ANSWERS TO BAR EXAMINATION QUESTIONS IN LABOR LAW & SOCIAL LEGISLATION ARRANGED BY TOPIC (1994 – 2006)

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From the ANSWERS TO BAR EXAMINATION QUESTIONS in POLITICAL LAW by the UP LAW COMPLEX and PHILIPPINE ASSOCIATION OF LAW SCHOOLS
FORWARD

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We would like to seek the indulgence of the reader for some Bar Questions which are improperly classified under a topic and for some topics which are improperly or ignorantly phrased, for the authors are just Bar Reviewees who have prepared this work while reviewing for the Bar Exams under time constraints and within their limited knowledge of the law. We would like to seek the reader’s indulgence for a lot of typographical errors in this work.

The Authors
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GENERAL PRINCIPLES

What are the salient features of the protection to labor provision of the Constitution? [5%]

SUGGESTED ANSWER:
The salient features of the Protection to Labor provision of the Constitution (Article XIII. Section 3) are as follows:
1. Extent of Protection - Full protection to labor;
2. Coverage of Protection - Local and overseas, organized and unorganized;
3. Employment Policy - Full employment and equality of employment opportunities for all;
4. Guarantees
   4.1. Unionism and Method of Determination of Conditions of Employment - Right of all workers to self-organization, collective bargaining and negotiations.
   4.2. Concerted Activities - Right to engage in peaceful concerted activities, including the right to strike in accordance with law.
   4.3. Working Conditions - Right to security of tenure, humane conditions of work and a living wage.
   4.4. Decision Making Processes - Right to participate in policy and decision making processes affecting their rights and benefits as provided by law.
5. Share in Fruits of production - Recognition of right of labor to its just share in fruits of production.

ANOTHER SUGGESTED ANSWER:
o The Constitution (In Article XIII, Section 3) provides that the State shall afford protection to labor, local and overseas, organized and unorganized.
o The State shall afford protection to labor by promoting full employment and equality of employment opportunities for all.
o Workers are entitled to security of tenure, humane conditions of work and a living wage.
o The State shall guarantee the right of all workers to self organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike, in accordance with law.
o Workers shall also participate in policy and decision making processes affecting their rights and benefits as may be provided by law.
o The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling labor disputes, including conciliation, and shall enforce mutual compliance therewith to foster industrial peace.
o The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Interpretation of Labor Laws (1998)
3. Article 4 of the Labor Code provides that in case of doubt in the implementation and interpretation of the provisions of the Code and its Implementing Rules and Regulations, the doubt shall be resolved in favor of labor. Article 1702 of the Civil Code also provides that in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

Mica-Mara company assails the validity of these statutes on the ground that they violate its constitutional right to equal protection of the laws. Is the contention of Mica Mara Company tenable? Discuss fully

SUGGESTED ANSWER:
No, the Constitution provides that the state shall afford full protection to labor. Furthermore, the State affirms labor as a primary economic force. It shall protect the rights of workers and promote their welfare.

ALTERNATIVE ANSWER:
a) No, because a law which promotes a constitutional mandate does not violate the equal protection clause. The constitutional mandate is for the State to afford full protection to labor such that, when conflicting interests of labor and capital are to be weighed on the scales of justice, the heavier influence of the latter should be counter-balanced by the sympathy the law should accord the underprivileged.
b) The contention of Mica-Mara Company is not tenable. The constitutional right to equal protection of the laws is not violated by reasonable classification. Thus, it is constitutionally possible to treat workers differently from employers.

The social justice principle embodied in the Constitution could be the basis for treating workers more favorably than employers, in the implementation and interpretation of the provisions of the Labor Code and of its implementing rules and regulations.

Interpretation of Labor Laws; Liberal Approach (2006)
What is the concept of liberal approach in interpreting the Labor Code and its Implementing Rules and Regulations in favor of labor? (2.5%)

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

Labor Legislation; Purpose (2006)
What is the purpose of labor legislation? (2.5%)

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

Differentiate labor standards law from labor relations law. Are the two mutually exclusive?

SUGGESTED ANSWER:
LABOR STANDARDS law is that labor law which prescribes terms and conditions of employment like Book in Book IV, Title I and Book VI of the Labor Code. These Books of the Labor Code deal with working conditions, wages, working conditions for women, minors, househelpers and home-workers, medical and dental services, occupational health and safety, termination and retirement.

On the other hand, LABOR RELATIONS law is that labor law which regulates the relations between employers and workers like Book V of the Labor Code which deals with labor organizations, collective bargaining, unfair labor practices and strikes and lockouts.

Labor standards laws and labor relations laws are not mutually exclusive; they are complement to each other. Thus, the law on strikes and lockouts which is an example of labor relations law includes some provisions on the security of tenure of workers who go on strike or who are locked out. These provisions are examples of labor standards law.

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

SUGGESTED ANSWER:
LABOR RELATIONS law focuses its provisions on the collective aspects of employer-employee relationship. Its legal provisions deal with employees organizing unions and how through these unions, employees are able to have collective bargaining with their employer.

On the other hand, LABOR STANDARDS law focuses on the terms and conditions of employment of employees as individual employees or those legal provisions dealing with wages, hours of work and other terms and conditions of employment.

There may be instances when the provisions of labor relations law may interrelate with provisions of labor standards law. Thus, a CBA which is dealt with in labor relations law may have provisions that improves upon the minimum terms and conditions of employment prescribed in labor standards law, like a CBA providing for a higher minimum wage, or for the computation of a higher overtime pay or the payment of holiday pay not only for regular holidays but also for certain special holidays.

Labor Statutes; Classification (1995 No. 1:)
1. What are the three (3) general classifications of labor statutes? Describe and give an example of each classification.

SUGGESTED ANSWER:
The three (3) general classifications of labor statutes are:

- Labor Relations Laws;
- Labor Standards Laws; and
- Social Security Laws.

LABOR RELATIONS Laws are those labor statutes that deal with the relations of labor and management, like the laws on unions, collective bargaining, unfair labor practices, strikes, lockouts and picketing.

LABOR STANDARDS are those labor statutes that prescribe standards relating to terms and conditions of employment for compliance by employers, like the laws on hours of work, weekly rest periods, holiday pay, wages, and laws dealing with women, minors, house-helpers, and industrial home-workers.

SOCIAL SECURITY Laws are those labor statutes that provide protection not only to a worker but also to members of his family in case of loss of income or when there is need for medical care brought about by contingencies like sickness, disability, death, and old age. Examples of social security laws are the Social Security Law, Revised Government Service Insurance Act, the Articles of the Labor Code on Employees Compensation, the
Labor Statutes; Principle of Solutio Indebiti; Not Applicable (1994)
Concepcion Textile Co. included the overtime pay, night-shift differential pay, and the like in the computation of its employees' 13th-month pay. Subsequently, with the promulgation of the decision of the Supreme Court in the case of San Miguel Corporation vs. Inciong (103 SCRA 139) holding that these other monetary claims should not be included in the computation of the 13th-month pay, Concepcion Textile Co. sought to recover under the principle of solutio indebiti its overpayment of its employees' 13th-month pay, by debiting against future 13th-month payments whatever excess amounts it had previously made.
1) Is the Company's action tenable?
SUGGESTED ANSWER:
1) The Company's action is not tenable. The principle of salutio indebiti which is a civil law concept is not applicable in labor law. Thus, solutio indebiti is not applicable to the instant case, (Davao Fruits Corporations vs. National Labor Relations Commission, et al. 225 SCRA 562)
ALTERNATIVE ANSWERS:
a) The Company's action would be tenable if payment was done by mistake, In which case recovery can be done under the principle of solutio indebiti its overpayment of its employees' 13th-month pay, by debiting against future 13th-month payments whatever excess amounts it had previously made.

Labor vs. Social Legislation
2. Is there any distinction between labor legislation and social legislation? Explain.
SUGGESTED ANSWER:
LABOR LEGISLATION is sometimes distinguished from social legislation by the former referring to labor statutes, like Labor Relations Law and Labor Standards, and the latter to Social Security Laws. Labor legislation focuses on the rights of the worker in the workplace.

SOCIAL LEGISLATION is a broad term and may include not only laws that give social security protection, but also those that help the worker secure housing and basic necessities. The Comprehensive Agrarian Reform law could also be considered a social legislation.

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

Labor; as Property Right (2006)
What property right is conferred upon an employee once there is an employer-employee relationship? Discuss briefly. (5%)
SUGGESTED ANSWER:
His employment is not merely a contractual relationship. One's employment is a property right within the mantle of constitutional protection (Callanta v. Carnation Phil., No. L-70615, October 28, 1986). Hence, the employee enjoys security of tenure and he cannot be dismissed except for cause and only after due process. The worker is thus protected and insulated against any arbitrary deprivation of his job (Philips Semi Conductors [Phils.] v. Fadrique, G.R. No. 141717, April 14, 2004).

Rights of Employer/Employee (1996)
2) What are the rights of an employer and an employee?
SUGGESTED ANSWER: The Constitution in Art. XIII, Section 3 provides for the following rights of employers and employees:
A. Employers Right to a reasonable return on investments, and to expansion and growth.
1. To a just share in the fruits of production;
2. Right to self organization, collective bargaining and negotiations and peaceful concerted activities, including the right to strike in accordance with law;
3. To security of tenure, humane conditions of work, and a living wage; and
4. To participate in policy and decision-making processes affecting their rights and benefits as may be provided by law,
ALTERNATIVE ANSWER:
In an employer-employee relationship, it is the right of the employer to use the services of an employee who is under his (employer's) orders as regards the employment. On the other hand, it is the right of the employee to receive compensation for the services he renders for the employer.

Rights of the Employer; Management Prerogative (2000)
a) An exclusive school for girls, run by a religious order, has a policy of not employing unwed mothers, women with live-in partners, and lesbians. Is the policy violative of any provision of the Labor Code on employment of women? (3%)
b) The same school dismissed two female faculty members on account of pregnancy out of wedlock. Did the school violate any provision of the Labor Code on employment of women? (3%)
SUGGESTED ANSWER:
a) No, the policy does not violate the Labor Code. The practice is a valid exercise of management function. Considering the nature and reason for existence of the school, it may adopt such policy as will advance its laudable objectives. In fact, the policy accords with the constitutional precept of inculcating ethical and moral values in schools. The school policy does not discriminate against women solely on account of sex (Art. 135, Labor Code) nor are the acts prohibited under Art. 137 of the Labor Code.

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

SUGGESTED ANSWER:
b) No, because to tolerate pregnancy out of wedlock will be a blatant contradiction of the school's laudable mission which, as already stated, accords with high constitutional precepts.

This answer does not contradict the ruling in Chua-Qua where the teacher merely fell in love with a bachelor student and the teacher, also single, did not get pregnant out of wedlock.

Rights of the Employer; Management Prerogative; Benefits; Unilaterally Given (2005)
Little Hands Garment Company, an unorganized manufacturer of children's apparel with around 1,000 workers, suffered losses for the first time in history when its US and European customers shifted their huge orders to China and Bangladesh. The management informed its employees that it could no longer afford to provide transportation shuttle services. Consequently, it announced that a normal fare would be charged depending on the distance traveled by the workers availing of the service.

Was the Little Hands Garments Company within its rights to withdraw this benefit which it had unilaterally been providing to its employees? Select the best answer(s) and briefly explain your reason(s) therefor.
(a) Yes, because it can withdraw a benefit that is unilaterally given;
(b) Yes, because it is suffering losses for the first time;
(c) Yes, because this is a management prerogative which is not due any legal or contractual obligation;
(d) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code;
(e) No, because it is a fringe benefit that has already ripened into a demandable right or entitlement. (10%)

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

An employer cannot be forced to continue giving a benefit, being given as a management prerogative, when it can no longer afford to pay for it. To hold otherwise, would be to penalize the employer for his past generosity. (Producer's Bank of the Philippines v. NLRC, G.R. No. 100701, March 28, 2001)

ALTERNATIVE ANSWER:
(d) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code;
(e) No, because it is a fringe benefit that has already ripened into a demandable right or entitlement.

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

ALTERNATIVE ANSWER:
(b) Yes, because it is suffering losses for the first time;
(d) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code.

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

Rights of the Employer; Management Prerogative; Contracting Out Services (1994)
Harbor View Hotel has an existing Collective Bargaining Agreement (CBA) with the union of rank-and-file employees consisting, among others, of bartenders, waiters, roomboys, housemen and stewards. During the lifetime of the CBA, Harbor View Hotel, for reasons of economy and efficiency, decided to abolish the position of housemen and
stewards who do the cleaning of the hotel's public areas. Over the protest of the Union, the Hotel contracted out the aforementioned job to the City Service Janitorial Company, a bonafide independent contractor which has a substantial capital in the form of Janitorial tools, equipment, machineries and competent manpower.

Is the action of the Harbor View Hotel legal and valid?

SUGGESTED ANSWER:
The action of Harbor View Hotel is legal and valid. The valid exercise of management prerogative, discretion and judgment encompasses all aspects of employment, including the hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and the discipline, dismissal and recall of workers, except as provided for, or limited by special laws.

Company policies and regulations are, unless shown to be gross oppressive or contrary to law, generally binding and valid on the parties and must be complied with until finally revised or amended unilaterally or preferably through negotiation or by competent authority. (San Miguel Corporation vs. Reynaldo R. Ubaldo and Emmanuel Noel A. Cruz, Chairman and Member respectively of the Voluntary Arbitration Panel, et al G.R No. 92859, 1 February 1993. J. Campos, Jr., 218 SCRA 293)

ALTERNATIVE ANSWER:

a) The action of the Harbor View Hotel is legal and valid. CONTRACTING OUT SERVICES or functions being performed by union members is not illegal per se. In fact, it is the prerogative of management to adopt cost-saving measures to ensure economy and efficiency. Contracting out services or functions being performed by Union members becomes illegal only when it interferes with, restrains or coerces employees in the exercise of their right to self-organization.

b) The action of Harbor View Hotel would, at first glance, appear to be an unfair labor practice under Article 248(c), e.g., "to contract out services or functions being performed by union members if such will interfere with, restrain or coerce employees in the exercise of their right to self-organization."

Considering, however, that in the case at bar, there is no showing that the contracting out of services would violate the employees right to self-organization, it is submitted that the hotel's action is a valid exercise of its management prerogatives and the right to make business judgments in accordance with law.

Rights of the Employer; Management prerogatives (1994)

Bulacan Medical Hospital (BMH) entered into a Collective Bargaining Agreement (CBA) with its Union, wherein it is expressly stipulated in the Management Prerogative Clause that BMH shall, in the exercise of its management prerogatives, have the sole and exclusive right to promulgate, amend and modify rules and regulations for the employees within the bargaining unit. A year after the contract was signed, BMH issued its Revised Rules and Regulations and furnished a copy thereof to the Union for dissemination to all employees covered by the CBA. The Union wrote BMH demanding that the Revised Rules and Regulations be first discussed with them before its implementation. BMH refused. So, the Union filed an action for unfair labor practice (ULP) against BMH.

1. Is the Union correct?
2. Assuming that the CBA was signed "or executed before the 1987 Constitution was ratified, would your answer to the preceding question be different?

SUGGESTED ANSWER:

1) The Union is correct. A provision in the collective bargaining agreement concerning management prerogatives, may not be interpreted as cession of the employees right to participate in the deliberation of matters which may affect their right and the formulation of policies relative thereto, such as the formulation of a code of discipline. [Philippine Airlines, Inc. vs. National Labor Relations Commission, et al, G.R No. 85985, 13 August 1993. J. Melo. 225 SCRA 258, 301.)

ALTERNATIVE ANSWER:

a) The Union is correct. Workers have the right to participate in policy and decision-making processes affecting their rights. (Art. 255J.

b) Yes. The Union is correct in asking for discussion of the revised rules prior to their effectivity. The reason is Art. XIII, Sec. 3 of the 1987 Constitution, allowing workers the right to
participate in policy and decision-making on matters related to their welfare and benefits.

The Union’s remedy however should not be to file a ULP case but to initiate a GRIEVANCE proceeding, and if unresolved, submit the matter to voluntary arbitration.

SUGGESTED ANSWER:

2) The answer would be the same even if the CBA was signed or executed before the ratification of the 1987 Constitution because it has always been the policy of the State to promote the enlightenment of workers concerning their rights and obligations as employees. (Art. 211; PAL vs. NLRC, GR 85985, August 13, 1993)

Rule; Injunction in Labor Cases (2000)

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

SUGGESTED ANSWER:

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


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

SUGGESTED ANSWER:

Yes. The State is bound under the Constitution to afford full protection to Labor; and when conflicting interests collide and they are to be weighed on the scales of social justice, the law should accord more sympathy and compassion to the less privileged workingman. (Fuentes v. NLRC. 266 SCRA 24 f 1997) However, it should be borne in mind that social justice ceases to be an effective instrument for the "equalization of the social and economic forces" by the State when it is used to shield wrongdoing. (Corazon Jamer v. NLRC. 278 SCRA 632 F 1 997)

ANOTHER SUGGESTED ANSWER:

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

ANOTHER SUGGESTED ANSWER:

Social justice as a guiding principle in Labor Law can be implemented side by side with the equal protection clause of the Constitution.

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

JURISDICTION

CBA; Implementation & Interpretation (1995)

How are cases arising from the Interpretation or implementation of collective bargaining agreements handled and disposed?

SUGGESTED ANSWER:

Through the grievance machinery and if not resolved by the grievance machinery, through voluntary arbitration.

Damages; Absence of E-E Relationship (1995)

Pablo Bagsakin, a law graduate who got tired of taking the bar examinations after several unsuccessful attempts, joined the Investigation Division of Warak Transport Company. From the very beginning Pablo never liked his manager because the latter always made fun of the former's accident reports. When Pablo's patience ran out he walked up to his manager who was reviewing the investigator's assignments and workload and boxed him until the latter collapsed. The incident happened during office hours at the Investigation Division in the presence of his co-employees. Pablo was dismissed without any investigation and was no longer allowed to enter the company premises.

The manager filed a complaint for damages against Pablo before the Pasig Regional Trial Court (RTC). In turn, Pablo filed a case for illegal dismissal with the Labor Arbiter against the manager and the transport company. Pablo asked for reinstatement without loss of seniority rights with full back wages. Pablo also filed before the Pasig RTC a motion to dismiss the damage suit alleging that the Labor Arbiter before
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whom the case for illegal dismissal was pending. The motion to dismiss. Discuss fully. Resolve the motion to dismiss. Discuss fully.

SUGGESTED ANSWER:
The motion to dismiss filed by Pablo before the Pasig RTC should be denied.

The damage suit filed by the manager against Pablo does not arise from employer-employee relationship. While the case involves an employer and his employee. It is not the employer-employee relationship between the two that gives rise to the damage suit. Instead, it is based solely on an alleged tort which could give rise to a damage suit under the Civil Code. Thus, the Labor Arbiter has no jurisdiction over the damage suit.

Damages; Not arising from the E-E Relations (1999)
FACTS: Mariet Demetrio was a clerk-typist in the Office of the President of a multi-national corporation. One day she was berated by the President of the company, the latter shouting invectives at her in the presence of employees and visitors for a minor infraction she committed. Mariet was reduced to tears out of shame and felt so bitter about the incident that she filed a civil case for damages against the company president before the regular courts. Soon thereafter, Mariet received a memorandum transferring her to the Office of the General Manager without demotion in rank or diminution in pay. Mariet refused to transfer.

With respect to the civil suit for damages, the company lawyer filed a Motion to Dismiss for lack of jurisdiction considering the existence of an employer-employee relationship and therefore, it is claimed that the case should have been filed before the Labor Arbiter.

2. Rule on the Motion to Dismiss. Should it be granted or denied? Explain briefly (3%).
SUGGESTED ANSWER:
The Motion to Dismiss should be denied. It is a regular court and not a Labor Arbiter that has jurisdiction on the suit for damages.

The damages are not arising from the employer-employee relations which would have placed the suit under the jurisdiction of a Labor Arbiter. The suit arises from the fact that the President of the company shouted invectives at Marlet Demetrio in the presence of employees and visitors. Her complaint for damages is against an officer of the Company based on slanderous language allegedly made by the latter. This falls under the Jurisdiction of the ordinary courts. There is here a simple action for damages for tortious acts allegedly committed by the defendant. Such being the case, the governing statute is the Civil Code and not the Labor Code. (Medina v. Castro-Bartolome, 116 SCRA 597)

ALTERNATIVE ANSWER:
The Motion to dismiss should be granted. According to the Labor Code (in Article 217 (a) 4), the Labor Arbiter has original and exclusive jurisdiction to hear and decide, among others, claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations.

The claim for damages in the case in question arose from the fact that the President of the Company shouted invectives at Marlet Demetrio in the presence of employees and visitors for a minor infraction she committed. If the infraction has something to do with her work, then, the claim for damages could be considered as arising from employer-employee relations. Thus, the claim is under the exclusive jurisdiction of the Labor Arbiter.

Dismissal; Int’l Agency (1994)
In 1990, Vic Garcia was hired by the International Labor Organization (ILO) Office in Manila as a bookkeeper for five years. On January 5, 1994, he was advised that his services were being terminated for loss of confidence. Garcia questioned his dismissal by ILO-Manila as arbitrary and without benefit of due process.

1) If you were counsel for ILO, what defense/s should you put up?
2) If you were the Labor Arbiter, how would you decide the case?

SUGGESTED ANSWER:
1) The defense that I will put up will be to claim that being an international agency, the ILO enjoys immunity, namely functional independence and freedom from control of the state in whose territory its office is located and is thus beyond the jurisdiction of the Labor Arbiter. (Southeast Asian Fisheries Development Center - Aqua Culture Department, et al vs. National Labor Relations Commission, et al G.R No, 86773, 14 February 1992)

2) If I were the Labor Arbiter. I will grant the motion to dismiss. The ILO being an International agency, the same is beyond the jurisdiction of the Labor Arbiter and immune from the legal writs and processes of the administrative agencies of the country, where it is found, for the reason that the subjection of such an organization to the authority of the local agencies would afford a convenient medium through which the host government may interfere in its operations or even influence or control its policies and decisions, and besides, such subjection to local jurisdiction would Impair the capacity of such body to impartially discharge its responsibilities.
Intra-corporate Matters/Officers (1996)
Diego, Executive Vice-President of Evergreen Development Corporation (EDC) was dismissed by the Board of Directors for his involvement in irregularities prejudicial to EDC's interests. He filed a complaint for illegal dismissal with the Labor Arbiter, praying for reinstatement with back-wages, P5 million pesos as moral damages, P1 million pesos as exemplary damages and attorney's fees. EDC questioned the Jurisdiction of the Labor Arbiter. Diego, in turn contended that the Labor Arbiter has jurisdiction over the case as it involves the termination of an employee and claims for backwages, benefits and damages. Decide.

SUGGESTED ANSWER:
The dismissal of an Executive Vice-President of a Corporation, who is a corporate officer, by the Board of Directors of the corporation is not a termination dispute under the Jurisdiction of a Labor Arbiter. It is an intra-corporate dispute that is under the Jurisdiction of the Securities and Exchange Commission.

Intra-corporate Matters/Officers (1997)
Mr. Jonathan Pe, a registered stockholder of New Wave Beauty Shop, Inc. was elected Vice-President of New Wage at a regular monthly meeting. At a subsequent meeting of the Board of Directors, it was resolved to dismiss Jonathan as Vice-president due to loss of trust and confidence. Jonathan Pe filed with the National Labor Relations Commission a complaint for illegal dismissal with damages against New Wage claiming that he was dismissed without due process. New Wage filed a Motion to Dismiss based on lack of jurisdiction. Resolve the motion.

SUGGESTED ANSWER:
The election of Jonathan Pe as Vice President of New Wave Beauty Shop, Inc, made him a corporate officer. His subsequent dismissal as such corporate officer is considered an intra-corporate matter. Thus, the dismissal of Pe is not a case of a termination dispute which is under the Jurisdiction of a Labor Arbiter. It is an intra-corporate dispute that is under the Jurisdiction of the Securities and Exchange Commission.

Labor Arbiter (1995)
1. Give the original and exclusive jurisdiction of Labor Arbiters.

SUGGESTED ANSWER:
Labor Arbiters have original and exclusive jurisdiction over:
1. unfair labor practices;
2. termination disputes;
3. cases accompanied with a claim for reinstatement, and involving wages, rates of pay, hours of work, and other terms and conditions of employment;
4. claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations;
5. cases arising from any violation of Article 264 of the Labor Code, including questions involving the legality of strikes and lockout; and
6. except claims of Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations including those persons in domestic or household service, Involving an amount exceeding five thousand pesos (P5,000 00) regardless of whether accompanied with a claim for reinstatement.

Labor Arbiter; Appeals (2001)
The affected members of the rank and file elevated a labor arbiter's decision to the NLRC via a petition for review filed after the lapse of the ten-day reglementary period for perfecting an appeal. Should the NLRC dismiss the petition outright or may the NLRC take cognizance thereof? (5%).

SUGGESTED ANSWER:
The NLRC should dismiss the appeal outright because the same was filed beyond the reglementary period of appeal. Article 223 of the Labor Code reads:
"Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from, receipt of such decisions, awards, or orders."

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

Labor Dispute (2001)
"A" was able to obtain a Judgment against his former employer, Company "B", for P750,000.00. In executing the judgment in favor of A, the Labor Arbiter sought to levy on B's office equipment. B filed an action for damages and injunction against the Labor Arbiter before the Regional Trial Court of the province where B's offices are located. Is B's action tenable? Why? (5%).

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

**ANOTHER SUGGESTED ANSWER:**
Yes, B's action before the Regional Trial Court is tenable if said action is limited to the filing of a damage suit against the Labor Arbiter because there exists no employer-employee relationship between "B" and the Labor Arbiter, and there is no labor dispute between them. In Agricultural Development Corporation vs. Court of Appeals, G.R. No. 112139. January 31, 2000, the Supreme Court, ruled:

"It is well settled in law and jurisprudence that where NO employer-employee relationship exists between the parties and no issue is involved which may be resolved by reference to the Labor Code, other labor statutes or any collective bargaining agreement, it is the Regional Trial Court that has jurisdiction."

**Med-arbiter (1996)**
The national council of X Union, the exclusive bargaining representative of all daily paid workers of Z Corp., called a general meeting and passed a resolution which provides that each union member was to be assessed P 1,000 to be deducted from the lump sum of P10,000.00 which each employee was to receive under the CBA. Sergio, a Union member, protested and refused to sign the authorization slip for the deduction. X Union then passed a resolution expelling Sergio from the union. Sergio filed a complaint before the Labor Arbiter for illegal deduction and expulsion from the union. Will the complaint prosper? Explain.

**SUGGESTED ANSWER:**
The complaint will not prosper before the Labor Arbiter because there is here an intra-union conflict which is under the Jurisdiction of the Med-Arbiter. (See Art. 226 and Rule V of Book V of the Rules and Regulations Implementing the Labor Code).

**Money Claims; Reinstatement (1996)**
Sara has been working as housemaid for the Bojilov spouses for three (3) years. In the early morning of July 28, the spouses and Sara were watching the live coverage of the finals of an Olympic boxing match between a Bulgarian and a Filipino which the foreign fighter won on points. Peeved by Sara's angry remarks that the scoring was unfair, the Bojilov spouses fired her on the spot.

Sara thereafter filed a complaint with the Regional Director of the DOLE for unpaid salaries totalling P5,500.00. The Bojilov spouses moved to dismiss the complaint on the belief that Sara's claim falls within the Jurisdiction of the Labor Arbiter. Sara, however, claimed that the Regional Director can decide on her claim by virtue of his plenary visitorial powers under Art. 128 and of Art. 129 of the Labor Code, as amended, which empowers the Regional Director to hear and decide, among others, matters involving recovery of wages.

1. Whose position will you sustain? Explain.
2. Will your answer be the same if Sara's claim is P4,500.00 with reinstatement? Explain.

**SUGGESTED ANSWER:**
1) I will sustain the position of the Bojilov spouses. Art. 128 is not applicable because the case did not arise as a result of the exercise of visitorial and enforcement powers by the Regional Director, as the duly authorized representative of the Secretary of Labor and Employment. Instead, the case is a simple money claim under Art. 129, which could be under the Jurisdiction of the Regional Director if the claim does not exceed P5,000.

But the claim exceeds P5,000.00. Thus, it is the Labor Arbiter who has jurisdiction under Art. 217(a) of the Labor Code.

2) I will still hold that it is the Labor Arbiter that has jurisdiction. It is true that the money claim no longer exceeds P5,000. But there is a claim for reinstatement. Thus, this claim is under the Jurisdiction of a Labor Arbiter, per Art. 129 of the Labor Code.

**Nat'l Labor Relations Commission (1995)**
3. What is the jurisdiction of the National Labor Relations Commission?

**SUGGESTED ANSWER:**
Jurisdiction of the NLRC:
1. exclusive appellate jurisdiction over all cases decided by Labor Arbiter;
2. exclusive appellate jurisdiction over all cases decided by Regional Directors or hearing officers involving the recovery of wages and other monetary claims and benefits arising from employer-employee relations where the aggregate money claim of each employee or househelper does not exceed five thousand pesos (P5,000.00);
3. original Jurisdiction to act as a compulsory arbitration body over labor disputes certified to NLRC by the Secretary of Labor and Employment; and
4. power to issue a labor injunction.

**Nat'l Labor Relations Commission (2001)**
Company "A" and Union "B" could not resolve their negotiations for a new CBA. After conciliation proceedings before the NCMB proved futile, B went on strike. Violence during the strike prompted A to file charges against striker-members of B for their illegal acts. The Secretary of Labor assumed Jurisdiction, referred the strike to the NLRC and issued a return-to-work order. The NLRC directed the parties to submit their respective position
papers and documentary evidence. At the Initial hearing before the NLRC, the parties agreed to submit the case for resolution after the submission of the position papers and evidence.

Subsequently, the NLRC issued an arbitral award resolving the disputed provisions of the CBA and ordered the dismissal of certain strikers for having knowingly committed illegal acts during the strike. The dismissed employees appealed the decision to the Court of Appeals claiming that they were deprived of their right to due process and that the affidavits submitted by A were self-serving and of no probative value. Should the appeal prosper? State the reason(s) for your answer clearly. (5%)

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

ANOTHER SUGGESTED ANSWER:
No, the appeal will not prosper. In CMP Federal Security Agency vs. NLRC, G.R. No. 125298, February 11, 1999, the Supreme Court ruled:

"The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. Hence, it is not legally objectionable for being violative of due process, for the labor arbiter to resolve a case based solely on the position papers, affidavits or documentary evidence submitted by the parties. The affidavits of witnesses in such case may take the place of direct testimony."

