations, particularly on whether to consider retirement as a negotiable issue.

Because of the continued impasse, the union went on strike. The Secretary of Labor and Employment immediately assumed jurisdiction over the dispute to avert widespread electric power interruption in the country. After extensive discussions and the filing of position papers (before the National Conciliation and Mediation Board and before the Secretary himself) on the validity of the union's strike and on the

wage and other economic issues (including the retirement issue), the DOLE Secretary ruled on the validity of the strike and on the disputed CBA issues, and ordered the parties to execute a CBA based on his rulings.

Did the Secretary of Labor exceed his jurisdiction when he proceeded to rule on the parties' CBA positions even though the parties did not fully negotiate on their own? (8%)

SUGGESTED ANWER:

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

Sec. of Labor; Assumption over Labor Dispute (2010)

No. XIX. a. 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.

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

SUGGESTED ANSWER:

Yes, the Secretary of Labor and Employment has plenary power to assume jurisdiction under Article 263(g) of the Labor Code. When in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor may assume jurisdiction over the dispute and decide it or certify it to the NLRC for compulsory arbitration (Art. 263[g], *Labor Code*). This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests (*Steel Corporation v. SCP Employees Union,* 551 SCRA 594 [2008]). Such assumption shall have the effect of automatic enjoining an impending strike or lockout, or an order directing

immediate return to work and resume operations, if a strike already took place, and for the employer to re-admit all employees under the same terms and conditions prevailing before the strike or lockout (Art. 263(g), Labor Code; Sec. 15, Rule XXII, Dept. Order No. 40-G-03).

Sec. of Labor; Assumption over Labor Dispute (2010)

No. XIX. b. 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.

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 NASWER:

No, the Secretary of Labor's order will be inconsistent with the established policy of the State of enjoining the parties from performing acts that undermine the underlying principles embodied in Article 263(g) of the Labor Code.

In this case, excepting the employees terminated due to redundancy form those who are required to return-to-work, which was the very labor dispute that sparked the union to strike, the Secretary of Labor comes short of his duty under Article 263(g) to maintain status quo or the terms and conditions prevailing before the strike. In fact, the Secretary could be accused of disposing of the parties' labor dispute without the benefit of a hearing, in clear derogation of due process of law.

Sec. of Labor; Assumption over Labor Dispute (2008)

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

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

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment.

You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues:

Were the employees simply exercising their constitutional right to petition for redness of their grievances? (3%)

SUGGESTED ANSWER:

No, there was a defiance of the assumption order of the Secretary of Labor by the union. The assumption order is immediately executor. Following an assumption order by the strikers is not a matter of option or voluntarinesss but of obligation on their part (Marcopper Mining Corporation v. Brillantes, G.R. No. 119381, March 11, 1996; Art. 264[a], Labor Code).

Sec. of Labor; Assumption over Labor Dispute; National Interest (2008)

No. III. b. Savoy Department Store (SDS) adopted a policy of hiring salesladies on five-month cycles. At the end of a saleslady's five-month term, another person is hired as replacement. Salesladies attend to store customers, were SDS uniforms, report at specified hours, and are subject to SDS workplace rules and regulations. Those who refuse the 5-month employment contract are not hired.

The day after expiration of her 5-month engagement, Lina wore her SDS white and blue uniform and reported for work but was

denied entry into the store premises. Agitated, she went on a hunger strike and stationed herself in front of one of the gates of SDS. Soon thereafter, other employees whose 5-month term had also elapsed, joined Lina's hunger strike.

The owner of SDS considered the hunger strike staged by Lina, et al.., an eyesore and disruptive of SDS business. He wrote the Secretary of Labor a letter asking him to assume jurisdiction over the dispute and enjoin the hunger "strike". What answer will you give if you were the Secretary of Labor? (3%)

SUGGESTED ANSWER:

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

Voluntary Arbitrators (2010)

No. XXV. 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 employee members of Union X were terminated from employment due to violation of the memorandum-policy. The union countered with a prohibitory injunction case (with prayer for the issuance of a temporary restraining order) filed with the Regional Trial Court, challenging the validity and constitutionality of the cell phone ban. The company filed a motion to dismiss, arguing that the case should be referred to the grievance machinery pursuant to an existing Collective Bargaining Agreement with Union X, and eventually to Voluntary Arbitration. Is the company correct? Explain. (3%)

SUGGESTED ANSWER:

Yes, termination cases arising in or resulting from the interpretation and implementation of the collective bargaining agreements, and interpretation and enforcement of company personnel policies which were initially processed at the various steps of the plant-level Grievance Procedure under the parties collective bargaining agreements, fall within the original and exclusive jurisdiction of the voluntary arbitrator pursuant to Article 217 (c) 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 in Union X's challenge against the validity and constitutionality of the cell phone ban being implemented by Company C. the issue, therefore, does not involve the interpretation of the memorandum-policy, but its intrinsic validity (Haliguefla v. PAL, 602 SCRA 297 [2009]).

Voluntary Arbitrator; Conciliation; Mediation; Arbitration (2010)

No. II. a. Distinguish the terms "conciliation," "mediation" and "arbitration." (3%)

SUGGESTED ANSWER:

There is a DOLE official called a "Conciliator Mediator". He is an officer of the NCMB whose principal function is to assist in the settlement and disposition of labor – management disputes through conciliation and preventive mediation. However, he does not promulgate decisions that settle controversies about rights, which are demandable and enforceable. The latter is called arbitration and is the function of a labor arbiter or a voluntary arbitrator.

ALTERNATIVE ANSWER:

(1) CONCILIATION is the process of dispute management whereby parties in dispute are brought together for the purpose of: (1) amicably settling the case upon a fair compromise; (2) determining the real parties in interest; (3) defining and simplifying the issues in the case; (4) entering into admissions or stipulations of facts; and (5) threshing out all other preliminary matters *(Section 3, Rule V, 2005 NLRC Rules of Procedure)*. In resolving labor disputes, this comes before arbitration, as a mandatory process, pursuant to the State policy of promoting and emphasizing conciliation as modes of settling labor disputes *(Art. 211 (A)(a), Labor Code)*.

(2) MEDIATION is a voluntary process of settling disputes whereby the parties elect a mediator to facilitate the communication and negotiation between the parties in dispute for the purpose of assisting them in reaching a compromise. *(Sec. 3(q), 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 biding on them *(Luzon Development Bank v. Association of Luzon Development Employees, 249 SCRA 162 [1995])*.

(4) in this jurisdiction, compulsory arbitration in labor disputes are submitted to a labor arbiter, whose powers and functions are clearly defined under Article 217(a) of the Labor Code; whereas in voluntary arbitration, the powers and functions of the voluntary arbitrator or panel of voluntary arbitrators elected to resolve the parties' dispute involve the interpretation and implementation of the parties' collective bargaining agreement, pursuant to Articles 260-262 of the Labor Code.

Voluntary Arbitrator; Labor Disputes; Voluntary Arbitration (2008)

No. II. a. What issues or disputes may be the subject of voluntary arbitration under the Labor Code? (4%)

SUGGESTED ANSWER:

Disputes that may be subject of voluntary arbitration are:

(1) Distortion of the wage structure within an establishment arising from any prescribed wage increase because of a law or wage order which any Regional Board issues (Art. 124, Labor Code); and

(2) Interpretation and implementation of the parties' collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies (Art. 217, as amended by R.A. 6715; Art. 260, Labor Code; Navarro III v. Damasco, G.R. No. 101875, July 14, 1995).

Voluntary Arbitrator; Voluntary Arbitration; Compulsory Arbitration (2008)

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

SUGGESTED ANSWER:

No, jurisdiction in compulsory arbitration is conferred by law, not by agreement of the parties (Veneracion v. Moncilla, G.R. No. 158238, July 20, 2006).

The law mandated that all grievances submitted to the grievance machinery which are not settled shall be referred to the voluntary arbitration prescribed in

the CBA Art. 260, Labor Code). This procedure providing for a conclusive arbitration clause in the CBA must be strictly adhered to and respected if the ends are to be achieved (Liberal Labor Union v. Phil. Can Co., G.R. No. L-4834, March 28, 1952, cited in San Miguel Corporation v, NLRC, G.R. No. 99266, March 02, 1999). Hence, to submit a dispute falling within the jurisdiction of a voluntary arbitration to compulsory arbitration would be to trifle faith the express mandate of the law.

Labor Relations

Non-Lawyers; Appearance; NLRC or LA (2007)

No. V. May non-lawyers appear before the NLRC or Labor Arbiter? May they charge attorney's fee for such appearance provided it is charged against union funds and in an amount freely agreed upon by the parties? Discuss fully. (5%)

SUGGESTED ANSWER:

Yes, non-lawyers 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 (Art. 222, Labor Code).

None—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. BISCOM, 42 SCRA 302 [1997]).

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 222, labor Code) provided that he presents a verified certification form the said organization that he is properly authorized;
(3) he is duly accredited member of any legal aid office duly recognized by the DOJ or IBP (Kanlaon Construction Enterprises v. NLRC, 279 SCRA 337 [1997])

ALTERNATIVE ANSWER:

Yes, attorney's fees may be charged against union funds in an amount agreed upon by the parties. Any stipulation to the contrary is void (Art. 222, 2(b)). However, 3 requisites must be complied

with in order that a union's attorney's fees and representation expenses may be valid and upheld:

(1) authorization by a written resolution of majority of all the members at the general membership meeting duly called for the purpose;

(2) secretary's record of the minutes of the meeting; and

(3) individual written authorization for check-off duly signed by the employee concerned (ABS-CBN Corp. et al., Article 241 (n) (o). 304 SCRA 489 [1999]).

CBA; Automatic Renewal Clause (2008)

No. I. a. Explain the automatic renewal clause of collective bargaining agreements. (3%)

SUGGESTED ANSWER:

The automatic renewal clause of Collective Bargaining Agreements requires that the parties maintain the status quo and continue the term and condition of an expired CBA until a new agreement is reached (Pier 8 Arrastre & Stevedoring Services, Inc v. Roldan-Confessor, G.R. No. 110854, February 13, 199; Art. 23, Labor Code).

CBA; Certification Election (2009)

No. XV. b. Among the 400 regular rank-and-file workers of MNO Company, a certification election was ordered conducted by the Med-Arbiter of the Region. The contending parties obtained the following votes:

(1) Union A - 70

(2) Union B - 71

(3)Union C – 42

(4). Union D - 33

(5). No union - 180

(6). Spoiled votes - 4

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

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

SUGGESTED ANSWER:

No, because 216 workers want to be represented by a union as bargaining agent. Only 180 workers opted for No

Union. Hence, a clear majority is in favor of being represented by a union.

CBA; Certification Election; Sole and Exclusive Collective Bargaining Agent (2009)

No. XV. a. Among the 400 regular rank-and-file workers of MNO Company, a certification election was ordered conducted by the Med-Arbiter of the Region. The contending parties obtained the following votes:

(1). Union A - 70

(2). Union B - 71

(3). Union C - 42

(4). Union D - 33

(5). No union - 180

(6). Spoiled votes - 4

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

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

SUGGESTED ANSWER:

No, to be certified as bargaining agent, the vote required is majority of the valid votes cast. There were 398 valid votes cast, the majority of which is 199. Since Union B got only 71 votes, it cannot be certified as the sole and exclusive bargaining agent of MNO's rank-and file workers.

CBA; Certification Election; Run-Off Election (2009)

No. XV. c. Among the 400 regular rank-and-file workers of MNO Company, a certification election was ordered conducted by the Med-Arbiter of the Region. The contending parties obtained the following votes:

(1). Union A - 70

(2). Union B - 71

(3). Union C - 42

(4). Union D - 33

(5). No union - 180

(6). Spoiled votes - 4

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

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

SUGGESTED ANSWER:

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

CBA; Check-Off Clause (2013)

No. IX. a. Pablo works as a driver at the National Tire Company (NTC). He is a member of the Malayang Samahan ng Manggagawa sa NTC, the exclusive rank-and-file collective bargaining representative in the company. The union has a CBA with NTC which contains a union security and a check-off clause. The union security clause contains a maintenance of membership provision that requires all members of the bargaining unit to maintain their membership in good standing with the union during the term of the CBA under pain of dismissal. The check-off clause on the other hand authorizes the company to deduct from union members' salaries defined amounts of union dues and other fees. Pablo refused to issue an authorization to the company for the check-off of his dues, maintaining that he will personally remit his dues to the union.

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

No, check-offs in truth impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by management at the instance of the union and for its benefit, in order to facilitate the collection of dues necessary for the latter's life and sustenance. But the obligation to pay union dues and agency fees obviously

devolves not upon the employer, but the individual employee. It is a personal obligation not demandable from the employer upon default or refusal of the employee to consent to a check-off. The only obligation of the employer under a check-off is to effect the deductions and remit the collection to the union (Holy Cross of Davao College v. Joaquin, G.R. No. 110007 [1996]).

CBA; Check-Off Clause; Employee's Salaries; Individual Written Authorization (2013)

No. IX. b. Pablo works as a driver at the National Tire Company (NTC). He is a member of the Malayang Samahan ng Manggagawa sa NTC, the exclusive rank-and-file collective bargaining representative in the company. The union has a CBA with NTC which contains a union security and a check-off clause. The union security clause contains a maintenance of membership provision that requires all members of the bargaining unit to maintain their membership in good standing with the union during the term of the CBA under pain of dismissal. The check-off clause on the other hand authorizes the company to deduct from union members' salaries defined amounts of union dues and other fees. Pablo refused to issue an authorization to the company for the check-off of his dues, maintaining that he will personally remit his dues to the union.

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

SUGGESTED ANSWER:

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

CBA; Codetermination (2008)

No. I. b. Explain the extent of the workers right to participate in policy and decision-making process as provided under Article XIII, Section 3 of the Philippine Constitution. Does it include membership

in the Board of Directors of a corporation? (3%)

SUGGESTED ANSWER:

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

CBA; Community Interest Rule (2007)

No. IV. b. Explain.

The Community of Interest Rule. (5%)

SUGGESTED ANSWER:

The Community Interest Rule – The Community Interest Rule states that in choosing the appropriate bargaining unit, there must be a determination of the community of interests of employees. A bargaining unit under DO 40-03 refers to a "group of employees sharing mutual interests within a given employer unit, comprise of all or less than all of the entire body of employees in the employer unit or any specific occupation or geographical grouping within such employer unit. The test grouping is community or mutuality of interests, such as substantial similarity of works or duties or of compensation and working conditions, because the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights.

CBA; Codetermination (2007)

No. I. a. What is the principle of codetermination? (5%)

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. (Art. 255, 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.

SECOND ALTERNATIVE ANSWER:

Codetermination is a term identified with workers' participation in the determination of business policy. Under the German model, the most common form of codetermination, employees of some firms are allocated control rights by law, in the form of board seats. It is based on the conviction that democratic legitimacy cannot be confined to government but must apply to all sectors of society. Besides corporate control rights, the German system deals with dual channels of representation of employees by unions (at the industry-wide, and microeconomic level) and works councils (at the firm level).

CBA; Deadlock Bar Rule (2009)

No. XVI. b. 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.

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

CBA; Duty to Bargain Collectively in Good Faith (2009)

No. XVI. c. 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.

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

SUGGESTED ANSWER:

No, pending renewal of the CBA, the parties are bound to keep the status quo and to treat the terms and conditions embodied therein still in full force and effect, until a new agreement is reached by the union and management. This part and parcel of the duty to bargain collectively in good faith under Article 253, the Labor Code.

CBA; Existing CBA Expired; Consequences (2010)

No. VIII. ABC company and U labor union have been negotiating for a new Collective Bargaining Agreement (CBA) but failed to agree on certain economic provisions of the existing agreement. In the meantime, the existing CBA expired. The company thereafter refused to pay the employees their midyear bonus, saying that the CBA which provided for the grant of midyear bonus to all company employees had already expired. Are the employees entitled to be paid their midyear bonus? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes, under Article 253 of the Labor Code, the parties are duly-bound to maintain the status quo and to continue in full force and effect the terms and conditions of the existing CBA until a new agreement is reached by the parties.

Likewise, Art. 253-A provides for an automatic renewal clause of a CBA has been entered into.

The same is also supported by the principle of hold-over, which states that despite the lapse of the formal

effectivity of the CBA, the law stills considers the same as continuing in force and effect until a new CBA shall have been validly executed (Meralco v. Hon. Sec. of Labor, 337 SCRA 90 [2000] citing National Congress of Union in the Sugar Industry of the Philippines v. Ferrer-Calleja, 205 SCRA 478 [1992]).

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

CBA; Freedom Period (2009)

No. XVI. a. 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.

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

SUGGESTED ANSWER:

The freedom period of the time within which a petition for certification election to challenge the incumbent collective bargaining agent may be filed is from 60 days before the expiry date of the CBA.

CBA; Globe Doctrine (2007)

No. IV. a. Explain.

The Globe Doctrine. (5%)

SUGGESTED ANSWER:

Under the Globe doctrine the bargaining units may be formed through separation of new units from existing ones whenever plebiscites had shown the workers' desire to have their own representatives (Globe Machine and Stamping Co. 3 NLRB 294, applied in Democratic Labor Union v. Cebu Stevedoring Co., 103 Phil. 1103 [1958]).

CBA; Substitutionary Doctrine (2009)

No. I. d. In the law on labor relations, the substitutionary doctrine prohibits a new collective bargaining agent from repudiating an existing collective bargaining agreement. (5%)

SUGGESTED ANSWER:

True, the existing collective bargaining agreement (in full force and effect) must be honored by a new exclusive bargaining representative because of the policy of stability in labor relations between an employer and the workers.

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

No. II. b. Differentiate "surface bargaining" from "blue-sky bargaining." (2%)

SUGGESTED ANSWER:

SURFACE BARGAINING is defined as "going through the motion of negotiating" without any legal intent to reach an agreement. The determination of whether a party has engaged in unlawful surface bargaining is a question of the intent of the party in question, which can only be inferred from the totality of the challenged party's conduct both at and away from the bargaining table. It involves the question of whether an employer's conduct demonstrates an unwillingness to bargain in good faith or is merely hard bargaining (Standard Chartered Bank

Employees Union [NUBE} v. Confesor, 432 SCRA 308 [2004]).

BLUE-SKY BARGAINING IS DEFINED as "unrealistic and unreasonable demands in negotiations by either or both labor and management, where neither concedes anything and demands the impossible" (Standard Chartered Bank Employees Union [NUBE] v. Confesors, supra).

CBA; Union Security Clause (2009)

No. XVIII. b. Explain the impact of the union security clause to the employees' right to security of tenure. (2%)

SUGGESTED ANSWER:

A valid union security clause when enforced or implemented for cause, after according the worker his substantive and procedural due process rights (Alabang Country club, inc. v. NLRC, 545 SCRA 357 [2008]; does not violate the employee's right to security of tenure. Art. 248(e) of the labor Code allows union security clauses and a failure to comply with the same is a valid ground to terminate employment. Union security clauses designed to strengthen unions and valid law policy.

CBU; Confidential Employees (2009)

No. I. b. All confidential employees are disqualified to unionize for the purpose of collective bargaining. (5%)

SUGGESTED ANSWER:

False, not all confidential employees are disqualified to unionize for the purpose of collective bargaining. Only confidential employees, who, because of the nature of their positions, have access to confidential information affecting labor-management relations as an integral part of their position are denied the right of self-organization for purpose of collective bargaining (San Miguel Corporation Supervisors v. Laguesma, 277 CSRA 370 [1997]).

CBU; Managerial Employees; Supervisory Employees (2010)

No. XV. a. Samahang Manggagawa ng Terracota, a union of supervisory employees at Terracota Inc., recently admitted a member of the company's managerial staff, A, into the union ranks.