Nat'l Labor Relations Commission (2001)
Some disgruntled members of Bantay Labor, Union filed with the Regional Office of the DOLE a written complaint against their union officers for mismanagement of union funds. The Regional Director did not rule in the complainants' favor. Not satisfied, the complainants elevated the Regional Director's decision to the NLRC. The union officers moved to dismiss on the ground of lack of Jurisdiction. Are the union officers correct? Why? (3%)

SUGGESTED ANSWER:
Yes, the union officers are correct in claiming that the NLRC has no jurisdiction over the appealed ruling of the Regional Director. In Barles vs. Bitonio, G.R. No. 120220, June 16, 1999, the Supreme Court ruled:

"Appellate authority over decisions of the Regional Director involving examination of union accounts is expressly conferred on the BLR under the Rule of Procedure on Mediation-Arbitration."

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

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

Nat'l Labor Relations Commissions (2001)
Company "A", within the reglementary period, appealed the decision of a Labor Arbiter directing the reinstatement of an employee and awarding backwages. However, A's cash bond was filed beyond the ten day period. Should the NLRC entertain the appeal? Why? (5%)

SUGGESTED ANSWER:
No, the NLRC should not entertain the appeal, as the same was not perfected for failure to file a bond. Art. 223 of the Labor Code reads:

"In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of cash or surety bond... In the amount equivalent to the monetary award in the judgment appealed from."

In ABA vs. NLRC, G.R. No. 122627. July 18, 1999, the Supreme Court ruled:

"An appeal bond is necessary......the appeal may be perfected only upon the posting of cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from."

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

Overseas Employment; Claim; Torts (2004)
A. Under a seaman’s contract of employment with a local manning agent of a foreign shipping company, Capt. TROY embarked on an ocean-going vessel in good health. One stormy night at sea, he was drenched with rainwater. The
following morning, he contracted fever which lasted for days. He suffered loose bowel movement, lost his appetite, and eventually he died before a scheduled airlift to the nearest port.

Subsequently, the widow of Capt. TROY complained against the local manning agent and its foreign principal before the Regional Arbitration Branch of DOLE, for actual and exemplary damages and attorney’s fees. She invoked the Labor Code provision which requires the employer to provide all necessary assistance to ensure the adequate and necessary medical attendance and treatment of the injured or sick employee in case of emergency.

Respondents moved to dismiss the complaint on the ground that the Labor Arbiter has no jurisdiction over the complaint for damages arising from illness and death of Capt. TROY abroad. Resolve the motion with reasons. (5%)

SUGGESTED ANSWER:
In Tolosa v. NLRC, (G.R. 149578, April 10, 2003), the Supreme Court held that what we have in this case is a claim arising from tort or quasi-delict. In such a situation, the seaman who died on November 18, 1992, cannot sue before the Labor Arbiter. But this will not apply now, as under Sec. 10, R.A. 8042, [effective June 7, 1995], what we have is a claim "arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages", cognizable by the "Labor Arbiters of the National Labor Relations Commission" (NLRC) who have the original and exclusive jurisdiction thereon.

Overseas Employment; Mandatory Remittance; Foreign Exchange (2006)
Can an overseas worker refuse to remit his earnings to his dependents and deposit the same in the country where he works to gain more interests? Explain. (5%)

SUGGESTED ANSWER:
NO. Art. 22 of the Labor Code provides that it shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in accordance with the rules and regulations prescribed by the Secretary of Labor and Employment. Executive Order No. 857 prescribes the percentage of foreign exchange remittance from 50% to 80% of the basic salary, depending on the worker's kind of job.

Hence, an overseas worker cannot refuse to remit his earnings. Otherwise, he shall be suspended or excluded from the list of eligible workers for overseas employment and in cases of subsequent violations; he shall be repatriated at his own expense or at the expense of his employer as the case may be.

Recovery of Wages (1994)
Tina Aquino, a domestic helper in the household of Fidel Aldeguer, filed an action In the Regional Office of the Department of Labor and Employment (DOLE) for recovery of unpaid wages amounting to P3,500.00 and P1,499.00 as moral damages. Aquino claimed that the amount of P3,500.00 is equivalent to the P500.00 a month she failed to receive for the last seven months of her employment with Aldeguer, based on their agreed P2,500.00 monthly salary. Aldeguer moved to have Aquino's complaint dismissed, alleging that as a domestic helper Ms. Aquino should have first brought the matter to the Lupong Barangay.

If you were the Regional Director, how would you resolve the matter?

SUGGESTED ANSWER:
As Regional Director, I will assume Jurisdiction. The provisions of P.D. No. 1508 requiring the submission of disputes before the Barangay Lupong Tagapayapa prior to their filing with the court or other government offices are not applicable to labor cases.

Article 129 of the Labor Code empowers the Regional Director to hear and decide any matter involving the recovery of wages and other monetary claims and benefits owing to an employee or person employed in domestic or household service, provided that the money claim does not exceed P5,000.00. (Montoya vs .Escayo, G.R. Nos, 82211-12, March 21. 1989)

Remedies; illegal dismissal (1999)
The Labor Arbiter dismissed the complaint for illegal dismissal filed by Genevieve Cruz against Bulag Optical Inc. (BOI) which denied her prayer for reinstatement but awarded financial assistance in her favor. BOI appealed the decision of the Labor Arbiter to the NLRC within the reglementary period. Genevieve filed an opposition to the appeal. The NLRC affirmed in toto the decision of the Labor Arbiter. Both the BOI and Genevieve are not satisfied with the decision of the NLRC.

1. What is the remedy, if any, of BOI and before what forum? Explain briefly. (3%)

SUGGESTED ANSWER:
BOI can file a Motion for Reconsideration with the NLRC after ten (10) calendar days from receipt of the decision.

If the NLRC denies the Motion for Reconsideration, BOI can file a petition for certiorari with the Court of Appeals under Rule 65 of the Rules of Court since the decision of the NLRC is final and executory.
2. Can Genevieve Cruz avail herself of the same remedy as that of BOI? Why? (2%)

**SUGGESTED ANSWER:**
Genevieve Cruz can avail herself of the same remedy as that of the BOI. The remedies described for the BOI are also the same remedies available to Genevieve Cruz as a party to the case, pursuant to the Labor Code (Article 223) and the Rules of Court (Rule 65).

Panel: But the facts of the case indicate that Genevieve did not appeal. She therefore cannot avail of the remedy.

**Secretary of Labor; Authority (1998)**
An airline which flies both the international and domestic routes requested the Secretary of Labor and Employment to approve the policy that all female flight attendants upon reaching age forty (40) with at least fifteen (15) years of service shall be compulsorily retired; however, flight attendants who have reached age forty (40) but have not worked for fifteen (15) years will be allowed to continue working in order to qualify for retirement benefits, but in no case will the extension exceed four (4) years.

Does the Secretary of Labor and Employment have the authority to approve the policy? [5%]

**SUGGESTED ANSWER:**
Yes, the Secretary of Labor and Employment has the authority to approve a policy dealing with the retirement of flight attendants of airlines.

Article 132 (d) of the Labor Code provides that the Secretary of Labor and Employment shall establish standards that will ensure the safety and health of women employees, including the authority to determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like.

**CAVEAT:**
It could be argued that Article 132 (d) may be unconstitutional because this may constitute discrimination in violation of the spirit of Section 14 of Article XIII of the Constitution which provides that the State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

**Secretary of Labor; Dismissal of Employees (1998)**
The Secretary of Labor and Employment, after receipt of a Notice to Terminate Employment of one hundred (100) workers, enjoined the employer from implementing their termination. Has the Secretary of Labor and Employment the authority to enjoin the employer from terminating the employment of the workers? If so, on what grounds? [5%]

**SUGGESTED ANSWER:**
The Secretary of Labor and Employment has the authority to enjoin an employer from terminating the employment of workers.

The Labor Code (in Article 377(b) provides that the Secretary of Labor and Employment may suspend the effectivity of the termination of workers pending the resolution of a labor dispute in the event of a prima facie finding of an appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay off.

**Voluntary Arbitrator (1997)**
State the cases when a labor dispute would fall under the Jurisdiction of voluntary arbitrators or panel of voluntary arbitrators.

**SUGGESTED ANSWER:**
A labor dispute falls under the jurisdiction of a voluntary arbitrator or a panel of voluntary arbitrators if a labor dispute arises from an unresolved grievance which in turn arises from the interpretation or implementation of a Collective Bargaining Agreement or of company personnel policies. (Art. 261)

Upon agreement of parties, a voluntary arbitrator or panel of voluntary arbitrators may also hear and decide all other labor disputes including unfair labor practices and bargaining deadlock. (Art. 262)

**Voluntary Arbitrator (2003)**
The employer company, in a directive to the union president, ordered the transfer of some of its employees, including a number of union officials, to its plant offices. The order was opposed by the union. Ultimately, the union filed an unfair labor practice against the company alleging that the purported transfer of its union officials was unjust and in violation of the Collective Bargaining Agreement (CBA), Pursuant to the terms of the CBA, the dispute was referred to a voluntary arbitrator who later ruled on the issues raised by the parties. Could it later be validly asserted that the "decision" of the voluntary arbitrator would have no "compulsory" effect on the parties? Explain.

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

ANOTHER SUGGESTED ANSWER:
No. The award of voluntary arbitrators acting within
the scope of their authority determines the rights of
the parties, and their decisions have the same
legal effects as a judgment of the Court. Such
decisions on matters of fact or law are conclusive,
and all matters in the award are thenceforth res
judicata on the theory that the matter has been
adjudged by the tribunal which the parties have
agreed to make final as tribunal of last resort.
(Volkschel Labor Union v. NLRC. 98 SCRA 314
(1980).

LABOR RELATIONS

CBA; Appropriate Bargaining Unit (1998)
What is an appropriate bargaining unit for
purposes of collective bargaining? [5%]
SUGGESTED ANSWER:
An APPROPRIATE BARGAINING UNIT is a group
of employees of a given employer comprised of all
or less than all of the entire body of employees,
which the collective interest of all the employees,
consistent with the interest of the employer,
indicate to be the best suited to serve reciprocal
rights and duties of the parties under the collective
bargaining provisions of the law. (See, e.g.,
University of the Philippines v. Ferrer-Calleja, 211

CBA; Arbitral Award; Retroactive Effect
(2001)
Company A and Union B had a 3-year CBA that
expired on June 12, 1990. Negotiations proved
futile so the unresolved issues were referred to an
Arbiter who rendered a decision on March 15,
1992 retroactive to December 14, 1990. Is the
Arbiter’s decision providing for retroactivity tenable
or not? Why? (5%)
SUGGESTED ANSWER:
The referral of the unresolved issues of the
collective bargaining negotiations to an Arbiter is
not within the jurisdiction of the Arbiter.

But assuming that the unresolved issues in the
collective bargaining negotiations were properly
referred to the Arbiter pursuant to the provision of
the Labor Code (Art. 262) that states that a
Voluntary Arbitrator may hear and decide any labor
dispute, including bargaining deadlocks, the
Arbiter’s decision providing for retroactivity is
tenable. Exercising his compulsory arbitration
power, the Arbiter could decide the issue of
retroactivity in any way which is not contrary to law,
morals, good customs, public order or public
policy.

But in a case (Manila Electric Co vs. Secretary of
Labor Leonardo Quisumbing, G.R. No. 127598,
February 22, 2000), the Supreme Court said that
an arbitral award shall retroact to the first day after
the six-month period following the expiration of the
last day of the CBA that was being re-negotiated.

ANOTHER SUGGESTED ANSWER:
The retroactive Order of the Labor Arbiter is void
for want of jurisdiction. Jurisdiction is conferred by
law. Nowhere in the Labor Code, more specifically,
Article 217, is the Labor Arbiter given jurisdiction
over unresolved issues in collective bargaining,
including determining the period or duration of a
Collective Bargaining Agreement.

CBA; Arbitral Awards; Effectivity (1994)
Company X, a transportation company, and Union
Y were in the process of negotiating a new
Collective Bargaining Agreement (CBA) to replace
the one which expired on March 15, 1990. The
negotiations reached an impasse on economic
issues on June 30, 1990. The Secretary of Labor
assumed Jurisdiction over the dispute and certified
the same to the NLRC for proper disposition.
Proceedings before the NLRC ended on November
30, 1990 and a decision was rendered
on December 15, 1990. The said decision made
retroactive to March 15, 1990 the new CBA
containing the issues resolved by the NLRC, as
well as those concluded and agreed upon by the
parties prior to their arriving at a deadlock in their
negotiations. Company X questioned the
retroactivity of the CBA alleging that the same
contravenes Art. 253-A of the Labor Code, which
provides for the automatic retroactivity of the
renewed CBA only if the same is entered into
within six (6) months from its expiry date, and, if
not, the parties must agree on the duration of a
retroactivity.
1) Is Company X’s position correct?
2) Would your answer be different if the
assumption of jurisdiction by the Secretary of
Labor was at the request or instance of Company
X?
SUGGESTED ANSWER:
1) The Company’s position is not correct. In
the absence of a specific provision of law prohibiting
retroactivity of the effectivity of arbitral awards
issued by the Secretary of Labor, the same is
deemed vested with plenary and discretionary
powers to determine the effectivity thereof, (St
Luke’s Medical Center, Inc. vs. Hon. Ruben O.
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Torres, etal.-G.R. No. 99395, 29 June 1993, J. Melo. 222 SCRA 779)

2) No. Regardless of which party sought the assumption by the Labor Secretary, the effect would be the same. An assumption case gives the Labor Secretary the plenary arbitration powers to rule on the issues presented for resolution, including the retroactivity of the new CBA.

CBA; Automatic Renewal Clause (1999)
What is the "automatic renewal clause" in a collective bargaining agreement? (2%)

SUGGESTED ANSWER:
The "AUTOMATIC RENEWAL CLAUSE" in a CBA refers to that provision of the Labor Code (Article 253) which states that "It shall be the duty of both parties (to a CBA) to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day (freedom) period and/or until a new agreement is reached by the parties."

CBA; Automatic Renewal Clause (2001)
Company "A" and Union "B" negotiated the last two years of their five-year CBA on April 1, 1990 to expire on March 31, 1992. Considering the amicable relations between the parties, neither one moved for the extension or termination of the agreement.

Sometime in 1995, some disgruntled employees filed a complaint demanding that they be paid the annual salary increases and other related annual increases specified in the CBA of April 1990, citing the provision in Art. 253 of the Labor Code which requires the parties to "xxx keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties".

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

SUGGESTED ANSWER:
The disgruntled employees are correct in their claim that the expired CBA remains in full force and effect until a new CBA is signed in accordance with Article 253 of the Labor Code.

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

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

CBA; Bargaining Representative (2000)
The Ang Sarap Kainan Workers Union appointed Juan Javier, a law student, as bargaining representative. Mr. Javier is neither an employee of Ang Sarap Kainan Company nor a member of the union. Is the appointment of Mr. Javier as a bargaining representative in accord with law? Explain. (3%)

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

CBA; Certification Election (2005)
As Human Resources Department (HRD) manager of EZ Components, an unorganized manufacturer of electric and electronic components for household appliances, you are suddenly confronted with demands for recognition and collective bargaining negotiations from two competing labor unions. They both claim to represent all the rank-and-file employees. Union A is led by a moderate faction, while Union B is affiliated with a militant federation identified with leftist ideology.

Which of the following courses of action should you take to best protect the interests of your company and employees?
(a.) Recognize Union A as the rightful bargaining representative because it will be more reasonable to deal with;
(b.) Recognize Union B because you do not want to antagonize its leftist connections and foment inter-union conflicts;
(c.) Ignore the demands of either union since you cannot be compelled legally to deal with them at this stage; or
(d.) Petition the Bureau of Labor Relations to conduct a certification election to determine
which union really represents the majority of the employees in the bargaining unit. (10%)  
**ALTERNATIVE ANSWER:**  
(d) Petition the Bureau of Labor Relations to conduct a certification election to determine which union really represents the majority of the employees in the bargaining unit. (Haw at Buklod ng Manggaigaiva [IBM] v. Calleja, G.R. No. 84685, February 23, 1990)  
**ALTERNATIVE ANSWER:**  
(c) Ignore the demands of either union since you cannot be compelled legally to deal with them at this stage.

**CBA; Certification Election; “No-Union” Win (2006)**  
Can a "no-union" win in a certification election? (2.5%)  
**SUGGESTED ANSWER:**  
YES. Sec. 20, Rule 9, Book V provides that where the votes cast results in "no union" obtaining the majority, the med arbiter shall declare such fact in the order. Hence, the employees may choose not to be represented by anyone (Reyes-Trajano v. Trajano, G.R. No 84433, June 2, 1992).

**CBA; Certification Election; Consent Election; Run-Off Election (2000)**  
Distinguish between "Certification Election", "Consent Election," and "Run-off Election", (6%)  
**SUGGESTED ANSWER:**  
CERTIFICATION ELECTION requires a petition for a Certification Election filed by a union or employer. A Med-Arbitrator grants the petition and an election officer is designated by the regional director to supervise the election. (Art. 256, 257, 258, Labor Code).  

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

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

**CBA; Certification Election; Freedom Period (1999)**  
1. In what instance may a petition for certification election be filed outside the freedom period of a current collective bargaining agreement? (3%).  
**SUGGESTED ANSWER:**  
As a general rule, in an establishment where there is in force and effect a CBA, a petition for certification election may be filed only during the freedom period of such CBA.  

But to have the above-mentioned effect, the CBA should have been filed and registered with the Department of Labor and Employment (See Article 231, 253-A and 256)  

Thus, a CBA that has not been filed and registered with the Department of Labor and Employment cannot be a bar to a certification election and such election can be held outside of the freedom period of such CBA.

**ALTERNATIVE ANSWER:**  
A petition for certification election may be filed outside the freedom period of a current CBA if such CBA is a new CBA that has been prematurely entered into, meaning, it was entered into before the expiry date of the old CBA. The filing of the petition for certification election shall be within the freedom period of the old CBA which is outside of the freedom period of the new CBA that had been prematurely entered into.

**CBA; Certification Election; Probationary Employees (1999)**  
2. Are probationary employees entitled to vote in a certification election? Why? (2%).  
**SUGGESTED ANSWER:**  
In a certification election, all rank-and-file employees in the appropriate bargaining unit are entitled to vote. This principle is clearly stated in Article 255 of the Labor Code which states that the "labor organization designated or selected by the majority of the employees in such unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining."  

Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence, all rank-and-file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. The Code makes no distinction as to their employment status as basis for eligibility to vote in the petition for certification election. The law refers to "all" the employees in the bargaining unit. All they need to be eligible to vote is to belong to the "bargaining unit." (Airtimer Specialists, Inc. v. Ferrer-Calleja, ISO SCRA 749)  

**ALTERNATIVE ANSWER:**  
PROBATIONARY EMPLOYEES may not be entitled to vote in a certification election where only regular employees belong to a bargaining unit and probationary employees do not belong to such bargaining unit. It is the belonging to a bargaining unit that entitles an employee to vote in a certification election.  

**ANOTHER ALTERNATIVE ANSWER:**
YES. Any employee, whether employed for a definite period or not, shall, beginning on his first day of service, be considered an employee for purposes of membership in any labor union (Art. 277(c)).

CBA; Closed Shop Provision; When not applicable (1999)

FACTS: In a certification election conducted by the Department of Labor, Associated Workers Organization in Laguna (AWOL) headed by Cesar Montanyo, won over Pangkat ng mga Manggagawa sa Laguna (PML), headed by Eddie Graciaa. Hence, AWOL was certified as the exclusive bargaining agent of the rank-and-file employees of the Laguna Transportation Company (LTC).

Shortly, thereafter, a Collective Bargaining Agreement was concluded by LTC and AWOL which provided for a closed shop. Consequently, AWOL, demanded that Eddie Graciaa and all the PML members be required to become members of AWOL as a condition for their continued employment: otherwise, they shall be dismissed pursuant to the closed shop provision of the CBA.

The union security clause of the CBA also provided for the dismissal of employees who have not maintained their membership in the union. For one reason or another, Francis Magallona, a member of AWOL, was expelled from the union membership for acts inimical to the interest of the union. Upon receipt of the notice that Francis Magallona failed to maintain his membership in good standing with AWOL, LTC summarily dismissed him from employment.

1. Can Eddie Graciaa and all the PML members be required to become members of the AWOL pursuant to the closed shop provision of the CBA? Why? (3%)  
SUGGESTED ANSWER:  
Eddie Gracla and all the PML members can not be required to become members of AWOL pursuant to the closed shop provision of the CBA. According to the Labor Code (Article 248(e), a closed shop provision cannot be applied to those employees who are already members of another union at the time of the signing of the CBA.

2. Is the termination from employment of Francis Magallona by LTC lawful? Why? (2%)  
SUGGESTED ANSWER:  
Pursuant to the closed shop provision of the CBA entered into by AWOL with LTC, membership in AWOL has become a condition of employment in LTC. As long as the expulsion of Francis Magallona from AWOL was done in accordance with applicable provisions of law and with the Constitution and By-laws of the AWOL, then it was lawful for LTC to terminate Magallona. Panel: The termination is unlawful (Ferrer v. NLRC).

CBA; Closed Shop vs. Agency Shop (1997)

(a) Describe a "closed shop agreement, does it differ from an "agency shop agreement."  
(b) Are the above agreements legal?  
SUGGESTED ANSWER:  
(a) A "CLOSED SHOP AGREEMENT" is that agreement embodied in a collective bargaining agreement (CBA) whereby the employer binds itself not to hire any person unless he is first a union member of the collective bargaining representative.

An "AGENCY SHOP AGREEMENT" is different from a closed shop agreement in that under the former, the employer does not bind itself not to hire a person unless he is first a union member of the collective bargaining representative. Instead, the employer binds itself to check off from those who are not union members of the collective bargaining representative a reasonable fee equivalent to the dues and other fees paid by union members if the non-union members accept the benefits of the CBA.

(b) The above agreements are legal or they are expressly allowed by the Labor Code.


Distinguish between "contract bar rule" and "deadlock bar rule". (3%)  
SUGGESTED ANSWER:  
Under the "CONTRACT BAR RULE," a certification election cannot be held if there is in force and in effect a collective bargaining agreement that has been duly registered with the Department of Labor and Employment except during the freedom period of such CBA which is the 60-day period prior to the expiry date of said CBA. (See Articles 231, 253-A and 256)

Under the "DEADLOCK BAR RULE" a certification election can not be held if a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or mediation or had become the subject of a valid notice of strike or lockout. (See Section 3, Rule XI, Book V of the Implementing Rules and Regulations of the Labor Code)

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

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

(a) Is the CBA provision valid?
SUGGESTED ANSWER:
No, the CBA provision is not valid. The benefits of a CBA are extendible to all employees regardless of their membership in the union because to withhold the same from non-union members would be to discriminate against them. (National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc., G.R. No. L-18170, August 31, 1963)

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

CBA; interpretation (2004)
B. The CBA between the Company and the rank-and-file Union contained the following provision: "Section 3. MEAL ALLOWANCE. The Company agrees to grant a MEAL ALLOWANCE of TEN PESOS (P10.00) to all employees who render at least TWO (2) hours or more of actual overtime work on a workday, and FREE MEALS, as presently practiced, not exceeding TWENTY FIVE PESOS (P25.00) after THREE (3) hours of actual overtime work."

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

CBA; Jurisdictional Pre-Conditions (1996)
2) What jurisdictional pre-conditions must be present to set in motion the mechanics of a collective bargaining?
SUGGESTED answer:
To set in motion the mechanics of collective bargaining, these jurisdictional pre-conditions must be present, namely:
1. The employees in a bargaining unit should form a labor organization;
2. The labor organization should be a legitimate labor organization;
3. As such legitimate labor organization, it should be recognized or certified as the collective bargaining representative of the employees of the bargaining unit; and
4. The labor organization as the collective bargaining representative should request the employer to bargain collectively. (See Arts. 243, 234, 255 and 250 of the Labor Code)

ALTERNATIVE ANSWER:
The mechanics of collective bargaining are set in motion only when the following Jurisdictional pre-conditions are met:
(1) possession of the status of majority representation of the employees’ representative in accordance with any of the means of selection or designation provided for by the Labor Code;
(2) proof of majority of representation; and
(3) a demand to bargain under Art. 251(g), of the Labor Code. (Kiok Loy v. NLRC. 141 SCRA 179 [1986])

Distinguish clearly but briefly between Lock-out and Closed Shop.
SUGGESTED ANSWERS:
LOCKOUT refers to the temporary refusal of an employer to furnish work as a result of a labor or industrial dispute. CLOSED SHOP, on the other hand, refers to a union security clause in a collective bargaining agreement whereby the employer agrees not to employ any person who is not a member of the exclusive collective bargaining representative of the employees in a bargaining unit.

CBA; Mandatory Subjects of Bargaining (1996)
1) What matters are considered mandatory subjects of collective bargaining?
SUGGESTED ANSWER:
Wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising from the collective bargaining agreement are considered mandatory subjects of collective bargaining. (See Art. 252 of the Labor Code)

CBA; Registration Requirement; Contract Bar-Rule (2000)
A Collective Bargaining Agreement was signed between the Ang Sarap Kainan Company and the Ang Sarap Kainan Workers Union. Should the Collective Bargaining Agreement be registered with the Bureau of Labor Relations? If so, why?

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

CBA; Run-Off Election (2006)
When does a “run-off” election occur? (2.5%)

SUGGESTED ANSWER:
A run-off election occurs when the following elements occur:
1. Between three (3) or more choices, and no choice receiving a majority of the valid votes cast;
2. The total number of votes for all contending unions is at least 50% of the number of vote cast; and
3. Between the labor unions receiving the two highest number of votes (Article 256, Labor Code).

CBA; Sale of Establishment; Effect (1994)
Coronet Records Phil. (CRP) manufactures audio/video record players, compact discs, video discs, cassettes and the like. CRP's shareholdings is 40% foreign and 60% domestic. CRP signed a Collective Bargaining Agreement (CBA) with its rank-and-file workers for three years starting from January 1, 1990 and ending on December 31, 1993.

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

The employees received their respective separation pay under protest and thereafter filed an action against CRP and Lyra Music Corporation for unfair labor practice (ULP). The Arbiter ruled in favor of the workers and ordered Lyra Music Corporation to absorb the former workers of CRP. Was the Labor Arbiter correct in his decision?

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

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

CBA; Social Security vs. Union Security (2004)
Distinguish clearly but briefly between Social security and union security

SUGGESTED ANSWERS:
SOCIAL SECURITY is the protection given by social insurance programs such as the programs of the SSS, GSIS and PHIC undertaken pursuant to their respective charters, including the employees compensation program provided for in the Labor Code. The aforesaid programs provide income benefits and/or medical care when contingencies like sickness, (also maternity in the case of SSS) disability, death, or retirement, including in the case of the GSIS, separation and unemployment benefits.

On the other hand, UNION SECURITY refers to a clause in a collective bargaining agreement whereby the employer agrees to employ or continue in employment only workers who are members of the exclusive collective bargaining representative of the employees of said employer in a bargaining unit.

CBA; Substitutionary Doctrine (2000)
a) The Samahan ng mga Manggagawa sa Pids and Co. Inc. lost its majority status in the bargaining unit one year after the signing of the Collective Bargaining Agreement. Bickerings among all the three other unions in the bargaining unit were a daily occurrence, with each union asserting majority status. To resolve this pestering problem, the Company and the three other unions agreed to hold a consent election under the supervision of the Bureau of Labor Relations. In the consent election, Pids and Co, Worker's Union
won, and was accordingly recognized by the Company as the exclusive bargaining representative in the bargaining unit. Is the Pids and Co. Workers Union bound by the Collective Bargaining Agreement signed between the Company and the Samahan ng Mga Manggagawa Sa Pids and Co. Inc.? Explain. (3%)

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

SUGGESTED ANSWER:

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

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

CBA; Union Security Clause (2004)

A. MPH Labor Union is the duly certified bargaining representative of the rank-and-file employees of MM Park Hotel since the 1970's. The collective bargaining agreement contained union shop security provisions. After the signing of the 2000–2005 CBA, the Union demanded the dismissal of 3 employees, XX, YY and ZZ, pursuant to the union security clause in the CBA.

The Hotel Management replied that it was legally impossible to comply with the demand of the Union. It might even be construed as unfair labor practice. For it appeared that XX, YY and ZZ had been recently promoted as supervisors and resigned from the Union. But according to the Union, the three submitted their resignations outside the freedom period after the 1996–2000 CBA expired on June 30, 2000. The Union argued that the Hotel Management could not skirt its obligation to respect and implement the union security clause by promoting the three employees. That could be viewed as rewarding employees for their disloyalty to the union, said the union officers.

Does the union security clause sufficiently justify the demand for dismissal of the three employees or not? May the Hotel Management validly refuse the Union’s demand? (5%)

CBA; Union Security Clause; Closed Shop Provision (1995)

Reconcile the compulsory nature of the closed shop provision in a Collective Bargaining Agreement with the constitutional guarantee of freedom of association. Discuss fully.

SUGGESTED ANSWER:

Among the policies of the State in the field of labor relations is to promote trade unionism and to foster the organization of a strong and united labor movement. UNION SECURITY CLAUSES, like a closed shop agreement, is one way of implementing the aforementioned labor relations policy. Implementing to some extent the concept of freedom of association, an employee who is already a member of a union could not be compelled to become a member of a bargaining union, even if there is a closed shop agreement.

ALTERNATIVE ANSWER:

It could be argued that a closed shop provision in a Collective Bargaining Agreement, because it requires that a person should first be a member of the bargaining union before he is employed, is violative of the right to freedom of association, because said right subsumes not only a right to join, but also a right not to join a union.

On the other hand, it could be argued that the exercise of the freedom of association means that workers should join unions. A closed shop agreement, as a union security clause, encourages the joining of unions.

CBA; Union; Representation Issue (1999)

FACTS: Jenson & Jenson (J & J) is a domestic corporation engaged in the manufacturing of consumer products. Its rank-and-file workers organized the Jenson Employees Union (JEU), a duty registered local union affiliated with PAFLU, a national union. After having been certified as the exclusive bargaining agent of the appropriate bargaining unit, JEU-PAFLU submitted its proposals for a Collective Bargaining Agreement with the company.