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

SUGGESTED ANWER:

Yes, as long as A is not a confidential employee who has access to confidential matters on labor relations (San Miguel Corporation Supervisors and Exempt Employees Union v. Laguesma, 277 SCRA 370, 374-375 [1997]).

If A performs supervisory functions, such as overseeing employees' performance and with power of recommendation, then A is a rightful member of the supervisory union. Otherwise, he may not, because Samahang Manggagawa ng Teracota cannot represent A, A being not part of SMT's bargaining unit.

CBU; Modes; Determination of Exclusive Bargaining Agreement (2012)

No. VII. b. The modes of determining an exclusive bargaining agreement are:

Explain briefly how they differ from one another. (5%)

(1) voluntary recognition

SUGGESTED ANSWER:

"Voluntary Recognition" refers to the process by which a legitimate labor union is recognized by the employer as the exclusive bargaining representative or agent in a bargaining unit. Sec. 1, (bbb), Rule 1, Book V (Omnibus Rules Implementing the Labor Code).

ALTERNATIVE ANSWER:

(1) Voluntary Recognition is possible only in unorganized establishments where there is only one legitimate labor organization and the employer voluntarily recognize the representation of such a union; whereas,

(2) Certification election is a process of determining the sole and exclusive bargaining gent of the employee in an appropriate bargaining unit for purposes of collective bargaining, which process may involve one, two or more legitimate labor organizations. On the other hand, (3) consent election is an agreed one, the purpose being merely to determine the issue of majority representation of all the workers in the appropriate bargaining unit.

(2) certification election

SUGGESTED ANSWER:

"Certification Election" refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is ordered by the

Department (Sec. 1(h), Rule 1, Book V, Omnibus Rules Implementing the Labor Code).

(3) consent election

SUGGESTED ANSWER:

"Consent Election" refers to the process of determining through secret ballot the sole ans exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A consent election is voluntarily agreed upon by the parties, with or without the intervention by the Department (Sec. 1(h), Rule 1, Book V, Omnibus Rules).

Privilege Communication (2007)

No. VII. b. How sacrosanct are statements/data made at conciliation proceedings in the Department of Labor and Employment? What is the philosophy behind your answer? (5%)

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. (Articles 233, labor Code.) This is to enable the conciliators 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.

Right to Strike; Cooling-Off Period (2009)

No. VII. a. Johnny is the duly elected President and principal union organizer of the Nagkakaisang Manggagawa ng Manila Restaurant (NMMR), a legitimate labor organization. He was unceremoniously dismissed by management for spending virtually 95% of his working hours in union activities. On the same day Johnny received the notice of termination, the labor union went on strike.

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

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

SUGGESTED ANSWER:

Yes, the conduct of a strike action without observing the cooling-off period is a violation of one of the requirements of law which must be observed. The

cooling-off periods required by Article 263(c) and 263(f) of the Labor Code are to enable the DOLE to exert effort to amicably settle the controversy, and for the parties to review and reconsider their respective positions during the cooling-off periods. But the Labor Code also provides that if the dismissal constitutes union busting, the union may strike immediately.

Right to Strike; DOLE Sec. Intervention; Return to Work (2012)

No. I. b 2. A deadlock in the negotiations for the collective bargaining agreement between College X and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5. The strike totally paralyzed the operations of the school. The Labor Secretary immediately assumed jurisdiction over the dispute and issued on the same day (November 5) a return to work order. Upon receipt of the order, the striking union officers and members, on November 1, filed a Motion for Reconsideration thereof questioning the Labor Secretary's assumption of jurisdiction, and continued with the strike during the pendency of their motion. On November 30, the Labor Secretary denied the reconsideration of his return to work order and further noting the strikers' failure to immediately return to work, terminated their employment. In assailing the Labor Secretary's decision, the Union contends that:

The strikers were under no obligation to immediately comply with the November 5 return to work order because of their then pending Motion for Reconsideration of such order; and

SUGGESTED ANSWER:

This position of the union is flawed. Article 263(g) Labor Code provides that "such assumption xxx shall have the effect of automatically enjoining the intended or impending strike xxx. If one has already taken place at the time of assumption, xxx 'all striking . . .employees shall immediately effective and executor notwithstanding the filing of a motion for reconsideration. (Ibid., citing University of Sto. Tomas v. NLRC, G.R. No. 89920, October 18, 1990, 190 SCRA 759).

Right to Strike; Economic Provisions of the CBA (2010)

No. XVI. b. On the first day of collective bargaining negotiations between rank-and-file Union A and B Bus Company, the former proposed a P45/day increase. The company insisted that ground rules for negotiations should first be established, to

which the union agreed. After agreeing on ground rules on the second day, the union representatives reiterated their proposal for a wage increase. When company representatives suggested a discussion of political provisions in the Collective Bargaining Agreement as stipulated in the ground rules, union members went on mass leave the next day to participate in a whole-day prayer rally in front of the company building.

The Union contended that assuming that the mass leave will be considered as a strike, the same was valid because of the refusal of the company to discuss the economic provisions of the CBA. Rule on the contention. (2%)

SUGGESTED ANSWER:

The Union's contention is wrong. A strike may be declared only in cases of deadlock in collective bargaining negotiations and unfair labor practice (Article 263(c), Labor Code); Section 1, Rule V, NCMB Manual of Procedures).

The proposal of the company to discuss political provisions pursuant to the ground rules agreed upon does not automatically mean that the company refuses to discuss the economic provisions of the CBA, or that the company was engaged in "surface bargaining" in violation of its duty to bargain, absent any showing that such tend to show that the company did not want to reach an agreement with the Union. In fact, there is no deadlock to speak of in this case.

The duty to bargain does not compel either party to agree to a proposal or require the making of a concession. The parties' failure to agree which to discuss first on the bargaining table did not amount to ULP for violation of the duty to bargain.

Besides, the mass leave conducted by the union members failed to comply with the procedural requirements for valid strike under the Rules, without which, the strike conducted taints of illegality.

Right to Strike; Illegal Strike; Dismissal (2010)

No. VI. b. 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.

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

SUGGESTED ANSWER:

No, Article 264 of the Labor Code distinguishes the effects of illegal strikes between ordinary workers and union officers who participate therein. A, as an ordinary striking worker, may not be declared to have lost his employment status by mere participation in an illegal strike, unless there is proof that he knowingly participated in the commission of illegal acts during the strike (Arellano University Employees and Workers Union v. CA, 502 SCRA 219 [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, 592 SCRA 471 [2009]).

Right to Strike; Illegal Strike; Dismissal (2007)

No. XV. Some officers and rank-and-file members of the union staged an illegal strike. Their employer wants all the strikers dismissed. As the lawyer, what will you advise the employer? Discuss fully. (5%)

SUGGESTED ANSWER:

I will advice the employer that not all the strikers can be dismissed. Any union officers 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 (CCBPI Postmix Workers Union v. NLRC, 299 SCRA 410 [1998]).

Right to Strike; Legal Requirements (2007)

No. IX. Discuss the legal requirements of a valid strike. (5%)

SUGGESTED ANSWER:

The legal requirements of a valid strike are as follows:

(1) No labor union may strike on grounds involving inter-union and intra-union disputes.

(2) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike with the Department of Labor and Employment at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(3) A decision o declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose.

(4) In every case, the union shall furnish the department of labor and Employment the voting at least seven days before the intended strike subject to the cooling-off period herein provided.

(5) No labor organization shall declare a strike without first having bargained collectively; without first having filed the notice required or without the necessary strike vote first having been obtained and reported to the department of labor and Employment.

(6) No strike shall be declared after assumption of jurisdiction by the president or the secretary or after certification or submission of the dispute o compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike.

(7) In a strike no person engaged in picketing should commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purpose, or obstruct public thoroughfares.

<u>FIRST ALTERNATIVE ANSWER:</u>

(1) Valid factual ground;
(2) Notice of strike filed by the bargaining agent (if collective bargaining deadlock) or a registered union in the affected bargaining unit (if unfair labor practice);
(3) Notice of strike filed with the NCMB;
(4) Notice of strike filed at least 24 hours prior to taking a strike vote by secret

balloting, informing said office of the decision to conduct a strike vote, and the date, place, and time thereof;
(5) Strike vote where majority of union members approve the strike;
(6) Strike vote report should be submitted to the NCMB at least 7 days before the intended date of strike;
(7) Except in cases of union busting, the cooling-off period prescribed (15 days, unfair labor practice; 30 days, collective bargaining deadlock) should be fully observed;
(8) 7-day waiting period or strike bans after submission of the strike vote report to NCMB should be fully observed;
(9) Not on grounds of ULP in violation of no-strike clause in CBA;
(10) Not visited with widespread violence;
(11) Not in defiance of the Secretary's assumption of jurisdiction order;
(12) Not prohibited by law (such as unions in the banking industry).

SECOND ALTERNATIVE ANSWER:

A valid strike requires compliance of both substantial and procedural grounds. Substantially, a valid strike has to be grounded on either unfair labor practice or deadlock in collective bargaining. Procedurally, the same must comply with the requirements of: (1) notice of strike to be filed at least 15 days before the intended ULP grounded strike or at least 15 days before the intended ULP grounded strike or at least 30 days prior to the deadlock in bargaining grounded strike; (2) Must comply with the strike vote requirement, meaning, a majority of the union membership in the bargaining unit must have voted for the staging of the strike, and notice hereon shall be furnished to the NCMB at least 24 hours before the strike vote is taken; and (3) the strike vote results must be furnished to the NCMB at least 7 days before the intended strike. The dismissal of a duly elected officer excuses, however, the union from the 15/30 days cooling-off requirement in Art. 263(c) of the Labor Code.

Right to Strike; National Interest; DOLE Sec. Intervention (2012)

No. I. b1. A deadlock in the negotiations for the collective bargaining agreement between College X and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5. The strike totally paralyzed the operations of the school. The Labor Secretary immediately assumed jurisdiction over the dispute and issued on the same day (November 5) a return to work order. Upon receipt of the order, the striking union officers and members, on November 1, filed a Motion for Reconsideration thereof questioning the

Labor Secretary's assumption of jurisdiction, and continued with the strike during the pendency of their motion. On November 30, the Labor Secretary denied the reconsideration of his return to work order and further noting the strikers' failure to immediately return to work, terminated their employment. In assailing the Labor Secretary's decision, the Union contends that:

The Labor Secretary erroneously assumed jurisdiction over the dispute since College X could not be considered an industry indispensable to national interest;

SUGGESTED ANSWER:

The contention has no merit. There is no doubt that the on-going labor dispute at the school adversely affects the national interest. The on-going work stoppage at the school unduly prejudices the students and will entail great loss in terms of time, effort and money to all concerned. More importantly, the school is engaged in the promotion of the physical, intellectual and emotional well-being of the country's youth, matters that are therefore of national interest (St. Scholastica's College v. Ruben Torres, G.R. No. 100152, June 29, 1992 citing Philippine School of Business Administration v. Oriel, G.R. No. 80648, August 15, 1988, 164 SCRA 402)

ALTERNATIVE ANSWER:

(1) The Secretary of Labor correctly assumed jurisdiction over the labor dispute because the school (College X) is an industry indispensable to the national interest. This is so because the administration of a school is engaged in the promotion of the physical, intellectual and emotional well-being on the country's youth (PSBA v. Noreil, 164 SCRA 402 [1998]).

(2) An assumption order is executor in character and must be strictly complied with by the parties even during the pendency of any petition (or Motion for Reconsideration) questioning its validity (Baguio Colleges Foundation v. NLRC, 222 SCRA 604 [1993]; Union of Filipino Employees v. Nestle Philippines, Inc., 193 SCRA 396 [1990]).

(3) 264 of the Labor Code, as amended. (Solid Bank Corporation, etc., v. Solid Bank Union, G.R. No. 159461, November 15, 2010) thus, the union officers and members who defied the assumption order of the Secretary of Labor are deemed to have lost their employment status for having knowingly participated in an illegal act (Union of Filipino Employees vs. Nestle Philippines, Supra.)

Right to Strike; DOLE Sec. Intervention; Return to Work (2012)

No. I. b 2. A deadlock in the negotiations for the collective bargaining agreement between College X and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5. The strike totally paralyzed the operations of the school. The Labor Secretary immediately assumed jurisdiction over the dispute and issued on the same day (November 5) a return to work order. Upon receipt of the order, the striking union officers and members, on November 1, filed a Motion for Reconsideration thereof questioning the Labor Secretary's assumption of jurisdiction, and continued with the strike during the pendency of their motion. On November 30, the Labor Secretary denied the reconsideration of his return to work order and further noting the strikers' failure to immediately return to work, terminated their employment. In assailing the Labor Secretary's decision, the Union contends that:

The strikers were under no obligation to immediately comply with the November 5 return to work order because of their then pending Motion for Reconsideration of such order;

SUGGESTED ANSWER:

This position of the union is flawed. Article 263(g) Labor Code provides that "such assumption xxx shall have the effect of automatically enjoining the intended or impending strike xxx. If one has already taken place at the time of assumption, xxx 'all striking . . .employees shall immediately effective and executor notwithstanding the filing of a motion for reconsideration (Ibid., citing University of Sto. Tomas v. NLRC, G.R. No. 89920, October 18, 1990, 190 SCRA 759).

Right to Strike; Stoppage of Work (2008)

No. VI. a. On the day that the Union could validly declare a strike, the Secretary of Labor issued an order assuming jurisdiction over the dispute and enjoining the strike, or if one has commenced, ordering the striking workers to immediately return to work. The return-to-work order required the employees to return to work within twenty-four hours and was served at 8 a.m. of the day the strike was to start. The order at the same time directed the Company to accept all employees under the same terms and conditions of employment prior to the work stoppage. The Union members did not return to work on the day the Secretary's assumption order was served nor on the next day; instead, they held a continuing

protest rally against the company's alleged unfair labor practices. Because of the accompanying picket, some of the employees who wanted to return to work failed to do so. On the 3rd day, the workers reported for work, claiming that they do so in compliance with the Secretary's return-to-work order that binds them as well as the Company. The Company, however, refused to admit them back since they had violated the Secretary's return-to-work order and are now considered to have lost their employment status.

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment.

You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues:

Was there a strike? (4%)

SUGGESTED ANSWER:

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

Right to Strike; Strike Define (2010)

No. XVI. a. On the first day of collective bargaining negotiations between rank-and-file Union A and B Bus Company, the former proposed a P45/day increase. The company insisted that ground rules for negotiations should first be established, to which the union agreed. After agreeing on ground rules on the second day, the union representatives reiterated their proposal for a wage increase. When company representatives suggested a discussion of political provisions in the Collective Bargaining Agreement as stipulated in the ground rules, union members went on mass leave the next day to participate in a whole-day prayer rally in front of the company building.

The company filed a petition for assumption of jurisdiction with the Secretary of Labor and Employment. The Union opposed the petition, arguing that it did not intend to stage a strike. Should the petition be granted? Explain. (2%)

SUGGESTED ANSWER:

Yes, there was a strike. What the union engaged in was actually a "work stoppage" in the guise of a protest rally.

Article 212(o) of the Labor Code defines a strike as a temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. The fact that the conventional term

"strike" was not used by the striking employees to describe their common course of action is inconsequential. What is controlling is the substance of the situation, and not its appearance. The term "strike" encompasses not only concerted work stoppages, but also slowdowns, mass leaves, sit-downs, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities (Santa Rosa Coco-Cola Plant Employees Union, Donrico v. Sebastian, et. al. v. Coca-Cola Bottlers Phils., Inc., 512 SCRA 437 [2007]).

Right to Strike; Strike Vote Requirement (2010)

No. VI. a. 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.

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 strike (See Art. 263(f), Labor Code; Section 11, Rule XXII, Dept. Order No. 40-03).

Also, the strike was illegal due to the non-observance of the 30-day cooling off period by the union (Art. 263[c], Labor Code).

Right to Strike; Strike Vote Requirement (2009)

No. VII. b. Johnny is the duly elected President and principal union organizer of the Nagkakaisang Manggagawa ng Manila Restaurant (NMMR), a legitimate labor organization. He was unceremoniously dismissed by management for spending virtually 95% of his working hours in union activities. On the same day Johnny received the notice of termination, the labor union went on strike.

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

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

Rule on the foregoing contentions with reasons.

SUGGESTED ANSWER:

Yes, the conduct of the strike action without a strike vote violates Art. 263(f) – "*In every case, the union or the employer shall furnish the [DOLE] the results of the voting at least seven days before the intended strike...*" to enable the DOLE and the parties to exert effort to settle the dispute without strike action.

Right to Strike; Union Member (2010)

No. XVI. c. On the first day of collective bargaining negotiations between rank-and-file Union A and B Bus Company, the former proposed a P45/day increase. The company insisted that ground rules for negotiations should first be established, to which the union agreed. After agreeing on ground rules on the second day, the union representatives reiterated their proposal for a wage increase. When company representatives suggested a discussion of political provisions in the Collective Bargaining Agreement as stipulated in the ground rules, union members went on mass leave the next day to participate in a whole-day prayer rally in front of the company building.

Union member AA, a pastor who headed the prayer rally, was served a notice of termination by management after it filed the petition for assumption of jurisdiction. May the company validly terminate AA? Explain. (2%)

SUGGESTED ANSWER:

No, the company cannot terminate AA because the Labor Code provides mere participation of a worker in a strike shall not constitute sufficient ground for termination of his employment.

Self Organization; Agency Fee (2010)

No. XIII. A is employed by XYZ Company where XYZ Employees Union (XYZ-EU) is the recognized exclusive bargaining agent. Although A is a member of rival union XYR-MU, he receives the benefits under the CBA that XYZ-EU had negotiated with the company.

XYZ-EU assessed A a fee equivalent to the dues and other fees paid by its members but A insists that he has no obligation to pay said dues and fees because he is not a member of XYZ–EU and he has not issued an authorization to allow the collection.

Explain whether his claim is meritorious. (3%)

SUGGESTED ANSWER:

No, the fee exacted from A takes the form of an AGENCY FEE. This is sanctioned by Article 248 (e) of the Labor Code.

The collection of agency fees in an amount equivalent to union dues and fees from employees who are not union members is recognized under Article 248(e) of the Labor Code. The union may collect such fees even without any written authorization from the non-union member employees, if said employees accepted the benefits resulting from the CBA. The legal basis of agency fees is quasi-contractual (Del Pilar Academy v. Del Pilar Academy Employees Union, 553SCRA 590 [2008]).

Self Organization; Agency Fee (2009)

No. XI. e. Agency fees cannot be collected from a non-union member in the absence of a written authorization signed by the worker concerned. (5%)

SUGGESTED ANSWER:

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

Self Organization; Mixed membership; not a ground for cancellation (2010)

No. XV. b. Samahang Manggagawa ng Terracota, a union of supervisory employees at Terracota Inc., recently admitted a member of the company's managerial staff, A, into the union ranks.

Assuming that A is ineligible to join the union, should the registration of Samahang Manggagawa ng Terracota be cancelled? Explain. (3%)

SUGGESTED ANSWER:

No, Rep. Act. No.9481 introduced a new provision, Art. 245-A, which provides that mixed membership is not a ground for cancellation of a union's registration, but said employees wrongfully joined are deemed removed from said union.

Self Organization; Grounds for Cancellation of Union Registration (2010)

No. XXIV. Rank-and-file workers from Peacock Feathers, a company with 120 employees, registered their independent

labor organization with the Department of Labor and Employment (DOLE) Regional Office. Management countered with a petition to cancel the union's registration on the ground that the minutes of ratification of the union constitution and by-laws submitted to the DOLE were fraudulent. Specifically, management presented affidavits of ten (10) out of forty (40) individuals named in the list of union members who participated in the ratification, alleging that they were not present at the supposed January 1, 2010 meeting held for the purpose. The union argued that the stated date of the meeting should have read "January 11, 2010," instead of "January 1, 2010," and that, at any rate, the other thirty (30) union members were enough to register a union. Decide with reason. (3%)

SUGGESTED ANSWER:

Petition for cancellation is dismissed for want of merit.

The date specified therein is purely a typographical error as admitted by the union itself. There was no willful or deliberate intention to defraud the union members that will vitiate their consent to the ratification. To be a ground for the cancellation of the union registration under the Labor Code, the nature of the fraud must be grave and compelling enough to vitiate the consent of the majority of union members (Mariwasa Stam Ceramics v. Secretary, 608 SCRA 706 [2009]).

Moreover, 20% of 120 is 24. So, even if the 10 union members disown their participation to the ratification of the union constitution and by-laws, the union is correct in arguing that the 30 union members suffice to uphold the legitimacy of the union (Art. 234, Labor Code).

Self Organization; Right to Self-Organization of Coop Employees (2010)

No. X. A, an employee of XYZ Cooperative, owns 500 shares in the cooperative. He has been asked to join the XYZ Cooperative Employees Association. He seeks your advice on whether he can join the association. What advice will you give him? (3%)

SUGGESTED ANSWER:

A cannot join XYZ Cooperative Employees Association, because owing shares in XYZ Cooperative makes him a co-owner thereof.

An employee-member of a cooperative cannot join a union and bargain collectively with his cooperative for an "owner cannot bargain with himself and his co-owners" (Cooperative Rural Bank

of Davao City, Inc. v. Calleja, 165 SCRA 725, 732 [1988]; San Jose City – Electrical Service Cooperative, Inc. v. Ministry of Labor, 173 SCRA 697, 701-703 [1989]).

Self Organization; Right to Self-Organization of Government Employees (2009)

No. XI. c. Government employees have the right to organize and join concerted mass actions without incurring administrative liability. (5%)

SUGGESTED ANSWER:

False, government employees have the right to organized, but they may be held liable for engaging in concerted mass actions, it being a prohibited activity under CSC Law (E.O. 181). The right of government employees to organize is limited to the formation of unions or associations without including the right to strike. (Gesite v. CA, 444 SCRA 51 [2004]).

Self Organization; Unions; Member Deemed Removed (2010)

No. V. Company XYZ has two recognized labor unions, one for its rank-and-file employees (RFLU), and one for supervisory employees (SELU). Of late, the company instituted a restructuring program by virtue of which A, a rank-and-file employee and officer of RFLU, was promoted to a supervisory position along with four (4) other colleagues, also active union members and/or officers. Labor Union KMJ, a rival labor union seeking recognition as the rank-and-file bargaining agent, filed a petition for the cancellation of the registration of RFLU on the ground that A and her colleagues have remained to be members of RFLU. Is the petition meritorious? Explain. (3%)

SUGGESTED ANSWER:

No, Having been promoted to supervisory positions, A and her colleagues are no longer part of the rank-and-file bargaining unit. They are deemed removed from membership of RFLU (Art. 245-A, Labor Code as amended by Rep. Act No. 9481).

Self Organization; Unions; Voluntary Cancellation of Registration (2008)

No. XIV. "Puwersa", 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. Respondent company replied that through it is willing, the rank-and-file employees

had already lost interest in joining the local union as they had dissolved it. "Puwersa" 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 "Puwersa" tenable? Decide with reasons. (6%

SUGGESTED ANSWER:

A new provisions, Art. 239-A, was inserted into the Labor Code by R.A. 9481, as follows:

"Art. 239-A. Voluntary Cancellation of Registration. – the registration of a legitimate labor organization may be cancelled by the organization itself: Provided, That at least two-thirds of its general membership votes, in a meeting duly called for that purpose to dissolve the organization: provided, further That an application to cancel registration is thereafter submitted by the board of the organization, attested to by the president thereof."

If indeed the local union was dissolves in accordance with the above provision of law, the argument of "Puwersa" is not tenable. This is so because "Puwersa" 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 Mills, Inc., G.R. No. L-33987, September 4, 1975; cited in Filipino Pipe and Foundry Corp. v. NLRC, G.R. No. 115180, November 16, 1999).

ULP; Criminal Liability (2009)

No. VII. c. Johnny is the duly elected President and principal union organizer of the Nagkakaisang Manggagawa ng Manila Restaurant (NMMR), a legitimate labor organization. He was unceremoniously dismissed by management for spending virtually 95% of his working hours in union activities. On the same day Johnny received the notice of termination, the labor union went on strike.

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

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

SUGGESTED ANSWER:

No, the administrative proceeding shall not be binding on the criminal case or be

considered as evidence of guilt, but merely as proof of compliance with the requirements to file the said criminal case for the commission of an unfair labor practice.

ULP; Criminal and Civil Liability (2007)

No. VIII. Discuss in full the jurisdiction over the civil and criminal aspects of a case involving an unfair labor practice for which a charge is pending with the Department of Labor and Employment. (5%)

SUGGESTED ANSWER:

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 biding 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 247, labor Code.)

ULP; Runaway shop (2009)

No. I. c. A runaway shop is an act constituting unfair labor practice. (5%)

SUGGESTED ANSWER:

False, a *runaway shop* is not automatically an unfair labor practice. It is an unfair labor practice if the relocation that brought about the *runaway shop* is motivated by anti-union animus rather than for business reasons.

ALTERNATIVE ANSWER:

True, the transfer of location of a strike bound establishment to another location (run-away shop) can constitute an act of interference or restraint of the employees' right to self-organization. There is an inferred anti-union bias of the employer (Labor Code, Art. 248[a]). The provisions of Art. 248[a] should be broadly and literally interpreted to achieve the policy objective of the law,

***i.e.*, to enhance the workers right to self-organization and collective bargain (Constitution, Art. XIII, Sec. 3 & Art.III, Sec. 8; labor Code, Arts., 243, 244 & 245; Caltex Filipino Managers, etc. v. CIR, 44 SCRA 350 [1972]).**

ULP; Violation to Bargain Collectively (2009)

No. XVI. d. 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.

If you were the lawyer for the union, what legal recourse or action would you advise? Reasons. (3%)

<u>SUGGESTED ANSWER:</u>

I would recommend the filing of an unfair labor practice case against the employer for violating the duty to bargain collectively under Article 248(g) of the labor Code. This arbitration case also institutes the "deadlock bar" that shall prevent any other union from filing a petition for certification election.

ALTERNATIVE ANSWER:

I will advice the Union to continue negotiations with the aid of the NCMB (Art. 250, Labor Code), and to file an economic provision, gross and serious in character under Articles 248(i) and Art. 261 of the Labor Code.

Labor Standards

E-E Relationship; Corporation (2012)

No. III. b. X was one of more than one hundred (100) employees who were terminated from employment due to the closure of Construction Corporation A. The Cruz family owned Construction Company A. Upon the closure of Construction Company A, the Cruzes established Construction Company B. Both corporations had the same president, the same board of directors, the same corporate officers, and all the same subscribers. From the General Information Sheet filed by both companies, it also showed that they shared the same address and/or premises. . Both companies also hired the same accountant who prepared the books for both companies.

X and his co-employees amended their Complaint with the Labor Arbiter to hold Construction Corporation 8 joint and severally liable with Construction Company A for illegal dismissal, backwages and separation pay. Construction Company 8 interposed a Motion to Dismiss contending that they are juridical entities with distinct and separate personalities from Construction Corporation A and therefore, they cannot be held jointly and severally liable for the money claims of workers who are not their employees. Rule on the Motion to Dismiss. Should it be granted or denied? Why? (5%)

SUGGESTED ANSWER:

Denied. The factual circumstance: that the business of Construction Company A and Construction Company B are related, that all of the employees of Company A are the same persons manning and providing for auxillary services to units of Company B, and that the physical plants, offices and facilities are situated in the same compound – justify the piercing of the corporate veil of Company B (Indophil Textile Mill workers Union v. Calica, 205 SCRA 697, [1992]). The fiction of corporate entity can be disregarded when it I used to

justify wrong or protect fraud.(Complex Electronic Association v. NLRC, G.R. No. 121315 & 122136, July 19, 1999).

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

No. XI. Complaints had worked five (5) years as waitresses in a cocktail lounge owned by the respondent. They did not receive any salary directly from the respondent but shared in all service charges collected for food and drinks to the extent of 75%. With respondent's prior permission, they could sit with and entertain guest inside the establishment and appropriate for themselves the tips given by guests. After five (5) years, the complaints individual shares in the collected service charges dipped to below minimum wage level as a consequence of the lounge's marked business decline. Thereupon, complaints asked respondent to increase their share in the collected service charges to 85% or the minimum wage level, whichever is higher.

Respondent terminated the services of the complainants who countered by filing a consolidated complaint for unlawful dismissal, with prayer for 85% of the collected services or the minimum wage for the appropriate periods, whichever is higher. Decide. (6%)

<u>SUGGESTED ANSWER:</u>

Art. 138 of the Labor Code provides as follows:

"art. 138. Classification of certain women workers. – any woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor, shall be considered as an employee of such establishment for purposes of labor and social legislation."

Since complainants are under the effective control and supervision of respondent, they are therefore considered as employees and entitled to full backwages based on the minimum wage for the appropriate period plus 85% of the collected service charges.

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

No. V. b. The Pizza Corporation (PizCorp) and Ready Supply Cooperative (RSC) entered into a "service agreement" where RSC in consideration of service fees to be paid by PizCorp's will exclusively supply PizCorp with a group of RSC motorcycle-

owning cooperative members who will henceforth perform PizCorp's pizza delivery service. RSC assumes under the agreement --- full obligation for the payment of the salaries and other statutory monetary benefits of its members deployed to PizCorp. The parties also stipulated that there shall be no employer-employee relationship between PizCorp and the RSC members. However, if PizCorp is materially prejudiced by any act of the delivery impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s.

Based on the test/s for employer-employee relationship, determine the issue of who is the employer of the RSC members. (4%)

SUGGESTED ANSWER:

The employer of the RSC is PizCorp.

The four-fold test in determining employer-employee relationship is as follows:

(1) The selection and engagement of the employees;
(2) The payment of wages;
(3) The power of dismissal; and
(4) The power of control the employee's conduct.

Of the above, the power of control over the employees' conduct is the most crucial and determinative indicator of the presence or absence of an employer-employee relationship.

Applying the Control Test, PizCorp is the employer of RSC members because "if PizCorp is materially prejudices by any act of the delivery crew that violated PizCorp's directives and orders, Piz Corp can directly impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s." clearly, PizCorop controls the RSC members' conduct not only as to the end to be achived but also as to the means of achieving the ends (Manaya v. Alabang Country Club, G.R. No. 168988, June 19, 2007).

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

No. IV. a. 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 lnaapi (SUKI), a labor union duly registered with DOLE. Subsequently, SUKI filed a petition for Certification Election in order to be recognized as the exclusive bargaining agent of its members. Juicy Bar and Night Club opposed the petition for Certification Election on the singular ground of absence of employer-employee relationship between the GROs on one hand and the night club on the other hand. May the GROs form SUKI as a labor organization for purposes of collective bargaining? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes, the GROs worked under the direct supervision of Nite Club Manager for a ubstantial period of time. Hence, under Art. 138, with or without compensation, the GROs are to be deemed employees. As such, they are entitled to all rights and benefits granted to employee/workers under the Constitution and other pieces of labor legislation including the right to form labor organizations for purposes of collective bargaining. (Conts., Art. XIII, Sec. 3; Labor Code, Art. 243).

ALTERNATIVE ANSWER:

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

E-E Relationship; OFW (2009)

No. III. b. Richie, a driver-mechanic, was recruited by Supreme Recruiters (SR) and its principal, Mideast Recruitment Agency (MRA), to work in Qatar for a period of two (2) years. However, soon after the contract was approved by POEA, MRA advised SR to forego Richie's deployment because it had already hired another Filipino driver-mechanic, who had just completed his contract in Qatar. Aggrieved, Richie filed with the NLRC a complaint against SR and MRA for damages corresponding to his two years' salary under the POEA-approved contract.

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

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.

Employment; Children; Below 15 yrs old (2012)

No. IV. b. A spinster school teacher took pity on one of her pupils, a robust and precocious 12-year old boy whose poor family could barely afford the cost of his schooling. She lives alone at her house near the School after her housemaid had left. In the afternoon, she lets the boy do various chores as cleaning, fetching water and all kinds of errands after school hours. She gives him rice and P100.00 before the boy goes home at 7:00 every night. The school principal learned about it and charged her with violating the law which prohibits the employment of children below 15 years of age. In her defense, the teacher stated that the work performed by her pupil is not hazardous. Is her defense tenable? Why? (5%)

SUGGESTED ANSWER:

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

(1) when a child works directly under the sole responsibility of his/her 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 form of media is essential xxx." (Section 12, R.A. No. 7610, as amended by R.A. No. 9231).

Employment; Children; Below 15 yrs old (2009)

No. XI. b. Employment of children below fifteen (15) years of age in any public or private establishment is absolutely prohibited. (5%)

SUGGESTED ANSWER:

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

Employment; Company Policy; Weight Regulation (2010)

No. XVIII. Flight attendant A, five feet and six inches tall, weighing 170 pounds ended up weighing 220 pounds in two years. Pursuant to the long standing Cabin and Crew Administration Manual of the employer airline that set a 147-pound limit for A's height, management sent A a notice to "shape up or ship out" within 60 days. At the end of the 60-day period, A reduced her weight to 205 pounds. The company finally served her a Notice of Administration Charge for violation of company standards on weight requirements. Should A be dismissed? Explain. (3%)

SUGGESTED ANSWER:

No, while the weight standards for cabin crew may be a valid company policy in light of its nature as a common carrier, the airline company is now estopped from enforcing the Manual as ground for dismissal against A. it hired A despite her weight of 170 pounds, in contravention of the same Manual it now invoked.

The Labor Code gives to an airline the power to determine appropriate minimum age and other standards for requirement or termination in special occupations such as those of flight attendants and the like. Weight standards for cabin crew is a reasonable imposition by reason of flight safety (Yrasuegui v. PAL, I 569 SCRA 467 [2008]). However, A had already been employed for two (2) years before the airline company imposed on her this weight regulation, and nary an incident did the airline company raise which rendered her amiss of her duties.

Employment; Employment Contract; Discrimination by reason of Marriage (2012)

No. VI. b. 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: llonggo, Cebuano and Kapampangan. lngga, 23 years old, was accepted as she possesses all the qualifications. After passing the probationary period, lngga 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, lngga 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 lngga tenable? Why? (5%)

SUGGESTED ANSWER:

Yes, Man-manu's pre-employment requirement cannot be justified as a "bona fide occupational qualification," where the particular requirements of the job would justify it. The said requirement is not valid because it does not reflect an inherent quality that is reasonably necessary for a satisfactory job performance. (PT&T v. NLRC, G.R. No. 118978, May 23, 1997 citing 45A Am. Jur. 2d, Job Distribution, Sec. 506, p. 486).

ALTERNATIVE ANSWER:

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

Employment; Employment Contract; Discrimination by reason of Marriage (2010)

No. IX. A was working as a medical representative of RX pharmaceutical company when he met and fell in love with B, a marketing strategist for Delta Drug Company, a competitor of RX. On several occasions, the management of RX called A's attention to the stipulation in his employment contract that requires him to disclose any relationship by consanguinity or affinity with coemployees or employees of competing companies in light of a possible conflict of interest. A seeks your advice on the validity of the company policy. What would be your advice? (3%)

SUGGESTED ANSWER:

The company policy is valid. However, it does not apply to A. As A and B are not yet married, no relationship by consanguinity or affinity exists between them. The case of *Duncan v. Glaxo Wellcome (*438 SCRA 343 [2004]) does not apply in the present case.

Employment; Employment Contract; Fixed Period of Employment (2008)

No. III. a. Savoy Department Store (SDS) adopted a policy of hiring salesladies on five-month cycles. At the end of a saleslady's five-month term, another person is hired as replacement. Salesladies attend to store customers, were SDS uniforms, report at specified hours, and are subject to SDS workplace rules and regulations. Those who refuse the 5-month employment contract are not hired.

The day after expiration of her 5-month engagement, Lina wore her SDS white and blue uniform and reported for work but was denied entry into the store premises. Agitated, she went on a hunger strike and stationed herself in front of one of the gates of SDS. Soon thereafter, other employees whose 5-month term had also elapsed, joined Lina's hunger strike.

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

SUGGESTED ANSWER:

I will decide the case in favor of Lina, et al.

In the case of PNOC-Energy Development Corporation v. NLRC, G.R. No. 97747, March 31, 1993, the Supreme Court set down the criteria under which fixed contracts of employment do not circumvent the security of tenure, to wit:

(1) The fixed period of employment was knowingly and voluntarily agreed upon, without any force, duress or improper pressure upon the employee and absent any other circumstances vitiating his consent; or

(2) It satisfactorily appears that the employer and employees dealt with each other on more or less equal terms with no moral dominance over the employee.

Lina, et. al., are not on equal terms with their employers and did not agree to a 5-month contract. The scheme of SDS to prevent workers from acquiring regular employment, violates security of tenure and contrary to public policy. (Pure Foods Corporation v. NLRC, G.R. No. 122653, December 12, 1997; cited in Philips Semiconductors [Phil.], Inc. v. Fadriquela, G.R. No. 141717, April 14, 2004).

Employment; Employment Contract; Prohibiting Employment in a Competing Company (2009)

No. I. a. An employment contract prohibiting employment in a competing company within one year from separation is valid. (5%)

SUGESTED ANSWER:

True. An employment contract prohibiting employment in a competing company within a reasonable period of one year from separation is valid. The employer has the right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and informations.

Employment; Househelper (2009)

No. VI. a. Albert, a 40-year old employer, asked his domestic helper, Inday, to give him a private massage. When Inday refused, Albert showed her Article 141 of the Labor Code, which says that one of the duties of a domestic helper is to minister to the employer's personal comfort and convenience.

Is Inday's refusal tenable? Explain. (3%)

SUGGESTED ANSWER:

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

Employment; Househelper; Driver (2012)

No. V. a. Baldo was dismissed from employment for having beenabsent without leave (AWOL) for eight (8) months. It turned outthat the reason for his absence was his incarceration after he was mistaken as his neighbor's killer. Eventually acquitted and released from jail, Baldo returned to his employer and demanded reinstatement and full backwages. Is Baldo entitled to reinstatement and backwages? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes, Baldo is entitled to reinstatement. Although he shall not be entitled to backwages during the period of his detention, but only from the time the company refuse to reinstate him. (Magtoto v. NLRC, 140 SCRA 58 [1985]).

ALTERNATIVE ANSWER:

No, Baldo is not entitled to reinstatement and backwaages. The dismissal was for cause, *i.e.,* AWOL. Baldo failed to timely inform the employer of the cause of his failure to report for work; hence, prolonged absence is a valid ground to terminate employment.

Employment; Househelper; Non-Household Work (2007)

No. II. b. May a househelp be assigned to non-household work? (5%)

SUGGESTED ANSWER:

A househelper may be assigned to non-household work but a househelper assigned to work in a commercial, industrial or agricultural enterprise should have a wage or salary rate not lower than provided for agricultural or non-agricultural workers as prescribed by law.