In the meantime, a power struggle occurred within the national union PAFLU between its National President, Manny Pakyao, and its National Secretary General, Gabriel Miro. The representation issue within PAFLU is pending resolution before the Office of the Secretary of Labor.
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By reason of this intra-union dispute within PAFLU, J & J obstinately and consistently refused to offer any counterproposal and to bargain collectively with JEU-PAFLU until the representation issue within PAFLU shall have been resolved with finality. JEU-PAFLU filed a Notice of Strike. The Secretary of Labor subsequently assumed jurisdiction over the labor dispute.

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

SUGGESTED ANSWER:

1. The representation issue that has arisen involving the national union PAFLU should not bar collective bargaining negotiation with J and J. It is the local union JEU that has the right to bargain with the employer J and J, and not the national union PAFLU.

It is immaterial whether the representation issue within PAFLU has been resolved with finality or not. Said squabble could not possibly serve as a bar to any collective bargaining since PAFLU is not the real party-in-interest to the talks; rather, the negotiations are confined to the corporation and the local union JEU. Only the collective bargaining agent, the local union JEU, possesses the legal standing to negotiate with the corporation. A duly registered local union affiliated with a national union or federation does not lose its legal personality or Independence (Adamson and Adamson, Inc. v. The Court of Industrial Relations and Adamson and Adamson Supervising Union (FFW), 127 SCRA 268 [1984]).

2. Yes. It is within assumption power.

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

(b) May a rank-and-file employee, who is not a member of the union representing his bargaining unit, avail of the wage increases which the union negotiated for its members? (4%)

SUGGESTED ANSWER:

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

CBU; Company Union vs. Union Shop (2004)

Distinguish clearly but briefly between Company union and union shop.

SUGGESTED ANSWERS:

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

CBU; Confidential Employees (1994)

1. Can an employer legally oppose the inclusion of confidential employees in the bargaining unit of rank-and-file employees?

2. Would your answer be different if the confidential employees are sought to be included in the supervisory union?

SUGGESTED ANSWER:

1) Yes, an employer can legally oppose the inclusion of confidential employees in the bargaining unit of the rank-and-file. This issue has been settled in the case of Golden Farms vs. Calleja, and reiterated in the case of Philips Industrial Dev. Inc. vs. NLRC.

ALTERNATIVE ANSWERS:

a) Yes, an employer can legally oppose the inclusion of the confidential employees in the bargaining unit of rank-and-file employees because confidential employees are ineligible to form, assist or join a labor union. By the nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations, and the union might not be assured of their loyalty in view of evident conflict of interest.

b) An employer can legally oppose the inclusion of confidential employees in the bargaining unit of rank-and-file employees because confidential employees are considered part of management. (Philtranco vs. BLR, 174 SCRA 388).

SUGGESTED ANSWER:

2) The answer would be the same if confidential employees are sought to be included in the supervisory union because confidential employees, being a part of management would not qualify to join, much less form a labor union. (Philtranco vs. BLR, 174 SCRA 388).

ALTERNATIVE ANSWER:

My answer would remain the same, even if the confidential employees were sought to be included in the supervisory union. Confidential employees...
would have the same adverse impact on the bargaining unit of supervisors: Confidential employees’ access to highly sensitive information may become the source of undue advantage by the union over the employer. (Philips Industrial Development Inc., vs. National Labor Relations Commission, et. al, G.R No. 88957, 25 June 1992)

CBU; Consent Election vs. Certification Election (2004)

Distinguish clearly but briefly between Consent election and certification election.

SUGGESTED ANSWERS:

A certification election and a consent election are both elections held to determine through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for the purpose of collective bargaining or negotiations. There is this difference, however, a CERTIFICATION ELECTION is ordered by the Department of Labor and Employment while a CONSENT ELECTION is voluntarily agreed upon by the parties, with or without the intervention of the Department of Labor and Employment.

CBU; Managerial Employees; Supervisory Employees (1995)

A supervisor's union filed a petition for certification election to determine the exclusive bargaining representative of the supervisory employees of Farmers Bank. Included in the list of supervisory employees attached to the petition are the Department Managers, Branch Managers, Cashiers and Comptrollers. Farmers Bank questioned this list arguing that Department Managers, Branch Managers, Cashiers and Comptrollers inherently possess the powers enumerated in Art. 212, par. (m), of the Labor Code, i.e., the power and prerogative to lay down and execute management policies or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.

1. Is the contention of Farmers Bank correct? Discuss fully.

SUGGESTED ANSWER:

The contention of the Farmers Bank is not correct, if, on examination of the actual powers exercised by the Department Managers, Branch Managers, Cashiers and Comptrollers, they are not vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. If their powers are to carry out their duties and responsibilities in accordance with the policies promulgated by the Board of Directors of the Bank, or by external authorities, like the Central Bank, then, they are not managerial but may be supervisory personnel. But this may be noted: The Bank officials mentioned in the case, have control, custody and/or access to confidential matters. Thus, they are confidential employees and in accordance with earlier Supreme Court decisions, as confidential employees, the Branch Manager, Cashier, Controller are disqualified from joining or assisting the supervisor's union of the Bank.

ALTERNATIVE ANSWER:

The contention of the Farmers Bank is partially correct. The Department managers and Branch managers, if they in fact have the powers implied by their titles, are managerial personnel. In accordance with the Labor Code, managerial personnel are not eligible to join and form labor unions.

On the other hand, cashiers who are in charge of money received or expended, and comptrollers who examine and supervise expenditures, are not managerial personnel, and if they supervise personnel, they could be supervisors, and are therefore to be included in the bargaining unit of supervisors.

2. Is there any statutory basis for the petition of the union? Explain.

SUGGESTED ANSWER:

There is statutory basis for the petition of the supervisors’ union. Under the Labor Code, supervisors have the right to form and join unions, but only unions of supervisory employees.

CBU; Managerial Employees; Supervisory Employees (1999)

FACTS: Samahan ng mga Manggagawa sa Companya ng Tabaco (SMCT) filed a Petition for Certification Election among the supervisory employees of the Tabaco Manufacturing Company (Tabaco) before the NCR Regional Office of the Department of Labor and Employment. It alleged, among other things, that it is a legitimate labor organization, a duly chartered local of NAFLU; that Tabaco is an organized establishment; and that no certification election has been conducted within one year prior to the filing of its petition for certification election.

The Petition filed by SMCT showed that out of its 50 members, 15 were rank-and-filers and two (2) were managers.

Tabaco filed a Motion to Dismiss on the ground that SMCT union is composed of supervisory and rank-and-file employees and, therefore, cannot act as bargaining agent for the proposed unit.

SMCT filed an opposition to the said Motion alleging that the infirmity, if any, in the membership of the union can be remedied in the pre-election
conference thru the exclusion-inclusion proceedings wherein those employees who are occupying rank-and-file positions will be excluded from the list of eligible voters.

1. Should the Motion to Dismiss filed by the Tabaco be granted or denied? Explain. (3%)

SUGGESTED ANSWER:
The Motion to Dismiss filed by Tabaco should be granted. According to the Labor Code (in Article 245), supervisory employees shall not be eligible for membership in a labor organization of rank-and-file employees but may join or form separate labor organizations of their own.

Because of the above-mentioned provision of the Labor Code, a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being a legitimate labor organization, it cannot possess the requisite personality to file a petition for certification election. (See Toyota Motor Philippines Corp. vs. Toyota Motor Philippines Corp. Labor Union, 268 SCRA 573)

ALTERNATIVE ANSWER:
The Motion to Dismiss should be denied. In the first place, the general rule is that in a certification election the employer is a mere bystander. An employer has no legal standing to question a certification election as it is the sole concern of the workers. The exceptions to the general rule of which are 1) when the existence of an employer-employee relationship is denied; and 2) when the employer questions the legal personality of the union because of irregularities in its registration are not present in this case.

2. Can the two (2) Managers be part of the bargaining unit? Why? (2%)

SUGGESTED ANSWER:
No, the two (2) Managers cannot be part of the bargaining unit composed of supervisory employees. A bargaining unit must effect a grouping of employees who have substantial, mutual interests in wages, hours, working conditions and other subjects of collective bargaining. (San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma, 227 SCRA 370)

The Labor Code (in Article 245) provides that managerial employees are not eligible to join, assist or form any labor organization.

The above provision shows that managerial employees do not have the same interests as the supervisory employees which compose the bargaining unit where SMCT wishes to be the exclusive collective bargaining representative.

CBU; Modes; Determination of Exclusive Bargaining Agreement (2006)
The modes of determining an exclusive bargaining agreement are:

a. voluntary recognition
b. certification election
c. consent election

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

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

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

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

Due Process; Disciplinary Cases (1995)
1. Gary, a salesman of Astro Chemical Company (ASTRO), was reported to have committed some serious anomalies in his sale and distribution of company products. ASTRO designated its Chief Legal Officer to investigate Gary. Instead of submitting to the investigation, Gary filed a petition to enjoin the investigation on the ground that ASTRO would appear to be his accuser, prosecutor and judge at the same time. Will the petition to enjoin the investigation prosper? Discuss fully.

SUGGESTED ANSWER:
The petition to enjoin the investigation will not prosper. It is inevitable that in disciplinary cases, the employer would appear to be accuser, prosecutor, and judge at the same time since it is the employer who charges an employee for the commission of an offense; he is also the person who directs the investigation to determine whether the charge against the employee is true or not and he is the one who will judge if the employee is to be penalized or not. But if the employee is given ample opportunity to defend himself, he could not
validly claim that he was deprived of his right to due process of law.

**ALTERNATIVE ANSWER:**
No. The employer is merely complying with the legal mandate to afford the employee due process by giving him the right to be heard and the chance to answer the charges against him and accordingly to defend himself before dismissal is effected.

**Employees; groups of employees (1996)**
1) Who are the managerial, supervisory and rank-and-file employees?

**SUGGESTED ANSWER:**
"MANAGERIAL EMPLOYEE" is one who is vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.

**SUPERVISORY EMPLOYEES** are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.

All employees who are neither managerial or supervisory employees are considered RANK-AND-FILE EMPLOYEES. (Art. 212(m) of the Labor Code)

**Employees; Managerial Employee vs. Managerial Staff (1994)**
Distinguish the rights of managerial employees from members of a managerial staff.

**SUGGESTED ANSWER:**
MANAGERIAL EMPLOYEES have no collective bargaining rights because they cannot join or form any other labor organization while officers of a managerial staff are not prohibited from joining, assisting or forming or arresting a supervisor's union; hence, they can bargain collectively. (Art. 245, Labor Code; National Sugar Refineries Corp. vs. NLRC, 220 SCRA 452).

**ALTERNATIVE ANSWER:**
MANAGERIAL EMPLOYEES, under Article 212(m) of the Labor Code are vested with the prerogatives to lay down and execute management policies and/or to hire, fire, transfer, promote, lay-off and discipline employees. They are not eligible for the right to self-organization for purposes of collective bargaining.

Upon the other hand, members of MANAGERIAL STAFF, under Article 82 of the Labor Code, are not vested with the above-cited prerogatives. They are not entitled to overtime pay and other benefits under Book III, Title 1 of the Code.

**Employees; managerial employees vs. supervisory employees (2002)**

**SUGGESTED ANSWER:**
Distinguish managerial employees from supervisory employees, (3%)

**Employees; managerial employees vs. Supervisory vs. Rank-and-File Employees (2003)**
The Labor Code treats differently in various aspects the employment of (i) managerial employees, (ii) supervisory employees, and (iii) rank-and-file employees. State the basic distinguishing features of each type of employment.

**SUGGESTED ANSWER:**
Under Book Three of the Labor Code, a MANAGERIAL EMPLOYEE refers to one whose primary duty consists of the management of the establishment in which he is employed or of a department or subdivision thereof, and to other
In both a sympathy strike and in a general strike, SUGGESTED ANSWERS: strike and general strike. Distinguish clearly but briefly between: Sympathy (2004)

Right to Strike; Assumption Power

FACTS: Jenson & Jenson (J & J) is a domestic corporation engaged in the manufacturing of consumer products. Its rank-and-file workers organized the Jenson Employees Union (JEU), a duty registered local union affiliated with PAFLU, a national union. After having been certified as the exclusive bargaining agent of the appropriate bargaining unit, JEU-PAFLU submitted its proposals for a Collective Bargaining Agreement with the company.

In the meantime, a power struggle occurred within the national union PAFLU between its National President, Manny Pakyao, and its National Secretary General, Gabriel Miro. The representation issue within PAFLU is pending resolution before the Office of the Secretary of Labor.

By reason of this intra-union dispute within PAFLU, J & J obstinately and consistently refused to offer any counterproposal and to bargain collectively with JEU-PAFLU until the representation issue within PAFLU shall have been resolved with finality. JEU-PAFLU filed a Notice of Strike. The Secretary of Labor subsequently assumed jurisdiction over the labor dispute.

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

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

SUGGESTED ANSWER:

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

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


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

SUGGESTED ANSWERS:

In both a sympathy strike and in a general strike, there is a stoppage of work by the concerted action of employees. In both kinds of strike, the strike is not the result of a labor or industrial dispute.

As the name implies, workers go on a SYMPATHY STRIKE to show their sympathy for certain workers who are on strike. On the other hand, in a GENERAL STRIKE, workers in the country or in a region, province, or city or municipality go on a strike to publicly protest a certain policy or action taken by the government. Thus, for instance, a general strike may be declared by workers to publicly protest the stand of President Arroyo that she is against an increase of the minimum wage at this time.

Under Book Five of the Labor Code, "MANAGERIAL EMPLOYEE" is one who is vested with powers or prerogatives to lay down, and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. A SUPERVISORY EMPLOYEE is one who, in the interest of the employer, effectively recommends such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book (Art. 212 (M), Labor Code).

On the matter of right to self-organization, a managerial employee cannot exercise such right; while a supervisor and a rank and file employee can (Arts. 245, 243, Labor Code).

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

FACTS: Jenson & Jenson (J & J) is a domestic corporation engaged in the manufacturing of consumer products. Its rank-and-file workers organized the Jenson Employees Union (JEU), a duty registered local union affiliated with PAFLU, a national union. After having been certified as the exclusive bargaining agent of the appropriate bargaining unit, JEU-PAFLU submitted its proposals for a Collective Bargaining Agreement with the company.

By reason of this intra-union dispute within PAFLU, J & J obstinately and consistently refused to offer any counterproposal and to bargain collectively with JEU-PAFLU until the representation issue within PAFLU shall have been resolved with finality. JEU-PAFLU filed a Notice of Strike. The Secretary of Labor subsequently assumed jurisdiction over the labor dispute.

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

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

SUGGESTED ANSWER:

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

2. Yes. The Secretary of Labor can decide the labor dispute by awarding the JEU CBA proposals as the Collective Bargaining Agreement of the parties because when the Secretary of Labor (under Article 263[g]) assumes jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor exercises the power of compulsory arbitration over the labor dispute, meaning, that as an exception to the general rule, the Secretary of Labor now has the power to set or fix wages, rates of pay, hours of work or terms and conditions of employment by...
determining what should be the CBA of the parties. (See Divine Word University vs. Secretary of Labor, 213 SCRA 759)

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

**Right to Strike; Compulsory Arbitration; Certification to NLRC (1995)**
What are the objectives of the Secretary of Labor and Employment in certifying a labor dispute to the NLRC for compulsory arbitration? Explain.

**SUGGESTED ANSWER:**
The objectives of the Secretary of Labor and Employment in certifying a labor dispute to the NLRC for compulsory arbitration is to prevent a work stoppage that may adversely affect the national interest and to see to it that a labor dispute is expeditiously settled.

**Right to Strike; Effects; Hired Replacements (2006)**
If due to the prolonged strike, ROSE Corporation hired replacements, can it refuse to admit the replaced strikers?

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

**Right to Strike; Effects; illegal strike (1995)**
Are the strikers in an illegal strike entitled to reinstatement under the Labor Code? Explain.

**SUGGESTED ANSWER:**
NO. Union officers and members who commit illegal acts lose their employment status. Any union officer who knowingly participates in an illegal strike, and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status. Participants (not a union officer and did not commit any illegal act) may be entitled to reinstatement.

**Right to Strike; Effects; illegal strike (1995)**
If the strike is declared illegal, will the strikers be entitled to their wages for the duration for the strike? Explain.

**SUGGESTED ANSWER:**
NO. The applicable doctrine will be: No work, no pay, unless there is an agreement to pay strike duration pay.

**Right to Strike; Effects; illegal strike (2000)**
A division manager of a company taunted a union officer two days after the union submitted to the Department of Labor and Employment (DOLE) the result of the strike vote. The division manager said: The union threat of an unfair labor practice strike is phony or a bluff. Not even ten percent (10%) of your members will join the strike.” To prove union member support for the strike, the union officer immediately instructed its members to cease working and walk out. Two hours after the walkout, the workers voluntarily returned to work.

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

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

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

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

**Right to Strike; Effects; Strikers’ illegal Acts (2006)**
Assuming the company admits all the strikers, can it later on dismiss those employees who committed illegal acts?

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

**Right to Strike; illegal dismissal (2003)**
Magdalo, a labor union in Oakwood, a furniture manufacturing firm, after failing in its negotiations with Oakwood. filed with the Department of Labor...
Right to Strike; illegal strike; Loss of Employment (1994)

Union A filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment. Upon a motion to dismiss by the Company on the ground that the acts complained of in the Notice of Strike are non-strikeable. The NCMB dismissed the Notice of Strike but continued to mediate the issues contained therein to prevent the escalation of the dispute between the parties. While the NCMB was conducting mediation proceedings, the Union proceeded to conduct a strike vote as provided for under the Labor Code. After observance of the procedural processes required under the Code, the Union declared a strike.

1. Is the strike legal?
2. Can the employer unilaterally declare those who participated in the strike as having lost their employment status?
3. What recourse do these employees (declared by the employer to have lost their employment status) have, if any?

SUGGESTED ANSWER:

1) NO. The strike is not legal. The Labor Code provides that no labor organization shall declare a strike without first having bargained collectively in accordance with its Title VII of Book V, which in turn provides that during conciliation proceedings the parties are prohibited from doing any act that may disrupt or impede the early settlement of the dispute. (Arts. 264(a), also 250(d); Labor Code)

ALTERNATIVE ANSWER:

a) The strike is not legal, considering that it was declared after the NCMB dismissed the Notice of Strike. Hence, it is as if, no notice of strike was filed. A strike declared without a notice of strike is illegal, (GOP-CCP vs. CIR, 93 SCRA 118).

b) No. The strike is illegal. It is already settled in the case of PAL vs. Secretary of Labor (Drilon) that the pendency of a mediation proceedings is a bar to the staging of a strike even if all the procedural requirements were complied with.

SUGGESTED ANSWER:

2) The employer may unilaterally declare those who participated in the strike as having lost their employment status but such unilateral declaration does not necessarily mean that thereby the strikers
are legally dismissed. The strikers could still file a case of illegal dismissal and prove, if they can, that there was no just cause for their dismissal.

**ALTERNATIVE ANSWER:**
a) The employer cannot unilaterally declare those who participated in the illegal strike as having lost their employment status. Only the union officers who knowingly participated in the strike and workers who knowingly participated in the commission of illegal acts, if any, may be declared to have lost their employment status. (Art. 264).

b) The employer has two options:
1. It may declare the strikers as having lost their employment status pursuant to Art. 264 of the Labor Code, or
2. It may file a case before the Labor Arbiter, under Art. 217, to have the strike declared illegal and after that proceed to terminate the strikers.

**SUGGESTED ANSWER:**
3) They could file a case of illegal dismissal. The strikers who are union officers may contend that the strike is not illegal. The strikers who are mere union members may contend that they did not commit any illegal acts during the strike. (Art. 264, Labor Code)

**ALTERNATIVE ANSWER:**
a) The employees who were declared to have lost their employment status can file a complaint for illegal dismissal with the NLRC, or seek the assistance of the NCMB for conciliation/mediation.

b) The recourse of the workers whose employment status are declared to have been lost is to file a case of illegal dismissal under Art. 217 of the Code, and to pray for the suspension of the effects of termination under Article 277(b) of the said Code because this involves a mass lay-off.

**Right to Strike; Industries Vital to National Interest (2004)**
Which of the following may be considered among industries most vital to national interest as to be the subject of immediate assumption of jurisdiction by the Secretary of Labor and Employment, as indispensable to national interest? (Art. 263 [g], Labor Code).

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

**Right to Strike; Industries Vital to National Interest; Return to Work Order (1996)**
A deadlock in the negotiations for the collective bargaining agreement between X College and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5 which 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 7, 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 reconsideration of his return to work order and further noting the striker's failure to immediately return to work terminated their employment.

In assailing the Labor Secretary's decision, the Union contends that:
1. the Labor Secretary erroneously assumed jurisdiction over the dispute since X College could not be considered an industry indispensable to national interest;
2. the strikers were under no obligation to immediately comply with the November 5 return to work order because of their then pending motion for reconsideration of such order; and
3. the strike being legal, the employment of the striking Union officers and members cannot be terminated.

Rule on these contention. Explain.

**SUGGESTED ANSWER:**
1) The Supreme Court has already ruled that educational institutions are in an industry indispensable to the national interest, considering
the grave adverse effects that their closure entails on their students and teachers.

2) The striking workers must immediately comply with a Return to Work Order even pending their motion for reconsideration. Compliance is a duty imposed by law, and a Return to Work Order is immediately executory in character.

The nature of a Return to Work Order, was characterized by the Supreme Court in Sarmiento v. Juico, 162 SCRA 676 (1988) as:

It is also important to emphasize that the return to work order not so much confers a right as it imposes a duty. It must be discharged as a duty even against the workers' will. Returning to work in this situation is not a matter of options or voluntariness but of obligation.

In Baguio Colleges Foundation v. NLRC, 222 SCRA 604 (1993) the Court ruled:

Assumption and certification orders are executory in character and are to be strictly complied with by the parties even during the pendency of any petition questioning their validity.

3) The continuing strike is illegal because it is in defiance of a return to work order of the Secretary of Labor and Employment, hence, termination of employment of all those who participated whether officer or member, is legal.

In Sta. Scholastica's College v. Torres, 210 SCRA 565 (1992), the Court ruled:

Any worker or union officer who knowingly participates in a strike defying a return to work order may, consequently, be declared to have lost his employment status in accordance with Art. 246 of the Labor Code.

**Right to Strike; Lawful Strike; Effect on Participants (1997)**

A strike was staged in Mella Corporation because of a deadlock in CBA negotiations over certain economic provisions. During the strike, Mella Corporation hired replacements for the workers who went on strike. Thereafter, the strikers decided to resume their employment.

Can Mella Corporation be obliged to reinstate the returning workers to their previous positions?

**SUGGESTED ANSWER:**

YES. Mella Corporation can be obligated to reinstate the returning workers to their previous positions. Workers who go on strike do not lose their employment status except when, while on strike, they knowingly participated in the commission of illegal acts. The Labor Code expressly provides: Mere participation of a worker in a lawful strike should not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

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

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

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

**SUGGESTED ANSWER:**

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

**Right to Strike; Limitations (2000)**

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

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

**SUGGESTED ANSWER:**

a) The first rationale is the constitutional provision that the right to strike is to be exercised "in accordance with law". Another rationale is the Civil Code provision that the relations between employer and employee are imbued with public interest and are subject to the provisions of special law. A third rationale is the police power of the state.

The interests to be balanced are the rights of the workers, as primary socio-economic force, to protection of the law, to security of tenure, to concerted activities, etc. These should be balanced with the right of the employer to reasonable return on investment and to expansion and growth. General welfare or the general peace
and progress of society should also be considered. This is why assumption of Jurisdiction and certification to NLRC are allowed in "national interest" cases. {Art. 263, Labor Code; Raw at Buklod ng Manggagawa v. NLRC, 198 SCRA 586 (1991); Lapanday Workers Union v. NLRC, 248 SCRA 96 (1995)}

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

Right to Strike; National Interest; DOLE Sec. intervention (2004)
Employees of ABC declared a strike after filing a Notice of Strike with the DOLE. They barricaded company gates and damaged vehicles entering company premises. On the second day of the strike, ABC filed a petition with the DOLE Secretary to intervene through the issuance of an assumption of jurisdiction order that the Secretary may issue when a strike or lock-out will adversely affect national interest. ABC furnished the Secretary with evidence to show that company vehicles had been damaged; that electric power had been cut off; and equipment and materials were damaged because electric power was not immediately restored. ABC forecast that the country’s supply of chlorine for water treatment (which the company produces) would be affected adversely if ABC’s operations were closed down by the strikers.

Could the DOLE Secretary intervene, assume jurisdiction and issue a TRO (Temporary Restraining Order)? Briefly justify your answer. (5%)

Right to Strike; Picketing Activity (2000)
The workers engaged in picketing activity in the course of a strike.

a) Will picketing be legal if non-employees of the strike-bound employer participate in the activity? (3%)
b) Can picketing activity be curtailed when illegal acts are committed by the picketing workers in the course of the activity? (3%)

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

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

Right to Strike; Picketing Activity; illegal dismissal (2004)
B. President FX, head of a newly formed labor union composed of 1/3 of the total number of rank-and-file employees in Super Stores, Inc., agitated his fellow employees to demand from management pay increases and overtime pay. His supervisor summoned him to explain his tardiness and refusal to obey regulations. Feeling threatened, he gathered 20 of his members and staged a 2-day picket in front of the shopping mall. Security staff arrived and dismantled the placards and barricades blocking the employees’ entry to the mall. In retaliation, FX threw stones at the guards, but the other striking workers just stood by watching him. Seven days after the picket, FX who had gone absent without leave returned to the mall and announced that he had filed a complaint for illegal dismissal and unfair labor practice against SSI.

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

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

SUGGESTED ANSWER:
There is a valid cause for the dismissal of FX, but due process was not observed.

Peaceful picketing is part of the constitutional freedom of speech. The right to free speech, however, has its limits, and picketing as a concerted activity is subject to the same limitations as a strike, particularly as to lawful purpose and lawful means. But it does not have to comply with the procedural requirements for a lawful strike, like the notice of strike or the strike vote.

However, in the problem given, picketing became illegal because of unlawful means, as barricades blocked the employees’ entry to the mall, and...
violence, ensued when FX threw stones at the guards. There was thus, valid cause for the dismissal of FX, however, due process was not observed because SSI did not comply with the twin requirements of notice and hearing.

**Right to Strike; Return to Work Order (1994)**

The Secretary of Labor assumed jurisdiction over a strike under Art. 263(g) of the Labor Code and issued a return-to-work order. The Union defied the return-to-work order and continued the strike. The Company proceeded to declare all those who participated in the strike as having lost their employment status.

1) Was the Company's action valid?
2) Was the Company still duty bound to observe the requirements of due process before declaring those who participated in the strike as having lost their employment status?

**SUGGESTED ANSWER:**

1) The Company's action is valid. Any declaration of a strike after the Secretary of Labor has assumed jurisdiction over a labor dispute is considered an illegal act, and any worker or union officer who knowingly participates in a strike defying a return-to-work order may consequently be declared to have lost his employment status and forfeited his right to be readmitted, having abandoned his position, and so could be validly replaced.

For the moment a worker defies a return-to-work order, he is deemed to have abandoned his job, as it is already in itself knowingly participating in an illegal act, otherwise the worker will simply refuse to return to his work and cause a standoff in company operations while returning the position he refuses to discharge or allow management to fill. (St. Scholastica’s College vs. Hon. Ruben Torres, Secretary of Labor, etal., G.R. No. 100158. 29 June 1992.)

**SUGGESTED ANSWER:**

2) Considering that the workers who defied the return-to-work order are deemed to have abandoned their employment, the only obligation required of an employer is to serve notices declaring them to have lost their employment status at the worker’s last known address. (Sec. 2 Rule XIV, Book V, Rules Implementing the Labor Code)

**Right to Strike; Return to Work Order (1997)**

The Secretary of Labor assumed Jurisdiction over a strike in Manila Airlines and eventually issued a return-to-work order. The Manila Airlines Employees Union defied the return-to-work order and continued with their strike. The management of Manila Airlines then declared all the employees who participated in the strike dismissed from employment.

(a) Was the act of Manila Airlines’ management in dismissing the participants in the strike valid?
(b) What are the effects of an assumption of jurisdiction by the Secretary of Labor upon the striking employees and Manila Airlines?

**SUGGESTED ANSWER:**

(a) Yes. The act of Manila Airlines’ management in dismissing the participants in the strike is valid, in a number of Supreme Court decisions, it has ruled that the defiance by workers of a return to work order of the Secretary of Labor issued when he assumes jurisdiction over a labor dispute is an illegal act and could be the basis of a legal dismissal. The return to work order imposes a duty; it must be discharged as a duty even against the workers' will.

(b) When the Secretary of Labor assumes jurisdiction over a strike, all striking employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike. [Art. 263(q)].

**Right to Strike; Return to Work Order (1998)**

The Secretary of Labor and Employment, after assumption of jurisdiction over a labor dispute in an airline issued a Return to Work Order. The airline filed a Motion for Reconsideration of the Order and pending resolution of the motion, deferred the implementation of the Order. Can the airline defer the implementation of the Return to Work Order pending resolution of the motion for reconsideration? [5%]

**SUGGESTED ANSWER:**

The airline cannot defer the implementation of the Return to Work Order on the basis of there being a pending Motion for Reconsideration re: the assumption of jurisdiction by the Secretary of Labor and Employment of a labor dispute. According to the Supreme Court, the Return to Work Order issued by the Secretary of Labor and Employment upon his assumption of jurisdiction over a labor dispute in an industry indispensable for the national interest is immediately executory.

**ANOTHER SUGGESTED ANSWER:**

No, the airline cannot defer the implementation of a return to work order pending resolution of a Motion for Reconsideration. The Labor Code reads –

Art. 263. Strikes, picketing, and lockouts. – xxx

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the
Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike... as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking employees ...shall immediately return to work, (underscoring supplied)

The Supreme Court, in Baguio Colleges Foundation V NLRC. 222 SCRA 604 (1995), ruled -

xxx assumption and certification orders are executory in character and are to be strictly complied with by the parties even during the pendency of any petition questioning their validity.