ALTERNATIVE ANSWER:

No, pursuant to Article 141 of the Labor Code, a househelper is defined as a person who renders domestic or household services exclusively to a household employer. "Domestic or household service" is defined as service in the employer's home, which is usually necessary or desirable for the maintenance and enjoyment thereof, and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers (Rule XIII, Section 1(b), Book 3 of the Labor Code)

A househelper cannot be assigned non-household work because to do so would place that person outside the ambit of the special Labor Code provisions on househelpers. In such a situation, terms and conditions of employment would differ.

Employment; HouseHelper; Non-Household Work (2007)

No. XVIII. Inday was employed by mining company X to perform laundry service at its staffhouse. While attending to her assigned task, she slipped and hit her back on a stone. Unable to continue with her work, she was permitted to go on leave for medication, but thereafter she was not allowed to return to work. She filed a complaint for illegal dismissal but her employer X contended that Inday was not a regular employee but a mere househelp. Decide. (5%)

SUGGESTED ANSWER:

Inday is a regular employee. Under Rule XIII, Section 1(b), Book 3 of the Labor Code, as amended, the terms "househelper" or "domestic servant" are defined as follows:

"The term "househelper as used herein is synonymous to the term "domestic servant" and shall refer to any person, whether male or female, who renders services in and about the employer's

home and which services are usually necessary and desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family."

The foregoing definition clearly contemplates such househelper or domestic servant who is employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. The definition cannot be interpreted to include househelp or laundrywomen working in staffhouses of a company, like Inday who attends the needs of the company's guest and other persons availing of the said facilities. The criteria is the personal comfort and enjoyment of the family of the employer in the home of said employer. While it may be true that the nature of the work of a house helper, domestic servant or laundrywoman in a home or in a company staffhouse may be similar in nature, the difference in their circumstances is that in the former instance they are actually serving the family while in the latter case, whether it is a corporation or a single proprietorship engaged in business or industry or any other agricultural or similar pursuit, service is being rendered in the staffhouses or within the premises of the business of the employer. In such instance, they are employees of the company or employed in the business concerned entitled to the privileges of a regular employee. The mere fact that the househelper or domestic servant is working within the premises of the business of the employer and in relation to or in connection with its officers and employees, warrants the conclusion that such househelper or domestic servant is and should be considered as a regular employee of the employer and not considered as a mere family househelper or domestic servant as contemplated in Rule XIII, Section 1(b), Book 3 of the Labor Code, as amended (Apex Mining Company, Inc. v. NLRC, 196 SCRA 251 [1991]).

Employment; Househelper vs. Homeworker (2009)

No. VI. b. Albert, a 40-year old employer, asked his domestic helper, Inday, to give him a private massage. When Inday refused, Albert showed her Article 141 of the Labor Code, which says that one of the duties of a domestic helper is to minister to the employer's personal comfort and convenience.

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

SUGGESTED ANSWER:

Art. 141. – Domestic Helper – one who performs services in the employers house which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including the services of a family driver.

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

Employment; Employment of Minors; Statutory Restrictions (2007)

No. II. a. Discuss the statutory restrictions on the employment of minors? (5%)

SUGGESTED ANSWER:

Article 140 of the Labor Code provides that employers shall not discriminate against any person in respect to terms and conditions of employment on account of his age.

The employer is duty-bound to submit a report to DOLE of all children under his employ, with a separate report on children found to be handicapped after a conduct of medical examination. Moreover, an employer in any commercial, industrial, or agricultural establishment or enterprise is required to keep a register of all children under his employ, indicating therein their respective dates of birth; and a separate file on written consent of their respective parents/guardians, another file for their educational and medical certificates, and a separate file for especial work permits issued by Secretary of DOLE.

For children employed as domestic, the head of the family shall give the domestic an opportunity to complete at least elementary education. (Arts. 110, 108, and 109, PD 603 of the Revised Penal Code)

Art. 272 provides that no person shall retain a minor in service against his will, in payment of a debt incurred by an ascendant, guardian or person entrusted with the custody of the sais minor.

Art. 278 enumerate various acts of exploitations of minors prohibited under the law, to wit:

(1) any person who shall cause any boy or girl under 16 years of age to perform any dangerous feat of balancing physical strength or contortion.

(2) Any person who, being an acrobat, gymnast, rope-walker, diver, wild animal tamer or circus manager or engaged in a similar calling, shall employ in exhibitions of these kinds of children under 16 years of age who are not his children or descendants.

(3) Any person engaged in any calling enumerated in the next paragraph who shall employ any descendant of his under 12 years of age in such dangerous exhibitions.

(4) Any ascendant, guardian, teacher or person entrusted in any capacity with the care of a child under 16 years of age, who shall deliver such child graciously to any person following any of the callings enumerated in par. 2 hereof, or to any habitual vagrant or beggar.

PD 603: Child and Youth Welfare Code

Art. 107 of Child and Welfare Code provides that children below 16 years of age may only be employed to perform light work which is nit harmful to their safety, health or normal development, and which is not prejudicial to their studies.

RA9231, amending RA 6710

RA 6710 included a provision allowing a minor below 16 years of age to participate in public entertainment or information through cinema, theater, radio or television, provided the contract is included by the child's parents or legal guardian, with the express agreement of the child, and approval of DOLE. The employer is required to: (a) ensure the protection, health, safety, morals and normal development of the child; (b) institute measures to prevent the child's exploitation and discrimination taking into account the system and level of renumeration, and the duration and arrangement of working time; and (c) formulate and implement a continuing program for training and skills acquisition of the child.

The Department of Education is chaired to promulgate a course design under its non-formal program aimed at promoting intellectual, moral and vocational efficiency to working children who have not undergone or finished elementary or secondary education.

Employment; Non-Resident Alien (2007)

No. XX. AB, a non-resident American, seeks entry to the country to work as Vice-President of a local telecommunications company. You are with the Department of Labor and Employment (DOLE). What permit, if any, can the DOLE issue so that

AB can assume as Vice-President in the telecommunications company? Discuss fully. (5%)

SUGGESTED ANSWER:

The Labor Code provides that "any alien seeking admission to the Philippine for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor."

"The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.

Thus, AB (or Telecommunication company) should be issued the above-mentioned alien employment permit so that AB can assume as Vice President of the Telecommunication Company.

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

No. XIII. a. Atty. Renan, a CPA-lawyer and Managing Partner of an accounting firm, conducted the orientation seminar for newly-hired employees of the firm, among them, Miss Maganda. After the seminar, Renan requested Maganda to stay, purportedly to discuss some work assignment. Left alone in the training room, Renan asked Maganda to go out with him for dinner and ballroom dancing. Thereafter, he persuaded her to accompany him to the mountain highway in Antipolo for sight-seeing. During all these, Renan told Maganda that most, if not all, of the lady supervisors in the firm are where they are now, in very productive and lucrative posts, because of his favorable endorsement.

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

SUGGESTED ANSWER:

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

(1) Atty. Renan has authority, influence or moral ascendancy over Miss Maganda;

(2) While the law calls for a demand, request or requirement of a sexual, it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned,

with equal certitude form acts of the offender. (Domingo vs. Rayala, 546 SCRA 90 [2008]);

(3) The acts of Atty. Renan towards Miss Maganda resound with defeaning clarity the unspoken request for a sexual favor, regardless of whether it is accepted or not by Miss Maganda.

(4) In sexual harassment, it is not essential that the demand, request or requirement be made as a condition for continued employment or promotion to a higher position. It is enough that Atty. Renan's act result in creating an intimidating, hostile or offensive environment for Miss Maganda.

Labor-Only Contracting vs. Job-Only Contracting (2012)

No. I. a. Distinguish Labor-Only contracting and Job-Only contracting. (5%)

SUGGESTED ANSWER:

Labor-only contracting:

The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the employees of the contractor are performing activities which are directly related to the main business of the principal (Sy, et al v. Fairland Knitcraft Co., Inc., G. R. Nos. 182915 &189658, December 12, 2011)

Legitimate Job Contracting:

The contractor ha 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 manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof (Escasinas v. Shangri-la's Mactan Island Resort, 580 SCRA 344 [2009]).

Labor-only contracting is prohibited while Job Contracting is allowed by law.

ALTERNATIVE ANSWER:

(1) Job-only Contracting is legal; whereas, Labor-Only Contracting is prohibited by law.

(2) In Job-Only contracting, the principal is only an indirect employer; whereas, in Labor-only contracting, the principal becomes the direct employer of the employees of the labor-only contractor.

(3) The liability of the principal in Job-only Contracting vis-à-vis employees of

the job-contractor is for a limited purpose only, e.g. wages and violation of labor standard laws; whereas, the liability of the principal in Labor-Only Contracting is for a comprehensive purpose and, therefore, the principal becomes solidarily with the labor-only contractor for all the rightful claims of the employees.

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

Labor-Only Contractor (2012)

No. X. a. XYZ Manpower Services (XYZ) was sued by its employees together with its client, ABC Polyester Manufacturing Company (ABC). ABC is one of the many clients of XYZ. During the proceedings before the Labor Arbiter, XYZ was able to prove that it had substantial capital of Three Million Pesos. The Labor Arbiter ruled in favor of the employees because it deemed XYZ as a labor only contractor. XYZ was not able to prove that it had invested in tools, equipment, etc. Is the Labor Arbiter's ruling valid? Explain. (5%)

SUGGESTED ANSWER:

Yes, the presumption is that a contractor is a labor-only contractor unless it is shoen that it has substantial capital and substantial invetstment in the form of tools, equipment, machineries, work premises and the like (Sy, et al v. Fairland Knitcraft Co., Inc., G.R. Nos. 182915 & 189658, December 12, 2011) besides, what Art. 106 of the Code defines is Labor-Only Contracting and not Job-Contracting. In mandating that "there is 'labor-only' contracting where the person supplying workers to an employment 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 Labor Arbiter's ruling is not valid. Art. 106 of the Labor Code provides that the contractor has "substantial capital or investment"; the law did not say substantial capital and investment. Hence, it is in the alternative; it is sufficiant if the contractor has one or the other, i.e.,

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

Labor-Only Contractor (2009)

No. XIV. a. Jolli-Mac Restaurant Company (Jolli-Mac) owns and operates the largest food chain in the country. It engaged Matiyaga Manpower Services, Inc. (MMSI), a job contractor registered with the Department of Labor and Employment, to provide its restaurants the necessary personnel, consisting of cashiers, motorcycle delivery boys and food servers, in its operations. The Service Agreement warrants, among others, that MMSI has a paid- up capital of P2,000,000.00; that it would train and determine the qualification and fitness of all personnel to be assigned to Jolli- Mac; that it would provide these personnel with proper Jolli-Mac uniforms; and that it is exclusively responsible to these personnel for their respective salaries and all other mandatory statutory benefits.

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

assumed all the responsibilities of a legitimate Independent Contractor.

Labor-Only Contractor (2008)

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

Assume that RSC has a paid-up capitalization of P1,000.000.00 Is RSC engaged in "labor only" contracting, permissible job contracting or simply, recruitment? (3%)

<u>SUGGESTED ANSWER:</u>

RSC is engaged in "labor-only" contracting.

Apart from the substantial capitalization or investment in the form of tools, equipment, machinery and work premises, the following factors need be considered.

(A) whether the contractor is carrying on an independent business;
(B) the nature and extent of the work;
(C) the skill required;
(D) the term and duration of the relationship;
(E) the right to assign the performance of specific pieces of work;
(F) the control and supervision of the workers;
(G) the power of the employer with respect to the hiring, firing and payment of workers of the contractor;
(H) the control of the premises;
(I) the duty to supply premises, tools, appliances, materials, and labor; and
(J) the mode, manner and terms of payment.

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

Consider also the following circumstances:

(1) the workers placed by RSC are performing activities which are directly related to the principal business of PizCorp. (Baguio v. NLRC, G.R. Nos. 79004-08, October 04, 1991);

(2) RSC is not free from the control and direction of PizCorp in all matters connected with the performance of the work (*ibid).*

Labor-Only Contractor; Remittance of SSS Premium (2008)

No. IX. Assume that in Problem 5, Mario, an RSC member disgusted with the non-payment of his night shift differential and overtime pay, filed a complaint with the DOLE Regional Office against RSC and PizCorp. After inspection, it was found that indeed Mario was not getting his correct differential and overtime pay and that he was declared an SSS member (so that no premiums for SSS membership were ever remitted). On this basis, the Regional Director issued a compliance order holding PizCorp and RSC solidarily liable for the payment of the correct differential and overtime pay and ordering PizCorp to report Mario for membership with SSS and remit overdue SSS premiums.

Who has the obligation to report the RSC members for membership with the SSS, with the concomitant obligation to remit SSS premiums? Why? (6%)

SUGGESTED ANSWER:

Since RSC is a "labor-Only" contractor and, therefore, considered a mere agent of PizCorp. PizCorp, as the real employer, has the legal obligation to report the RSC members as its employees for membership with the SSS and remit its premium.

Labor-Only Contractor; Worker's Money Claim (2009)

No. XIV. b. Jolli-Mac Restaurant Company (Jolli-Mac) owns and operates the largest food chain in the country. It engaged Matiyaga Manpower Services, Inc. (MMSI), a job contractor registered with the Department of Labor and Employment, to provide its restaurants the necessary personnel, consisting of cashiers, motorcycle delivery boys and food servers, in its operations. The Service Agreement warrants, among others, that MMSI has a paid- up capital of P2,000,000.00; that it would train and determine the qualification

and fitness of all personnel to be assigned to Jolli- Mac; that it would provide these personnel with proper Jolli-Mac uniforms; and that it is exclusively responsible to these personnel for their respective salaries and all other mandatory statutory benefits.

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

The employers can file their claims against Jolli-Mac pursuant to Art. 106 of the Labor Code which reads: "Contractor or subcontractor – xxx In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent, that he is liable to employee directly employed by him."

Recruitment & Placement; Direct Hiring of OFW (2010)

No. I. 3. As a general rule, direct hiring of Overseas Filipino Workers (OFWs) is not allowed. (2%)

SUGGESTED ANSWER:

True, Art. 18 of the Labor Code provides that no employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Department of Labor and Employment. (DOLE) except direct-

hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the DOLE.

Another exemption if "Name Hire," which refers to a worker who is able to secure an overseas employment opportunity with the assistance or participation of any agency.

Recruitment & Placement; Contract of Employment; Relief (2010)

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

Is A entitled to relief? Explain. (3%)

SUGGESTED ANSWER:

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

(1) A can file a complaint for Recruitment Violation for XYZ's failure to deploy him within the prescribed period without any valid reason, a ground for the imposition of administrative sanctions against XYZ under Section 2, Rule I, Part V of the 2003 POEA Rules of Employment of Seafarers.

(2) At the same time, A can file for illegal recruitment under Section 6(L) of Rep. Act No 8042 (*cf:* Section 11 Rule I, Part V of the 2003 POEA Rules on Employment of Seafarers).

A may file a complaint for breach of contract, and claim damages therefor before the NLRC, despite absence of employer-employee relationship. Section 10 of Rep. Act No 8042 conferred jurisdiction on the Labor Arbiter not only claims arising out of EER, but also by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. (Santiago v. CF Sharp Crew Management, 527 SCRA 165 [2007]).

Recruitment & Placement; Illegal Recruitment; Criminal Liability (2010)

No. XXI. a. 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.

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

<u>SUGGESTED ANSWER:</u>

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

Recruitment & Placement; Illegal Recruitment; Criminal Liability; Recruitment Agency (2010)

No. XXI. b. 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.

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

Recruitment & Placement; Illegal Recruitment; Types (2007)

No. III. a. Discuss the types of illegal recruitment under the Labor Code. (5%)

SUGGESTED ANSWER:

Under the Labor Code, as amended by Republic Act No. 8042 otherwise known as the "Overseas Filipinos and Migrant Workers Act of 1998", 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 (Art. 13(b), Arts. 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:

(A) 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;

(B) Furnishing or publishing any false notice or information or document in relation to recruitment or employment;

(C) 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;

(D) 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;

(E) Influencing or to attempting to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(F) 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;

(G) Obstructing or attempting to obstruct inspection by the Secretary of Labor or by his duly authorized representative;

(H) 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;
(I) 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 that those authorized under this code and implementing rules and regulations. (RA 8042, Migrant Workers & Oversees Filipino Act of 1995)

Recruitment & Placement; Illegal Recruitment; Search & Arrest Warrants (2007)

No. III. b. In initiating actions against alleged illegal recruiters, may the Secretary of Labor and Employment issue search and arrest warrants? (5%)

SUGGESTED ANSWER:

No, under the 1987 Constitution, only judges may issue warrants of arrest or search warrant.

Recruitment & Placement; POEA; Disciplinary Action; OFW (2007)

No. XIX. Cite five grounds for disciplinary action by the Philippine Overseas Employment Administration (POEA) against overseas workers. (5%)

SUGGESTED ANSWER:

Under the Section 1(A) and (B), Rule III, Part VII of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of the Land-based Overseas Workers, the following are the grounds for disciplinary action against overseas workers:

(A) Pre-employment Offenses
(1) Using, providing, or submitting false information or documents for purposes of job application or employment;
(2) Unjustified refusal to depart for the worksite after all employment and travel documents have been duly approved by the appropriate overnment agency/eis.

(B) Offenses during Employment

(1) Commission of a felony or a crime punishable by Philippine Laws or by the laws of the host country;
(2) Unjustified breach of employment contract;
(3) Embezzlement of company funds or monies and/or properties of a fellow worker entrusted for delivery to kin or relatives in the Philippines; and
(4) Violation/s sacred practice of the host country.

Further, under Section 1(A) and (B), Rule II, Part VI of the 2003 Rules and Regulations Governing the Recruitment and Employment of Seafarers, the following are the grounds for disciplinary action against seafarers:

(A) Pre-employment Offenses
(1) Submission/furnishing or using false information or documents or any form of misappropriation for the purpose of job application or employment;
(2) Unjust refusal to join ship after all employment and documents have been duly approved by the appropriate government agencies.
(B) Offenses During Employment
(1) Smuggling or violation of any custom rules and regulations of the Philippines and foreign port;
(2) Desertion;
(3) Absence without leave;
(4) Sleeping on post while on duty;
(5) Insubordination;

(6) Drunkenness;
(7) Creating trouble outside the vessel's premises;
(8) Gambling;
(9) Violation of company policies and regulations;
(10) Incompetency and inefficiency;
(11) Inciting mutiny, malicious destruction of ship's property or any activity which will hamper the efficient operation of the vessel;
(12) Concerted action to breach approved contracts;
(13) Any activity which tends to destroy harmonious relationship of the company;
(14) Grave abuse of authority;
(15) Other gross misbehaviors prejudicial to good order and discipline;
(16) Negligence causing damage, loss, spoilage or deterioration of vessel's stocks and property;
(17) Connivance with or cuddling of stowaway;
(18) Willfully making false statements, reports, certification or spurious seafarer's documents for personal gain with or with intent to misled or defraud the company;
(19) Any other case as to cast aspersion on the good name of the company and vessel;
(20) Violation of safety and environmental rules/regulations; and
(21) Failure to observe the drug and alcohol policy of that company.

Wages; Employee's Wage; Facilities (2013)

No. II. Gamma Company pays its regular employees P350.00 a day, and houses them in a dormitory inside its factory compound in Manila. Gamma Company also provides them with three full meals a day.

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

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

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

<u>**SUGGESTED ANSWER:**</u>

No, the following requisites were not complied with:

(A) Proof that such facilities are customarily furnished by the trade
(B) The provision of deductible facilities is voluntarily accepted by the employee
(C) The facilities are charged at the fair and reasonable value. Mere availment is not sufficient to allow deduction from the employees' wages. (*Mayon Hotel & restaurant v. Adarna,* 458 SCRA 609 [2005]).

<u>**ALTERNATIVE ANSWER:**</u>

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

Wages; Employee's Wage; Facilities (2010)

No. XXIII. A worked as a roomboy in La Mallorca Hotel. He sued for underpayment of wages before the NLRC, alleging that he was paid below the minimum wage. The employer denied any underpayment, arguing that based on long standing, unwritten policy, the Hotel provided food and lodging to its housekeeping employees, the costs of which were partly shouldered by it and the balance was charged to the employees. The employees' corresponding share in the costs was thus deducted from their wages. The employer concluded that such valid deduction naturally resulted in the payment of wages below the prescribed minimum. If you were the Labor Arbiter, how would you rule? Explain. (3%)

<u>**SUGGESTED ANSWER:**</u>

I will rule in favor of A.

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

In *Mabeza v. NLRC (*271 SCRA 670 [1997]), the Supreme Court held that the employer simply cannot deduct the value form 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.

Wages; Holiday Pay (2010)

No. IV. A, a worker at ABC Company, was on leave with pay on March 31, 2010. He reported for work on April 1 and 2, Maundy Thursday and Good Friday, respectively,

both regular holidays. Is A entitled to holiday pay for the two successive holidays? Explain. (3%)

SUGGESTED ANSWER:

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

Wages; No Work No Pay Principle XIII (2008)

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

SUGGESTED ANSWER:

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

Wages; Overtime Pay; Waiver (2009)

No. XI. d. A waiver of the right to claim overtime pay is contrary to law. (5%)

SUGEESTED ANSWER:

True, as a general rule, overtime compensation cannot be waived, whether expressly or impliedly; and stipulation to the contrary is against the law (Pampanga Sugar Dev. Co., Inc. v. CIR, 114 SRCA 725 [1982]). An excep0tion would be the adoption of a compressed work week on voluntary basis, subject to the guidelines of Department Order No. 02, Series of 2004.

Wages; Undertime off-set by Overtime (2010)

No. XIV. 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.

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, Rep. Act. No.9481 introduced a new provision, Art. 245-A, which provides that mixed membership is not a ground for cancellation of a union's registration, but said employees wrongfully joined are deemed removed from said union.

Wages; Wage Distortion; Definition (2009)

No. IX. a. What is *wage distortion?* Can a labor union invoke wage distortion as a valid ground to go on strike? Explain. (2%)

SUGGESTED ANSWER:

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

No. the existence of wage distortion is not a valid ground for staging a strike because Art. 124 of the Labor Code provides for a specific method or procedure for correcting wage distortion. In *Ilaw at Buklod ng Manggagawa vs. NLRC*, (198 SCRA586, 594-5 [1991]), the Court said.

Wages; Wage Distortion; Means of Solving (2009)

No. IX. b. What procedural remedies are open to workers who seek correction of wage distortion? (2%)

SUGGESTED ANSWER:

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

<u>Organized establishment</u> – follow the grievance procedure as provided for in the CBA, ending in voluntary arbitration.

<u>Unorganized establishment</u> – 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.

Working Hours; Emergency Overtime Work (2010)

No. XIV. a. 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.

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

<u>SUGGESTED ANSWER:</u>

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

Termination of Employment

Backwages; Money Claims; OFW (2010)

No. VII. b. A was an able seaman contracted by ABC Recruitment Agency for its foreign principal, Seaworthy Shipping Company (SSC). His employment contract provided that he would serve on board the Almieda II for eight (8) months with a monthly salary of US$450. In connection with his employment, he signed an undertaking to observe the drug and alcohol policy which bans possession or use of all alcoholic beverages, prohibited substances and un-prescribed drugs on board the ship. The undertaking provided that: (1) disciplinary action including dismissal would be taken against anyone in possession of the prohibited substances or who is impaired by the use of any of these substances, and (2) to enforce the policy, random test sampling would be done on all those on board the ship.

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

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Dismissal; Defiance of Return to Work Order (2008)

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

The Union officers and members filed a complaint for illegal dismissal arguing that there was no strike but a protest rally which is a valid exercise of the workers constitutional right to peaceable assembly and freedom of expression. Hence, there was no basis for the termination of their employment.

You are the Labor Arbiter to whom the case was raffled. Decide, ruling on the following issues:

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

SUGGESTED ANSWER:

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

Dismissal; Due Process; Requirement (2009)

No. XVII. a. Alfredo was dismissed by management for serious misconduct. He filed suit for illegal dismissal, alleging that although there may be just cause, he was not afforded due process by management prior to his termination. He demands reinstatement with full backwages.

What are the twin requirements of due process which the employer must observe in terminating or dismissing an employee? Explain. (3%)

SUGGESTED ANSWER:

The twin requirements of due process are notice and hearing to be given to the worker. There is likewise a two-notice requirement rule, with the first notice pertaining to specific causes or grounds for termination and directive to submit a written explanation within a reasonable period. "The second notice pertains to notice of termination. Pursuant to Perez v. Philippine Telegraph and Telephon Company (G.R. N. 152048, 7 April 2009), the Court held that a hearing or conference is not mandatory, as long as the employee is given "ample opportunity to be heard", i.e. any meaningful opportunity (verbal or written) to answer the charges against him or her and submit evidence in support of the defense, whether in a hearing, conference, or some other fair, just and equitable way.

Dismissal; Illegal Dismissal; Disability Complaint (2013)

No. X. 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 2000Philippine Overseas Employment Administration Standard Employment Contract (2000 POEA-SEC). Cesar's employment was also covered by a CBA between the union, AMOSl.JP, and Meritt Shipping. Both the 2000 POEA-SEC and the CBA commonly provide the same mode and procedures for claiming disability benefits. Cesar's last contract (for nine months) expired on July 15, 2013.

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

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

Assume that you are the Labor Arbiter deciding the case. Identify the facts and issues you would consider material in resolving the illegal dismissal and disability complaint. Explain your choices and their materiality, and resolve the case. (8%)

SUGGESTED ANSWER:

(1) Does the Labor Arbiter have jurisdiction to decide the case?
(2) Did Cesar submit to a post-employment examination within 3 days upon his return? This is mandatory requirement; otherwise, Cesar will forfeit his right to claim benefits.
(3) Is Dr. Sales the company-designated physician? The company-designated physician is the one who initially determines compensability.

(4) Was Cesar assisted by Dr. Sales (if he is the company physician) within 120 days?

(5) If the 120 days was exceeded and no declaration was made as to Cesar's disability, was this extended to 240 days because Cesar required further medical treatment?

(6) Was the 240 days exceeded and still no final decision was reached as to Cesar's disability? If so, Cesar is deemed entitled to permanent total disability benefits.

(7) If the company's physician and Cesar's physician cannot agree, was a third physician designated to determine the true nature and extent of the disability. The third physician's finding under the law is final and conclusive.

(8) In the matter of the complaint for illegal dismissal: There is none because Cesar disembarked on a "finished contract."

(9) Seafarers are contractual employees, for a fixed terms, governed by the contract they sign; an exception to Article 280 (now Article 286) of the Labor Code. Hence, the complaint for illegal dismissal will not prosper.

Dismissal; Illegal Dismissal; Liabilities (2012)

No. II. b. In the Collective Bargaining Agreement (CBA) between Dana Films and its rank-and-file Union (which is directly affiliated with MMFF, a national federation), a provision on the maintenance of membership expressly provides that the Union can demand the dismissal of any member employee who commits acts of disloyalty to the Union as provided for in its Constitution and By-Laws. The same provision contains an undertaking by the Union (MMFF) to hold Dana Films free from any and all claims of any employee dismissed. During the term of the CBA, MMFF discovered that certain employee-members were initiating a move to disaffiliate from MMFF and join a rival federation, FAMAS. Forthwith, MMFF sought the dismissal of its employee-members initiating the disaffiliation movement from MMFF to FAMAS. Dana Films, relying on the provision of the aforementioned CBA, complied with MMFF's request and dismissed the employees identified by MMFF as disloyal to it.

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 to their former positions without reduction in rank, serniority and salary; and (2) to jointly and severally pay the dismissed

employees backwages, without any reduction in pay or qualification (Amanda Rice v. NLRC, G.R. No. 68147, June 30, 1988).

Dismissal; Illegal Dismissal; Separation Pay in Lieu of Reinstatement (2009)

No. XVIII. a. Cite four (4) instances when an illegally dismissed employee may be awarded separation pay in lieu of reinstatement. (3%)

SUGGESTED ANSWER:

These four instances are: (i) in case the establishment where the employee is to be reinstated has closed or ceased operations; (ii) where the company has been declared insolvent; (iii) former position no longer exists at the time of reinstatement for reason not attributable to the fault of the employer; and (iv) where the employee decides not to be reinstated as when he does not pray for reinstatement in his complaint or position paper.

Dismissal; Authorized Causes; Closure & Cessation of Business (2012)

No. VIII. a. 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.

As counsel for the corporation, what steps will you take prior to its closure? (3%)

SUGGESTED ANSWER:

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

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

No. VIII. b. 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.

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

<u>**SUGGESTED ANSWER:**</u>

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

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

No. VIII. d. 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.

Are the employees entitled to separation benefits? (3%)

<u>**SUGGESTED ANSWER:**</u>

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

Dismissal; Just Cause; Loss of Trust and Confidence (2009)

No. V. b. Domingo, a bus conductor of San Juan Transportation Company, intentionally did not issue a ticket to a female passenger, Kim, his long-time crush. As a result, Domingo was dismissed from employment for fraud or willful breach of trust. Domingo contests his dismissal, claiming that he is not a confidential employee and, therefore, cannot be dismissed from the service for breach of trust. Is Domingo correct? Reasons. (2%)

<u>**SUGGESTED ANWER:**</u>

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

Dismissal; Just Cause; Serious Misconduct (2013)

No. I. a. 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.

As lawyer for Magna, advise the company on whether just and valid grounds exist to dismiss Jose. (4%)

SUGGESTED ANSWER:

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

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

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

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

ALTERNATIVE ANSWER:

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

In one case, the Court considered theft committed against a co-employee as a case analogous to serious misconduct, for which the penalty of dismissal form 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.

Dismissal; Just Cause; Serious Misconduct (2009)

No. XIII. b. Atty. Renan, a CPA-lawyer and Managing Partner of an accounting firm, conducted the orientation seminar for newly-hired employees of the firm, among them, Miss Maganda. After the seminar, Renan requested Maganda to stay, purportedly to discuss some work assignment. Left alone in the training room, Renan asked Maganda to go out with him for dinner and ballroom dancing. Thereafter, he persuaded her to accompany him to the mountain highway in Antipolo for sight-seeing. During all these, Renan told Maganda that most, if not all, of the lady supervisors in the firm are where they are now, in very productive and lucrative posts, because of his favorable endorsement.

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

SUGGESTED ANSWER:

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

ANOTHER SUGGESTED ANSWER:

No, the case for illegal dismissal with damages filed in the Office of Labor Arbiter will not prosper. Renan was terminated for serious misconduct which is a just cause under Art. 282 of the Labor Code. The act of Renan is grave and aggravated in character, and committed in connection with his work (Echaverria v. Venutek Media, 516 SCRA 72 [2007]), and indicates that he has become unfit to continue working for his employer (Torreda v. Toshibe Info. Equipment, Inc. Phils., 515 SCRA 133 [2007]).

Dismissal; Just Cause; Serious Misconduct; Performance of Official Work (2013)

No. I. b. 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.

Assuming this time that Magna dismissed Jose from employment for cause and you are the lawyer of Jose, how would you argue the position that Jose's dismissal was illegal? (4%)

SUGGESTED ANSWER:

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

For misconduct or improper behavior to be a just cause for dismissal, it (a) must be serious; (b) must relate o 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 Mayers Squibb, G.R. No. 168637/170684 [2008]).

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

Dismissal; Just Cause; Without Due Process (2012)

No. II. a. In the Collective Bargaining Agreement (CBA) between Dana Films and its rank-and-file Union (which is directly affiliated with MMFF, a national federation), a provision on the maintenance of membership expressly provides that the Union can demand the dismissal of any member employee who commits acts of disloyalty to the Union as provided for in its Constitution and By-Laws. The same provision contains an undertaking by the Union (MMFF) to hold Dana Films free from any and all claims of any employee dismissed. During the term of the CBA, MMFF discovered that certain employee-members were initiating a move to disaffiliate from MMFF and join a rival federation, FAMAS. Forthwith, MMFF sought the dismissal of its employee-members initiating the disaffiliation movement from MMFF to FAMAS. Dana Films, relying on the provision of the aforementioned CBA, complied with MMFF's request and dismissed the employees identified by MMFF as disloyal to it.

Will an action for illegal dismissal against Dana Films and MMFF prosper or not? Why? (5%)

SUGGESTED ANSWER:

Yes, while Dana Films, under the CBA, is bound to dismiss any employee who is expelled by MMFF for disloyalty (upon its written request), this undertaking should not be done hastily and summarily. Due process is required before a member can be dropped from the list of union members of good standing. The company's dismissal of its workers without giving them the benefit of a hearing, and without inquiring from the workers on the cause of their expulsion as union members, constitute bad faith. (Liberty Cotton Mills Workers Union, et al v. Liberty Cotton Mills, Inc. et al., G.R. No L-33987, May 31, 1979).

Dismissal; Just Cause; Willful Disobedience (2008)

No. XII. Arnaldo, President of "Bisig" Union in Femwear Company, readied himself to leave exactly at 5:00 p.m. which was the end of his normal shift to be able to send off his wife who was scheduled to leave for overseas. However, the General Manager required him to render overtime work to meet the company's export quota. Arnaldo begged off, explaining to the General Manager that he had to see off his wife who was leaving to work abroad. The company dismissed Arnaldo for insubordination. He filed a case for illegal dismissal. Decide (6%)

SUGGESTED ANSWER:

Compulsory overtime work may be required when the completion or continuation of work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer (Art. 89, Par. E, Labor Code; Section 10, Rule I, Book III, Implementing Rules).

On the other hand, dismissal for willful disobedience of the employer's lawful orders, requires that: (a) the assailed conduct must have been willful or intentional, characterized by a "wrongful and perverse attitude;" and (b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to his duties (Dimabayao v. NLRC, G.R. No. 122178, February 25, 1999; Alcantara, Jr. v. CA, G.R. No. 143397, August 06, 2002).

Although the order to rendr overtime is valid. Arlando should not be dismissed because he was motivated by his honest belief that the order unreasonably prevented him from sending off his wife who was leaving for overseas.

While the circumstances do not justify his violation of the order to render overtime, they do not justify Arnaldo's dismissal either (Alcantara, Jr. v. CA, G.R. No. 143397, August 06, 2002).

Dismissal; Constructive Dismissal; Transfer (2013)

No. IV. b. 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.

Advise Bobby on the best course of action to take under the circumstances. (4%)

SUGGESTED ANSWER:

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

Dismissal; OFW (2010)

No. VII. a. A was an able seaman contracted by ABC Recruitment Agency for its foreign principal, Seaworthy Shipping Company (SSC). His employment contract provided that he would serve on board the Almieda II for eight (8) months with a monthly salary of US$450. In connection with his employment, he signed an undertaking to observe the drug and alcohol policy which bans possession or use of all alcoholic beverages, prohibited substances and un-prescribed drugs on board the ship. The undertaking provided that: (1) disciplinary action including dismissal would be taken against anyone in possession of the prohibited substances or who is impaired by the use of any of these substances, and (2) to enforce the policy, random test sampling would be done on all those on board the ship.

On his third month of service while the Almieda II was docked at a foreign port, a random drug test was conducted on all members of the crew and A tested positive for marijuana. He was given a copy of the

drug test result. In compliance with the company's directive, he submitted his written explanation which the company did not find satisfactory. A month later, he was repatriated to the Philippines.

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Dismissal; Payroll Reinstatement (2009)

No. VIII. c. Alexander, a security guard of Jaguar Security Agency (JSA), could not be given any assignment because no client would accept him. He had a face only a mother could love. After six (6) months of being on "floating" status, Alexander sued JSA for constructive dismissal. The Labor Arbiter upheld Alexander's claim of constructive dismissal and ordered JSA to immediately reinstate Alexander. JSA appealed the decision to the NLRC. Alexander sought immediate enforcement of the reinstatement order while the appeal was pending.

JSA hires you as lawyer, and seeks your advice on the following:

If the order of reinstatement is being enforced, what should JSA do in order to prevent reinstatement? (2%)

Explain your answers.

SUGGESTED ANSWER:

The employer cannot prevent reinstatement but may, however, opt for reinstatement of the employee in the payroll of the company without requiring him to report back to his work (Zamboanga City Water Distrcit v. Buat, 232 SCRA 587 [1994]).

PLEASE NOTE

In connection with security guards, Department Order No. 14 series of 2001, if there is lack of assignment then the security guard is entitled to separation pay.

Dismissal; Reinstatement; Non-Compliance (2007)

No. X. Discuss briefly the instances when non-compliance by the employer with a reinstatement order of an illegally dismissed employee is allowed. (5%)

SUGGESTED ANSWER:

Despite a reinstatement order, an employer may not reinstate an employee in the following instances: (a) when the position or any substantial equivalent thereof no longer exists; (b) when reinstatement has been rendered moot and academic by supervening events, such as insolvency of the employer as declared by the court or closure of the business; or (c) the existence of strained relations between the employer and the illegally dismissed employee, provided the matter is raised before the Labor Arbiter.

ALTERNATIVE ANSWER:

When reinstatement is not feasible due to the strained employer-employee relationship; or that the reinstatement is rendered moot by the bona fide closure of business; or when the position previously held by the employee no longer exists and there is no equivalent position available; or that the employee is sick with an illness that cannot be cured within 6 months, or that the employee has reached the age of retirement; or that the employee himself refuses to be reinstated for one reason or another; in view of the expiration of the 4-year prescriptive period; RA 8042 (Migrant Workers and Overseas Act) does not allow reinstatement to overseas Filipino workers especially seamen. In these instances, separation pay in lieu of reinstatement may be ordered at the rate of one month for every year of service, a fraction of at least 6 months equivalent to one year, whichever is higher.

Dismissal; Reinstatement; Backwages; Damages (2009)

No. XVIII. b. Explain the impact of the union security clause to the employees' right to security of tenure. (2%)

SUGGESTED ANSWER:

A valid union security clause when enforced or implemented for cause, after according the worker his substantive and procedural due process rights (Alabang

Country club, inc. v. NLRC, 545 SCRA 357 [2008]; does not violate the employee's right to security of tenure. Art. 248(e) of the labor Code allows union security clauses and a failure to comply with the same is a valid ground to terminate employment. Union security clauses designed to strengthen unions and valid law policy.

Dismissal; Reinstatement Without Backwages (2009)

No. V. a. Baldo was dismissed from employment for having been absent without leave (AWOL) for eight (8) months. It turned out that the reason for his absence was his incarceration after he was mistaken as his neighbor's killer. Eventually acquitted and released from jail, Baldo returned to his employer and demanded reinstatement and full backwages. Is Baldo entitled to reinstatement and backwages? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes, Baldo is entitled to reinstatement. Although he shall not be entitled to backwages during the period of his detention, but only from the time the company refuse to reinstate him. (Magtoto v. NLRC, 140 SCRA 58 [1985]).

ALTERNATIVE ANSWER:

No, Baldo is not entitled to reinstatement and backwaages. The dismissal was for cause, *i.e.,* AWOL. Baldo failed to timely inform the employer of the cause of his failure to report for work; hence, prolonged absence is a valid ground to terminate employment.

Dismissal; Reinstatement; Self-Executory (2009)

No. VIII. b. Alexander, a security guard of Jaguar Security Agency (JSA), could not be given any assignment because no client would accept him. He had a face only a mother could love. After six (6) months of being on "floating" status, Alexander sued JSA for constructive dismissal. The Labor Arbiter upheld Alexander's claim of constructive dismissal and ordered JSA to immediately reinstate Alexander. JSA appealed the decision to the NLRC. Alexander sought immediate enforcement of the reinstatement order while the appeal was pending.