Being executory in character, there was nothing for the parties to do but implement the same, (underscoring supplied)

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

In a labor dispute, the Secretary of Labor issued an "Assumption Order". Give the legal implications of such an order.

SUGGESTED ANSWER:
Under Art. 263(g) of the Labor Code, such assumption shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption order. If one had already taken place at the time of assumption, all striking or lockout employees shall immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike or lockout.

The Secretary of Labor and Employment may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

The mere issuance of an assumption order by the Secretary of Labor automatically carries with it a return-to-work order, even if the directive to return to work is not expressly stated in the assumption order. Those who violate the foregoing shall be subject to disciplinary action or even criminal prosecution. Under Art. 264 of the Labor Code, no strike or lockout shall be declared after the assumption of jurisdiction by the Secretary.

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

ANOTHER SUGGESTED ANSWER:
STATUTORY REQUIREMENTS for a Valid Strike

A. STATUS OF STRIKING UNION -
For a ULP strike or bargaining deadlock strike, only a duly-certified or -recognized bargaining representative may declare such strike.

B. PROCEDURAL REQUIREMENTS -
(1) Notice of Intent. Filing of Notice of Intent to Strike with the NCMB.
(2) Cooling-off Period.- Observance of Cooling-off Period.
(a) ULP - 15 days before intended date of strike
(b) Bargaining Deadlock - 30 days before intended date of strike.
(3) Strike Vote and Filing of the same with the NCMB and the observance of the seven (7) days strike ban. [Art. 263 (c-f), Labor Code].
C. CAUSE -

The cause of a strike must be a labor or industrial dispute. [Art. 212(o). Labor Code. Compliance with all legal requirements are meant to be and should be mandatory. (National Federation of Sugar Workers v. Ovajera, 114 SCRA 354 [1982]).

Right to Strike; Temporary Stoppage (2002)

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

SUGGESTED ANSWER:
The contention of the union is NOT correct. In the case, it is clear that the employees agreed to work on Sundays and Holidays if their work schedule required them to do so for which they would be paid additional compensation as provided by law. The above-mentioned agreement that the employees voluntarily entered into is valid. It is not contrary to law. It is provided in the agreement that if they will work Sundays or Holidays that they will be paid additional compensation as provided by law. Neither is the agreement contrary to morals, good customs, public order or public policy.

Thus, when the workers did not report for work when by agreement they were supposed to be on duty, there was a temporary stoppage of work by the concerted action of the employees as a result of an Industrial or labor dispute because they were on strike. [See Interphil Laboratories Employees Union-FFW v. Interphil Laboratories Inc., GR No. 142864, December 19, 2001]

Right to Strike; Wildcat Strike (1997)
The Kilusang Kabisig, a newly-formed labor union claiming to represent a majority of the workers in the Microchip Corporation, proceeded to present a list of demands to the management for purposes of collective bargaining. The Microchips Corporation, a multinational corporation engaged in the production of computer chips for export, declined to talk with the union leaders, alleging that they had not as yet presented any proof of majority status.

The Kilusang Kabisig then chained Microchip Corporation with unfair labor practice, and declared a “wildcat” strike wherein means of ingress and egress were blocked and remote and isolated acts of destruction and violence were committed.

a) Was the strike legal?

b) Was the company guilty of an unfair labor practice when it refused to negotiate with the Kilusang Kabisig?

SUGGESTED ANSWERS:

(a) Because what was declared is a “wildcat” strike, the strike is illegal. A “wildcat” strike is one that is one declared by a group of workers without formal union approval. Thus, it is illegal because the Labor Code requires that for a strike to be legal, among others, the decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by a secret ballot in meetings or referenda called for that purpose.

ALTERNATIVE ANSWERS:

a.1) The strike is illegal. The Labor Code recognizes only one of two (2) grounds for a strike to be legal: bargaining deadlock or unfair labor practice. A strike to compel an employer to recognize a union is not allowed by law.

2) The strike is not illegal. For the strike to be illegal because of violence, it should be characterized by pervasive violence. Here, there were only remote and violated acts of destruction and violence. But even if the strike is not illegal, those strikers who committed illegal acts, namely, those who blocked the means of ingress and egress and who committed acts of destruction and violence, these strikers can be legally dismissed.

Right to Strike; Work Slowdown (1998)
The day following the workers' voluntary return to work, the Company Production Manager discovered an unusual and sharp drop in workers' output. It was evidently clear that the workers are engaged in a work slowdown activity. Is the work slowdown a valid form of strike activity? [5%]

SUGGESTED ANSWER:

A WORK SLOWDOWN is not a valid form of strike activity. If workers are to strike, there should be temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute (See Article 212(o) of the Labor Code.

ANOTHER SUGGESTED ANSWER:

No, a slowdown is not a valid form of strike activity. The Supreme Court in Ilaw at Buklod ng Manggagawa v. NLRC 198 SCRA 586 (1991) ruled - The Court is in substantial agreement with the
petitioner’s concept of a slowdown as a "strike on the installment plan", as a willful reduction in the rate of work by conceited action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute, as an activity by which workers, without a complete stoppage of work retard production or their performance of their duties... The Court also agrees that such slowdown is generally condemned as inherently illicit and unjustifiable, because while the employees "continue to work and remain at their positions, and accept wages paid to them", they at the same time select what part of their allotted tasks they care to perform of their own volition or refuse openly, or secretly, to the employers damage, to do other work; in other words, they work on their own terms.

Likewise, a slowdown is not a valid form of concerted activity, absent a labor dispute between the parties. The Labor Code reads - Art. 212. . – xxx Co) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

**ANOTHER SUGGESTED ANSWER:**

No. It is a prohibited activity. It can be said to be a violation of the duty to bargain collectively. The union is guilty of bad faith. The workers should resume operations under the same terms and conditions prevailing prior to the strike.

**Self Organization; Acquisition of Legal Personality (2003)**

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

a) On the date the agreement to organize the union is signed by the majority of all its members; or

b) On the date the application for registration is duly filed with the Department of Labor or

c) On the date appearing on the Certificate of Registration; or

d) On the date the Certificate of Registration is actually issued; or

e) None of the above, Choose the correct answer.

**SUGGESTED ANSWER:**

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

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

**ANOTHER SUGGESTED ANSWER:**

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

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

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

Malou is the Executive Secretary of the Senior Vice-president of a bank while Ana is the Legal Secretary of the bank’s lawyer. They and other executive secretaries would like to join the union of rank and file employees of the bank. Are they eligible to join the union? Why? Explain briefly.

**SUGGESTED ANSWER:**

The following rules will govern the right of self-organization of Malou, Ana, and the other Executive Secretaries:

1. No Right to Self-Organization — Confidential employees who act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor-management relation. The two criteria are cumulative and both must be met [San Miguel Corporation Union v. Laguesma, 277 SCRA 370 (1997)]

2. With Right to Self-Organization — When the employee does not have access to confidential labor relations information, there is no legal prohibition against confidential employees from forming, assisting, or joining a labor organization. [Sugbuanon Rural Bank, Inc. v. Laguesma, 324 SCRA 425 (2000)]

3. No right of self-organization for Legal Secretaries — Legal Secretaries fall under the category of confidential employees with no right to self-organization. [Pier & Arrastre Stevedoring Services, Inc. v. Confesser, 241 SCRA 294 (1995)]

**Self Organization; BLR Certification; Certification Election (1998)**

Can the Bureau of Labor Relations certify a union as the exclusive bargaining representative after showing proof of majority representation thru union membership cards without conducting an election? [5%]

**SUGGESTED ANSWER:**

The Bureau of Labor Relations CANNOT certify a union as the exclusive collective bargaining representative after showing of proof of majority representation thru union membership cards without conducting a certification election.
The Labor Code (in Arts. 256, 257 and 258) provides only for a certification election as the mode for determining the exclusive collective bargaining representative if there is a question of representation in an appropriate bargaining unit.

**ANOTHER SUGGESTED ANSWER:**
No, the Bureau of Labor Relations cannot certify a union as the exclusive bargaining representative without conducting a certification election. The Supreme Court, in Colgate Palmolive Philippines Inc. v. Ople. 163 SCRA 323 (1988), ruled -

The procedure for a representation case is outlined in the Labor Code ... the main purpose of which is to aid in ascertaining majority representation. The requirements under the law ... are all calculated to ensure that the certified bargaining representative is the true choice of the employees against all contenders. xxx When an ... official by-passes the law on the pretext of retaining a laudable objective, the intendment or purpose of the law will lose its meaning as the law itself is disregarded. When the [Bureau of Labor Relations] directly [certifies] a union, he in fact disregarded this procedure and its legal requirements. There was therefore failure to determine with legal certainty whether the union indeed enjoyed majority representation.

**Self Organization; Certification Election (2001)**

UNIDAD, a labor organization claiming to represent the majority of the rank and file workers of BAGSAK Toyo Manufacturing Corp. (BMTC), filed a petition for certification election during the freedom period obtaining in said corporation. Despite the opposition thereto by SIGAW Federation on the ground that UNIDAD was not possessed with all the attributes of a duly registered union, the Med-Arbiter issued an Order calling for a certification election on July 25, 2001.

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

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

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

**Self Organization; Certification Election; Bystander Rule (1996)**

PT & T Supervisory Employees Union filed a petition for the holding of a certification election among the supervisory employees of the PT & T Company. The company moved to dismiss the petition on the ground that Union members were performing managerial functions and were not merely supervisory employees. The company also alleged that a certified bargaining unit existed among its rank and file employees which barred the filing of the petition.

1. Does the company have the standing to file the Motion to Dismiss? Explain.
2. If you were the Med-Arbiter, how would you resolve the petition.
3. What is the proper remedy of an employer to ensure that the employees are qualified to hold a certification election?

**SUGGESTED ANSWER:**
1) No, the company has no standing to file the Motion to Dismiss as the employer has no right to interfere in a purely union matter or concern. (Philippine Fruits and Vegetable Industries, Inc. vs Torres, 211 SCRA 95 (1992)

The Court would wish to stress once more the rule which It has consistently pronounced in many earlier cases that a certification election is the sole concern of the workers and the employer is regarded as nothing more than a bystander with no right to interfere at all in the election.

2) As the MED ARBITER I will:
   a) Deny, for lack of merit, the employer's Motion to Dismiss as the employer has no right to interfere in a purely union matter or concern.
   b) Proceed to hear the merits of the petition, especially:
      1. the appropriation of the claimed bargaining unit;
      2. inclusion and exclusion of voters, or the proposed voter list; and
      3. if the petition is in order, to set the date, time and place of the election.
3) The employer has no remedy. The petition for certification election was initiated by the Union; hence, the employer is a total stranger or a bystander in the election process. (Philippine Fruits and Vegetable Industries, Inc. v. Torres, 211 SCRA 95 [1992]). To allow an employer to assert a remedy is an act of interference in a matter which is purely a concern of the Union.

**ALTERNATIVE ANSWER:**

1) The company does not have the standing to file a motion to dismiss the petition for certification election, but it could move for the exclusion of the employees it alleged to be managerial employees from the bargaining unit for which a petition for certification election has been filed.

As a general rule, an employer has no standing in a petition for certification election because the purpose of a certification election is to determine who should be the collective bargaining representative of the employees. Thus, a certification election is the concern of the employees and not of the employer.

But in the case at bar, the employer may have a standing because the petition for certification election involves personnel which the employer alleges to be managerial employees. And managerial employees under the Labor Code are not eligible to form, assist or Join labor organizations, implying that they cannot be part of the bargaining unit for which a petition for certification election has been filed.

2) As the MED-ARBITER, I will order the holding of the certification election. The fact that there is already a certified collective bargaining representative of the rank and file employees of the Company is not a bar to the holding of a certification election for the determination of the collective bargaining representative of the supervisory employees. But I will exclude those employees found to be managerial from participating in the certification election.

3) The proper remedy of an employer to ensure that only the employees are qualified to hold a certification election is to move for the exclusion of those whom he alleges to be managerial personnel.

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

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

**SUGGESTED ANSWER:**

According to the Labor Code, in any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by a legitimate labor organization.

In the above-described situation, a certification election is made mandatory because if there is no certified bargaining agent as determined by a certification election, there could be no collective bargaining in the said unorganized establishment.

**Self Organization; E-E Relationship; Certification Election (1998)**

Is it required that an employer-employee relationship exists between an employer and the employees in the appropriate bargaining unit before a certification election can be ordered? If so, why? [5%]

**SUGGESTED ANSWER:**

Yes. It is required that an employer-employee relationship exists between an employer and the employees in the appropriate bargaining unit before a certification election can be ordered for the simple reason that a certification election is held for the purpose of determining which labor organization shall be the exclusive collective bargaining representative of the employees in an appropriate bargaining unit. There could be no collective bargaining between persons who do not have any employer-employee relationship.

**ANOTHER SUGGESTED ANSWER:**

Yes. The Supreme Court has ruled that the existence of an employer-employee relationship is required before a certification election can be held. The Supreme Court in Allied Force Waters Union v. Campania Maritime 19 SCRA 268 (1967). ruled - xxx There being no employer-employee relationship between the parties disputants, there is neither "a duty to bargain collectively" to speak of. And there being no such duty, to hold certification elections would be pointless. There is no reason to select a representative to negotiate when there can be no negotiations in the first place. Where there is no duty to bargain collectively, it is not proper to hold certification elections in connection therewith.

**Self Organization; Gov't Employees (2004)**

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

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

Is the position taken by the walk-out leaders and participants legally correct? Reason briefly. (5%)

**SUGGESTED ANSWER:**
The position taken by the walk-out leaders and participants is not legally correct. They are government employees, and as such, they do not have the right to strike. According to the actual wording of Section 3 of Article XIII of the Constitution, the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities including the right to strike in accordance with law."

Thus, the last clause of the above-quoted provision of the Constitution makes it very clear: the right to strike is not constitutional, it is statutory because the right should be "in accordance with law". And there is as yet no law giving government employees the right to strike.

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

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

**Self Organization; Importance (1996)**

1) What is the importance of labor organizations?

**SUGGESTED ANSWER:**
A labor organization exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment. Employees may form labor organizations for their mutual aid and protection.

**ALTERNATIVE ANSWER:**
The importance of labor unions are:

a) The enhancement of democracy and the promotion of social justice and development.

b) As instrumentalities through which worker welfare may be promoted and fostered.

(Mactan Workers Union v. Aboitiz, 45 SCRA 577 (1972))

**SELF ORGANIZATION; MEMBERSHIP POLICY (1998)**

A labor union lawyer opined V. that a labor organization is a private and voluntary organization; hence, a union can deny membership to any and all applicants.

Is the opinion of counsel in accord with law? [5%]

**SUGGESTED ANSWER:**
NO, the opinion of counsel is not in accord with law. The Labor Code (in Article 249 (a and b) provides that a labor organization has the right to prescribe its own rules for the acquisition or retention of membership, but it is an unfair labor practice to act for a labor organization to restrain or coerce employees in the exercise of their right to self-organization. Thus, a labor organization cannot discriminate against any employee by denying such employee membership in the labor organization on any ground other than the usual terms and conditions under which membership or continuation of union membership is made available to other members.

**ANOTHER SUGGESTED ANSWER:**
Yes, the legal opinion of counsel, on the nature of a labor union and its admission policy is in accord with law, but must be qualified. The Supreme Court ruled in Salunga v. CIR, 21 SCRA 216 (1967) as follows:

Generally, a state may not compel ordinary voluntary association to admit thereto any given individual, because membership therein maybe accorded or withheld as a matter of privilege.

The same case further ruled that the law can compel a labor union to admit an applicant for membership when the union is:

The rule is qualified in respect of labor unions holding a monopoly in the supply of labor, either in a given locality or as regards a particular employer with which it has a closed-shop agreement. The reason is that [union security provisions] cause the admission requirements of trade unions to be affected with public interest.

**SELF ORGANIZATION; RIGHT TO DISAFFILIATE FROM THE LOCAL UNION; ILLEGAL DISMISSAL (1994)**

In the Collective Bargaining Agreement (CBA) between Royal Films and its rank-and-file Union (which is directly affiliated with MFF, 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 (MFF) to hold Royal Films free from any and all claims of any employee dismissed.

During the term of the CBA, MFF discovered that certain employee members were initiating a move to disaffiliate from MFF and join a rival federation, FAMAS. Forthwith, MFF sought the dismissal of its employee members initiating the disaffiliation movement from MFF to FAMAS. Royal Films, relying on the provision of the aforementioned CBA, complied with MFFs request and dismissed the employees identified by MFF as disloyal to it.

(1) Will an action for illegal dismissal against Royal Films and MFF prosper or not?
(2) What are the liabilities of Royal and MFF to the dismissed employees, if any?

SUGGESTED ANSWER:
1) The action for illegal dismissal will prosper. The right of a local union to disaffiliate from its mother federation is well-settled. A local union, being a separate and voluntary association, is free to serve the interest of all its members including the freedom to disaffiliate when circumstances warrant this right is consistent with the constitutional guarantee of freedom of association. Thus, the Act of initiating move to disaffiliate is not an act of disloyalty. (Tropical Hut. Employee's Union-CGW, et al. vs. Tropical Hut Food Market, Inc., etal, G.R. Nos. L^-3495-99, January 20. 1990)

ALTERNATIVE ANSWER:
The action for illegal dismissal will prosper. Disaffiliation cannot be considered an act of disloyalty. The very essence of self-organization is for the workers to form a group for the effective enhancement and protection of common interest. (PICEWO v. People Industrial & Commercial Corp., 112 SCRA 440)

2) MFF can be held liable to pay the backwages of the dismissed employees. Royal can be held jointly and severally liable for backwages if it acted with undue haste in dismissing the employees (Manila Cordage Co. v. CIR, 78 SCRA 398). In addition, Royal can be ordered to reinstate the dismissed employees.

Self Organization; Right to Self-Organization of Coop Employees (2002)
Do employees of a cooperative have a right to form a union? Explain briefly. (2%)

SUGGESTED ANSWER:
Employees who are members of a cooperative cannot form a union because, as members, they are owners and owners cannot bargain with themselves. However, employees who are not members of the cooperative can form a union. [San Jose Electric Service Cooperative v. Ministry of Labor, 173 SCRA 697 (1989)]

Self Organization; Union Dues; Assessment (2002)
The union deducted P20.00 from Rogelio's wages for January. Upon inquiry he learned that it was for death aid benefits and that the deduction was made pursuant to a board resolution of the directors of the union. Can Rogelio object to the deduction? Explain briefly. (5%)

SUGGESTED ANSWER:
Yes. In order that the special assessment (death aid benefit) may be upheld as valid, the following requisites must be complied with: (1) Authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; (2) Secretary's record of the meeting; and (3) Individual written authorization for the check-off duly signed by the employee concerned. [ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting Corp, and Union Officers, 304 SCRA 489 (1999)]

In the problem given, none of the above requisites were complied with by the union. Hence, Rogelio can object to the deduction made by the union for being invalid.

Self Organization; Union Dues; Assessments (1997)
Arty. Facundo Veloso was retained by Welga Labor Union to represent it in the collective bargaining negotiations. It was agreed that Atty. Veloso would be paid in the sum of P20,000.00 as attorney's fees for his assistance in the CBA negotiations.

After the conclusion of the negotiations, Welga Labor Union collected from its individual members the sum of P100.00 each to pay for Atty. Veloso's fees and another sum of P100 each for services rendered by the union officers. Several members of the Welga Labor Union approached you to seek advice on the following matters.

a) Whether or not the collection of the amount assessed on the individual members to answer for the Attorney's fees was valid.

b) Whether or not the assessment of P100 from the individual members of the Welga Labor Union for services rendered by the union officers in the CBA negotiations was valid.

SUGGESTED ANSWER:
(a) The assessment of P100.00 from each union member as attorney's fees - for union negotiation, is not valid. Art. 222(b) of the Labor Code, reads: "No attorneys fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any
individual member of the contracting union; Provided, however, that attorneys fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to be contrary shall be null and void."

(b) The assessment of ₱100.00 as negotiation fees charged to each individual union member and payable to union officers is also not valid, for the same reason as stated above. The assessment is an act violative of Art. 222(b).

ALTERNATIVE ANSWER:
(a) The collection of the amount assessed on the individual members to answer for the attorney's fees would be valid if it was authorized by a written resolution of a majority of all the members in a general membership meeting called for the purpose.

(b) The assessment of ₱100.00 from the Individual members of the Welga Labor Union for services rendered by the union officers in the CBA negotiations would be valid if it was authorized by a written resolution of a majority of all the members in a general membership meeting duly called for the purpose. (Art. 241(N)].

Self Organization; Unions; Assessments (2001)
(b) What requisites must a Union comply with before it can validly impose special assessments against its members for incidental expenses, attorney's fees, representation expenses and the like? (3%)

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

ANOTHER SUGGESTED ANSWER:
In the case of ABS-CBN Employees Supervisors Union vs. ABS-CBN Boardcasting Corp., and Union Officers, G.R. No. 106518, March 11,1999, the Supreme Court ruled that the following are the requisites:
(1) Authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose;
(2) Secretary's record of the minutes of the meeting; and
(3) Individual written authorization for check-off duly signed by the employee concerned. (See also: Gabriel vs. Secretary of Labor, G.R. No. 115949, March 16* 2000).

Self Organization; Unions; Financial Records (1999)
FACTS: Polaris Drug Company had an existing Collective Bargaining Agreement with Polaris Workers Union (PWU) which was due to expire on May 31, 1999. PWU had a total membership of one hundred [100] rank-and-file employees of the company. Mike Barela, a militant member of the union, suspected that the union officers were misappropriating union funds as no financial report was given to the general membership during the union's general assembly. Hence, Mike Barela prepared a sworn written complaint and filed the same with the Office of the Secretary of Labor on May 10, 1999, petitioning for an examination of the financial records of PWU.

1. Is the Secretary of Labor authorized by law to examine the financial records of the union? If so, what power? If not, why not? (3%)

SUGGESTED ANSWER:
The Secretary of Labor is expressly authorized by the Labor Code (in Article 274) to examine the financial records of the unions to determine compliance or non-compliance with the pertinent provisions of the Labor Code and to prosecute any violation of the law and the union constitution-and-by-laws. But this authority may be exercised only upon the filing of a complaint under oath and duly supported by the written consent of at least twenty percent (20%) of the total membership of the labor organization concerned.

ALTERNATIVE ANSWER:
Among the rights and conditions of membership in a labor organization is the right implied by the proviso in the Labor Code (Article 241 (m)) stating that the books of accounts and other records of the financial activities of any labor organization shall be open to inspection by any officer or member thereof during office hours.

As a union member, Mike Barela could file an intra-union case that may entail the act of the Secretary of Labor examining the financial records of the union. (See La Tondena Workers Union v. Secretary of Labor and Employment, 239 SCRA 117)

2. Under the facts given above, could an examination or audit of the financial records of the union be ordered? Why? (2%)

SUGGESTED ANSWER:
Under the facts given in the question, an examination or audit of the financial records of the union can not be ordered because for such examination or audit to take place, there should be a complaint under oath and duly supported by written consent of at least twenty (20%) per cent of the total membership of the labor organization concerned. In this case, the aforementioned requirement was not fulfilled. It was only a sworn
written complaint by one union member that was filed.

Also, the Labor Code provides that an examination of the books of a union shall not be conducted during the sixty (60) day freedom period nor within thirty (30) days immediately preceding the date of election of union officials.

In the case, the complaint was filed on May 10, 1999 which is within the freedom period of the current CBA which was to expire on May 31, 1999.

Self Organization; Unions; Financial Records (2001)

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

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

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

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

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

SUGGESTED ANSWER:
A. Union members may be expelled from the labor organization only on valid grounds provided for in the Union Constitution, By-Laws, or conditions for union membership.

ANOTHER SUGGESTED ANSWER:
Whenever appropriate for any violation of the rights as:

a) Refusal to pay union dues and special assessments;

b) Disloyalty to the union; and

c) Violation of the constitution and by-laws of the union.

SUGGESTED ANSWER:
B. Yes. If it is shown that he acted in bad faith, or without or in excess of authority, or was motivated by personal ill-will in dismissing the employee, the general manager may be held jointly and severally liable for the backwages of an illegally dismissed employee. [ARB Construction C. v. Court of Appeals, 332 SCRA 427, (2000), Lim v. NLRC, 303 SCRA 432, (1999)]

ANOTHER SUGGESTED ANSWER:
Yes. The General Manager may be held jointly and severally liable for back wages of an illegally dismissed employee if he or she actually authorized or ratified the wrongful dismissal of the employee under the rule of respondeat superior. In case of illegal dismissal, corporate directors and officers are solidary liable with the corporation where termination of employment are done with malice or bad faith. [Bogo-Medellin Sugar Planters Assoc., Inc. v. NLRC, 296 SCRA 108, (1998)]

Self-Organization (2002)

Mang Bally, owner of a shoe repair shop with only nine (9) workers in his establishment, received proposals for collective bargaining from the Bally Shoe Union. Mang Bally refused to bargain with the workers for several reasons. First, his shoe business is just a service establishment. Second, his workers are paid on a piecework basis (i.e., per shoe repaired) and not on a time basis. Third, he has less than ten (10) employees in the establishment. Which reason or reasons is/are tenable? Explain briefly. (2%)

SUGGESTED ANSWER:
NONE. First, Mang Bally's shoe business is a commercial enterprise, albeit a service establishment. Second, the mere fact that the workers are paid on a piece-rate basis does not negate their status as regular employees. Payment by piece is just a method of compensation and does not define the essence of the relation. [Lambo v. NLRC, 317 SCRA 420 (1999)]. Third, the employees' right to self organization is not delimited by their number.

The right to self-organization covers all persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational Institutions whether operating for profit or not (Art. 243, Labor Code)

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

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

A, B, C and D were dismissed by the School on the ground of violating the Labor Code which prohibits managerial employees to "join, assist or form any labor organization".

Is the contention of the School tenable? Is the dismissal of A, B, C and D valid? Explain. (5%)

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

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

Self-Organization; Right to Join (2000)
(1) Do workers have a right not to join a labor organization? (3%)

(2) Do the following workers have the right to self-organization? Reasons/basis (2%)
   a. Employees of non-stock, non-profit organizations?
   b. Alien employees?

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

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

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

ULP; Awards of Damages (2001)
(b) "A", an employee, sued company "B" for unfair labor practice, Illegal dismissal and damages as a consequence thereof. The Arbiter granted A's prayer for reinstatement, backwages, and included an award for attorney's fees. On appeal to the NLRC, the Commission affirmed the Arbiter's decision but deleted the award for attorney's fees since fees were not claimed in A's complaint. Who was correct, the Arbiter or the NLRC? Why? (2%)

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

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

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

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

**ULP; Contracting Out Labor (2001)**
(a) Company "A" contracts out its clerical and janitorial services. In the negotiations of its CBA, the union insisted that, henceforth, the company may no longer engage in contracting out these types of services, which services the union claims to be necessary in the company's business, without prior consultation. Is the union's stand valid or not? For what reason(s)? (2%)

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

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

**ULP; Definition & Examples of ULP (1996)**
1) Define unfair labor practice, Answer;

**SUGGESTED ANSWER:**
UNFAIR LABOR PRACTICE means any unfair labor practice as expressly defined by the Labor Code (Arts. 248 and 249 of the Labor Code). Essentially, an unfair labor practice is any act committed by an employer or by a labor organization, its officers, agents or representatives which has the effect of preventing the full exercise by employees of their rights to self-organization and collective bargaining. (See Arts 248 and 249 of the Labor Code).

2) Give three (3) examples of unfair labor practices on the part of the employer and three (3) examples of unfair labor practices on the part of the labor union.

**ANSWER:**
Any three (3) from the following enumeration in the Labor Code:

**ART. 248. Unfair labor practices of employers.** It shall be unlawful for an employer to commit any of the following unfair labor practice:
1. To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
2. To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
3. To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
4. To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including, the giving of financial or other support to it, or its organizations, or supporters;
5. To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Provided, that the individual authorization required under Article 241, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;
6. To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
7. To violate the duty to bargain collectively as prescribed by this Code;
8. To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
9. To violate a collective bargaining agreement.

**ULP; Jurisdiction; Labor Arbiter (1997)**
On 01 August 1992, Pro-Knit, a corporation engaged in the manufacture of textile garments,
entered into a collective bargaining agreement with the Kamao Union in representation of the rank and file employees of the corporation.

The CBA was effective up to 20 June 1995. 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 10 May 1995 Kamao Union submitted to Pro-Knit’s management their proposals for the renegotiation of a new CBA. The next day, Pro-Knit suspended negotiations while Kamao Union since Pro-Knit had entered into a merger with Eagle Garments, a corporation also engaged in the manufacture of textile garments. Eagle Garments assumed all the assets and liabilities of Pro-Knit.

Kamao filed a complaint with the Regional Trial Court for specific performance and damages with a prayer for preliminary injunction against Pro-Knit and Eagle Garments.

Pro-Knit and Eagle Garments filed a Motion to Dismiss based on lack of Jurisdiction. How would you rule on the Motion to Dismiss?

**SUGGESTED ANSWER:**

I will grant the Motion to Dismiss. The act of Pro-knit suspending negotiations with Kamao Union could be an unfair labor practice. It could be a violation of the duty to bargain collectively. As such, the case is under the jurisdiction of a Labor Arbiter and not of a regular Court.

**ALTERNATIVE ANSWER:**

I will deny the Union’s Motion to Dismiss. There is no labor dispute between the parties; hence, the Regional Trial Court has Jurisdiction over the complaint. Art. 212 of the Labor Code, reads -

Labor dispute includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment regardless of whether the disputants stand in the proximate relations of employer and employee.

In addition, the Company can claim that labor contracts are contracts in personam and do not generally bind successors in interest except under special circumstances. In Sundowner Development Corporation v Drilon, 180 SCRA 14, the Court said: The rule is that unless expressly assumed, labor contracts such as xxx collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being in personam, thus binding only between the parties.

**ULP; Refusal to Negotiate (1997)**

The Kilusang Kabisig, a newly-formed labor union claiming to represent a majority of the workers in the Microchip Corporation, proceeded to present a list of demands to the management for purposes of collective bargaining. The Microchips Corporation, a multinational corporation engaged in the production of computer chips for export, declined to talk with the union leaders, alleging that they had not as yet presented any proof of majority status.