JSA hires you as lawyer, and seeks your advice on the following:

Can the order of reinstatement be immediately enforced in the absence of a motion for the issuance of a writ of execution? (2%)

SUGGESTED ANSWER:

Yes, in *Pioneer Texturizing Corp. v. NLRC*, the Court held that an award or order of reinstatement is self-executory and does not require a writ of execution to implement and enforce it. To require the application for and issuance of a writ of execution as prerequisite for the execution of a reinstatement award would certainly betray and run counter to the very object and intent of Article 223 of the Labor Code (on the immediate execution of a reinstatement order).

ALTERNATIVE ANSWER:

The decision to reinstate pending appeal is not self-executory. A motion for a writ of execution is mandatory before an order of reinstatement can be enforced because of an employee needs, the assistance of the NLRC Sheriff to enforce the Order.

Dismissal; Striking Members and Officers (2012)

No. I. b3. A deadlock in the negotiations for the collective bargaining agreement between College X and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5. The strike totally paralyzed the operations of the school. The Labor Secretary immediately assumed jurisdiction over the dispute and issued on the same day (November 5) a return to work order. Upon receipt of the order, the striking union officers and members, on November 1, filed a Motion for Reconsideration thereof questioning the Labor Secretary's assumption of jurisdiction, and continued with the strike during the pendency of their motion. On November 30, the Labor Secretary denied the reconsideration of his return to work order and further noting the strikers' failure to immediately return to work, terminated their employment. In assailing the Labor Secretary's decision, the Union contends that:

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

SUGGESTED ANSWER:

Responsibility of the striking members and officers must be on an individual and not collective basis. Art. 264 (a) of the Labor Code mandates that "No strike or lockout shall be declared after the assumption by the President or the Secretary of Labor." In Manila Hotel Employee Association v. Manila Hotel Corporation [517 SCRA 349 (2007)], it was held that defiance of the Assumption Order or a return-to-work order by a striking employee, whether a Union Officer or a plain member, is an

illegal act which constitutes a valid ground for loss of employment status. It thus follow that the defiant strikers were validly dismissed.

Employee; Casual Employee (2007)

No. XVI. A carpenter is employed by a private university in Manila. Is the carpenter a regular or a casual employee? Discuss fully. (5%)

SUGGESTED ANSWER:

If the employment of the carpenter is sporadic and brief in nature or occasional, his employment is casual especially because the work he is performing is not in the usual course of the school's trade or business. However, if the carpenter has rendered service at least one year, whether continuous or broken, he becomes a regular employee by operation of law, with respect to the activity of which he is employed and his employment shall continue while such activity exists (Article 280, Labor Code; See also Philippine Geothermal, Inc. v. NLRC, 189 SCRA 211 [1990]; Kimberly Independent Labor Union, etc. v. Drilon, 18 SCRA 190 [1990]).

ALTERNATIVE ANSWER:

A carpenter employed by a university is a casual employee. The carpenter is engaged to perform a job, work or service which is mostly incidental to the business of the employer, and such job, work or service is for a definite period made known to the employee at the time of engagement: *Provided,* that any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue which such activity exists.

Employee; Contractual Employee (2010)

No. I. 2. The relations between employer and employee are purely contractual in nature. (2%)

SUGGESTED ANSWER:

False, some aspects of the relations between employer and employee are determined by certain labor standards.

ALTERNATIVE ANSWER:

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

Article 1700 of the Civil Code provides that "The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good."

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

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

Employee; Contractual Employee; Employing Retired Employee (2013)

No. VIII. a. 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.

After Albert's retirement at age 65, should he be considered a regular employee entitled to all his previous salaries and benefits when the company allowed him to continue working? (4%)

SUGGESTED ANSWER:

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

The present case is similar in a case decided by the Supreme Court (Januaria

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

Employee; Contractual Employee of Legitimate Contractor (2012)

No. X. b. Does the performance by a contractual employee, supplied by a legitimate contractor, of activities directly related to the main business of the principal make him a regular employee of the principal? Explain. (5%)

SUGGESTED ANSWER:

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

Employee; Contract of Partnership (2012)

No. VII. a. Inggu, an electronics technician, worked within the premises of Pit Stop, an auto accessory shop. He filed a Complaint for illegal dismissal, overtime pay and other benefits against Pit Stop. Pit Stop refused to pay his claims on the ground that lnggu was not its employee but was an independent contractor . . It was common practice for shops like Pit Stop to collect the service fees from customers and pay the same to the independent contractors at the end of each week. The auto shop explained that lnggu was like a partner who worked within its premises, using parts provided by the shop, but otherwise lnggu was free to render service in the other auto shops. On the other hand, lnggu insisted that he still was entitled to the benefits because he was loyal to Pit Stop, it being a fact that he did not perform work for anyone else. Is lnggu correct? Explain briefly. (5%)

SUGGESTED ANSWER:

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

Employee; Employment Contract Impressed with Public Interest (2008)

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

Is the contractual stipulation that there is no employer-employee relationship binding on labor officials? Why? Explain fully. (3%)

SUGGESTED ANSWER:

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

Employee; Field Personnel vs. Contractual Employee; Benefits (2010)

No. XX. A, a driver for a bus company, sued his employer for nonpayment of commutable service incentive leave credits upon his resignation after five years of employment. The bus company argued that A was not entitled to service incentive leave since he was considered a field personnel and was paid on commission basis and that, in any event, his claim had prescribed. If you were the Labor Arbiter, how would you rule? Explain. (6%)

SUGGESTED ANSWER:

I will grant the prayer of A.

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

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

ALTERNATIVE ANSWER:

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

Employee; Fixed Term Employee (2012)

No. VI. a. For humanitarian reasons, a bank hired several handicapped workers to count and sort out currencies. The handicapped workers knew that the contract was only for a period of six-months and the same period was provided in their employment contracts. After six months, the bank terminated their employment on the ground that their contract has expired. This prompted the workers to file with the Labor Arbiter a complaint for illegal dismissal. Will their action prosper? Why or why not? (5%)

SUGGESTED ANSWER:

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

Employee; Project Employee (2009)

No. IV. Diosdado, a carpenter, was hired by Building Industries Corporation (BIC), and assigned to build a small house in Alabang. His contract of employment specifically referred to him as a "project employee," although it did not provide any particular date of completion of the project.

Is the completion of the house a valid cause for the termination of Diosdado's employment? If so, what are the due process requirements that the BIC must satisfy? If not, why not? (3%)

SUGGESTED ANSWER:

The completion of the house should be valid cause for termination of Diosdado's employment. Although the employment contract may not state a particular date, but if it did specify that the termination of the parties' employment relationship was to be a "day certain" – the day when the phase of work would be completed – the employee cannot be considered to have been a regular employee (Filipinas Pre-Fabricated Building Systems v. Puente, 43 SCRA 820 [2005]).

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

ALTERNATIVE ANSWER:

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

Employee; Regular Employee; Driver (2012)

NO. V. b. 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.

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

SUGGESTED ANSWER:

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

Employee; Regular Employee; (2008)

No. IV. Super Comfort Hotel employed a regular pool of "extra waiters" who are called or asked to report for duty when the Hotel's volume of business is beyond the capacity of the regularly employed waiters to undertake. Pedro has been an "extra waiter" for more than 10 years. He is also called upon to work on weekends, on holidays and when there are big affairs at the hotel.

What is Pedro's status as an employee under the Labor Code? Why? Explain your answer fully. (6%)

SUGGESTED ANSWER:

Pedro has acquired the status of a regular employee.

Pedro has engaged to perform activities which are necessary or desirable to the usual business or trade of the employer.

Moreover, Pedro has been an "extra waiter" for more than 10 years. Any employer who has rendered service for one year, whether continuous or broken, shall be considered a regular employee with respect to the activities of which he is employed and his employment shall continue while such activity exists (Art. 280, Labor Code).

Employee; Regular Employee; OFW (2009)

No. XI. a. Seafarers who have worked for twenty (20) years on board the same vessel are regular employees. (5%)

SUGGESTED ANSWER:

False, seafarers as overseas Filipino workers are fixed0term employees whose continued rehiring should not be interpreted as a basis for regularization but rather as a series of contact renewals sanctioned under the doctrine set by Millares vs. NLRC (Gu-Miro v. Adorable, 437 SCRA 162 [2004]).

Employee; Regular Seasonal Employee (2010)

No. XVII. A was hired to work in a sugar plantation performing such tasks as weeding, cutting and loading canes, planting cane points, fertilizing and cleaning the drainage. Because his daily presence in the field was not required, A also worked as a houseboy at the house of the plantation owner. For the next planting season, the owner decided not to hire A as a plantation worker but as a houseboy instead. Furious, A filed a case for illegal dismissal against the plantation owner. Decide with reason. (3%)

SUGGESTED ANSWER:

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

The primary standard for determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer (Pier 8 Arrastre & Stevedoring Services, Inc., et. al. v. Jeff B. Boclot,534 SCRA 431 [2007]). Considering that A, as plantation worker, performs work that is necessary and desirable to the usual business of the plantation owner, he is therefore a regular seasonal employee and is entitled to reinstatement upon onset of the next season unless he was hired for the duration of only one season (Hacienda Bino v. Cuenca, 4556 SCRA 300 [2005]).

Converting A to a mere house boy at the house of the plantation owner amounts to an act of serving his employment relations as its plantation worker (Angeles v. Fernandez, 213 SCRA 378 [2007]).

Quitclaims; Waivers; Release (2010)

No. I. 1. Deeds of release, waivers and quitclaims are always valid and binding. (2%)

SUGGESTED ANSWER:

False, deeds of release, waivers and quitclaims are not always valid and binding. An agreement is valid and

binding only if: (a) the parties understand the terms and conditions of their settlement; (b) it was entered into freely and voluntarily by them; and (c) it is contrary to law, morals, and public policy.

ALTENATIVE ANSWER:

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

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

Resignation; Voluntary; Quitclaim (2010)

No. XI. Because of continuing financial constraints, XYZ, Inc. gave its employees the option to voluntarily resign from the company. A was one of those who availed of the option. On October 5, 2007, he was paid separation benefits equivalent to seven (7) months pay for his six (6) years and seven (7) months of service with the company and he executed a waiver and quitclaim.

A week later, A filed against XYZ, Inc. a complaint for illegal dismissal. While he admitted that he was not forced to sign the quitclaim, he contended that he agreed to tender his voluntary resignation on the belief that XYZ, Inc. was closing down its business. XYZ, Inc., however, continued its business under a different company name, he claimed.

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

SUGGESTED ANSWER:

The quitclaim executed by A is valid and binding.

Generally, deeds of release, waiver or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or form contesting the legality of their dismissal, since quitclaims are looked upon with disfavor

and are frowned upon as contrary to public policy. However, where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking (Francisco Soriano, Jr. v. NLRC, et. al., 530 SCRA 526 [2007]).

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

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

ALTERNATIVE ANSWER:

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

Retirement; Additional Service Rendered (2013)

No. VIII. b. 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.

Is he entitled to additional retirement benefits for the additional service he rendered after age 65? (4%)

SUGGESTED ANSWER:

No, he cannot be compulsorily retired twice in the same company.

Retirement; Types (2007)

No. XI. a. A rule, when is retirement due? (5%)

SUGGESTED ANSWER:

Article 287 provides for two types of retirement:

(A) Optional retirement – which may be availed of by an employee reaching the age of 60 years;
(B) Compulsory retirement – which may be availed of by an employee upon reaching the age of 65 years. In both instances, the law imposes the minimum service requirement of 5 years with the establishment.

Retirement Benefits; Boundary System (2012)

No. IX. a. 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.

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 and SIL pay. Hence, his retirement pay should be computed solely on the basis of his salary. Specifically, Sec. 3(e) of the Rules and Regulations implementing P.D. 851 excludes form the obligation of 13th Month Pay "Employees of those who are paid on xxx boundary "basis. On the other hand, Sec. 1(d), Rule V, Book III of the Omnibus Rule provides that those "employees whose performance is unsupervised by the employer" are not entitled to Service Incentive Leave. A taxi driver paid under the Boundary System is an "unsupervised" employee.

Retirement Benefits; Computation (2012)

No. IX. b. 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.

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 ANWER:

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

Wages; Money Claims, Computation (2009)

No. III. c. Richie, a driver-mechanic, was recruited by Supreme Recruiters (SR) and its principal, Mideast Recruitment Agency (MRA), to work in Qatar for a period of two (2) years. However, soon after the contract was approved by POEA, MRA advised SR to forego Richie's deployment because it had already hired another Filipino driver-mechanic, who had just completed his contract in Qatar. Aggrieved, Richie filed with the NLRC a complaint against SR and MRA for damages corresponding to his two years' salary under the POEA-approved contract.

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

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

Rule on the validity of the foregoing arguments with reasons.

SUGGESTED ANSWER:

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

Social Legislations

GSIS; Compulsory Coverage (2009)

No. X. a. State briefly the compulsory coverage of the Government Service Insurance Act. (2%)

SUGGESTED ANSWER:

The following are compulsorily covered by the GSIS pursuant to Sec. 3 of R.A. 8291.

(A) All employees receiving compensation who have not reached the compulsory retirement age, irrespective of employment status.

(B) Members of the judiciary and constitutional commission for life insurance policy.

Paternity Leave Act of 1996 (2013)

No. IV. b. 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.

What can Roger-Tammy's 2nd husband and the father of her two (2) younger children - claim as benefits under the circumstances? (4%)

SUGGESTED ANSWER:

Under R.A. No. 8187 or the Paternity Leave Act of 1996, Roger can claim paternity leave of seven (7) days with full pay if he is lawfully married to Tammy and cohabiting with her at the time of the miscarriage.

SSS; Compulsory Coverage; Cooperative Member (2009)

No. X. b. Can a member of a cooperative be deemed an employee for purposes of compulsory coverage under the Social Security Act? Explain. (2%)

SUGGESTED ANSWER:

Yes, an employee of a cooperative, not over sixty (60) years of age, under the SSS Law, subject to compulsory coverage. The Section 8(d) SSS Law defines an employee as –

"Sec. 8(d) – any person who performs services for an employer in which either

or both mental and physical efforts are used and who receives compensation for such service, where there is an employer-employee relationship."

SSS; Maternity Benefits (2010)

No. III. A, single, has been an active member of the Social Security System for the past 20 months. She became pregnant out of wedlock and on her 7th month of pregnancy, she was informed that she would have to deliver the baby through caesarean section because of some complications. Can A claim maternity benefits? If yes, how many days can she go on maternity leave? If not, why is she not entitled? (3%)

SUGGESTED ANSWER:

Yes, the SSS Law does not discriminate based on the civil status of a female member-employee. As long as said female employee has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of her childbirth, she can avail of the maternity benefits under the law.

Since A gave birth through C-section, she is entitled to one hundred percent (100%) of her average salary credit for seventy-eight (78) days, provided she notifies her employer of her pregnancy and the probable date of her childbirth, among others (See Section 14-A, Rep. Act No. 8282).

The same maternity benefits are ensured by Sec. 22 (b)(2) of the magna Carta of Women (Rep. Act No. 9710).

SSS; Maternity Benefits (2007)

No. XIV. AB, single and living-in with CD (a married man), is pregnant with her fifth child. She applied for maternity leave but her employer refused the application because she is not married. Who is right? Decide. (5%)

SUGGESTED ANSWER:

AB is right. The Social Security Law, which administers the Maternity Benefit Program does not require that the relationship between the father and the mother of the child be legitimate. The law is compensating the female worker because of her maternal function and resultant loss of compensation. The law is morality free.

ALTERNATIVE ANSWER:

Neither party is correct. The employer cannot refuse the application on the ground that she is only living with CD, as legitimate marriage is not a precondition for the grant of maternity leave. Neither AB is correct, since

maternity leave is only available for the first four deliveries or miscarriage.

SSS; Magna Carta of Women (2013)

No. VI. a. 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.

What benefits can Tammy claim under existing social legislation? (4%)

SUGGESTED ANSWER:

Assuming she is employed, Tammy is entitled to a special leave benefit of two moths with full pay (Gynecological Leave) pursuant to R.A. No. 9710 or the Magna Carta of Women. She can also claim Sickness Leave benefit in accordance with the SSS Law.

SSS; Money Claims (2008)

No. VIII. Carol de la Cruz is the secretary of the proprietor of an auto dealership in Quezon City. She resides in Caloocan City. Her office hours start at 8 a.m. and end at 5 p.m. On July 30, 2008, at 7 a.m. while waiting for public transport at Rizal Avenue Extension as has been her routine, she was sideswiped by a speeding taxicab resulting in her death. The father of Carol filed a claim for employee's compensation with the Social Security System. Will the claim prosper? Why? (6%)

SUGGESTED ANSWER:

Yes, under the "Going-To-And-Coming-From-Rule," the injuries (or death, as in this case) sustained by an employee "going to and coming from" his place of work are compensable (Bael v. Workmen's Compensation Commission, G.R. No. L-42255, January 31, 1977).

SSS; Monthly Contribution (2008)

No. VII. Tito Paciencioso is an employee of a foundry shop in Malabon, Metro Manila. He is barely able to make ends meet with his salary of P4,000.00 a month. One day, he asked his employer to stop deducting from his salary his SSS monthly contribution,

reasoning out that he is waiving his social security coverage.

If you were Tito's employer, would you grant his request? Why? (6%)

SUGGESTED ANSWER:

No, payment of SSS monthly contribution is compulsory and cannot be waived. To grant Tito's request will violate the SSS law and expose me to the risk of punishment of fine or imprisonment or both at the discretion of the Court (Sec. 9, Social Security Act, R.A. 8282).

MULTIPLE CHOICE QUESTIONS (MCQ)

2013 Labor Law Exam MCQ (October 6, 2013)

I. The parties to a labor dispute can validly submit to voluntary arbitration _________. (1%)

(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), Article 262 (now Article 268) of the Labor Code. The Voluntary Arbitrator,

upon agreement of the parties, can assume jurisdiction over the dispute.

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

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

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

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

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

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

SUGGESTED ANSWER:

(D), Article 263(c) (now Article 269(c)) of the Labor Code.

III.

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

Is the arrangement legal from the perspective of labor standards? (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.

SUGGESTED ANSWER:

(A)

(E), the employer and employee must deal with each other on more or less equal terms.

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

IV(1). He can file a complaint for illegal dismissal without any legal bar within _________. (1%)

(A) three (3) years

<u>(B) four (4) years</u>

(C) five (5) years

(D) six (6) years

(E) ten (10) years

<u>SUGGESTED ANSWER:</u>

(B), Article 1146 of the Civil Code.

IV(2). If he has money claims against DEF Corp., he can make the claim without any legal bar within _________. (1%)

<u>(A) three (3) years</u>

(B) four (4) years

(C) five (5) years

(D) six (6) years

(E) ten (10) years

<u>SUGGESTED ANSWER:</u>

(A), Article 297 (formerly 291) of the Labor Code.

V. 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%)

(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

<u>(E) no separation pay at all</u>

<u>SUGGESTED ANSWER:</u>

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

VI. 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%)

(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)

VII. The minimum wage prescribed by law for persons with disability is __________. (1%)

(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), this is the general rule. As an exception, if the employee is qualified to work and the disability has nothing to do with the work, the employee is entitled to 100%.

VIII. What is the financial incentive, if any, granted by law to SPQ Garments whose cutters and sewers in its garments-for-export operations are80% staffed by deaf and deaf-mute workers? (1%)

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

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

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

(D) Exemption from real property tax for one (1) year of the property where facilities

for persons with disability have been constructed.