The Kilusang Kabisig then chained Microchip Corporation with unfair labor practice, and declared a "wildcat" strike wherein means of ingress and egress were blocked and remote and isolated acts of destruction and violence were committed.

✓ Was the company guilty of an unfair labor practice when it refused to negotiate with the Kilusang Kabisig?

**SUGGESTED ANSWERS:**

NO. It is not an unfair labor practice (ULP) not to bargain with a union which has not presented any proof of its majority status. The Labor Code imposes on an employer the duty to bargain collectively only with a legitimate labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit. It is not a ULP for an employer to ask a union requesting to bargain collectively that such union first show proof of its being a majority union.

**ULP; Rights & Obligations; Workers’ Association (2004)**

A. Around 100 workers of a mill in a coconut plantation organized themselves for the purpose of promoting their common interest and welfare. The workers’ association prepared a petition for increasing the daily pay of its members in compliance with minimum wage rates for their sector in the region, and for granting benefits to which they are entitled under the law.

However, the workers became restless and anxious after the owner-manager threatened them with mass lay-off if the association would press for their demands. Most of its members have worked in the mill for 10 to 15 years with no improvement in working conditions and monetary benefits.

The leaders of the workers’ association approached you and asked: what legal steps could they take to protect their security of tenure? What advice could you give them? (5%)

**SUGGESTED ANSWER:**

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

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

ULP; Subject to Criminal Prosecution (2005)
Is the commission of an unfair labor practice by an employer subject to criminal prosecution? Please explain your answer briefly. (3%)

SUGGESTED ANSWER:
Yes, because unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment. (Article 247, Labor Code; See also B.P. Big. 386 as amended by R.A. No. 6715). However, the criminal aspect can only be filed when the decision of the labor tribunals, finding the existence of unfair labor practice, shall have become final and executory.

LABOR STANDARDS

E-E Relationship: Corporation (1999)
FACTS: Teofilco Lacson was one of more than one hundred (100) employees who were terminated from employment due to the closure of LBM Construction Corporation (LBM).

LBM was a sister company of Lastimoso Construction, Inc. and RL Realty & Development Corporation. All three (3) entities formed what came to be known as the Lastimoso Group of Companies. The three (3) corporations were owned and controlled by members of the Lastimoso Family; their incorporators and directors all belonged to the Lastimoso family. The three (3) corporations were engaged in the same line of business, under one management and used the same equipment including manpower services.

Teofilco Lacson and his co-employees filed a complaint with the Labor Arbiter against LBM, RL Realty and Lastimoso Construction to hold them jointly and severally liable for backwages and separation pay.

Lastimoso Construction, Inc. and RL Realty & Development Corporation interposed a Motion to Dismiss contending that they are Juridical entitles with distinct and separate personalities from LBM Construction Corporation 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:
It is very clear that even if LBM Construction company, Lastimoso Construction Company, Inc. and RL Realty & Development Corporation all belong to the Lastimoso family and are engaged in the same line of business under one management and used the same equipment including manpower services, these corporations were separate juridical entities.

Thus, only the LBM Construction Corporation is the employer of Teofilco Lacson. The other corporation do not have any employer-employee relations with Lacson.

The case in question does not include any fact that would justify piercing the veil of corporate fiction of the other corporations in order to protect the rights of workers.

In a case (Concept Builders, Inc. v. NLRC. 257 SCRA 149), the Supreme Court ruled that it is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation maybe disregarded or the veil of corporate fiction pierced.

ALTERNATIVE ANSWER:
Motion to Dismiss should be denied. In the case at bar, the Labor Arbiter would be justified in piercing the corporate veil and considering the three (3) corporations as one and the same entity as the employer of Teofilco Lacson because based on the facts "the three corporations were owned and controlled by members of the Lstimoso family; their incorporators and directors all belonged to the Lastimoso family. The three (3) corporations were engaged in the same line of business, under one management and used the same equipment including manpower services." The facts show that "the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons, or in the case of two corporations, will merge them into one
E-E Relationship; Determined by Facts & Laws (2000)
Banco de Manila and the Ang Husay Janitorial and Pest Control Agency entered into an Independent Contractor Agreement with the usual stipulations: specifically, the absence of employer-employee relationship, and the relief from liability clauses. Can the Bank, as a client, and the Agency, as an independent contractor, stipulate that no employer-employee relationship exists between the Bank and the employees of the Agency who may be assigned to work in the Bank? Reason. (5%)
SUGGESTED ANSWER:
They can so stipulate if the relationship is indeed Job contracting. Yet the stipulation cannot prevail over the facts and the laws. The existence of employer-employee relationship is determined by facts and law and not by stipulation of the parties. (Insular Life Assurance Co. Ltd. v. NLRC. 287 SCRA 476 (1998); Tabas v. California Manufacturing Co. Inc., 169 SCRA 497 (1989)].
ALTERNATIVE ANSWER:
Yes, they can stipulate provided that the contract of Independent contractor is valid in accordance with Art 106 of the Labor Code.

E-E Relationship; Elements (1996)
1) When does an employer-employee relationship exist?
SUGGESTED ANSWER:
The Supreme Court, in a long line of decisions has consistently ruled that the following are the elements of an employer-employee relationship:
A. Selection and engagement of the employee;  
B. Payment of wages;  
C. Power of discipline and dismissal; and  
D. Power to control the employee's conduct as regards his employment.
ALTERNATIVE ANSWER:
An employer-employee relationship exists when a person (an employer) who carries on a business, trade, industry, undertaking, or activity of any kind uses the services of another person (an employee) who, receiving compensation, is under the employer's orders as regards the employment.

E-E Relationship; GRO's & Night Clubs (1999)
FACTS: Solar Plexus Bar and Night Club allowed by tolerance fifty (50) Guest Relations Officers (GRO) 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, are free to ply their trade elsewhere at anytime but once they enter the premises of the night club, they are required to stay up to closing time. The GROs earned their keep exclusively from commissions for food and drinks, and tips from generous customers. In time, the GROs formed the Solar Ugnayan ng mga Kababaihang Inaapi (SUKI); a labor union duly registered with DOLE. Subsequently, SUKI filed a petition for certification election in order to be recognized as the exclusive bargaining agent of its members. Solar Plexus 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:
The GROs may form SUKI as a labor organization for purposes of collective bargaining. There is an employer-employee relationship between the GROs and the night club.
The Labor Code (in Article 138) provides that any woman who is permitted or suffered to work, with or without compensation, in any nightclub, 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.
In the case at bar, it is clearly stated that the women once they enter the premises of the night club would be under the direct supervision of the manager from 8:00 p.m. to 4:00 a.m. everyday including Sundays and holidays. Such is indicative of an employer-employee relationship since the manager would be exercising the right of control.

E-E Relationship; Security Guards; Floating Status (1999)
FACTS: Asia Security & Investigation Agency (ASIA) executed a one-year contract with the Baron Hotel (BARON) for the former to provide the latter with twenty (20) security guards to safeguard the persons and belongings of hotel guests, among others. The security guards filled up Baron application form and submitted the executed forms directly to the Security Department of Baron. The pay slips of the security guards bore Baron's logo and showed that Baron deducted therefrom the amounts for SSS premiums, medicare contributions and withholding taxes. Assignments of security guards, who should be on duty or on call, promotions, suspensions, dismissals and award citations for meritorious services were all done upon approval by Baron's chief Security officer.
After the expiration of the contract with Asia, Baron did not renew the same and instead executed another contract for security services with another agency. Asia placed the affected security guards on "floating status" on "no work no pay" basis. Having been displaced from work, the Asia security guards filed a case against the Baron Hotel for illegal dismissal, overtime pay, minimum wage differentials, vacation leave and sick leave benefits, and 13th month pay.

Baron Hotel denied liability alleging that Asia is the employer of the security guards and therefore, their complaint for illegal dismissal and payment of money claims should be directed against Asia. Nevertheless, Baron filed a Third Party Complaint against Asia.

1. Is there an employer-employee relationship between the Baron Hotel, on one hand, and the Asia security guards, on the other hand? Explain briefly, (3%)

**SUGGESTED ANSWER:**

As a general rule, the security guards of a private security guard agency are the employees of the latter and not of the establishment that has entered into a contract with the private security guard agency for security services.

But under the facts in the question, Baron Hotel appear to have hired the security guards, to have paid their wages, to have the power to promote, suspend or dismiss the security guards and the power of control over them, namely, the security guards were under orders of Baron Hotel as regard their employment.

Because of the above-mentioned circumstances, Baron Hotel is the employer of the security guards.

2. Assuming that ASIA is the employer, is the act of ASIA in placing the security guards on "floating status" lawful? Why? (2%)

**SUGGESTED ANSWER:**

It is lawful for a private security guard agency to place its security guard on a "floating status" if it has no assignment to give to said security guards.

But if the security guards are placed on a "floating status" for more than six (6) months, the security guards may consider themselves as having been dismissed.

**E-E Relationship; Self-Employed (2003)**

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

**SUGGESTED ANSWER:**

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

**ANOTHER SUGGESTED ANSWER:**

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

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

B. TRX, a local shipping firm, maintains a fleet of motorized boats plying the island barangays of AP, a coastal town. At day’s end the boat operators/crew members turn over to the boat owner their cash collections from cargo fees and passenger fares, less the expenses for diesel fuel, food, landing fees and spare parts.

Fifty percent (50%) of the monthly income or earnings derived from the operations of the boats are given to the boatmen by way of compensation. Deducted from the individual shares of the
boatmen are their cash advance and peso value of their absences, if any.

Are these boatmen entitled to overtime pay, holiday pay, and 13th month pay? (5%)

**SUGGESTED ANSWER:**
If the boatmen are considered employees, like jeepney drivers paid on a boundary system, the boatmen are not entitled to overtime and holiday pay because they are workers who are paid by results. Said workers, under the Labor Code are not entitled, among others, to overtime pay and holiday pay.

In accordance with the Rules and Regulations implementing the 13th month pay law, however, the boatmen are entitled to the 13th month pay. Workers who are paid by results are to be paid their 13th month pay.

**ANOTHER SUGGESTED ANSWER:**
No. The arrangement between the boat owner and the boat operators/crew members partook of the nature of a joint venture. The boatmen did not receive fixed compensation as they shared only in the cash collections from cargo fees and passenger fares, less expenses for fuel, food, landing fees and spare parts. It appears that there was neither right of control nor actual exercise of such right on the part of the boat owner over the boatmen. It is clear that there was no employer-employee relationship between the boat owner and the boatmen. As such, these boatmen are not entitled to overtime pay, holiday pay and 13th month pay.

**E-E Relationship; Working Student & School (1997)**
Ruben Padilla entered into a written agreement with Gomburza College to work for the latter in exchange for the privilege of studying in said institution. Ruben's work was confined to keeping clean the lavatory facilities of the school. One school day, Ruben got into a fist fight with a classmate, Victor Monteverde, as a result of which the latter sustained a fractured arm.

Victor Monteverde filed a civil case for damages against Ruben Padilla, impleading Gomburza College due to the latter's alleged liability as an employer of Ruben Padilla.

Under the circumstances, could Gomburza College be held liable by Victor Monteverde as an employer of Ruben Padilla?

**SUGGESTED ANSWER:**
Gomburza College is not liable for the acts of Ruben Padilla because there is no employer-employee relationship between them. As provided in the Rules and Regulations Implementing the Labor Code "there is no employer-employee relationship between students on one hand, and schools, colleges, or universities on the other, where students work with the latter in exchange for the privilege to study free of charge, provided the students are given real opportunity, including such facilities as may be reasonable and necessary to finish their chosen courses under such arrangement."

**ALTERNATIVE ANSWER:**
Gomburza College can be held liable by Victor Monteverde as an employer of Ruben Padilla. Applying the control test, the College is the employer of Padilla because in the latter's work of keeping clean the lavatory facilities of the school, he is under the control of the College as regards his employment.

However, Ruben Padilla was not acting within his assigned tasks. Art. 2180. New Civil Code provides: The obligation imposed by Art. 2176 (Quasi-delicts) is demandable xxx (also from) employers (who) shall be liable for the damages caused by their employees xxx acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." It could be argued that Ruben Padilla was not acting within the scope of his assigned tasks; thus, his employer, Gomburza College is not liable.

**Employment; Aliens; Requisites (1995)**
2. Phil-Norksgard Company, Inc., a domestic corporation engaged in the optics business, imported from Sweden highly sophisticated and sensitive instruments for its laboratory. To install the instruments and operate them, the company intends to employ Borja Anders, a Swedish technician sojourning as a tourist in the Philippines.

As lawyer of the company, what measures will you take to ensure the legitimate employment of Borja Anders and at the same time protect Philippine labor. Discuss fully.

**SUGGESTED ANSWER:**
To ensure the legitimate employment of Borja Anders, a non-resident alien, I will apply at the Department of Labor and Employment for the Issuance of an employment permit claiming that there is no one in the Philippines who can do the work that Anders is being asked to do.

At the same time, to protect Philippine labor, I will see to it that Anders will have an understudy who will learn, by working with Anders, how to install and operate the highly sophisticated and sensitive instruments from Sweden.

**ALTERNATIVE ANSWER:**
To protect Philippine labor, the Labor Code provides that the alien employee shall not transfer
to another job or change his employer without prior approval of the Secretary of Labor.

Employment; Children; Below 15 yrs old (2004)
A spinster school teacher took pity on one of her pupils, a robust and precocious 12-year old boy whose poor family could barely afford the cost of his schooling. She lives alone at her house near the school after her housemaid left. In the afternoon, she lets the boy do various chores as cleaning, fetching water and all kinds of errands after school hours. She gives him rice and P30.00 before the boy goes home at 7:00 every night. The school principal learned about it and charged her with violating the law which prohibits the employment of children below 15 years of age. In her defense, the teacher stated that the work performed by her pupil is not hazardous, and she invoked the exception provided in the Department Order of DOLE for the engagement of persons in domestic and household service.

Is her defense tenable? Reason. (5%)
SUGGESTED ANSWER:
No, her defense is not tenable. Under Article 139 of the Labor Code on "minimum employable age", no child below 15 years of age shall be employed except when he works directly under the sole responsibility of his parents or guardian, the provisions of the alleged Department Order of DOLE to the contrary notwithstanding. A mere Department Order cannot prevail over the express prohibitory provisions of the Labor Code.

Employment; Driver as Househelper & in a Commercial Establishment (1998)
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. Is the driver a househelper? [3%]

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? [2%]
SUGGESTED ANSWER:
The driver is a househelper. A person is a househelper or is engaged in domestic or household service if he/she renders services in the employer's home which are 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 family drivers.

A family driver who drives the family van to fetch merchandise from suppliers and delivers the same to a boutique in a mall owned by the family for whom he works should be paid the minimum daily wage of a driver in a commercial establishment.

The Labor Code (in Article 143) provides that no househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided by law for agricultural or non-agricultural workers.

Employment; Handicapped Employee (1998)
A lady worker was born with a physical deformity, specifically, hard of hearing, speech impaired, and color blind. However, these deficiencies do not impair her working ability.

Can the employer classify the lady worker as a handicapped worker so that her daily wage will only be seventy-five percent (75%) of the applicable daily minimum wage? [5%]
SUGGESTED ANSWER:
No, the employer cannot classify the lady worker as a handicapped worker because according to the facts in the question, her deficiencies do not impair her working ability. If her earning capacity is therefore not also impaired, then she cannot be considered a handicapped worker.

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

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

Employment; Handicapped Employee (2000)
Ana Cruz has a low IQ. She has to be told at least three times before she understands her daily work assignment. However, her work output is at least
equal to the output of the least efficient worker in her work section. Is Ms. Cruz a handicapped worker? Explain. (5%)
SUGGESTED ANSWER:
No, low IQ or low efficiency does not make the worker "handicapped" in the contemplation of law. Handicap means such physical or mental infirmity that impairs capacity to work. The deficiency may also be due to age or injury. (Art 78. Labor Code).

Employment; Contractual Employees (2006)

For humanitarian reasons, a bank hired several handicapped workers to count and sort out currencies. Their employment contract was for six (6) months. The bank terminated their employment on the ground that their contract has expired prompting them to file with the Labor Arbiter a complaint for illegal dismissal. Will their action prosper? (5%)
ALTERNATIVE ANSWER:
Their action will not prosper because they are covered by the fixed term employment contract which automatically lapsed at the end of the 6-month period (Brent School v. Zamora, G.R. No. 48494, February 5, 1990; Art. 280, Labor Code). A contract of employment for a definite period terminates on its own term at the end of its period. It does not necessarily follow that the parties are forbidden from agreeing on a fixed period of time for the performance of activities usually necessary and desirable in the usual business of the employer (Pangilinan v. Gen. Milling, G.R. No. 149329, July 12, 2004).
ALTERNATIVE ANSWER:
Yes. Undeniably, handicapped workers are never on equal terms with the bank as employer. In Philippine National Oil Company-Energy Development Corporation v. NLRC, G.R. No. 97747, March 31, 1993, the Supreme Court set down two criteria under which fixed contracts of employment do not circumvent security of tenure, to wit:
1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and about any other circumstances vitiating his consent; or
2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

Employment; Homeworkers (2000)
b) Mrs. Josie Juan is the confidential secretary of the Chairman of the Board of the bank. She is presently on maternity leave. In an arrangement where the Chairman of the Board can still have access to her services, the bank allows her to work in her residence during her leave. For this purpose, the bank installed a fax machine in her residence, and gave her a cellphone and a beeper. Is Mrs. Juan a homeworker under the law? Explain. (3%)
SUGGESTED ANSWER:
No, she is actually an office worker. She is not an industrial homeworker who accepts work to be fabricated or processed at home for a contractor, which work, when finished, will be returned to or repurchased by said contractor. (Art. 155, Labor Code).

Employment; Househelpers (2000)
a) Nova Banking Corporation has a resthouse and recreational facility in the highlands of Tagaytay City for the use of its top executives and corporate clients. The resthouse staff includes a caretaker, two cooks and a laundrywoman. All of them are reported to the Social Security System as domestic or household employees of the resthouse and recreational facility and not of the bank. Can the bank legally consider the caretaker, cooks and laundrywoman as domestic employees of the resthouse and not of the bank? (3%)
SUGGESTED ANSWER:
No, they are not domestic employees. They are bank employees because the resthouse and recreational facility are business facilities as they are for use of the top executives and clients of the bank. [Art. 141, Labor Code; Apex Mining Co., Inc. v. NLRC, 196 SCRA 251 (1991); Traders Royal Bank v. NLRC. G.R. No. 127864, December 22, 1999]

Employment; Minors (2006)
Determine whether the following minors should be prohibited from being hired and from performing their respective duties indicated hereunder: (5%)
1. A 17-year old boy working as miner at the Walwadi Mining Corporation.
SUGGESTED ANSWER:
It is absolutely Prohibited for any person below 18 years of age to be employed in hazardous work, harmful to health and safety (Sec. 3, Rule 12, Book 3, ties Implementing the Labor Code), including construction work, logging, firefighting, mining, quarrying, stevedoring, dock work, deep sea fishing and mechanized fishing (Sec. 8[2], Rule 1, Book 4, Rules Implementing the Labor Code).
2. An 11-year old boy who is an accomplished singer and performer in different parts of the country.

**SUGGESTED ANSWER:**
Under RA. 7610, Section 12, as amended by RA. No. 9231 states that:
Employment of children — children below 15 years of age shall not be employed (Art. 139, Labor Code) except when the following conditions are met:
(a) When the child's participation in public entertainment is essential;
(b) There is a written contract approved by the DOLE and signed by the child's parents or legal guardians, with the express consent of the child; and
(c) the employer who employs the child must secure a work permit from the DOLE.

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

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

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

**SUGGESTED ANSWER:**
Section 14, Article 8, RA. 7610, as amended by Section 5, RA. 9231 states that a child shall be prohibited to act as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

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

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

**Employment; Minors; Hazardous Work (2002)**

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

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

(1) Malyn Vartan is a well-known radio-TV show host. She signed a contract with XYZ Entertainment Network to host a one-hour daily talk show where she interviews various celebrities on topical subjects that she herself selects. She was paid a monthly remuneration of P300,000.00. The program had been airing for almost two years when sponsors' advertising revenues dwindled, constraining the network to cancel the show upon the expiration of its latest contract with Ms. Vartan. The talk-show host protested the discontinuance of her monthly talent fee, claiming that it was tantamount to her illegal dismissal from the network since she has already attained the status of a regular employee. (6%)

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

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

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

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

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

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

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

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

SUGGESTED ANSWER:

No, the Personnel Manager's reply to the applicant's question whether she qualifies for the position she is applying for does not constitute sexual harassment. The Personnel Manager did not ask for or insinuate a request for a sexual favor in return for a favorable action on her application for a job. But the Manager's statement may be offensive if attire or physical look is not a criterion for the job being applied for.

ALTERNATIVE ANSWER:

Yes. The remarks did not give due regard to the applicants' feelings and it is a chauvinistic disdain of her honor, justifying the finding of sexual harassment [Villarama v. NLRC, 236 SCRA 280 (1994)]

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

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

Is Mr. Barak liable for sexual harassment committed in a work-related or employment environment? (5%)

SUGGESTED ANSWER:

Yes, the elements of sexual harassment are all present. The act of Mr. Barak was committed in a workplace. Mr. Barak, as supervisor of Pedrito Masculado, has authority, influence and moral ascendancy over Masculado.

B. Given the specific circumstances mentioned in the question like Mr. Barak following Masculado to the comfort room, etc. Mr. Barak was requesting a sexual favor from Masculado for a favorable recommendation regarding the latter's employment.

It is not impossible for a male, who is a homosexual, to ask for a sexual favor from another male.

ANOTHER SUGGESTED ANSWER:

I do not see any sexual favor being solicited. Having a "little drink" in Mr. Barak's Condo Unit, as condition for a "favorable recommendation is not one of the prohibited acts enumerated in Sec. 3 (a) of R.A. 7877, otherwise known as the Anti-Sexual Harassment Act of 1995.
Employment; Women; Anti-Sexual Harassment vs. Discrimination against Women (2003)

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

SUGGESTED ANSWER:
When an employer discriminates against women in the adoption of policy standards for employment and promotion in his enterprise, he is not guilty of sexual harassment. Instead, the employer is guilty of discrimination against women employees which is declared to be unlawful by the Labor Code.

For an employer to commit sexual harassment, he - as a person of authority, influence or moral ascendancy -should have demanded, requested or otherwise required a sexual favor from his employee whether the demand, request or requirement for submission is accepted by the object of said act.

Employment; Women; Discrimination by reason of Age (1998)

At any given time, approximately ninety percent (90%) of the production workforce of a semiconductor company are females. Seventy-five percent (75%) of the female workers are married and of child-bearing years. It is imperative that the Company must operate with a minimum number of absences to meet strict delivery schedules. In view of the very high number of lost working hours due to absences for family reasons and maternity leaves, the Company adopted a policy that it will employ married women as production workers only if they are at least thirty-five (35) years of age.

Is the policy violative of any law? [5%]

SUGGESTED ANSWER:
Yes, it is violative of Article 140 of the Labor Code which provides that no employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.

ANOTHER SUGGESTED ANSWER:
The policy of the company to employ married women as production workers only if they are at least thirty-five (35) years of age is valid. There is no prohibition in the Labor Code for such an employer to exercise this management function. There is a justifiable basis for the company policy, i.e., the need for continuity of production with minimum absences because of the peculiar business conditions and needs of the company, i.e., very tight delivery schedules. The company respects the institution of marriage as shown by the fact that it employs married women. There is no violation of the stipulation against marriage (Art. 136), and prohibited acts (Art. 137) of the Labor Code.

STILL ANOTHER SUGGESTED ANSWER:
It may be noted that the policy is directed only to married women. This may violate the spirit of Article 136 of the Labor Code which provides that it shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman shall not get married.

Employment; Women; Discrimination by reason of Marriage (1995)

Fil-Aire Aviation Company (FIL-AIRE) 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) major Visayan dialects, viz: Ilongo, Cebuano and Waray. Lourdes, 23 years old, was accepted as she possessed all the qualifications. After passing the probationary period, Lourdes 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, Lourdes was not hired as a regular flight attendant. Consequently, she filed a complaint against FIL-AIRE alleging that the pre-employment qualifications violate relevant provisions of the Labor Code and are against public policy.

Is the contention of Lourdes tenable? Discuss fully.

SUGGESTED ANSWER:
The contention of Lourdes is tenable. When she was not hired as a regular flight attendant by FIL-AIRE because she disclosed that she got married when she was 18 years old. The airline company violated the provision of the Labor Code which states:

"It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage."

Employment; Women; discrimination; illegal dismissal (1997)

Dinna Ignacio was hired by Stag Karaoke Club as a guest relations officer. Dinna was also required to sing and dance with guests of the club. In Dinna Ignacio’s employment contract, which she signed, the following stipulations appeared:

✓ Compensation: Tips and commissions coming from guests shall be subjected to 15% deduction.
D
Hours of work: 5 P.M. up to 2 A.M. dairy including Sundays and Holidays

Other conditions: Must maintain a body weight of 95 lbs., remain single. Marriage or pregnancy will be considered as a valid ground for a termination of employment.

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

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

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

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

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

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

Employment; Women; Sexual Harassment Act (2005)
Carissa, a comely bank teller, was due for her performance evaluation which is conducted every six months. A rating of "outstanding" is rewarded with a merit increase. She was given a "below average" rating in the last two periods. According to the bank's personnel policy, a third rating of "below average" will result in termination. Mr. Perry Winkle called Carissa into his office a few days before submitting her performance ratings. He invited her to spend the night with him in his rest house. She politely declined. Undaunted, Mr. Winkle renewed his invitation, and Carissa again declined. He then warned her to "watch out" because she might regret it later on. A few days later, Carissa found that her third and last rating was again "below average."

Carissa then filed a complaint for sexual harassment against Mr. Winkle with the Department of Labor and Employment. In his counter-affidavit, he claimed that he was enamored with Carissa. He denied having demanded, much less received any sexual favors from her in consideration of giving her an "outstanding" rating. He also alleged that the complaint was premature because Carissa failed to refer the matter to the Committee on Decorum and Discipline for investigation and resolution before the case against him was filed. In her reply affidavit, Carissa claimed that there was no need for a prior referral to the Committee on Decorum and Discipline of her complaint.

Resolve the case with reasons. (5%)
SUGGESTED ANSWER:
I will hold Mr. Perry Winkle guilty of sexual harassment. This resolution is predicated mainly upon the following considerations:
(1) Mr. Perry Winkle exercises authority, influence or moral ascendancy over Carissa;
(2) Mr. Winkle's insistence in inviting Carissa "to spend the night with him in his rest house" implies a request or demand for a sexual favor;
(3) Mr. Winkle's warning clearly manifests that the refusal of the sexual favor would jeopardize Carissa's continued employment; and
(4) Mr. Winkle's invitation for a sexual favor will result in an intimidating, hostile, or otherwise offensive working environment for Carissa.

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

Employment; Women; Sexual Harassment Act (2006)
As a condition for her employment, Josephine signed an agreement with her employer that she
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will not get married, otherwise, she will be considered resigned or separated from the service.

Josephine got married. She asked Owen, the personnel manager, if the company can reconsider the agreement. He told Josephine he can do something about it, insinuating some sexual favors. She complained to higher authorities but to no avail. She hires you as her counsel. What action or actions will you take? Explain. (5%)

ALTERNATIVE ANSWER:
I will file a criminal case against Owen for violation of RA. No. 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995."

I will also file a separate and independent action for damages against Owen. By reason of the fact that the Company did not take immediate action thereon, I will include the Company in the civil suit for damages and make it jointly and severally liable with Owen.

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

Independent Contractor (2001)
(a) "X" is a bona fide service contractor providing manpower services to various companies, possessing the necessary capital and equipment needed to effectively carry out its commitments. "Y" is an employee of "X" and assigned to work as a janitor in Company "Z". In the course of Y's assignment, Z's supervisors and employees would give verbal instructions to Y as to how and where to perform his work. X pays Y salary. Subsequently, Y's services were terminated by X. Y sued Z for illegal dismissal. May Y's case against Z prosper? Why? (2%)

SUGGESTED ANSWER:
Y's case against Z will not prosper, because Z is not the employer of Y. The employer of "Y" is "X". "Y" would be an employee of "Z" if "X" here is a labor-only contractor but X is not a labor-only contractor. He possesses the necessary capital and equipment needed to effectively carry out its commitment as a service contractor.

Applying the control test, the fact that "Z's" supervisors and employees give verbal instructions to Y as to how and where to perform his work does not necessarily mean that thereby he is under the control of Z as regards his employment as long as X, as service contractor, actually directs the work of Y. It should also be noted that X pays the salary of Y as the employee of the former.

ANOTHER SUGGESTED ANSWER;
Yes, Y's case against Company "Z" will prosper. Company "Z" will be deemed the direct employer because the Company directly and specifically controlled the manner by which the work should be done and, by doing so also the result. (See Traders Royal Bank vs. NLRC, December 2, 1999).

The presence of the element or factor of control, which is the most important factor in determining the existence of an employer-employee relationship is present. In Religious of the Virgin Mary vs. NLRC, G.R. No. 103606, October 13, 1999, the Supreme Court, ruled:

As this Court has consistently ruled, the power of control is the most decisive factor in determining the existence of employer-employee relationship.

Independent Contractor (2002)
Pandoy, an electronics technician, worked within the premises of Perfect Triangle, an auto accessory shop. He filed a complaint for illegal dismissal, overtime pay and other benefits against Perfect Triangle, which refused to pay his claims on the ground that Pandoy was not its employee but was an independent contractor. It was common practice for shops like Perfect Triangle to collect the service fees from customers and pay the same to the independent contractors at the end of each week. The auto shop explained that Pandoy was like a partner who worked within its premises, using parts provided by the shop, but otherwise Pandoy was free to render service in the other auto shops. On the other hand, Pandoy insisted that he still was entitled to the benefits because he was loyal to Perfect Triangle, it being a fact that he did not perform work for anyone else. Is Pandoy correct? Explain briefly. (5%)

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

The Supreme Court has ruled: "In stark contrast to the Company's regular employees, there are independent, free lance operators who are
permitted by the Company to position themselves proximate to the Company premises. These independent operators are allowed by the Company to wait on Company customers who would be requiring their services. In exchange for the privileges of favorable recommendation by the Company and immediate access to the customers in need of their services, these independent operators allow the Company to collect their service fee from the customer and this fee is given back to the Independent operator at the end of the week. In effect, they do not earn fixed wages from the Company as their variable fees are earned by them from the customers of the Company. The Company has no control over and does not restrict the methodology or the means and manner by which these operators perform their work. These operators are not supervised by any employee of the Company since the results of their work is controlled by the customers who hire them. Likewise, the Company has no control as an employer over these operators. They are not subject to the regular hours and days of work and may come and go as they wish. They are not subject to any disciplinary measures from the Company, save merely for the inherent rules of general behavior and good conduct.” [Ushio Marketing v. NLRC, 294 SCRA 673 (1998)]

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

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

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

a) My analytical framework will be an analysis of the law on Independent contractor and labor only contracting.