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

SUGGESTED ANSWER:

(A), Magna Carta for Disabled Persons.

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

You clarify that an employee, project or non-project, will acquire regular status if __________. (1%)

(A) he has been continuously employed for more than one year

(B) his contract of employment has been repeatedly renewed, from project to project, for several years

(C) he performs work necessary and desirable to the business, without a fixed period and without reference to any specific project or undertaking

(D) he has lived up to the company's regularization standards

(E) All of the above.

SUGGESTED ANSWER:

(C)

X. 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? (1%)

(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), Article 248 (formerly Art. 242) of the Labor Code.

XI. 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? (1%)

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

XII. 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%)

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

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

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

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

(E) They are both wrong.

SUGGESTED ANSWER:

(B) or (D)

(D), Article 259 (formerly Article 253) of the Labor Code.

XIII. 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? (1%)

(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:

(A) or (D)

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

For reasons of its own, BM Institute no longer wanted to continue with Aleta's

teaching services. Thus, after the contract for her second year expired, BM Institute advised Aleta that her contract would no longer be renewed. This advice prompted Aleta to file a complaint for illegal dismissal against BM Institute.

Will the complaint prosper? (1%)

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

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

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

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

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

SUGGESTED ANSWER:

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

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

If you were the Manager, would you release one half of Robert's salary to Wanda? (1%)

(A) No, because an employer is prohibited from interfering with the freedom of its employees to dispose of heir 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) or (C)

XVI. 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.

(l) Will the case prosper? (1%)

(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)

XVI(2). 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 advice them to do? (1%)

(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)

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

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

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

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

(C) Constant and Able should be held solidarily liable for the unpaid wages and

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

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

(E) The above statements are all inaccurate.

SUGGESTED ANSWER:

(A)

XVIII. 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? (1%)

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

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

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

2012 Bar Law Exam MCQ (October 7, 2012)

(1) The workers worked as cargadores at the warehouse and rice mills of farm A for several years. As cargadores, they loaded, unloaded and pilled sacks of rice from the warehouse to the cargo trucks for delivery to different places. They were paid by Farm A on a piece-rate basis. Are the workers considered regular employees?

(A) <u>Yes, because Farm A paid wages directly to these workers without the intervention of any third party independent contractor;</u>

(B) <u>Yes, their work is directly related, necessary and vital to the operations of the farm;</u>

(C) No, because Farm A did not have the power to control the workers with respect to the means and methods by which the work is to be accomplished;

(D) A and B.

<u>SUGGESTED ANSWER:</u>

(A) Yes, because Farm A paid wages directly to these workers without the intervention of any third party independent contractor

(B) Yes, their work is directly related, necessary and vital to the operations of the farm;

(2) The following are excluded from the coverage of Book III of the Labor Code of the Philippines (Conditions of employment) except:

(A) Field personnel;

(B) <u>Supervisors;</u>

(C) Managers;

(D) Employees of government-owned and controlled corporations.

<u>SUGGESTED ANSWER:</u>

(B) Supervisors [Art. 82, Labor Code]

(3) Work may be performed beyond eight (8) hours a day provided that:

(A) <u>Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 25% thereof;</u>

(B) Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 30% thereof;

(C) Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 20% thereof;

(D) None of the above.

SUGGESTED ANSWER:

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

(4) 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?

(A) Yes, provided there is a clear written agreement knowingly and freely entered into by the employees;

(B) 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;

(C) No, the employer and employee cannot stipulate that the latter's regular or basic salary includes the overtime pay;

(D) A and B.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

(B) 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.

(5) The following are instances where an employer can require an employee to work overtime, **except:**

(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;

(B) When the country is at war or when other national or local emergency has been declared by the national assembly or the chief executive;

(C) **When there is urgent work to be performed on machines, installations, or equipment or some other cause of similar nature;**

(D) **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 ANSWERS:

(A), (B), (C), (D)

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

(A) No, because employees have a right to receive their regular daily wage during regular holidays;

(B) Yes, because April 09 is not regular holidays;

(C) Yes, because of the principle of "a fair day's wage for a fair day's work";

(D) Yes, because he employs less than ten (10) employees.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

(7) For misconduct or improper behavior to be just cause for dismissal, the following guidelines must be met, **except:**

(A) It must be serious;

(B) It must relate to the performance of the employee's duties;

(C) It should not be used as a subterfuge for causes which are improper, illegal or unjustified;

(D) It must show that the employee has become unfit to continue working for the employer.

SUGGESTED ANSWER:

(C) It should not be used as a subterfuge for causes which are improper, illegal or unjustified [Solid Development Corp.

Workers Association vs. Solid Development Corp., 530 SCRA 132 (2007)].

(8) 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?

(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.

(9) 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:

(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., 576 SCRA 625]

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

(10) 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?

(A) No, because G has already remitted the employees' salaries to K, validly excusing G from liability;

(B) <u>Yes, because he is jointly and solidarily liable for whatever monetary claims the employees may have against K;</u>

(C) <u>Yes, because of the principle of "a fair day's wage for a fair day's work";</u>

(D) B and C.

<u>SUGGESTED ANSWER:</u>

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

<u>ALTERNATIVE ANSWER:</u>

(C) Yes, because of the principle of "a fair day's wage for a fair day's work.

(11) 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 payment were paid to M by directly deducting from the employee's monthly salary. Is this practice of directly deducting payments of debts from the employee's wages allowed?

(A) <u>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;</u>

(B) Yes, because it has already become customary such that no express authorization is required;

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

(D) <u>No, because Article 116 of the Labor Code absolutely prohibits the withholding of wages and kickbacks. Article 116 provides for no exception.</u>

<u>SUGGESTED ANSWER:</u>

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

<u>ALTERNATIVE ANSWER:</u>

(A) Yes, because where the employee is indebted to the employer, it is

sanctioned by the law on compensation under Article 1706 of the Civil Code.

(12) 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 hired replacement workers in their place. Is Company B obliged to reinstate the returning workers?

(A) No, because the strike caused work stoppage;

(B) No, because it is a valid exercise of management prerogative;

(C) <u>Yes, because workers who go on strike do not lose their employment status;</u>

(D) <u>Yes, because workers are entitled to such retention every time during a valid strike.</u>

<u>SUGGESTED ANSWER:</u>

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

<u>ALTERNATIVE ANSWER:</u>

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

(13)Which of the following is not a valid reason for a strike?

(A) There is a bargaining deadlock;

(B) <u>There is a prevailing intra-union dispute;</u>

(C)The company engaged in unfair labor practice;

(D) Theirs is a flagrant violation of CBA's economic provisions.

<u>SUGGESTED ANSWER:</u>

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

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

(A) Working permit for Iya's employment is not required because the job is not hazardous;

(B) Her work period exceeds the required working hours for children aged 15 years old;

(C) To require a 15-year old to work without obtaining the requisite working permit is a form of child labor;

(D) Iya, who was engaged in a work that is not child labor, is a working child.

SUGGESTED ANSWER:

(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].

(15) Under employee's compensation, the so-called "Theory of Increased Risks" is relevant when:

(A) There is a need to categorize a disability as permanent and total;

(B) It is not clear as to how an injury was sustained;

(C) The ailment or sickness is not classified as an occupational disease;

(D) There is a prima facie finding that the employee had willful intention to hurt himself.

SUGGESTED ANSWER:

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

(16)Which of the frollowing injuries/death is not compensable?

(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.

(17) The provisions of the Labor Code on the Working Conditions and Rest Periods of employees are inapplicable to the following employees, except :

(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.

(18) Bugay, an employee with only six (6) months of service, was dismissed due to redundancy. He is, under Art. 283 of the Labor Code, entitled to a separation pay of:

(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 [Art. 283, Labor Code].

(19) The power to suspend or cancel a license to recruit employees is vested on:

(A) The Secretary of Labor and Employment;

(B) The POEA Administrator;

(C) A and B concurrently;

(D) Neither of them.

SUGGESTED ANSWER:

(B) The POEA Administrator [POEA Rules on Overseas land-based employment {2012}].

ALTERNATIVE ANSWERS:

(A) The Secretary of Labor and Employment;
(B) The POEA Administrator;
(C) A and B concurrently: [Transaction Overseas Corp., vs. Sec. of Labor, G.R. No. 109583, Sept. 5, 1997]

(20) 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?

(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 [Sec. 4 of RA 8042 as amended by Sec. 3 of RA 10023].

(21) Which is not a procedural requirement for the correction of wage distortion in an unorganized establishment?

(A) Both employer and employee will attempt to correct the distortion;

(B) Settlement of the dispute through National Conciliation and Mediation Board (NCMB);

(C) Settlement of the dispute through voluntary arbitration in case of failure to resolve dispute through CBA dispute mechanism;

(D) A and B.

SUGGESTED ANSWER:

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

(22) In what situation is an employer permitted to employ a minor?

(A) 16-year old child actor as a cast member in soap opera working 8 hours a day, 6 days a week;

(B) A 17-year old in deep sea-fishing;

(C) A 17 -year old construction worker;

(D) A 17-year old assistant cook in a family restaurant.

SUGGESTED ANSWER:

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

(23)The most important factor in determining the existence of an employer-employee relationship is the:

(A) Power to control the method by which employees are hired and selected;

(B) Power to control the manner by which employees are transferred from one job site to another;

(C) Power to control the results achieved by giving guidelines to the employees;

(D) Power to control the results to be achieved and the employee's method of achieving the task.

SUGGESTED ANSWER:

(D) Power to control the results to be achieved and the employee's method of achieving the task.

(24) 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?

(A) Labor Arbiter;

(B) DOLE Regional Director;

(C) Conciliator/Mediator;

(D) MTC Judge.

SUGGESTED ANSWER:

(B) Dole Regional Director [Art. 129, Labor Code]

(25) What is the nature of the liabilities of the local recruitment agency and its foreign principal?

(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:

(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

(26) 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:

(A) for a fee, which is charged directly from the workers.

(B) for a fee, which is charged directly from employers.

(C) <u>for a fee, which is charged directly or indirectly from workers, employers or both.</u>

(D) for a fee, which is charged from workers or employers, which covers both local and overseas employment.

<u>SUGGESTED ANSWER:</u>

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

(27) Who has jurisdiction over a money claim instituted by an overseas Filipino worker?

(A) <u>Labor Arbiter;</u>

(B) National Labor Relations Commission;

(C) Labor Arbiter concurrently with the regular courts.;

(D) National Labor Relations Commission concurrently with the regular courts.

<u>SUGGESTED ANSWER:</u>

(A) Labor Arbiter [Sec. 10, Art. 8042]

(28) Which of the following is not a valid wage deduction?

(A) Where the worker was insured with his consent by the employer, and the deduction is allowed to recompense the employer for the amount paid by him as the premium on the insurance;

(B) When the wage is subject of execution or attachment, but only for debts incurred for food, shelter, clothing and medical attendance;

(C) <u>Payment for lost or damaged equipment provided the deduction does not exceed 25°/o of the employee's salary for a week;</u>

(D) Union dues.

<u>SUGGESTED ANSWER:</u>

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

(29) Is the contractor a necessary party in a case where labor contracting is the main

issue and labor-only contracting is found to exist?

(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 ANSWER:

(A) Yes, the contractor is necessary in the full determination of the case as he is the porpoted employer of the worker.

(B) Yes, no full remedy can be granted and executed without impleading the purpoted contractor.

(30) Who among the following is not entitled to 13th month pay?

(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]

(31) Which type of employee is entitled to a service incentive leave?

(A) managerial employees;

(B) field personnel;

(C) government workers;

(D) part-time workers.

SUGGESTED ANSWER:

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

(32) A wage order may be reviewed on appeal by the National Wages and Productivity Commission under these grounds, except:

(A) grave abuse of discretion;

(B) non-conformity with prescribed procedure;

(C) questions of law;

(D) <u>gross under or over-valuation.</u>

<u>SUGGESTED ANSWER:</u>

(D) Gross under over-valuation

(33) The following may file a Petition for Certification Election, except:

(A) The employer;

(B) The legitimate labor organization;

(C) The Federation on behalf of the chapter;

(D) <u>The Work</u>

<u>SUGGESTED ANSWER:</u>

(D) Workers' Association [Arts. 258 (employer), 242, 258 (legitimate labor organization) and 257 (Federation which has issued a charter certificate) Labor Code]

(34) The following are grounds to deny Petition for Certification Election, except:

(A) The petitioning union is illegitimate or improperly registered

(B) Non-appearance for two consecutive schedules before the Med-Arbiter by petitioning union;

(C) <u>The inclusion of members outside the bargaining unit;</u>

(D) Filed within an existing election bar.

<u>SUGGESTED ANSWER:</u>

(C) The inclusion of members outside the bargaining unit [Art. 245-A, Labor Code, as amended]

(35) 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?

(A) Yes, it was a strike; yes, it was a valid activity;

(B) <u>Yes, it was a strike; no, it was not a valid activity;</u>

(C) No, it was not a strike; yes, it was a valid activity;

(D) No, it was not a strike; no, it was not a valid activity.

<u>SUGGESTED ANSWER:</u>

(B) Yes, it was a strike; no, it was not a valid activity [Airline Pilots Association of the Phils. vs. CIR, 76 SCRA 274; and

first City Interlinks Transportation vs. Roldan Confessor, 272 SCRA 124].

(36) Which of the following is not considered an employer by the terms of the Social Security Act?

(A) A self-employed person;

(B) The government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the government;

(C) A natural person, domestic or foreign, who carries on in the Philippines, any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment;

(D) A foreign corporation.

SUGGESTED ANSWER:

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

(37) 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?

(A) None of them;

(B) Either one of them;

(C) Only maternity leave benefits;

(D) Only sickness benefits.

SUGGESTED ANSWER:

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

(38) 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?

(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]

(39) Which of the following is not a privilege of a person with disability under the Magna Carta for disabled persons?

(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 [Magna Carla of PWDs]

(40) Which of the following is not a regular holiday?

(A) New Year's Eve;

(B) Eidil Fitr;

(C) Father's Day;

(D) lndependence Day.

SUGGESTED ANSWER:

(C) Father's Day [Art. 94 (c), Labor Code]

(41)Which is a characteristic of a labor-only contractor?

(A) Carries an independent business different from the employer's;

(B) The principal's liability extends to all rights, duties and liabilities under labor standards laws including the right to self-organization;

(C) No employer-employee relationship;

(D) Has sufficient substantial capital or investment in machinery, tools or equipment directly or intended to be related to the job contracted.

SUGGESTED ANSWER:

(C) No employer-employee relationships [Art. 106, Labor Code]

(42) What is not an element of legitimate contracting?

(A) The contract calls for the performance of a specific job, work or service;

(B) It is stipulated that the performance of a specific job, work or service must be within a definite predetermined period;

(C) The performance of specific job, work or service has to be completed either within or outside the premises of the principal;

(D) <u>The principal has control over the performance of a specific job, work or service.</u>

<u>SUGGESTED ANSWER:</u>

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

(43) Which is a characteristic of the learner?

(A) <u>A person is hired as a trainee in an industrial occupation;</u>

(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.

<u>SUGGESTED ANSWER:</u>

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

(44) What is not a prerequisite for a valid apprenticeship agreement?

(A) Qualifications of an apprentice are met;

(B) A duly executed and signed apprenticeship agreement;

(C) <u>The apprenticeship program is approved by the Secretary of Labor;</u>

(D) Included in the list of apprenticeable occupation of TESDA.

<u>SUGGESTED ANSWER:</u>

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

(45) Which is not a constitutional right of the worker?

(A) The right to engage in peaceful concerted activities;

(B) The right to enjoy security of tenure;

(C) <u>The right to return on investment;</u>

(D) The right to receive a living wage.

<u>SUGGESTED ANSWER:</u>

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

(46) Employee-employer relationship exists under the following, except :

(A) Jean, a guest relations officer in a nightclub and Joe, the nightclub owner;

(B) Atty. Sin' Cruz, who works part-time as the resident in house lawyer of X Corporation;

(C) <u>Paul, who works as registered agent on commission basis in an insurance company;</u>

(D) Jack and Jill, who work in X Company, an unregistered Association.

SUGGESTED ANSWER:

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

(47) With respect to legitimate independent contracting, an employer or one who engages the services of a bona fide independent contractor is -

(A) An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor not only for unpaid wages but also for all the rightful! claims of the employees under the Labor Code;

(B) Treated as direct employer of his contractor's employees in all instances; he becomes subsidiarily liable with the contractor only in the event the latter fails to pay the employees' wages and for violation of labor standard laws;

(C) <u>An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor only in the event the latter fails to pay the employees' wages and for violation of labor standard laws;</u>

(D) Treated as direct employer of his contractor's employees in all instances; the principal becomes solidarily liable with the contractor not only for unpaid wages but also for all the rightful claims of the employees under the Labor Code;

SUGGESTED ANSWER:

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

(48)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?

(A) Yes, Article 1 ~9 of the Labor Code shall apply, and thus, the Labor Arbiter has jurisdiction;

(B) No, Article 128 (b) of the Labor Code shall apply, and thus, the DOLE Regional Director has jurisdiction;

(C) Yes, if the claim exceeds P5,000.00, the DOLE Secretary loses jurisdiction;

(D) No, a voluntarily arbitrator has jurisdiction because the matter involved is a grievable issue.

SUGGESTED ANSWER:

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

(49) Which of the following is not compensable as hours worked?

(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 ANSWER:

(A) Travel away from home. [Art. 84, Labor Code]

(B) Travel from home to work.

(50) 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.

(A) Bargaining representative;

(B) Labor organization;

(C) Legitimate labor organization;

(D) Federation.

SUGGESTED ANSWER:

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

(51) 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.

(A) Arbitration;

(B) Mediation;

(C) Conciliation;

(D) Reconciliation.

SUGGESTED ANSWER:

(A) Arbitration

(52) 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?

(A) Employer contests the findings of the labor regulations officers and raises issues thereon;

(B) In order to resolve any issues raised, there is a need to examine evidentiary matters;

(C) The issues raised should have been verifiable during the inspection;

(D) The evidentiary matters are not verifiable in the normal course of inspection.

SUGGESTED ANSWER:

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

(53) In what instances do labor arbiters have jurisdiction over wage distortion cases?

(A) When jurisdiction is invoked by the employer and employees in organized establishments;

(B) When the case is unresolved by Grievance Committee;

(C) After the panel of voluntarily arbitrators has made a decision and the same is contested by either party;

(D) <u>In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMM.</u>

<u>SUGGESTED ANSWER:</u>

(D) In unorganized establishment when the same is not voluntarily resolved by the parties before the NCMB. [Art. 124, Labor Code]

(54) Is a termination dispute a grievable issue?

(A) Yes, if the dismissal arose out of the interpretation or Implementation of the CBA;

(B) <u>No, once there's actual termination, the issue is cognizable by a Labor Arbiter;</u>

(C)Yes, it is in the interest of the parties that the dispute be resolved on the establishment level;

(D) No, a voluntary arbitrator must take cognizance once termination is made effective.

<u>SUGGESTED ANSWER:</u>

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

(55) 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?

(A) Yes, he is entitled to full reimbursement of his placement fee, with' interest at 12°/o 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) <u>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°/o per annum;</u>

(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°/o per annum.

<u>SUGGESTED ANSWER:</u>

(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]

(56)The following are exempt from the rules on minimum wages, except:

(A) Household or domestic helpers; .

(B) Homeworkers engaged in needle work;

(C) Workers' in duly registered establishment in the cottage industry;

(D) <u>Workers in the duly registered cooperative.</u>

<u>SUGGESTED ANSWER:</u>

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

(57) Which of the following is a right and/or condition of membership in a labor organization?

(A) No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;

(B) The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and bylaws of the organization;

(C) No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;

(D) <u>All of the above.</u>

<u>SUGGESTED ANSWER:</u>

(D) All of the above. [Art. 241, Labor Code]:

(A) No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed; [Art. 241 (a), Labor Code]

(B) The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization; [Art. 241 (b), Labor Code]

(C) No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity. {Art. 241 (c) Labor Code]

(58) Which phrase most accurately completes the statement - Members of cooperatives:

(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.

<u>(C) cannot invoke the right to collective bargaining because each member is considered an owner.</u>

(D) cannot invoke the right to collective bargaining because they are expressly prohibited by law.

<u>SUGGESTED ANSWER:</u>

(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]

(59) Which of the following is not true in unfair labor practices committed by an employer?

<u>(A) Unfair labor practices cannot be committed unless the union has been formed and registered;</u>

(B) The commission of unfair labor practice requires an employer-employee relationship;

(C) The offense of unfair labor practice prescribes in one (1) year;

(D) The list of unfair labor practices is exclusive.

<u>SUGGESTED ANSWER:</u>

(A) Unfair labor practices cannot be committed unless union has been performed and registered. [Art. 247 Labor Code].

(60) Which of the following is correct with respect to the extent of the application of security of tenure?

(A) It applies to managerial and to all rank-and-file employees i f 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 ANSWER:

(A) It applies to managerial and to all rank-and-file employees if not yet regular, but not to management trainees. [Management trainees are not employees yet]

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

(61) Which of the following is not a procedural due process requirement in the termination of an employee for just cause?

(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.

(62) 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:

(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) <u>Valid, for the dismissal is with just/authorized cause, but the employer shall be liable for nominal damages;</u>

(D) Valid, even if due process is not observed, hence reinstatement should not be ordered.

<u>SUGGESTED ANSWER:</u>

(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]

(63) What is the quantum of evidence required in labor cases?

(A) The degree of proof which produces the conclusion that the employee is guilty of the offense charged in an unprejudiced mind;

(B) <u>Such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion;</u>

(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.

<u>SUGGESTED ANSWER:</u>

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

(64) Which of the following statements is the most accurate?

(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) <u>Domestic helpers in the personal service of another are not entitled to 13th month pay.</u>

<u>SUGGESTED ANSWER:</u>

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

(65) The decision of the Labor Arbiter in a labor dispute case is:

(A) immediately executory;

(B) requires a writ of execution;

(C) <u>is immediately executory insofar as the reinstatement of the employee is concerned;</u>

(D) is stayed by the appeal of the employer and posting of appeal bond.

<u>SUGGESTED ANSWER:</u>

(C) Is immediately executor insofar as the reinstatement of the employee is concerned. [Art. 223, Labor Code]

(66) Which of the following is cognizable by the Bureau of Labor Relations Med-Arbiters?

(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) <u>Contest for the position of MG Union President brought by Ka Joe, the losing candidate in the recent union elections;</u>

(D) G contesting his removal as Chief Executive Officer of Company Z.

<u>SUGGESTED ANSWER:</u>

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

(67) 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?

(A) <u>Yes, he can file an appeal before the Court of Appeals via a Petition for Certiorari under rule 65;</u>

(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.

<u>SUGGESTED ANSWER:</u>

(A) Yes, he can file an appeal before the court of appeals via a petition for certiorari under Rule 65 [NFL vs Laguesma]

(68) R was employed as an instructor of Cruz College located in Santiago City, lsabela. 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 llagan, 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?

(A) Yes, such transfer should require an automatic additional allowance; the non-granting of said allowance amounts to a diminution of benefit;

(B) <u>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;</u>

(C) <u>No, R's re-assignment did not amount to constructive dismissal because the college has the right to transfer R based on contractual stipulation;</u>

(D) B and C.

<u>SUGGESTED ANSWER:</u>

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

<u>ALTERNATIVE ANSWER:</u>

(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.

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

(A) On the date the agreement to organize the un1on is signed by the majority of all its members;

(B) On the date the application for registration is duly filed with the Department of Labor.;

(C) On the date appearing on the Certificate of Registration;

(D) <u>On the date. the Certificate of Registration is actually issued.</u>

<u>SUGGESTED ANSWER:</u>

(D) On the date the certificate of registration is actually issued [Art. 234, Labor Code]

(70) How many years of service is the underground mine employee required to have rendered in order to be entitled to retirement benefits?

(A) <u>5;</u>

(B) 10;

(C) 15;

(D) 20.

<u>SUGGESTED ANSWER:</u>

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

(71) What is the prescriptive period of all criminal offenses penalized under the Labor Code and the Rules Implementing the Labor Code?

(A) <u>3 years;</u>

(B) 4 years;

(C) 5 years;

(D) 10 years.

<u>SUGGESTED ANSWER:</u>

(A) 3 years [Art. 290, Labor Code]

(72) What is the nature of employment of househelpers?

(A) Seasonal;

(B) <u>Fixed-term;</u>

(C) Regular;

(D) Probationary.

<u>SUGGESTED ANSWER:</u>

(B) Fixed-Term [Not to exceed 2 years but "renewable for such periods as many be agreed upon by the parties" [Art. 242, Labor Code]

(73) The appeal to the NLRC may be entertained only on any of the following grounds, except:

(A) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(B) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(C) <u>If made purely on questions of fact and law;</u>

(D) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant

<u>SUGGESTED ANSWER:</u>

(C) If made purely on Question of fact and law. [Art. 223, Labor Code]

(74) The following are unfair labor practices of employers, except:

(A) Interrogating its employees in connection with their membership in the union or their union activities which hampers their exercise of free choice;

(B) <u>The grant of profit-sharing benefits to managers, supervisors and all rank-and-file employees not covered by the CBA;</u>

(C) The cessation of a company's operations shortly after the organization of a labor union and the resumption of business barely a month after;

(D) Withdrawal by the employer of holiday pay benefits stipulated under a supplementary agreement with the union.

<u>SUGGESTED ANSWER:</u>

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

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

(A) Age;

(B) Physical Deficiency;

(C) Mental Deficiency;

(D) <u>Psychological Deficiency.</u>

<u>SUGGESTED ANSWER:</u>

(D) Psychological Deficiency [Art. 78, Labor Code]

2011 Labor Law Exam MCQ (November 6, 2011)

(1) 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?

(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.

(2) 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?

(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 hoursworked.

(3) The Labor Code on retirement pay expands the term "one-half (½) month salary" because it means

(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.

(4) 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?

(A) No, "loss of confidence" as reason for dismissal does not apply to rank and file employees.

(B) No, “loss of confidence” applies only to confidential positions.

(C) Yes, “loss of confidence” is broad enough to cover all dishonest acts of employee.

(D) RIGHT ANSWER Yes, “loss of confidence” applies to employees who are charged with the care and custody of the employer's property.

(5) 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?

(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.

(6) 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?.

(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.

(7) 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?

(A) No. the management has the right to contract out jobs to secure efficient and economical operations.

(B) Yes. They should be reinstated or absorbed by the security agency as its employees.

(C) No. They are estopped from demanding reinstatement after receiving their separation pay.

(D) Yes. The company cannot contract out regular jobs such as they had.

(8) Although both are training programs, apprenticeship is different from learnership in that

(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.

(9) 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?

(A) Yes. The jobs were given to job contractors, not to labor-only contractors, and the dismissed employees received higher separation pay than the law required.

(B) No. The outsourcing and the employment termination were invalid since the management failed to show that it suffered severe financial losses.

(C) No. Since the outsourcing of jobs in several departments entailed the separation of many employees, the club needed the Secretary of Labor's approval of its actions.

(D) No. Since the outsourced jobs were held by old-time regular employees, it was illegal

for the club to terminate them and give the jobs to others.

(10) 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?

(A) Instead of giving a 30-day notice, she can just give a 30-day advanced salary and make the separation effective immediately.

(B) So long as she gave DOLE a 30-day prior notice, she can give the employees a shorter notice.

(C) The 30-day advance notice to the employee and the DOLE cannot be shortened even with a 30-day advance salary.

(D) She can give a shorter notice if the retrenchment is due to severe and substantial losses.

(11) 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?

(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.

(12) 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

(A) a person rendering personal service to another.

(B) a regular company employee.

(C) a family member.

(D) domestic helper.

(13) The union filed a notice of strike due to a bargaining deadlock. But, because the Secretary of Labor assumed jurisdiction over the dispute, the strike was averted. Meanwhile, the employer observed that the union engaged in a work slowdown. Contending that the slowdown was in fact

an illegal strike, the employer dismissed all the union officers. The union president complained of illegal dismissal because the employer should first prove his part in the slowdown. Is the union president correct?

(A) Yes, since the employer gave him no notice of its finding that there was a slowdown.

(B) Yes. The employer must prove the union president's part in slowdown.

(C) No. When a strike is illegal, the management has the right to dismiss the union president.

(D) No. As the union president, it may be assumed that he led the slowdown.

(14) 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?

(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.

(15) 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?

(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) <u>Yes, jurisdiction lies with the regular courts since the complainant was a corporate officer.</u>

(16) An employee proved to have been illegally dismissed is entitled to reinstatement and full backwages computed on the basis of his

(A) <u>basic salary plus the regular allowances and the thirteenth month pay.</u>

(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.

(17) 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?

(A) <u>Yes, absent an agreement to the contrary, the management determines work hours and, by law, meal break is without pay.</u>

(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.

(18) 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?

(A) <u>No, every employee found to have been illegally dismissed is entitled to immediate reinstatement even pending appeal.</u>

(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.

(19) Llanas Corporation and Union X, the certified bargaining agent of its employees, concluded a CBA for the period January 1, 2000 to December 31, 2004. But, long before the CBA expired, members of Union Y, the minority union, showed dissatisfaction with the CBA under the belief that Union X was a company union. Agitated by its members, Union Y filed a petition for a Certification Election on December 1, 2002. Will the petition prosper?

(A) No, such a petition can only be filed within the freedom period of the CBA.

(B) No, since a petition for certification can be filed only upon the expiration of the CBA.

(C) Yes, a certification is the right remedy for ousting a company union.

(D) Yes, employees should be allowed to cancel at the earliest opportunity a CBA that they believed was obtained by a company union.

(20) Is it correct to say that under Philippine law a househelper has no right to security of tenure?

(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.

(21) 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?

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

(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 does not qualify as independent contractoremployer, its clients being the source of the employees' salaries.

(22) Executive Order No. 180, which protects government employees, does NOT apply to "high-level employees," namely,

(A) presidential appointees.

(B) those performing policy-determining functions, excluding confidential employees and supervisors.

(C) <u>confidential employees and those performing policy-determining functions.</u>

(D) elective officials.

(23) 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

(A) <u>an indemnity equivalent to 15 days' pay plus compensation already earned.</u>

(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.

(24) 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?

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

(B) Yes, since the Wage Order cannot prejudice the management's vested interest in the provisions of the CBA.

(C) No, disallowing creditability of CBA pay increase is within the wage board's authority.

(D) No, the CBA increase and the Wage Order are essentially different and are to be complied with separately.

(25) 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?

(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

(26) 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

(A) if a labor-management council exists.

(B) if a labor-management council does not exist.

(C) if a union exists and it agrees to the creation of a labor-management council.

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

(27) If not used by the end of the year, the service incentive leave shall be

(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.

(28) An employee is NOT entitled to "financial assistance" in cases of legal dismissal when the dismissal

(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.

(29) In a work-related environment, sexual harassment is committed when

(A) the offender has authority, influence, or moral ascendancy over his subordinate victim.

(B) <u>the victim's continued employment is conditioned on sexual favor from her.</u>

(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.

(30) Government employees may elect a union as their exclusive representative but this right is not available to

(A) regular employees in government instrumentalities and agencies.

(B) <u>employees of government-owned and -controlled corporations without original charters.</u>

(C) employees of government-owned-or-conrolled corporations with original charters.

(D) employees of provincial and local government units.

(31) 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?

(A) <u>Yes, the agency and the employer's uncaring attitude makes them liable for such damages.</u>

(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.

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

(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) <u>may leave work without giving a 30-day notice to the employer.</u>

(D) may abandon his job at once.

(33) 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?

(A) <u>Yes, the law on retrenchment, the sugar mill's loses not being substantial.</u>

(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.

(34) "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

(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) <u>the piece rate formula accords with the labor department's approved rates.</u>

(35) An employer may require an employee to work on the employee's rest day

(A) <u>to avoid irreparable loss to the employer.</u>

(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.

(36) 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

(A) the extension does not cover cases of union busting.

(B) <u>the parties agreed to such extended jurisdiction.</u>

(C) the parties are allowed to appeal the voluntary arbitrator's decision.

(D) the parties agreed in their CBA to broaden his jurisdiction.

(37) 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?

(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.

(38) 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?

(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.

(39) 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?

(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.

(40) For labor, the Constitutionally adopted policy of promoting social justice in all phases of national development means

(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.

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

(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.

(42) The constitution promotes the principle of shared responsibility between workers and employers, preferring the settlement of disputes through

(A) compulsory arbitration.

(B) collective bargaining.

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

(D) labor-management councils.

(43) Which of the following is NOT a requisite for entitlement to paternity leave?

(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.

(44) 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?

(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.

(45) Of the four definitions below, which one does NOT fit the definition of "solo parent" under the Solo Parents Welfare Act?

(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.

(46) 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?

(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.

(47) A handicapped worker may be hired as apprentice or learner, provided

(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.

(48) 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?

(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.

(49) 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

(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.

(50) Which of the following grounds exempts an enterprise from the service incentive leave law?

(A) The employees already enjoy 15 days vacation leave with pay.

(B) The employer's business has been suffering losses in the past three years.

(C) The employer regularly employs seven employees or less.

(D) The company is located in a special economic zone.

(51) Which of the following acts is NOT considered unfair labor practice (ULP)?

(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.

(52) 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?

(A) Yes, since 13th month pay should only be one-twelfth of the regular pay.

(B) <u>No, since the erroneous computation has ripened into an established, nonwithdrawable practice.</u>

(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.

(53) Where the petition for a certification election in an unorganized establishment is filed by a federation, it shall NOT be required to disclose the

(A) <u>names of the local chapter's officers and members.</u>

(B) names and addresses of the federation officers.

(C) names and number of employees that initiated the union formation in the enterprise.

(D) names of the employees that sought assistance from the federation in creating the chapter.

(54) 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

(A) <u>credited only once.</u>

(B) credited in full.

(C) proportionately reduced.

(D) equally divided for the purpose of totalization.

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

(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.

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

(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.

(57) Night differential is differentiated from overtime pay in that

(A) while overtime pay is given for overtime work done during day or night, night differential is given only for work done between 10:00 p.m. and 6:00 a.m.

(B) while overtime pay is paid to an employee whether on day shift or night shift, night shift differential is only for employees regularly assigned to night work.

(C) while overtime pay is for work done beyond eight hours, night differential is added to the overtime pay if the overtime work is done between 6:00 p.m. and 12 midnight.

(D) while overtime pay is 25% additional to the employee's hourly regular wage, night differential is 10% of such hourly wage without overtime pay.

(58) Differentiate a "labor organization" from a "legitimate labor organization."

(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.

(59) The negotiating panels for the CBA of X Company established a rule that only employees of the company will seat in each panel. In the next session, the management panel objected to the presence of the union counsel. Still the negotiation proceeded. At the next session, the management panel again objected to the presence of the union counsel as a non-observance of the “no outsider” rule. The negotiation nonetheless proceeded. Does the management panel's objection to the presence of the union counsel constitute unfair labor practice through bad-faith bargaining?

(A) Yes, the management is harping on a non-mandatory matter instead of proceeding with the mandatory subjects of bargaining.

(B) No, there is no bargaining in bad faith since the bargaining proceeded anyway.

(C) Yes, the management panel has no legal basis for limiting the composition of the union negotiating panel.

(D) No, since it is the union that violates the ground rules fashioned by the parties, it is the one negotiating in bad faith.

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

(A) order arrest of an illegal recruiter

(B) inspect premises, books and records

(C) cancel license or authority to recruit

(D) garnish recruiter's bond

(61) Where there is a bargaining deadlock, who may file a notice of strike?

(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.

(62) When a recruitment agency fails to deploy a recruit without valid reason and without the recruit's fault, the agency is obligated to

(A) reimburse the recruit's documentary and processing expenses.

(B) reimburse the recruit's expenses with 6% interest.

(C) pay the recruit damages equivalent to one year's salary.

(D) find another employer and deploy the recruit within 12 months.

(63) Which of the following is an essential element of illegal recruitment?

(A) The recruiter demands and gets money from the recruit but issues no receipt.

(B) <u>The recruiter gives the impression that he is able to send the recruit abroad.</u>

(C) The recruiter has insufficient capital and has no fixed address.

(D) The recruiter has no authority to recruit.

(64) 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?

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

(65) Which is NOT a guideline for the dismissal of an employee on the ground of "loss of confidence"?

(A) Loss of confidence may not be arbitrarily invoked in the face of overwhelming evidence to the contrary.

(B) <u>Loss of confidence as cause of dismissal should be expressly embodied in written company rules.</u>

(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.

(66) 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?

(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) <u>With a labor arbiter for all three complainants.</u>

(D) With the DOLE Regional Director provided they are consolidated for expediency.

(67) 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?

(A) Health personnel

(B) Employees with first aid training

(C) Security and safety personnel

(D) <u>Any employee</u>

(68) The management and Union X in Atisan Mining entered into a CBA for 1997 to 2001. After 6 months, a majority of the members of Union X formed Union Y and sought management recognition. The latter responded by not dealing with either union. But, when the CBA's economic provisions had to be renegotiated towards the end of the term of the CBA, the management chose to negotiate with Union Y, the newer union. Thus, Union X which negotiated the existing CBA charged the company with unfair labor practice (ULP). The company argued that it committed no unfair labor practice since the supposed violation had nothing to do with economic provisions of the CBA. Is the management right?

(A) <u>No. Refusal to comply with the CBA's economic provisions is not the only ground for ULP; a disregard of the entire CBA by refusing to renegotiate with the incumbent bargaining agent is also ULP,</u>

(B) Yes. No unfair labor practice was committed because the supposed violation has nothing to do with economic provisions of the CBA.

(C) Yes. The management commits no ULP when it decided to renegotiate with the numerically majority union.

(D) Yes. A CBA violation amounts to ULP only if the violation is "gross," meaning flagrant or malicious refusal to comply with the CBA's economic provisions which is not the case here.

(69) The apprenticeship program should be supplemented by theoretical instruction to be given by

(A) the apprentice's school only where the apprentice is formally enrolled as a student.

(B) the employer if the apprenticeship is done in the plant.

(C) the civic organizations that sponsor the program.

(D) the Department of Labor and Employment.

(70) 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?

(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.

(71) The employer must observe both substantive and procedural due process when dismissing an employee. If procedural due process is not observed, the dismissal will be regarded as

(A) defective; the dismissal process has to be repeated.

(B) an abuse of employer's discretion, rendering the dismissal void.

(C) ineffectual; the dismissal will be held in abeyance.

(D) <u>legal and valid but the employer will be liable for indemnity.</u>

(72) 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?

(A) Labor-only contractors

(B) <u>Job contractors</u>

(C) Pakyaw workers

(D) Manpower agency contractors

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

(A) Every end of the month

(B) <u>Every two weeks</u>

(C) Every week

(D) At the end of each work day

(74) Which of the following conditions justifies a licensed employment agency to charge and collect fees for employment assistance?

(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) <u>The worker has obtained employment through the agency's efforts.</u>

(75) 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?

(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.

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