If there is a valid INDEPENDENT CONTRACTOR situation, Mr. Dado will be the direct employer, and the Metro Grocery will be the indirect employer.

If there is a LABOR-CONTRACTOR only relationship, the Metro Grocery will be the employer as it directly hired the employees.

SUGGESTED ANSWER:

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

Independent Contractor; Liabilities (2004)

A. Clean Manpower Inc. (CMI) had provided janitorial services to the National Economic Development Authority (NEDA) since April 1988. Its service contract was renewed every three months. However, in the bidding held on July 1992, CMI was disqualified and excluded. In 1993, six janitors of CMI formerly assigned at NEDA filed a complaint for underpayment of wages. Both CMI and NEDA were impleaded as respondents for failure to comply with NCR Wage Orders Nos. 01 and 02, which took effect on November 1, 1990 and January 2, 1992, respectively.

Should NEDA, a government agency subject to budgetary constraints, be held liable solidarily with CMI for the payment of salary differentials due the complainants? Cite the legal basis of your answer. (5%)

SUGGESTED ANSWER:

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


Distinguish between "job contracting" and "labor-only contracting."

SUGGESTED ANSWER:
When a person, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project, there is "JOB CONTRACTING." When the independent contractor does the work that is contracted out, he is not under the control of the person who contracted out the work to be done.

In "LABOR-ONLY CONTRACTING", a person supplies workers to an employer. Said person does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities related to the principal business of the employer to whom the workers are supplied.

Labor-Only Contractor (2002)
Sta. Monica Plywood Corporation entered into a contract with Arnold for the milling of lumber as well as the hauling of waste wood products. The company provided the equipment and tools because Arnold had neither tools and equipment nor capital for the job. Arnold, on the other hand, hired his friends, relatives and neighbors for the job. Their wages were paid by Sta. Monica Plywood Corp. to Arnold, based on their production or the number of workers and the time used in certain areas of work. All work activities and schedules were fixed by the company.

A. Is Arnold a job contractor? Explain briefly. (2%)
B. Who is liable for the claims of the workers hired by Arnold? Explain briefly. (3%)

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

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

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

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

Labor-Only Contractor vs. Independent Contractor (1994)
1) What is a "labor-only" contract?
2) Distinguish the liabilities of an employer who engages the services of a bonafide "independent contractor" from one who engages a "labor-only" contractor?

SUGGESTED ANSWER:
1) "LABOR-ONLY" CONTRACT is a contract between an employer and a person who supplies workers where the person supplying workers does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. (Art. 106, Labor Code)

2) A person who engages the services of a bona fide "INDEPENDENT CONTRACTOR" for the performance of any work, task, job or project is the indirect employer of the employees who have been hired by the independent contractor to perform said work, task, job or project.

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

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

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

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

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

Recruitment & Placement; Cancellation; Certificate of Registration; Travel Ban (2004)
Concerned Filipino contract workers in the Middle East reported to the Department of Foreign Affairs (DFA) that XYZ, a private recruitment and placement agency, is covertly transporting extremists to terrorist training camps abroad. Intelligence agencies of the government allegedly confirmed the report.

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

Should the DOLE orders be upheld or set aside? (5%)
SUGGESTED ANSWER:
1. The DOLE order cancelling the licenses of XYZ is void because a report that an agency is covertly transporting extremists is not a valid ground for cancellation of a Certificate of Registration (Art. 239, Labor Code) and there is failure of due process as no hearing was conducted prior to the cancellation (Art. 238, Labor Code).

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

ANOTHER SUGGESTED ANSWER:
The DOLE orders should be set aside. It is true that the Migrant Workers and Overseas Filipinos Act, particularly its Section 5, could be the basis of the power of DOLE to effect a ban on the deployment of OFWs by XYZ. If the ban, however, is for the purpose of preventing XYZ from transporting extremists to terrorist training camps abroad, this is a police and national security problem better dealt with by the police or the Office of the National Security Adviser.

More importantly, the cancellation of the license of XYZ requires notice and hearing. Absent such notice and hearing, the order of cancellation of the Secretary of Labor and Employment is null and void because of the denial of due process.

Recruitment & Placement; illegal recruitment to economic sabotage (2005)
(1) During the open forum following your lecture to a group of managers and HRD personnel, you were asked the following questions:
(a) What qualifying circumstances will convert "illegal recruitment" to "economic sabotage," thus subjecting its perpetrator or perpetrators to a penalty of life imprisonment and a fine of at least P500,000.00? Please explain your answer briefly.
(3%)
SUGGESTED ANSWER.
Under Article 38(b) of the Labor Code, as amended by P.D. No. 2018, it provides that illegal recruitment shall be considered an offense involving economic sabotage if any of the following qualifying circumstances exists:
(1) When illegal recruitment is committed by a SYNDICATE, requiring three or more persons who conspire or confederate with one another in carrying out any unlawful or illegal transaction, enterprise or scheme;
When illegal recruitment is committed in a LARGE SCALE, as when it is committed against three or more persons individually or as a group. (People v. Navarra, G.R. No. 119361, February 19, 2001; See also Sec. 6 of R.A. No. 8042)

Recruitment & Placement; illegal recruitment; Economic Sabotage (2002)
When is illegal recruitment considered a crime of economic sabotage? Explain briefly. (3%)
SUGGESTED ANSWER:
According to Art. 28 of the Labor Code, illegal recruitment is considered a crime of economic sabotage when committed by a syndicate or in large scale.

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

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

Recruitment & Placement; Large Scale Illegal Recruitment (2005)
Maryrose Ganda's application for the renewal other license to recruit workers for overseas employment was still pending with the Philippine Overseas Employment Administration (POEA). Nevertheless, she recruited Alma and her three sisters, Ana, Joan, and Mavic, for employment as housemates in Saudi Arabia. Maryrose represented to the sisters that she had a license to recruit workers for overseas employment. Maryrose also demanded and received P30,000.00 from each of them for her services. However, Maryrose's application for the renewal of her license was denied, and consequently failed to employ the four sisters in Saudi Arabia.

The sisters charged Maryrose with large scale illegal recruitment. Testifying in her defense, Maryrose declared that she acted in good faith because she believed that her application for the renewal of her license would be approved. Maryrose adduced in evidence the Affidavits of Desistance which the four private complainants had executed after the prosecution rested its case. In the said affidavits, they acknowledge receipt of the refund by Maryrose of the total amount of P120,000.00 and indicated that they were no longer interested to pursue the case against Maryrose. Resolve the case with reasons. (5%)

ALTERNATIVE ANSWER:
Illegal recruitment is defined by law as any recruitment activities undertaken by non-licensees or non-holders of authority. (People v. Senoron, G.R. No. 119160, January 30, 1997) And it is large scale illegal recruitment when the offense is committed against 3 or more persons, individually or as a group. (Article 38[b], Labor Code)

In view of the above, Maryrose is guilty of large scale illegal recruitment. Her defense of good faith and the Affidavit of Desistance as well as the refund given will not save her because R.A. No. 8042 is a special law, and illegal recruitment is malum prohibitum. (People v. Saulo, G.R. No. 125903, November 15, 2000)

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

Recruitment & Placement; Non-Transferability of License (1998)
A Recruitment and Placement Agency declared voluntary bankruptcy. Among its assets is its license to engage in business. Is the license of the bankrupt agency an asset which can be sold in public auction by the liquidator? [5%]

SUGGESTED ANSWER:
No, because of the non-transferability of the license to engage in recruitment and placement.

The Labor Code (in Article 29) provides that no license to engage in recruitment and placement shall be used directly or indirectly by any person other than the one in whose favor it was issued nor may such license be transferred, conveyed or assigned to any other person or entity.

It may be noted that the grant of a license is a governmental act by the Department of Labor and Employment based on personal qualifications, and citizenship and capitalization requirements. (Arts. 27-28, Labor Code)

Recruitment & Placement; Recruitment Agencies (2002)
Is a corporation, seventy percent (70%) of the authorized and voting capital of which is owned and controlled by Filipino citizens, allowed to engage in the recruitment and placement of workers, locally or overseas? Explain briefly. (2%)

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

Recruitment & Placement; Travel Agency; Prohibition (2006)
Wonder Travel and Tours Agency (WTTA) is a well-known travel agency and an authorized sales agent of the Philippine Air Lines. Since majority of its passengers are overseas workers, WTTA applied for a license for recruitment and placement activities. It stated in its application that its purpose is not for profit but to help Filipinos find employment abroad.

Should the application be approved? (5%)

ALTERNATIVE ANSWER:
The application should be disapproved, as it is prohibited by Article 26 of the Labor Code, to wit: "Article 26. Travel agencies and sales agencies of airline companies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment whether for profit or not."
Rule I, Part IIPOEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Workers (2002) disqualifies any entity having common director or owner of travel agencies and sales agencies of airlines, including any business entity from the recruitment and placement of Filipino workers overseas, whether they derive profit or not.

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

**Wage Distortion (2002)**
A. How should a wage distortion be resolved (1) in case there is a collective bargaining agreement and (2) in case there is none? Explain briefly. (3%)

**SUGGESTED ANSWER:**
A. According to Art. 124 of the Labor Code, in case there is a collective bargaining agreement, a dispute arising from wage distortions shall be resolved through the grievance machinery provided in the CBA, and if remains unresolved, through voluntary arbitration. In case there is no collective bargaining agreement, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and if it remains unresolved after ten (10) calendar days of conciliations, then the dispute is referred to the appropriate branch of the National Labor Relations Commission.

**Wage; Reduction of Minimum Pay & Wages (2006)**
Can an employer and an employee enter into an agreement reducing or increasing the minimum percentage provided for night differential pay, overtime pay, and premium pay? (5%)

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

**Wage; Wage Distortion; Definition & Elements (2006)**
When is there a wage distortion?

**ALTERNATIVE ANSWER:**
A WAGE DISTORTION arises when an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation (Article 124, Labor Code of the Philippines).

**ALTERNATIVE ANSWER:**
There is wage distortion when the following four elements concur:

a. An existing hierarchy of positions with corresponding salary rates;

b. A significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one;

c. The elimination of the distinction between the two levels; and

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

**Wage; Wage Distortion; Means of Solving (2006)**
How should a wage distortion be settled?

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

**Wage; Wage Distortion; Not a ground for Strike/Lockout (2006)**
Can the issue of wage distortion be raised in a notice of strike? Explain. (10%)

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

Wages; 13th month pay (1994)
Concepcion Textile Co. included the overtime pay, night-shift differential pay, and the like in the computation of its employees' 13th-month pay. Subsequently, with the promulgation of the decision of the Supreme Court in the case of San Miguel Corporation vs. Inciong (103 SCRA 139) holding that these other monetary claims should not be included in the computation of the 13th-month pay, Concepcion Textile Co. sought to recover under the principle of solutio indebiti its overpayment of its employees' 13th-month pay, by debiting against future 13th-month payments whatever excess amounts it had previously made.

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

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

ALTERNATIVE ANSWERS:
A) The Company's action would be tenable if payment was done by mistake, in which case recovery can be done under the principle of solutio indebiti. But if there was no mistake, the Company's action would be untenable because it would violate Article 100 of the Labor Code which prohibits elimination or diminution of benefits.

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

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

Wages; 13th month pay (1998)
What would be your advice to your client, a manufacturing company, who asks for your legal opinion on whether or not the 13th Month Pay Law (Presidential Decree No. 851) covers a casual employee who is paid a daily wage? (5%)

SUGGESTED ANSWER:
I will advise the manufacturing company to pay the casual employee 13th Month Pay if such casual employee has worked for at least one (1) month during a calendar year. The law on the 13th Month Pay provides that employees are entitled to the benefit of said law regardless of their designation or employment status.

The Supreme Court ruled in Jackson Building-Condominium Corporation v. NLRC, 246 SCRA 329, (1995) interpreting P.D. No. 851, as follows:
xxx employees are entitled to the thirteenth-month pay benefits regardless of their designation and irrespective of the method by which their wages are paid.

Wages; Bonus (2002)
B. The projected bonus for the employees of Suerte Co. was 50% of their monthly compensation. Unfortunately, due to the slump in the business, the president reduced the bonus to 5% of their compensation. Can the company unilaterally reduce the amount of bonus? Explain briefly. (2%)

SUGGESTED ANSWER:
Yes. The granting of a bonus is a management prerogative, something given in addition to what is ordinarily received by or strictly due the recipient.

An employer, like Suerte Co., cannot be forced to distribute bonuses when it can no longer afford to pay. To hold otherwise would be to penalize the employer for his past generosity. [Producers Bank of the Phil. v NLRC, 355 SCRA 489, (2001)]

ANOTHER SUGGESTED ANSWER:
It depends. If there is a legal obligation on the part of Suerte Co. to pay a bonus of its employees equivalent to 50% of their monthly compensation, because said obligation is included in a collective bargaining agreement, then Suerte Co. cannot reduce the bonus to 5% of their monthly compensation. But if the payment of the bonus is not a legal obligation but only a voluntary act on the part of the employer, said employer,
unilaterally, can only reduce the bonus from 50% to 5% of the monthly compensation of its employees; the employer can, in fact, not give any bonus at all.

**Wages; Bonus (2003)**

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

**SUGGESTED ANSWER:**

No. The grant of a bonus is a prerogative, not an obligation, of the employer. (Traders Royal Bank v. NLRC. 189 SCRA 274 (1990). The matter of giving a bonus over and above that which is required by law is entirely dependent on the financial capability of the employer to give it. (Businessday v. NLRC. 221 SCRA 9 (1993).

Hence, given the circumstances, ABC Bank cannot be compelled to continue paying its employees the traditional mid-year and Christmas bonuses in addition to the 13th month pay.

**Wages; Bonus; Nature (1995)**

What is a bonus? When is it demandable as a matter of right? Explain.

**SUGGESTED ANSWER:**

A bonus is money given in addition to an employee’s usual compensation. It may be given as a gratuity, as an act of liberality. But a bonus is demandable as a matter of right if it is made a legal obligation by law or in a collective bargaining agreement or in a contract of employment or by its having been given for such a long time such that the receipt of a bonus has ripened into a right.

**ALTERNATIVE ANSWER:**

A bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the employer’s success and realization of profit.

1. Grant of bonus is a prerogative, not an obligation of the employer: and

2. It is entirely dependent on the employer’s capacity to pay.

Normally discretionary, it becomes part of the regular compensation by reason of long and regular concession or when the bonus is included as among the benefits granted in a CBA.

**Wages; Computation of Basic Salary (1997)**

Robert Suarez is a salesman for Star Pharmaceuticals, Star Pharmaceuticals has applied with the Department of Labor and Employment for clearance to terminate (by way of retrenchment) the services of Suarez due to financial losses. Robert Suarez, aside from his monthly salary, receives commissions on the sales he makes. He also receives allowances. The existing CBA between Star Pharmaceuticals and the union, of which Robert Suarez is a member, states that any employee separated from employment for causes not due to the fault of the employee shall receive from the company a retirement gratuity in an amount equivalent to one month’s salary per year of service.

Robert Suarez contends that in computing his separation pay, his sales commission and his allowances should be included in the monthly salary. Do you agree?

**SUGGESTED ANSWER:**

I agree, with some conditions. In computing separation pay, the monthly salary should include commissions because commissions received by a salesman is part of his salary.

But for allowances to be included as part of salary, they should be for services rendered or to be rendered, like a cost of living allowance. But transportation and representation allowances are not considered as part of salary because they are to meet expenses for transportation and representation. Thus, cost of living allowances, but not transportation or representation allowances, shall be included as part of salary in the computation of separation pay.

Note: Re: allowances as part of salary, in Santos vs. NLRC 154 SCRA 166, the Supreme Court said: "in the computation of backwages and separation pay, account must be taken not only of basic salary but also her transportation and emergency living allowances."

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

On orders of his superior, Efren, a high-speed sewing machine technician, worked on May 1, Labor Day. If he worked eight (6) hours on that day, how much should he receive if his daily rate is P400.00? (2%)

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

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

This year, National Heroes Day (August 25) falls on a Sunday. Sunday is the rest day of Bonifacio whose daily rate is P500.00.

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

B. If he works for ten (10) hours on that day, how much should he receive for his work? Explain. (2%)

**SUGGESTED ANSWER:**

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

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

**Wages; Holiday Pay (2005)**

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

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

**SUGGESTED ANSWER:**

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

**Wages; Money Claims (1998)**

An explosion in a mine site resulted in the death of fifty (50) miners. At the time of the accident

(1) The Mining Company has not yet paid the wages, overtime, holiday and rest day compensation of the deceased miners;

(2) All the deceased miners owed the Miners Cooperative Union sums of money;

(3) The Mining Company was served by a sheriff Writs of Garnishment of Wages of some of the deceased miners by virtue of final Judgments in several collection suits.

After the accident, the wives, paramours, brothers, sisters and parents of the deceased miners filed their claims for unpaid wages, overtime, holiday and rest day compensation. The Company has acknowledged its obligations. However, it is in a quandary as to how to adjudicate the conflicting claims; and whether it can deduct from the monies due the miners their unpaid debts with the credit union.

How will you advise the mining company on the following:

1) Can the Mining Company defer payment of the money claims until an appropriate court has ruled on the conflicting claims? [3%]

2) Can the Mining Company deduct from the amount due to each miner an amount equivalent to their debt and remit the same to the Credit Union? (2%)

**SUGGESTED ANSWER:**

1. I will advise the Mining Company to pay to the respective heirs of the deceased miners whatever were the unpaid wages, overtime, holiday and rest day compensation of said deceased miners without the necessity of intestate proceedings. The claimants, if they are all of age shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs, to the exclusion of all other persons. If any of the heirs is a minor, the affidavit shall be executed on his behalf by his natural guardian or next of kin. The affidavit shall be presented to the employer who shall make payment through the Secretary of Labor or his representative. The representative of the Secretary of Labor shall act as referee in dividing the amount paid among the heirs. (See Art. 105 (b) of the Labor Code)

2. I will advise the Mining Company not to deduct from the amount due to each miner the amount equivalent to his debt to the Credit Union. The debts of a deceased worker to the Credit Union is
not one of the allowable deductions under the Labor Code, or any rules and regulations of the Department of Labor and Employment. (See Art. 113 of the Labor Code)

**ANOTHER SUGGESTED ANSWER:**
Yes, if pursuant to CBA provision or authorized by worker in writing; otherwise. No.

**Wages; Money Claims; Attorney’s Fees; Damages (2001)**

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

Is the award of attorney's fees valid? State the reasons for your answer. (2%).

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

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

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

**Wages; Paid by Results; Holiday Pay (2002)**

Nemia earns P7.00 for every manicure she does in the barber shop of a friend which has nineteen (19) employees. At times she takes home P175.00 a day and at other times she earns nothing. She now claims holiday pay. Is Nemia entitled to this benefit? Explain briefly (5%)

**SUGGESTED ANSWER:**
No, Nemia is not entitled to holiday pay. Art. 82 of the Labor Code provides that workers who are paid by results are, among others, not entitled to holiday pay. Nemia is a worker who is paid by results. She earns P7.00 for every manicure she does.

**ANOTHER SUGGESTED ANSWER:**
Yes. Nemia is entitled to holiday pay. The Supreme Court has ruled: "As to the other benefits, namely, holiday pay, premium pay, 13th month pay, and service incentive leave which the labor arbiter failed to rule on but which the petitioners prayed for in their complaint, we hold that petitioners are so entitled to these benefits. Three (3) factors lead us to conclude that petitioners, although piece rate workers, were regular employees of private respondents.

FIRST as to the nature of the petitioner's tasks, their job of repacking snack food was necessary or desirable in the usual business of private respondents, who were engaged in the manufacture and selling of such food products; SECOND, petitioners worked for private respondents throughout the year, their employment not having been dependent on a specific project or season; and THIRD, the length of time that petitioners worked for private respondents. Thus, while petitioner's mode of compensation was on a "per piece basis" the status and nature of their employment was that of regular employees."

[Labor Congress of the Philippines v. NLRC, 290 SCRA 509 (1998)]

**Wages; Teachers; ECOLA (1997)**

Lita Cruz, a full time professor in San Ildefonso University, is paid on a regular monthly basis. Cruz teaches for a period of ten months in a schoolyear, excluding the two month's summer break.

During the semestral break, the University did not pay Lita Cruz her emergency Cost of Living allowance (ECOLA) although she received her regular salary since the semestral break was allegedly not an integral part of the school year and no teaching service were actually rendered by her. In short, the University invoked the principle of "no work, no pay".

Lita Cruz seeks your advice on whether or not she is entitled to receive her ECOLA during semestral breaks. How would you respond to the query?

**SUGGESTED ANSWER:**
There is no longer any law making it the legal obligation of an employer to grant an Emergency Cost of Living Allowance (ECOLA) although she received her regular salary since the semestral break was allegedly not an integral part of the school year and no teaching service were actually rendered by her. In short, the University invoked the principle of "no work, no pay".

Thus, whether the ECOLA will be paid or not during the semestral break now depends on the provisions of the applicable wage order or contract which may be a CBA, that many grant said ECOLA.
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ALTERNATIVE ANSWER:
The "no work, no pay" principle does not apply. The teachers receive their regular salaries during the semestral break. The law granting emergency cost of living allowances was designed to augment the income of the employees to enable them to cope with the rising cost of living and inflation. It was enacted pursuant to the State's duty to protect labor and to alleviate the plight of the workers. To uphold the school's interpretation of the law would run counter to the intent of the law and constitution (University of Pangasinan Faculty Union v. University of Pangasinan, 127 SCRA 691).

Wages; Unpaid Wages; Preference of Credit in favor of Employees (1995)
1. Under the Labor Code, is the right of first preference a lien on the property of the insolvent debtor in favor of the workers? Explain.

SUGGESTED ANSWER:
The right of first preference in favor of workers is not a lien on the property of the insolvent debtor. The preference could be exercised only in the event of bankruptcy or liquidation of an employer's business.

ALTERNATIVE ANSWER:
A preference does not attach to specific properties. A lien creates charges on a particular property. The right of first preference as regards unpaid wages recognized by the Labor Code does not constitute a lien on the property of the insolvent debtor in favor of the workers. It is but a preference of credit in their favor, a preference in application.

The Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer.

Wages; Unpaid Wages; Preference of Credit in favor of Employees (2003)
Premiere Bank, a banking corporation, being the creditor-mortgagee of XYZ & Co., a garment firm, foreclosed the hypothecated assets of the latter. Despite the foreclosure, XYZ & Co. continued its business operations. A year later, the bank took possession of the foreclosed property. The garment firm's business operations ceased without a declaration of bankruptcy. Jose Caspar, an employee of XYZ & Co., was dismissed from employment due to the cessation of business of the firm. He filed a complaint against XYZ & Co. and the bank. The Labor Arbiter, after hearing, so found the company liable, as claimed by Jose Caspar, for separation pay. Premiere Bank was additionally found subsidiarily liable upon the thesis that the satisfaction of labor benefits due to the employee is superior to the right of a mortgagee of property. Was the Labor Arbiter correct in his decision?

SUGGESTED ANSWER:

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

ANOTHER SUGGESTED ANSWER:
The Decision of the Labor Arbiter holding Premiere Bank (as foreclosing mortgagee-creditor) subsidiarily liable for a money obligation of XYZ & Co, (as mortgagor) to Caspar, its employee, has no legal basis.
1. There is no privity of relationship between the Bank and Caspar. The relationship, upon which the obligation to pay a sum of money is based, is between XYZ (the mortgagor) and Caspar as its employee arising from the Labor Code provision requiring an employer to pay separation pay, re: other causes of employment.

2. At both times - Labor Arbiter Decision to pay separation pay and foreclosure - XYZ & Co. was an existing business entity and neither bankrupt or in liquidation, although its business operations after the foreclosure ceased.

3. The decision of the Labor Arbiter for XYZ & Co. to pay a sum of money to Caspar was based on an action in personam, not in rem. enforceable against any party. (Sundowner Corporation vs. drilon. 180 SCRA 14 (1989)

4. The reference in the Decision to "labor benefits due to an employee is superior to the right of a mortgagee of property" is misplaced. The preferential claim rule has no basis and runs contrary to law and jurisprudence.

Wages; Unpaid Wages; Preference of Credit in favor of Employees (1995)
Distinguish the mortgage created under the Civil Code from the right of first preference created by the Labor Code as regards the unpaid wages of workers. Explain.

SUGGESTED ANSWER:
A MORTGAGE directly subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for which it was constituted. It creates a real right which is enforceable against the whole world. It is therefore a lien on an identified real property.
MORTGAGE CREDIT is a special preferred credit under the Civil Code in the classification of credits. The preference given by the Labor Code when not attached to any specific property, is an ordinary preferred credit.

ALTERNATIVE ANSWER:
If the asset of an employer which has become bankrupt or has been liquidated has been mortgaged, the proceeds of the sale of said mortgaged asset is first subject to the lien of the person to whom the property is mortgaged. Said lien is superior to the first preference enjoyed by the workers pursuant to the Labor Code.

Wages; Unpaid Wages; Preference of Credit in favor of Employees (1999)
FACTS: Lowland Cement & Factory Company (LCFC) borrowed P500M from the Development Bank of the Philippines and mortgaged the entire company, inclusive of its land, buildings and equipment, to guarantee the payment of the loan. However, because of the economic conditions, LCFC incurred heavy losses and eventually failed to pay DBP the required monthly amortizations over a period of more than one (1) year. In due time, DBP foreclosed the mortgaged assets of LCFC resulting in the closure of the company and the displacement of all its employees for want of work.

The LCFC Labor Union [Union] filed in behalf of the displaced workers a labor case against DBP as the new owner of the defunct cement factory for wage differentials, retirement pay and other money claims. The Labor Arbiter decided in the favor of the Union. DBP appealed to the NLRC.

DBP contended in its appeal that its acquisition of the mortgage assets of LCFC through foreclosure sale did not make it the owner of the defunct Lowland Cement, and that the doctrine of successor-employer is not applicable in this case, since DBP did not continue the business operation of LCFC.

The NLRC while finding merit in DBP’s contention, nonetheless held DBP liable to the extent of the proceeds of the foreclosure sale since the Union's claims in behalf of the workers constitute a first preference with respect to their claims as workers against LCFC.

Panel: All claims must be filed in insolvency proceedings, which are outside the jurisdiction of the NLRC (Republic v. Peralta)

Wages; Wage Distortion (1997)
(a) Define Wage Distortion.
(b) May a wage distortion, alleged by the employees but rejected by the employer to be such, be a valid ground for staging a strike?

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

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

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

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

Wages; Wages vs. Salary; Subject to Attachment (1994)
1) Distinguish "salary" from "wages."
2) Are these subject to attachment and execution?

SUGGESTED ANSWER:
1) The term "WAGES" applies to compensation for manual labor, skilled or unskilled, while salary
"WAGES" are those paid to any employee as his remuneration or earnings payable by an employer for work done or to be done, or for services rendered or to be rendered.

On the other hand, "SALARY" is used in the law that provides for a 13th-month pay. In this law, basic salary includes all remuneration or earnings paid by an employer to his employees for services rendered, but does not include allowances or monetary benefits which are not considered or integrated as part of the regular or basic salary. (Art. 97(f), Labor Code; Sec, 2(b), P.D. No. 851)

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

Wages; Waiver of Compensation (1996)
2) Jose applied with Mercure Drug Company for the position of Sales Clerk. Mercure Drug Company maintains a chain of drug stores that are open everyday till late at night. Jose was informed that he had to work on Sundays and holidays at night as part of the regular course of employment. He was presented with a contract of employment setting forth his compensation on an annual basis with an express waiver of extra compensation for work on Sundays and holidays, which Jose signed. Is such a waiver binding on Jose? Explain.

SUGGESTED ANSWER:
As long as the annual compensation is an amount that is not less than what Jose should receive for all the days that he works, plus the extra compensation that he should receive for work on his weekly rest days and on special and regular holidays and for night differential pay for night work, considering the laws and wage orders providing for minimum wages, and the pertinent provisions of the Labor Code, then the waiver that Jose signed is binding on him for he is not really waiving any right under Labor Law. It is not contrary to law, morals, good customs, public order or public policy for an employer and employee to enter into a contract where the employees’ compensation that is agreed upon already includes all the amounts he is to receive for overtime work and for work on weekly rest days and holidays and for night differential pay for late night work.

SUGGESTED ANSWER:
As long as the annual compensation is an amount that is not less than what Jose should receive for all the days that he works, plus the extra compensation that he should receive for work on his weekly rest days and on special and regular holidays and for night differential pay for night work, considering the laws and wage orders providing for minimum wages, and the pertinent provisions of the Labor Code, then the waiver that Jose signed is binding on him for he is not really waiving any right under Labor Law. It is not contrary to law, morals, good customs, public order or public policy for an employer and employee to enter into a contract where the employees’ compensation that is agreed upon already includes all the amounts he is to receive for overtime work and for work on weekly rest days and holidays and for night differential pay for late night work.

ALTERNATIVE ANSWER:
The waiver of benefits provided for by law is void. Art. 6 of the New Civil Code provides: "Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs."

Working Hours; Charitable Institution; Overtime Pay (2002)
Socorro is a clerk-typist in the Hospicio de San Jose, a charitable institution dependent for its existence on contributions and donations from well wishers. She renders work eleven (11) hours a day but has not been given overtime pay since her place of work is a charitable institution. Is Socorro entitled to overtime pay? Explain briefly. (5%)

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

Working Hours; Charitable Institution; Weekly Rest Period; (1998)
A Ladies Dormitory run or managed by a charitable non-profit organization claims that it is exempt from the coverage of the Weekly Rest Period provision of the Labor Code. Is the claim valid? [5%]

SUGGESTED ANSWER:
No. The claim is not valid. The provisions on weekly rest periods in the Labor Code cover every employer, whether operating for profit or not. (See Article 91 of the Labor Code)

Working Hours; Compressed Work Week (2005)
(d) Under what conditions may a "compressed work week" schedule be legally authorized as an exception to the "eight-hour a day" requirement under the Labor Code? (4%)

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

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

Working Hours; Night Shift Differential (2002)
As a tireman in a gasoline station, open twenty four (24) hours a day with only five (5) employees, Goma worked from 10:00 P.M. until 7:00 A.M. of the following day. He claims he is entitled to night shift differential. Is he correct? Explain briefly.

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

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

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

**Working Hours; Saturday Work (2003)**
A case against an employer company was filed charging it with having violated the prohibition against offsetting undertime for overtime work on another day. The complainants were able to show that, pursuant to the Collective Bargaining Agreement (CBA), employees of the union had been required to work "overtime" on Saturday but were paid only at regular rates of pay on the thesis that they were not required to complete, and they did not in fact complete, the eight-hour work period daily from Monday through Friday. Given the circumstances, the employer contended that the employees were not entitled to overtime compensation, i.e., with premium rates of pay. Decide the controversy.

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

**Working Hours; Sick Leave; Overtime Pay (1997)**
Danilo Flores applied for the position of driver in the motor-pool of Gold Company, a multinational corporation. Danilo was informed that he would frequently be working overtime as he would have to drive for the company's executives even beyond the ordinary eight-hour work day. He was provided with a contract of employment wherein he would be paid a monthly rate equivalent to 35 times his daily wage, regular sick and vacation leaves, 5 day-leave with pay every month and time off with pay when the company's executives using the cars do not need Danilo's service for more than eight hours a day, in lieu of overtime.

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

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

Thus, the monthly rate equivalent to 35 times the daily wage may be sufficient to include overtime pay. There is no labor law requiring the payment of sick and vacation leaves except the provision for a five-day service incentive leave in the Labor Code.

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

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

**Working Hours; When Compensable; “While on Call” (2004)**
Gil Bates, a computer analyst and programmer of Hard Drive Company, works eight hours a day for five days a week at the main office providing customers information technology assistance.
On Saturdays, however, the company requires him to keep his cellular phone open from 8:00 A.M. to 5:00 P.M. so that the Management could contact him in case of heavy work load or emergency problems needing his expertise.

May said hours on Saturdays be considered compensable working hours “while on call”? If so, should said compensation be reported to the Social Security System? (5%)

SUGGESTED ANSWER:
Said hours on Saturdays should be considered as compensable working hours “while on call”. In accordance with the Rules and Regulations Implementing the Labor Code, an employee who is not required to leave word at his home or with company officials as to where he may be reached is not working while on call. But in the question, Gil Bates was required to keep his cell phone open from 8:00 A.M. to 5:00 P.M. Therefore, Bates should be considered as working while on call, if he cannot use effectively and gainfully for his own purpose the time from 8:00 A.M. to 5:00 P.M. on Saturdays when he is required to keep his cell-phone open.

The compensation actually received by Bates for working while on call on Saturdays should be reported to the Social Security System because under the Social Security Law, compensation means “all actual remuneration for employment.”

ANOTHER SUGGESTED ANSWER:
If Gil Bates can effectively utilize the Saturdays in his own interest even “while on call”, said hours on Saturdays are not compensable. However, if during said hours on Saturdays, Bates is actually required to attend to urgent work to the extent of leaving what he is doing, then the same are compensable working hours to the extent of the actual hours of work rendered by him.

The compensation paid by the company to Bates for said hours worked on Saturdays should be reported to the SSS. This is so because the basis of computing the SSS contribution includes all actual remuneration, including allowances and cash value of any compensation paid in any medium other than cash.

Working Hours; When Compensable; “While on Call”; Waiting Time (1997)
Lito Kulangkulang and Bong Urongtsulong are employed as truck drivers of Line Movers, Inc. Usually, Lito is required by the personnel manager to just stay at the head office after office hours because he could be called to drive the trucks. While at the head office, Lito merely waits in the manager’s reception room. On the other hand, Bong is allowed to go home after office hours but is required to keep his cellular phone on so that he could be contacted whenever his services as driver becomes necessary.

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

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

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

TERMINATION OF EMPLOYMENT

Backwages (2002)
A. An employee was ordered reinstated with backwages. Is he entitled to the benefits and increases granted during the period of his lay-off? Explain briefly. (3%)

SUGGESTED ANSWER:
A. Yes. An employee who is ordered reinstated with backwages is entitled to the benefits and increases granted during the period of his lay-off. The Supreme Court has ruled: “Backwages are granted for earnings a worker lost due to his illegal dismissal and an employer is obliged to pay an illegally dismissed employee the whole amount of salaries plus all other benefits and bonuses and general increases to which the latter should have been normally entitled had he not been dismissed.” [Sigma Personnel Services v. NLRC, 224 SCRA 181 (1993)]

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

SUGGESTED ANSWER:
A. Yes. An employee who is ordered reinstated with backwages is entitled to the benefits and increases granted during the period of his lay-off. The Supreme Court has ruled: “Backwages are granted for earnings a worker lost due to his illegal dismissal and an employer is obliged to pay an illegally dismissed employee the whole amount of salaries plus all other benefits and bonuses and general increases to which the latter should have been normally entitled had he not been dismissed.” [Sigma Personnel Services v. NLRC, 224 SCRA 181 (1993)]

Backwages vs. Unpaid Wages (1994)
Distinguish between an award for back wages and an award for unpaid wages.

**SUGGESTED ANSWER:**
An award for **BACKWAGES** is to compensate an employee who has been illegally dismissed, for the wages, allowances and other benefits or their monetary equivalent, which said employee did not receive from the time he was illegally dismissed up to the time of his actual reinstatement.

On the other hand, an award for **UNPAID WAGES** is for an employee who has actually worked but has not been paid the wages he is entitled to receive for such work done. (Arts. 279 and 97(1), Labor Code)

**ALTERNATIVE ANSWER:**
An award of **BACKWAGES** is given to an employee who is unjustly dismissed. The cause of action here is the unjust dismissal. On the other hand, an award of **UNPAID WAGES** is given to an employee who has not been paid his salaries or wages for services actually rendered. The cause of action here is non-payment of wages or salaries. (General Baptist Bible College vs. NLRC 219 SCRA 549).

**Backwages; Basis (2001)**
What economic components constitute backwages for a rank and file employee? Are these components equally applicable to a managerial employee? (5%)

**SUGGESTED ANSWER:**
The Labor Code (Art. 279) provides that an employee who is unjustly dismissed from work is entitled to reinstatement and also to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to his actual reinstatement. An employee is entitled to all the above benefit regardless of whether he is a rank-and-file employee or a managerial employee.

However, backwages may also include the 13th month pay which are paid to rank-and-file employees, as well as benefits arising from a CBA given only to employees in the bargaining unit. Managerial employees cannot be given the same since they are ineligible to join a labor organization.

**Backwages; Basis (2001)**
"A" was hired by company "B" in January 1980 until A was illegally dismissed on April 30, 1990 as found by a Labor Arbiter who ordered reinstatement and full backwages from April 30, 1990 until As reinstatement. The Arbiter's decision was promulgated on April 29, 1995. B appealed claiming, among others, that the award for backwages was excessive in that it went beyond three-year rule set forth in Mercury Drug v. CIR (56 SCRA 696). Is B's contention tenable? Why? (5%)

**SUGGESTED ANSWER:**
No, the contention of "B" is not tenable. Rep. Act No. 6715, which was enacted in 1989, in effect set aside the three-year rule set forth in Mercury Drug vs. CIR (56 SCRA 696) when it provided that the full backwages that an unjustly dismissed employee shall receive shall be computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The word "actual" was inserted in the law by Rep. Act No. 6715. Thus, in accordance with the aforesaid law, an unjustly dismissed employee shall receive his full backwages computed from the time his compensation was withheld from him up to the time of his actual reinstatement even if this period is more than three years.

**ANOTHER SUGGESTED ANSWER:**
No, the contention of "B" is not tenable. The Supreme Court (In Ferrer vs. NLRC, July 5, 1993) abandoned the Mercury Drug Rule and in 1996 Bustamante vs. NLRC, 265 SCRA 61 the Supreme Court said:

[Quoting Article 279 of the Labor Code] Under the above quoted provision, it became mandatory to award backwages to illegally dismissed regular employees. The law specifically declared that the award of backwages was to be computed from the time compensation was withheld from the employee up to the time of his reinstatement.

The clear legislative intent of the amendment in RA No. 6715 is to give more benefits to the workers than was previously given them under the Mercury Drug rule. In other words, the provision calling for “full backwages” to illegally dismissed employees is clear, plain and free from ambiguity, and, therefore, must be applied without attempted or strained interpretation.

**Backwages; Basis (2001)**
(a) "A", an employee of Company "B", was found to have been illegally dismissed and was ordered to be reinstated and paid backwages from the time of dismissal until actual reinstatement. The case was elevated all the way to the Supreme Court. By the time the Supreme Court's decision became final and executory, B had closed down and was in the process of winding up. Nonetheless, B paid A his backwages and separation pay. A complained that B's computation was erroneous in that A's allowances was not included. Is A correct in his claim? For what reason(s)? (2%).

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

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

**Dismissal; Authorized Causes (2002)**
B. According to Art 283 of the Labor Code, the lawful or authorized causes for the termination of an employee are:
1. installation of labor saving devices
2. redundancy
3. retrenchment to prevent losses or;
4. closing or cessation of operation of the establishment or undertaking, unless the closing is for the purpose of circumventing the provisions of the Labor Code. Art 284 also provides that an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees.

**Dismissal; Authorized Causes vs. Just Cause (2004)**
What are the authorized causes for a valid dismissal by the employer of an employee? Why are they distinct from the just causes? (5%)

**SUGGESTED ANSWERS:**
The AUTHORIZED CAUSES for a valid dismissal are the following:
1. installation of labor-saving devices
2. redundancy
3. retrenchment to prevent losses
4. the closing or cessation of operation of the establishment or undertaking

**SUGGESTED ANSWERS:**
The authorized causes for a valid dismissal are distinct from just causes because where the dismissal of an employee is based on just causes, these just causes are acts committed by the employee which provide the basis for his dismissal. On the other hand, where the dismissal is based on authorized causes, these authorized causes are the results of the proper exercise by the employer of his management prerogatives.

If a valid dismissal is based on just causes, there is no liability on the part of the employer, although sometimes, financial assistance to be given to the dismissed employee is asked of the employer. If a valid dismissal is based on authorized causes, the employer has to pay separation pay except in case of closure or cessation of operation due to serious business losses or financial reverses.

**Dismissal; Authorized Causes; Closure & Cessation (2001)**
Company "A" was engaged in the manufacture of goods using the by-products of coconut trees and employed some fifty workers who lived in the coconut plantation in Quezon Province. The land upon which A conducted its operation was subjected to land reform under R.A. 6657 for distribution to the tenants and residents of the land. Consequently, A had to close its operations and dismiss its workers. The union representing the employees demanded that A pay the dismissed workers separation pay under Art. 283 of the Labor Code that requires, among others, the payment of separation pay to employees in cases of "closing or cessation of operations of the establishment or undertaking". Is the union's claim correct or not? Why? (5%)

**SUGGESTED ANSWER:**
The union's claim is not correct. In the case of National Federation of Labor vs. NLRC, G.R. No. 127718, March 2, 2000, the Supreme Court ruled that there is no obligation to pay separation pay if the closure is not a unilateral and voluntary act of the employer.

In the question, the closure was brought about not by a unilateral and voluntary act of the employer but due to the act of government in the implementation of the Comprehensive Agrarian Reform Law.

**Dismissal; Authorized Causes; Closure & Cessation of Business; Old Age (2006)**
If the reason for the closure is due to old age of the brothers and sisters:
1. Is the closure allowed by law? (2.5%)
2. Are the employees entitled to separation benefits? (2.5 %)

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

**SUGGESTED ANSWER:**
2. YES. One month pay, or one-half month pay for every year of service, a fraction of at least 6 months or more equivalent to one year, whichever is higher. (Catatista v. NLRC, GR. No. 102422, August 3,1995).
LABOR LAW – Bar Q & A (as arranged by Topics) 1994-2006

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

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

1. As counsel for the corporation, what steps will you take prior to its closure? (2.5%)  
2. Are the employees entitled to separation pay? (2.5%)  

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

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

Dismissal; Authorized Causes; Downsizing Employees (2001)

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

SUGGESTED ANSWER:  
The claim of the employees may or may not be correct. When the Corporation undertook its "downsizing" program, it may have terminated its employees on either one of two grounds, namely, redundancy or retrenchment.

For REDUNDANCY, there is no requirement of losses, whereas in retrenchment, substantial losses, actual or anticipated, is a requirement. (Article 283, Labor Code). In Atlantic Gulf and Pacific Company vs. NLRC, G.R. No. 112546, March 13,1996), except if the CBA provides otherwise (JAKA Foods v. Pacot, G.R. No. 151378, Mar. 28, 2005).

DISMISSAL; AUTHORIZED CAUSES; REDUNDANCY (1999)

FACTS: Harvester Independent Ventures (HIV) adopted a redundancy program to streamline operations. Positions which overlapped each other, or which are in excess of the requirements of the service, were declared redundant. This program resulted in the reduction of manpower complement and consequent termination of fifteen (15) employees, which included the secretary of the local union and the company's Pollution control Officer.

Ilaw at Buklod ng Manggagawa (IBM), questioned the termination of the 15 employees, contending that the same constituted union busting and therefore, illegal, if the same is undertaken without prior union approval.

1. Is IBM correct in its contention that redundancy can be implemented by HIV only upon prior union approval? Why? (3%)  

SUGGESTED ANSWER:  
The Labor Code (in Article 283) very clearly gives the employer the right to terminate any of its employees for redundancy.

2. Can the position of Pollution Control Officer be declared redundant? Why? (2%)  

SUGGESTED ANSWER:  
If there is a law requiring companies to have a Pollution Officer, then HIV cannot declare such office redundant.

If there is no such law, then the Pollution Officer could be considered redundant.  

Panel: Consider case of Escareal. A position created by law cannot be declared redundant.

Dismissal; Authorized Causes; Redundancy (2000)

a) Can redundancy exist where the same is due to the company's failure to properly forecast its manpower requirements? (3%)  
b) Can redundancy exist where the work performed by twelve (12) workers can be performed as efficiently by ten (10) workers by increasing the speed of a machine without detriment to the health and safety of the workers? (3%)  

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

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

Dismissal; Authorized Causes; Retrenchment & Redundancy (2001)

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

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

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

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

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

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

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

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

SUGGESTED ANSWER:
In the case of Asian Alcohol Corp. (supra), the Supreme Court stated that REDUNDANCY exists when the service capability of the work is in excess of what is reasonably needed to meet the demands on the enterprise. A REDUNDANT POSITION is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business dropping of a particular line previously manufactured by the company or phasing out of a service activity previously undertaken by the business. Under these conditions, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.

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

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

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

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

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

Dismissal; Authorized Causes; Retrenchment (1998)
The Company Legal Counsel advised the Board of Directors as follows: "A company cannot retrench to prevent losses until actual losses occur. The Company must wait until the end of the Business Year when its Books of Accounts, Profit and Loss Statement showing the actual loss and Balance Sheet have been audited by an Independent auditing firm."

Is the legal advice of counsel correct? [5%]

SUGGESTED ANSWER:
The legal advice is not correct. The Labor Code (in Article 283) provides that retrenchment may be resorted to "TO PREVENT LOSSES" Thus, there could be legal basis for retrenchment even before actual losses as long as the losses are imminent and serious.

ANOTHER SUGGESTED ANSWER:
The advise of the Company Legal Counsel that an employer cannot retrench to prevent losses until actual losses occur is not correct. The Labor Code provides:

Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee xxx retrenchment to prevent losses.

The law does not require that retrenchment can be undertaken by an employer only after an actual
business loss occurs. The Supreme Court in Lopez Sugar Corporation v. Federation of Free Workers, 189 SCRA 179 (1990), said:

In its ordinary connotation, the phrase “to prevent losses” means that the retrenchment or termination of some employees is authorized to be undertaken by the employer sometime before the losses anticipated are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until sometime after losses shall have in fact materialized; if such an intent were expressly written into law, the law may well be vulnerable to constitutional attack as taking property from one man to another, (underscoring supplied)

Dismissal; Authorized Causes; Retrenchment (2003)

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

SUGGESTED ANSWER:

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

1. Losses or expected losses should be substantial and not merely de minimis;
2. The expected losses must be reasonably imminent, and such imminence can be perceived objectively and in good faith by the employer.
3. It must be necessary and likely to prevent the expected losses. The employer must have taken other measures to cut costs other than labor costs; and
4. Losses if already realized, or the expected losses must be proved by sufficient and convincing evidence. (Lopez Sugar Corp. v. Federation of Sugar Workers. 189 SCRA 179(1990).

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

ANOTHER SUGGESTED ANSWER:

Yes. The authorized cause to dismiss due to redundancy or retrenchment under Art. 283 of the Labor Code has been disproved by Daisy's engaging the services of a substitute checker at a salary much lower than that which Leo used to receive. Also, it appears that the one (1) month notice rule required in said law was not complied with. Such being the case, the twin requirements for a valid dismissal under Arts. 277 (b) and 283 of the Code have clearly not been complied with. That no separation pay was paid Leo, in violation of Art. 283 of the Code, his dismissal can all the more be successfully assailed.

Dismissal; Authorized Causes; Seniority Rule (2001)

(c) Is the SENIORITY RULE or "last in first out" policy to be strictly followed in effecting a retrenchment or redundancy program? (1%).

SUGGESTED ANSWER:

Again, in Asian Alcohol Corp., the Supreme Court stated that with regard the policy of "first in, last out" in choosing which positions to declare as redundant or whom to retrench to prevent further business losses, there is no law that mandates such a policy. The reason is simple enough. A host of relevant factors come into play in determining cost efficient measures and in choosing the employees who will be retained or separated to save the company from closing shop. In determining these issues, management plays a pre-eminent role. The characterization of positions as redundant is an exercise of business judgment on the part of the employer. It will be upheld as long as it passes the test of arbitrariness.

Dismissal; Authorized Causes; Sickness (2004)

A. Gabriela Liwanag has been working as bookkeeper at Great Foods, Inc., which operates a chain of high-end restaurants throughout the country, since 1970 when it was still a small eatery at Binondo. In the early part of the year 2003, Gabriela, who was already 50 years old, reported for work after a week-long vacation in her province. It was the height of the SARS (Severe Acute Respiratory Syndrome) scare, and management learned that the first confirmed SARS death case in the Philippines, a “balikbayan” nurse from Canada, is a townmate of Gabriela. Immediately, a memorandum was issued by management terminating the services of Gabriela on the ground that she is a probable carrier of SARS virus and that her continued employment is prejudicial to the health of her co-employees.
Is the action taken by the employer justified? (5%)

SUGGESTED ANSWER:
The employer's act of terminating the employment of Gabriela is not justified. There is no showing that said employee is sick with SARS, or that she associated or had contact with the deceased nurse. They are merely townmates. Furthermore, there is no certification by a competent public health authority that the disease is of such a nature or such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. (Implementing Rules, Book VI, Rule 1, Sec. 8, Labor Code).

Dismissal; Constructive Dismissal; Floating Status (2004)
RS, a security guard, filed a complaint for illegal dismissal against Star Security Agency. He alleged he was constructively dismissed after ten years of service to the Agency. Having been placed on "off-detail" and "floating status" for 6 months already, he claimed the Agency just really wanted to get rid of him because it required him to take a neuro-psychiatric evaluation test by Mahusay Medical Center. RS said he already submitted the result of his evaluation test by Brent Medical Clinic as precondition to a new assignment, but the report was rejected by the Agency. RS added that Mahusay Medical Center had close ties with Star’s president. It could manipulate tests to favor only those guards whom the Agency wanted to retain. Star defended its policy of reliance on Mahusay Medical Center because it has been duly accredited by the Philippine National Police. It is not one of those dubious testing centers issuing ready-made reports. Star cited its sad experience last year when a guard ran amuck and shot an employee of a client-bank. Star claimed management prerogative in assigning its guards, and prayed that RS’ complaint be dismissed.

What are the issues? Identify and resolve them. (5%)

SUGGESTED ANSWER:
The facts in the question raise these issues:
1. When RS was placed on "off-detail" or "floating status" for more than six months, can RS claim that he was terminated?
2. Is there a valid reason for the termination of RS?

On the first issue, based on prevailing jurisprudence, RS can be considered as terminated because he has been placed on "off detail" or "floating status" for a period which is more than six (6) months.

On the second issue, it is true that disease is a ground for termination. But the neuro-psychiatric evaluation test by the Mahusay Medical Center is not the certification required for disease to be a ground for termination. The Rules and Regulations implementing the Labor Code require a certification by a public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment.

ANOTHER SUGGESTED ANSWER:
The issues involved are as follows:
1. Is there constructive dismissal?
2. Is there a valid exercise of management prerogative?

On the first issue, there is constructive dismissal. RS cannot be placed on "off-detail" and "floating status" indefinitely. If it lasts for more than six (6) months, RS shall be deemed to have been constructively dismissed thus entitling him to separation benefits. (Superstar Security Agency v. NLRC, 184 SCRA 74, [1990]).

On the second issue, there is no valid exercise of management prerogative. Star’s claim of management prerogative in assigning its guards cannot be exercised to defeat or circumvent RS’ right to security of tenure.

Dismissal; Constructive Dismissal; Transfer (1996)
Mansueto was hired by the Philippine Packing Company (PPC) sometime in 1960 as an hourly paid research field worker at its pineapple plantation in Bukidnon. In 1970, he was transferred to the general crops plantation in Misamis Oriental. Mansueto was promoted to the position of a monthly paid regular supervisor four years after.

Subsequently, research activity in Misamis Oriental was phased out to March of 1982 for having become unnecessary. Mansueto thereafter received a written memorandum from the PPC, reassigning him to the Bukidnon plantation effective April 1, 1982, with assurance that his position of supervisor was still there for him to hold. Mansueto tried to persuade the PPC management to reconsider his transfer and if this was not possible, to at least consider his position as redundant so that he could be entitled to severance pay. PPC did not accept Mansueto’s proposal.

When Mansueto continuously failed to report for work at the Bukidnon plantation, PPC terminated his employment by reason of his refusal to accept his new assignment.

Mansueto claims that his reassignment is tantamount to an Illegal constructive dismissal. Do you agree with Mansueto? Explain.

SUGGESTED ANSWER:
There is no constructive dismissal by the mere act of transferring an employee. The employee's contention cannot be sustained simply because a transfer causes inconvenience. There is no constructive dismissal where, as in Philippine Japan Active Carbon Corp., vs. NLRC, 171 SCRA 164 (1989), the Court ruled that constructive dismissal means:

A quitting because continued employment is rendered impossible, unreasonable or unlikeable; as an offer involving a demotion in rank and a diminution in pay.

The transfer will not substantially alter the terms and conditions of employment of the Supervisor. The right to transfer an employee is part of the employer's managerial function.

Furthermore, the Court ruled that an employee has no vested right to a position, and in justifiable cases employment may be terminated.

An employer's right to security of tenure does not give him such a vested right to his position as would deprive the Company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, not inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.

**Dismissal; Damages Recoverable (2001)**

What damages can an illegally dismissed employee collect from his employer? (2%).

**SUGGESTED ANSWER:**

An illegally dismissed employee may collect from his employer ACTUAL or COMPENSATORY damages, MORAL damages and EXEMPLARY damages, as well as attorney's fees as damages.

**ANOTHER SUGGESTED ANSWER:**

Moral and exemplary damages are only proper where the employee has been harassed and arbitrarily terminated by the employer, Nueva Ecija vs. Electric Cooperative Employees Association (G.R. No. 116066, January 24, 2000; Cruz vs. NLRC, G.R. No. 16384. February 7, 2000; Philippine Aeolus etc., vs. Chua (G.R. No. 124617, April 28, 2000; and Lucas vs. Royo, G.R. No. 136185, October 30, 2000).

(b) May the Labor Arbiter, NLRC or Court of Appeals validly award attorney's fees in favor of a complainant even if not claimed or proven in the proceedings? Why? (3%).

**SUGGESTED ANSWER:**

A Labor Arbiter, NLRC and Court of Appeals may validly award attorney's fees in favor of a complainant only if the claimant claimed and proved that he is entitled to attorney's fees.

**ANOTHER SUGGESTED ANSWER:**

Article 2208 of the New Civil Code allows the award of attorney's fees when the defendant's act or omission has compelled the plaintiff to litigate or incur expenses to protect his interest. Attorney's fees may be considered as a part of an equitable relief awarded in the concept of damages.

**Dismissal; Due Process; Requirements (1994)**

1) Distinguish between the substantive and the procedural requirements for the dismissal of an employee.

**SUGGESTED ANSWER:**

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

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

**Dismissal; Due Process; Requirements (2006)**

Inday was employed by Herrera Home Improvements, Inc. (Herrera Home) as interior decorator. During the first year of her employment, she did not report for work for one month. Hence, her employer dismissed her from the service. She filed with the Labor Arbiter a complaint for illegal dismissal alleging she did not abandon her work and that in terminating her employment, Herrera Home deprived her of her right to due process. She thus prayed that she be reinstated to her position.

Inday hired you as her counsel. In preparing the position paper to be submitted to the Labor Arbiter, explain the standards of due process which should have been observed by Herrera Home in terminating your client's employment. (5%)

**SUGGESTED ANSWER:**

The Labor Code provides the following procedure to be observed in terminating the services of an employee based on just causes as defined in Art. 283 of the Code:

a. A written notice must be served on the employee specifying grounds for termination and giving him opportunity to answer;

The employee shall be given ample opportunity to defend himself, with or without the assistance of
dismissal of Yosi Cigarette Factory. As a result, he was dismissed from employment by the Wagan Security Agency, an independent contractor. At the time of his dismissal, Antonio had been serving as a watchman in the factory for many years, often at stretches of up to 12 hours, even on Sundays and holidays, without overtime, nighttime and rest day benefits. He thereafter filed a complaint for illegal dismissal and non-payment of benefits against Yosi Cigarette Factory, which he claimed was his actual and direct employer.

As the Labor Arbiter assigned to hear the case, how would you correctly resolve the following: (6%)

(a) Antonio’s charge of illegal dismissal;

SUGGESTED ANSWER:
This is a case involving permissible job contracting. Antonio’s charge of illegal dismissal against Yosi Cigarette Factory will not prosper. Wagan Security Agency, an independent contractor, is Antonio’s direct employer. Yosi is only Antonio’s indirect employer. By force of law, there is in reality no employer-employee relationship between Yosi and Wagan Security Agency.
**Antonio.** (Baguio v. NLRC, G.R. Nos. 79004-08, October 4, 1991)

**b) Antonio’s claim for overtime and other benefits.**

**SUGGESTED ANSWER:**
I will dismiss Antonio’s claim for overtime and other benefits for lack of merit as against Yosi. In legitimate job contracting, the principal employer (Yosi) becomes jointly and severally liable with the job contractor (Wagan) only for the payment of the employee’s (Antonio) wages whenever the contractor fails to pay the same. Other than that, the principal employer (Yosi) is not responsible for any other claim made by the employee (Antonio).

(San Miguel Corp. v. MAERC Integrated Services, Inc., G.R. No. 144672, July 10, 2003)

**Dismissal; Just Cause; Misconduct (1996)**

Sergio, an employee of Encantado Philippines, Inc. (EPI), was at the company canteen when Corazon, a canteen helper, questioned him for his use of somebody else’s identification card (ID). Sergio flared up and shouted at Corazon "Wala kang pakialam! Kung gusto mo, itapon ko itong mga pagkain ninyo!". When Sergio noticed that some people where staring at him rather menacingly, he left the canteen but returned a few minutes later to remark challengingly "Sino ba ang nagagalit" Sergio then began smashing some food items that were on display for sale in the canteen, after which he slapped Corazon which caused her to fall and suffer contusions. The incident prompted Corazon to file a written complaint with Gustavo, the personnel manager of EPI, against Sergio.

Gustavo required Sergio to explain in writing why no disciplinary action should be taken against him. In his written explanation, Sergio admitted his misconduct but tried to explain it away by saying that he was under the influence of liquor at the time of the incident. Gustavo thereafter issued a letter of termination from the employment of Sergio for serious misconduct.

Sergio now flies a complaint for illegal dismissal, arguing that his acts did not constitute serious misconduct that would justify his dismissal. Decide.

**SUGGESTED ANSWER:**
The acts of Sergio constituted serious misconduct. Thus, there was just cause for his termination. The fact that he was under the influence of liquor at the time that he did what he did does not mitigate, instead it aggravates, his misconduct. Being under the influence of liquor while at work is by itself serious misconduct.

**ALTERNATIVE ANSWER:**
The dismissal is not justified because the serious misconduct committed by the employee is not in connection with his work. Art. 282(g) of the Labor Code was interpreted by the Supreme Court in Aris Philippines, Inc. v. NLRC, as follows:

"It is not disputed that private respondent has done, indeed he admitted to have committed, a serious misconduct. In order to constitute a "just cause" for dismissal, however, the act complained of must be related to the performance of the duties of the employee such as would show him to be thereby unfit to continue working for the employer."

**Dismissal; Just Cause; Probationary Employees; Rights (2006)**

During their probationary employment, eight (8) employees were berated and insulted by their supervisor. In protest, they walked out. The supervisor shouted at them to go home and never to report back to work. Later, the personnel manager required them to explain why they should not be dismissed from employment for abandonment and failure to qualify for the positions applied for. They filed a complaint for illegal dismissal against their employer.

As a Labor Arbiter, how will you resolve the case?

**SUGGESTED ANSWER:**
As a Labor Arbiter I will resolve the case in favor of the eight (8) probationary employees due to the following considerations:

2. In all cases involving employees on probationary status, the employer shall make known to the employee at the time he is hired, the standards by which he will qualify for the positions applied for.
3. The filing of the complaint for illegal dismissal effectively negates the employer’s theory of abandonment (Rizada v. NLRC, G.R. No. 96982, September 21, 1999).
4. The order to go home and not to return to work constitutes dismissal from employment.
5. The eight (8) probationary employees were terminated without just cause and without due process.

In view of the foregoing, I will order reinstatement to their former positions without loss of seniority rights with full backwages, plus damages and attorney fees.

**Dismissal; Just Cause; Requirements (1999)**

**FACTS:** Joseph Vitriolo (JV), a cashier of Seaside Sunshine Supermart (SSS), was found after an audit, to have cash shortages on his monetary accountability covering a period of about five months in the total amount of P48,000.00. SSS served upon JV the written charge against him via a memorandum order of preventive suspension,
giving JV 24 hours to submit his explanation. As soon as JV submitted his written explanation within the given period, the same was deemed unsatisfactory by the company and JV was peremptorily dismissed without any hearing.

The day following his termination from employment, JV filed a case of illegal dismissal against SSS. During the hearing before the Labor Arbiter, SSS proved by substantial evidence JV's misappropriation of company funds and various infractions detrimental to the business of the company. JV, however, contended that his dismissal was illegal because the company did not comply with the requirements of due process.

I. Did SSS comply with the requirements of procedural due process in the dismissal from employment of JV? Explain briefly (2%)

**SUGGESTED ANSWER:**
In connection with the right to due process in the termination of an employee, the Labor Code (in Article 277[b]) requires that the employer furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires.

SSS did not comply with the above described requirements for due process. The memorandum order was for the preventive suspension of JV, not a notice for his termination and the causes of his termination.

2. If you were the Labor Arbiter, how would you decide the case? Explain briefly (3%)

**SUGGESTED ANSWER:**
I will decide that the termination of JV was legal. It was for just cause. JV's misappropriation of company funds and various infractions detrimental to the business of the company duly proven by substantial evidence constitute a willful breach by JV of the trust reposed in him by his employer which is a just cause for termination. (See Article 282)

But I will award him indemnity of, say P1,000, for the failure of the employer to give him due process.

**Dismissal; Just Cause; Separation Pay (1996)**

1) Daisy, the branch manager of Tropical Footwear Inc., was dismissed for serious misconduct. She filed a complaint for illegal dismissal and damages. The Labor Arbiter sustained Daisy's dismissal but awarded her separation pay based on social justice and as an act of compassion considering her 10-year service with the company.

Was the award of the separation pay proper? Explain.

**SUGGESTED ANSWER:**
No, the award of separation pay is not proper because the employee was terminated for serious misconduct and payment of separation pay will be to reward an employee for a wrong doing. In Philippine Long Distance Telephone Co., vs NLRC, 164 SCRA 671 (1988).

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting his moral character.

The policy of social justice is not intended to countenance wrongdoing. Compassion for the poor is an imperative of every human society but only when the recipient is not a rascal claiming an undeserve privilege. Those who invoke social justice may do so only if their hands are clean and their motives blameless.

A contrary rule would have the effect of rewarding rather than punishing the erring employee for his offense.

**ALTERNATIVE ANSWER:**
The award of the separation pay was not proper. According to the Labor Code, SEPARATION PAY is to be paid to an employee whose employment is terminated due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking. When an employer terminates the services of an employee who has been found to be suffering from any disease, the employee is also to be paid separation pay.

But on the basis of equity, the Supreme Court has ruled that an employee whose employment has been terminated for just cause may nevertheless, for humanitarian reasons, be granted financial assistance in the form of separation pay. But also according to the Supreme Court, a terminated employee is not deserving of said financial assistance if her termination is due to serious misconduct.

In the case, Daisy was dismissed because of serious misconduct. Thus, she should not be paid separation pay.

**Dismissal; Just Causes (2001)**

"A" worked for company "B" as a rank and file employee until April 1990 when A's services were terminated due to loss of confidence in A. However, before effecting A's dismissal, B accorded A due process including full opportunity
to answer the charges against him in the course of the investigation. Was B justified in dismissing A after the investigation? Why? (5%)

**SUGGESTED ANSWER:**
In the case of PLDT vs. NLRC (G.R. No. 106947, February 11, 1999), the Supreme Court ruled that the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned must be one holding a position of trust and confidence.

Rank-and-file employees may only be dismissed for loss of confidence if the same is because of a willful breach of trust by a rank and file employee of the trust reposed in him by his employer or duly authorized representative (Art. 282(c), Labor Code).

**ANOTHER SUGGESTED ANSWER:**
"B" is justified in dismissing "A" for loss of confidence after according him the right to procedural due process. However, the following guidelines must be observed, as ruled in Nokom vs. NLRC, G.R. No. 140034. July 18, 2000:
1. loss of confidence should not be simulated;
2. it should not be used as subterfuge for causes which are improper, illegal or unjustified;
3. it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and
4. it must be genuine, not a mere after thought to justify their action

**Dismissal; Just Causes vs. Authorized Causes (2000)**
Distinguish between dismissal of an employee for just cause and termination of employment for authorized cause. Enumerate examples of just cause and authorized cause. (5%)

**SUGGESTED ANSWER:**
Dismissal for a JUST CAUSE is founded on faults or misdeeds of the employee. Separation pay, as a rule, will not be paid. Examples: serious misconduct, willful disobedience, commission of crime, gross and habitual neglect, fraud and other causes analogous to the foregoing. (Art 282, Labor Code).

Termination for AUTHORIZED CAUSES are based on business exigencies or measures adopted by the employer, not constituting faults of the employee. Payment of separation pay at varying amounts is required. Examples: redundancy, closure, retrenchment, installation of labor saving device and authorized cause. (Art. 283-284, Labor Code).

**Dismissal; Just Causes; Disobedience (1995)**
Roman had been a driver of Double-Ten Corporation for ten (10) years. As early as his fifth year in the service he was already commended as a Model Employee and given a salary increase. On his seventh year, he became a steward of his labor union. Since then he became disputatious and obstinate and his performance fell below par. One day his manager told him to pick up some documents from a certain bank which were needed to close a business transaction. Roman did not obey. He said he had an important personal engagement. Moreover, he did not want to drive a vehicle that was not air-conditioned. When his immediate supervisor asked him in the afternoon to drive an air-conditioned car, Roman again refused. He said he did not want to drive as he wanted to leave the office early.

Roman was asked to explain. After hearing his explanation, Roman was dismissed for willful disobedience. Roman filed a case for illegal dismissal against the Double-Ten Corporation with prayer for reinstatement and full back wages without loss of seniority rights, plus moral and exemplary damages and attorney's fees. Roman contended that since there was no emergency situation and there were other drivers available, his refusal to drive for the manager, and later for his supervisor, was not serious enough to warrant his dismissal. On the other hand, he claimed that he was being punished because of his activities as a steward of his union. If you were the Labor Arbiter, would you sustain Roman? Discuss fully.

**SUGGESTED ANSWER:**
If I were the Labor Arbiter, I will not sustain Roman. It is true that it would be an unfair labor practice for an employer to discriminate against his employee for the latter's union activities.

But in the case, the Corporation is not discriminating against Roman because he is a union official. When the Manager of Roman told him to pick up some documents from a certain bank, this was a lawful order and when Roman did not obey the order, he was disobedient; and when he disobeyed a similar request made later in the afternoon of same day, he was guilty of willful disobedience to do what management asked him to do. This is just cause for his termination.

**ALTERNATIVE ANSWER:**
a) No. The existence of an emergency situation is irrelevant to the charge of willful disobedience; an opposite principle would allow a worker to shield himself under his self-designed concept of "non-emergency situation" to deliberately defy the directive of the employer.

b) If it can be established that the true and basic motive for the employer's act is derived from the
employee's union affiliation or activities, the allegation by the employer of another reason whatever its substance of validity, is unwavering. Thus, the dismissal could be considered illegal.

Dismissal; Just Causes; Disobedience (2003)
Oscar Pimentel was an agent supervisor, rising from the ranks, in a corporation engaged in real estate. In order to promote the business, the company issued a memorandum to all agent supervisors requiring them to submit a feasibility study within their respective areas of operation. All agent supervisors complied except Oscar. Reminded by the company to comply with the memorandum, Oscar explained that being a drop-out in school and uneducated, he would be unable to submit the required study. The company found the explanation unacceptable and terminated his employment. Aggrieved, Oscar filed a complaint for illegal dismissal against the company. Decide the case.

SUGGESTED ANSWER:
For failure to comply with the memorandum to submit a feasibility study on his area of operation, Oscar can not be terminated (presumably for insubordination or willful disobedience) because the same envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, or lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

In the case at bar, at least two requisites are absent, namely: (1) Oscar did not willfully disobey the memorandum with a perverse attitude; and (2) the directive to make a feasibility study did not pertain to his duties. Hence, the termination from employment of Oscar Pimentel is not lawful.

Dismissal; Just Causes; Insubordination (1999)
FACTS: Mariet Demetrio was a clerk-typist in the Office of the President of a multi-national corporation. One day she was berated by the President of the company, the latter shouting invectives at her in the presence of employees and visitors for a minor infraction she committed. Mariet was reduced to tears out of shame and felt so bitter about the incident that she filed a civil case for damages against the company president before the regular courts. Soon thereafter, Mariet received a memorandum transferring her to the Office of the General Manager without demotion in rank or diminution in pay. Mariet refused to transfer.

With respect to the civil suit for damages, the company lawyer filed a Motion to Dismiss for lack of jurisdiction considering the existence of an employer-employee relationship and therefore, it is claimed that the case should have been filed before the Labor Arbiter.

1. Will Mariet Demetrio's refusal to transfer constitute the offense of insubordination? Explain briefly. (2%)

SUGGESTED ANSWER:
Mariet Demetrio's transfer constitutes the offense of insubordination. The transfer is a lawful order of the employer.

It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move its employees around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not refuse to obey the order of transfer. (Philippine Japan Active Carbon Corp. V. NLRC, 171 SCRA 164)

Dismissal; Just Causes; Misconduct (1995)
Universal Milling Company (UNIVERSAL) and Mara's Canteen (MARA'S) executed an agreement that UNIVERSAL employees patronizing MARA'S could buy food on credit and enjoy a 25% discount provided that they present their Identification Card (ID) and wear their company uniform. Nikko, an employee of UNIVERSAL, used the ID of Galo, a co-employee in buying food at MARA'S. An alert employee of MARA'S discovered the misrepresentation of Nikko but not without engaging him in a heated argument. Nikko boxed MARA'S employee resulting in serious physical injuries to the latter. UNIVERSAL dismissed Nikko from the company. Nikko sued UNIVERSAL for illegal dismissal.

As Labor Arbiter, how would you decide the case? Discuss fully.

SUGGESTED ANSWER:
There is ground for disciplining Nikko. In presenting the ID of a co-employee to buy food at Mara's at a discount and engaging in a fist fight, these acts of Nikko constitute misconduct. But it is not the kind of serious misconduct that could be the basis of dismissal. It will be noted that the fight did not take place at the workplace.

ALTERNATIVE ANSWER:
The facts are not clear whether the canteen is within the company premises. If it is, then the act of Nikko in boxing Mara’s employee may be considered as a valid ground for disciplinary action. However, in this case, the penalty of dismissal is not commensurate to the misconduct allegedly committed.

**Dismissal; Just Causes; Quitclaims (1999)**

Can a final and executory judgment be compromised under a "Release and Quitclaim" for a lesser amount? (3%)

**SUGGESTED ANSWER:**

Yes, as long as the "Release and Quitclaim" is signed by the very same person entitled to receive whatever is to be paid under the final and executory judgment that was the subject of the compromise agreement and that the "Release and Quitclaim" was signed voluntarily.

In Alba Patio de Makati v. NLRC: A final and executory judgment can no longer be altered, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Moreover, a final and executory judgment cannot be negotiated, hence, any act to subvert it is contemptuous.

It was incumbent upon the counsel for the complainant to have seen to it that the interest of all complainants was protected. The quitclaim and the release in the preparation of which he assisted clearly worked to the grave disadvantage of the complainants. To render the decision of this Court meaningless by paying the back-wages of the affected employees in a much lesser amount clearly manifested a willful disrespect of the authority of this Court as the final arbiter of cases brought to it.

**A final and executory judgment cannot be compromised under a "Release and Quitclaim"**

If said "Release and Quitclaim is clearly to the grave disadvantage of the affected employees by paying them much lesser amounts than what they were entitled to receive under the judgment. (See Alba Patio de Makati vs. NLRC, 201 SCRA 355).

2. May an ordinary rank-and-file employee be terminated for loss of trust and confidence? If so, what proof is required? If not, why not? (2%)

**SUGGESTED ANSWER:**

An ordinary rank and file employee may be terminated for loss of trust and confidence as long as loss of trust and confidence is brought about objectively due to a willful breach by the employee of the trust reposed in him by his employer or duly authorized representative, and said willful breach is proven by substantial evidence.

When adequately proven, the dual grounds of breach of trust and loss of confidence constitute valid and ample bases to warrant termination of an errant employee. As a general rule, however, employers are allowed a wider latitude of discretion in terminating the employment of managerial personnel or those of similar rank performing functions which by their nature requires the employer's full trust and confidence, than in the case of an ordinary rank-and-file employee, whose termination on the basis of these same grounds requires proof of involvement in the events in question; mere uncorroborated assertions and accusations by the employer will not suffice. (Manila Midtown Commercial Corporation v. Nuwhrain. 159 SCRA 212).

**Dismissal; Liability; Corporate Officers (1997)**

Are the principal officers of a corporation liable in their personal capacity for non-payment of unpaid wages and other monetary benefits due its employees?

**SUGGESTED ANSWER:**

As a general rule, the obligations incurred by the principal officers and employees of a corporation are not theirs but the direct accountabilities of the corporation they represent.

However, SOLIDARY LIABILITIES may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases: when directors and trustees or, in appropriate cases, the officers of a corporation:

(1) vote for or assent to patently unlawful acts of the corporation;
(2) act in bad faith or with gross negligence in directing the corporate affairs;
(3) are guilty of conflict of Interest to the prejudice of the corporation, its stockholders or members, and other persons.

In labor cases, the Supreme Court has held corporate directors and officers solidarity liable with the corporation for the termination of employment of employees done with malice or bad faith. (Sunio v. NLRC. 127 SCRA 390; General Bank and Trust Co. v. Court of Appeals, 135 SCRA 659).

**ALTERNATIVE ANSWER:**

No. Unless they are guilty of malice or bad faith in connection with the non-payment of unpaid wages and other monetary benefits due to employees.

**Dismissal; Payroll Reinstatement (2005)**

(c) What is meant by "payroll reinstatement" and when does it apply? (4%)

**SUGGESTED ANSWER:**
PAYROLL REINSTATEMENT is one where an employee is paid his monthly salary without making him perform actual work. It applies in termination cases where the labor court declares the dismissal illegal and orders reinstatement of the employee, but the employer does not want to actually or physically reinstate him and instead, at the employer's option, merely reinstates the employee in the payroll pending appeal.

Dismissal; Payroll Reinstatement; Reinstatement Order (1999)

FACTS: In the illegal dismissal case filed by Sharon Cometa against Up & Down Company, the labor Arbiter rendered a decision directing her immediate reinstatement and payment of full backwages. The Company appealed to the NLRC. Following her lawyer's advise that the reinstatement aspect of the decision is immediately executory, Sharon went to the HRD Office of the Company and demanded immediate reinstatement. When the Company refused, her lawyer, Atty. Maximiano Anunciacion, filed a motion to cite the employer in contempt. Acting on the motion, the NLRC ordered the payroll reinstatement of Sharon Cometa.

1. Can the company or any of its officials be cited for contempt for refusing to reinstate Sharon Cometa? Why? (3%)

SUGGESTED ANSWER:
Yes. The company or any of its officials can be cited for contempt. It is noted that in his decision, the Labor Arbiter specifically directed the immediate reinstatement of Sharon Cometa. This directive under the Labor Code (Article 223) is immediately executory, even pending appeal. (Pioneer Texturizing Corporation v. NLRC, 280 SCRA 806)

ALTERNATIVE ANSWER:
Yes. Under Art. 223 of the Labor Code, an employer has two options in order for him to comply with an order of reinstatement, which is immediately executory, even pending appeal.

FIRSTLY, he can admit the dismissed employee back to work under the same terms and conditions prevailing prior to the employee's dismissal or, at the option of the employer, merely reinstated in the payroll. Failing to exercise any of the above options, the employer can be compelled under PAIN OF CONTEMPT, to pay instead the salary of the employee effective from the date the employer failed to reinstate despite an executory writ of execution served upon him. Under Art. 218 of the Labor Code, the NLRC has the power to cite persons for direct and indirect contempt.

ANOTHER ALTERNATIVE ANSWER:

In a case (Maranaw Hotel Corp. v. NLRC, 238 SCRA 191), the Supreme Court said that although the reinstatement aspect of a Labor Arbiter's decision was immediately executory, it does not follow that it is self-executory. There must still be a writ of execution issued motu proprio or upon motion of the interested party. (See Article 224)

2. May the NLRC order the payroll reinstatement of Sharon Cometa? Why? (2%)

SUGGESTED ANSWER:
The NLRC may NOT order the payroll reinstatement of Sharon Cometa. The Labor Code (Article 223) provides that in the immediate reinstatement of a dismissed employee, the employee shall be admitted back to work under the same terms and conditions prevailing prior to the employee's dismissal or, at the option of the employer, merely reinstated in the payroll. Thus, the reinstatement of the employee in the payroll is at the option of the employer and not of the NLRC or the Labor Arbiter who have the power only to direct reinstatement.

Dismissal; Reinstatement (1994)

May a court order the reinstatement of a dismissed employee even if the prayer of the complaint did not include such relief?

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

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

Dismissal; Reinstatement (1995)

Give at least five (5) instances when an illegally dismissed employee may not be reinstated.

SUGGESTED ANSWER:
Five [5] instances when an illegally dismissed employee may not be reinstated:
(1) When the position held by the illegally dismissed employee has been abolished and there is no substantially equivalent position for said employee;
(2) When the employer has ceased to operate;
(3) When the employee no longer wishes to be reinstated;
(4) When strained relations between the employer and the employee have developed and
(5) When the employer has lost his trust and confidence in the employee who is holding a position of trust and confidence.

In addition to the above, an illegally dismissed employee may not be reinstated:

(1) When he is already entitled to retire at the time he is to be reinstated;
(2) When he is already dead;
(3) When reinstatement will not serve the interest of the parties; and
(4) When he has obtained regular and substantially equivalent employment elsewhere.

Dismissal; Requirements (1998)
Assuming the existence of valid grounds for dismissal, what are the requirements before an employer can terminate the services of an employee? [5%]

SUGGESTED ANSWER:
The employee being terminated should be given DUE PROCESS by the employer.

For termination of employment based on any of the JUST CAUSES for termination, the requirements of due process that the employer must comply with are:

1. A WRITTEN NOTICE should be served on the employee specifying the ground or grounds for termination and giving to said employee reasonable opportunity within which to explain his side.
2. A HEARING or CONFERENCE should be held during which the employee concerned, with the assistance of counsel if the employee so desires, is given the opportunity to respond to the charge, present his evidence and present the evidence presented against him.
3. A WRITTEN NOTICE OF TERMINATION, if termination is the decision of the employer, should be served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

For termination of employment based on AUTHORIZED CAUSES, the requirements of due process shall be deemed complied with upon service of a WRITTEN NOTICE to the employee and the appropriate Regional Office of the Department of Labor & Employment at least thirty (30) days before the effectivity of the termination specifying the ground or grounds for termination.

ANOTHER SUGGESTED ANSWER:
Assuming that there is a valid ground to terminate employment, the employer must comply with the requirement of PROCEDURAL DUE PROCESS - written notice of intent to terminate stating the cause for termination; Hearing; and Notice of Termination.

The Labor Code reads: A. Notice and Hearing
Art, 277. Miscellaneous provisions. - xxx
(b) xxx The employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires ...

The Supreme Court ruled in Salaw v, NLRC, 202 SCRA 7 (1991)

xxx Not only must the dismissal be for a valid or unauthorized cause as provided by law xxx but the rudimentary requirements of due process - notice and hearing - must also be observed before an employee must be dismissed.

B. Two (2) Notice Requirements -
The Supreme Court in Tanala v. NLRC 252 SCRA 314 (1996), and in a long line of earlier cases, ruled:

xxx This Court has repeatedly held that to meet the requirements of due process, the law requires that an employer must furnish the workers sought to be dismissed with two written notices before termination of employment can be legally effected, that is, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) subsequent notice, after due hearing, which informs the employee of the employers decision to dismiss him.

Dismissal; Requirements (1999)
FACTS: On September 3, 1998, the National Bureau of Investigation (NBI) extracted from Joko Diaz — without the assistance of counsel — a sworn statement which made it appear that Joko, in cahoots with another employee, Reuben Padilla, sold ten (10) cash registers which had been foreclosed by North-South Bank for P50,000.00 and divided the proceeds therefrom in equal shares between the two of them.

On September 10, 1998. Joko was requested by Rolando Bato, the bank manager, to appear before the Disciplinary Board for an investigation in the following tenor: “You are requested to come on Thursday, September 14, 1998, at 11:00 a.m. the Board Room, without counsel or representative, in connection with the investigation of the foreclosed cash registers which you sold without authority.”

Mr. Bato himself conducted the investigation, and two (2) days thereafter, he dismissed Joko. The bank premised its action in dismissing Joko solely on the latter's admission of the offense imputed to
him by the NBI in its interrogation on September 3, 1998. Aside from this sworn statement, no other evidence was presented by the bank to establish the culpability of Joko in the fraudulent sale of the bank's foreclosed properties.

1. Is the dismissal of Joko Diaz by North-South Bank legally justified? Explain briefly. (3%)

**SUGGESTED ANSWER:**
The dismissal of Joko Diaz by North-South Bank is not legally justified, Diaz was not given the required due process by the Bank. He should have been given a written notice that he was being terminated and a statement of the causes for his termination.

He was instead given a just notice about an investigation relative to an incident.

It was also contrary to law for the Bank to tell Diaz that he should attend the investigation "without counsel or representative." Instead, he should have been afforded as provided in the Labor Code (in Article 277 [b]) ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires.

If the evidence that was the basis for the termination of Joko Diaz was only his own statement "extracted" from him by the NBI when Joko was without the assistance of counsel, then the statement cannot be substantial evidence for Joko's termination.

**ALTERNATIVE ANSWER:**
No. Under Sec. 12 of Art. in of the 1987 Constitution any "confession or admission obtained in violation of Sec. 12 and 17 shall be inadmissible in evidence against him". Since the sole basis for his dismissal was the confession procured by the NBI in violation of his right to counsel which is inadmissible for any purpose and any proceeding including an administrative case, his dismissal is illegal. Diaz’s termination is likewise illegal because he was deprived of his right to due process since during the investigation he was required to attend without counsel or representative.

2. Can Reuben Padilla’s participation in the fraudulent sale of the bank’s foreclosed properties be made to rest solely on the unilateral declaration of Joko Diaz? Why? (2%)

**SUGGESTED ANSWER:**
No. The unilateral declaration of Joko, where Joko has not been subjected to cross-examinations cannot be considered as substantial evidence; it is just hearsay.

**ALTERNATIVE ANSWER:**
No. The unilateral declaration of Joko is not enough. Such declaration must be corroborated by other competent and convincing evidence. At the very least, what the Bank should do should be to confront Reuben Padilla with the declaration of Joko (Century Textile Mills, Inc. vs. NLRC, 161 SCRA628).

**Dismissal; Requirements; Suspension of Termination (1994)**
Atty. Oliza heads the legal department of Company X with the rank and title of Vice-President. During his leave of absence, his assistant took over as acting head of the legal department. Upon his return, Atty. Oliza was informed in writing that his services were no longer needed, it appearing that the Company had lost so many cases by default due to his incompetence. Atty. Oliza filed a case for illegal dismissal.

1) Will his case prosper?
2) Pending hearing, may Atty. Oliza ask the Secretary of Labor to suspend the effects of the termination of the services of an employee and to order his temporary reinstatement?

**SUGGESTED ANSWER:**
1) His case will prosper. He was not given procedural due process. He was not given the required notice, namely, a written notice containing a statement of the causes for termination, and he was not afforded ample opportunity to be heard and to defend himself.

But if, before the Labor Arbiter, in a hearing of the case of illegal dismissal that Atty. Oliza may have filed, he is found to be grossly incompetent, this is just cause for his dismissal. (Art. 277(b), Labor Code)

**ALTERNATIVE ANSWER:**
Yes. The examinee submits that Atty. Oliza's case will prosper. Well-settled is the rule that even managerial employees are entitled to the constitutional guarantee of security of tenure. In the case at bar, there was a clear deprivation of Atty. Oliza's right to due process. The blanket accusation of "incompetence" hardly qualifies as compliance with the substantive requirements for an employee's dismissal. The written notice that his services were no longer needed also fall short of the procedural requirements of notice and opportunity to be heard, the twin ingredients of due process.

2) The Labor Code gives the Secretary of Labor and Employment the power to suspend the effects of a termination made by an employer pending resolution of a labor dispute in the event of a prima facie finding by the Department of Labor and Employment before whom such dispute is pending that the termination may cause serious labor dispute or is in implementation of a mass lay-off.

The termination of Atty. Oliza does not cause a serious labor dispute considering that he is a
managerial employee. It is not in implementation of a mass lay-off. Thus, pending hearing, the Secretary of Labor and Employment may not suspend the effects of the termination and order his temporary reinstatement. (Art. 277[b])

Dismissal; Requisites; Reinstatement
Juan Dukha, a bill collector of Ladies Garments Company, was dismissed because he did not remit his collections. He filed a case against his company for illegal dismissal. During the hearing, the President of the Company admitted that Juan was never formally investigated for his dishonesty; neither was he informed of the nature of the charge against him. He was simply barred from entering company premises by the security guards upon instruction of management.

Juan Dukha asks for immediate reinstatement with full back wages and without loss of seniority rights. Will the complaint of Juan Dukha for illegal dismissal prosper? Explain.

SUGGESTED ANSWER:
Yes, there may be just cause for terminating Juan Dukha. But he was not accorded the required due process of law.

ALTERNATIVE ANSWER:
The complaint of Juan Dukha for illegal dismissal will prosper in the sense that the complaint will be heard by a Labor Arbiter. His being barred from entering company premises by the security guards is tantamount to dismissal. In the hearing, the employer will have the burden of proving that there is just cause for terminating Juan, possibly on the basis of willful breach of trust. On the other hand, Juan will be given the opportunity to prove that his failure to remit his collection is not because of dishonesty.

2. Assuming that he cannot be reinstated, what right can he immediately assert against his employer? Explain.

SUGGESTED ANSWER:
Assuming that Juan cannot be reinstated because there is just cause for his dismissal, he would nevertheless be entitled to an indemnity from his employer, because he was denied due process of law by said employer.

ALTERNATIVE ANSWER:
Juan can pursue the case of illegal dismissal before a Labor Arbiter where he will assert the right to defend himself, i.e., to explain his failure to remit his collections.

3. Suppose Juan Dukha proved during the hearing that he was robbed of his collections and, consequently, the Labor Arbiter decided in his favor. In the meantime, the Ladies Garments Company appealed to the National Labor Relations Commission (NLRC).

Pending appeal, what rights are available to Juan relative to the favorable decision of the Labor Arbiter? Explain.

SUGGESTED ANSWER:
Juan can ask for immediate reinstatement pending resolution of the appeal filed by the company with the NLRC. At the option of his employer, he may be admitted back to work or merely reinstated in the payroll.

Dismissal; Separation Pay; Backwages (2002)
Lyric Theater Corp. issued a memorandum prohibiting all ticket sellers from encashing any check from their cash collections and requiring them instead to turn over all cash collections to the management at the end of the day. In violation of this memorandum, Melody, a ticket seller, encashed five (5) checks from her cash collection. Subsequently the checks were dishonored when deposited in the account of Lyric Theater. For this action, Melody was placed under a 20-day suspension and directed to explain why she should not be dismissed for violation of the company's memorandum. In her explanation, she admitted having encashed the checks without the company's permission. While the investigation was pending, Melody filed a complaint against Lyric Theater for backwages and separation pay. The Labor Arbiter ordered Lyric Theater to pay Melody P115,420.79 representing separation pay and backwages. The NLRC affirmed the ruling of the Labor Arbiter. Is the ruling of the NLRC correct? Explain briefly. (5%)

SUGGESTED ANSWER:
The ruling of the NLRC affirming the Labor Arbiter's decision ordering Lyric Theater to pay P115,420.79 representing separation pay and backwages is wrong.

The Labor Arbiter's decision is wrong because:

a) It is premature. There was still no termination. All that was done by the employer (Lyric Theater) was to place the employee (Melody) under a 20-day suspension, meanwhile directing her to explain why she should not be dismissed for violation of company's memorandum.

b) The order for Lyric Theater to pay separation pay has no factual basis. Separation pay is to be paid to an employee who is terminated due to the Installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment undertaking. None of these events has taken place. Neither is separation pay here in lieu of reinstatement. Melody is not entitled to reinstatement because there is a just cause for her termination.
Employee; Contractual Employees; Seafarers (2002)

Tomas and Cruz have been employed for the last 22 years in various capacities on board the ships of BARKO Shipping Company. Their employment was made through a local manning company. They have signed several ten (10) month employment contracts with BARKO Shipping. The NLRC ruled that they were contractual employees and that their employment was terminated each time their contracts expired is the ruling of the NLRC correct? Explain your answer fully. (5%)

**SUGGESTED ANSWER:**
Yes. A contract of employment for a definite period terminates by its own terms at the end of such period. Since Tomas and Cruz signed ten (10) month employment contracts, their employment terminates by its own terms at the end of each ten (10)-month period.

The decisive determinant in term employment should not be the activities that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of their employment relation (not the character of his duties as being "usually necessary or desirable in the usual business of the employer").

Stipulation in the employment contracts providing for "term employment" or "fixed period employment" are valid when the period are agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure exerted on the employee; and when such stipulations were not designed to circumvent the laws on security of tenure. [Brent School v. Zamora, 181 SCRA 702 (1990)]

Moreover, in Brent School v. Zamora, supra, the Supreme Court stated that Art. 280 of the Labor Code does not apply to overseas employment.

In Pablo Coyoca v. NLRC, 243 SCRA 190, (1995), the Supreme Court also held that a seafarer is not a regular employee and Filipino seamen are governed by the rules and regulations governing overseas employment and the said rules do not provide for separation or termination pay.

From the foregoing cases, it is clear that seafarers are considered contractual employees. They cannot be considered as regular employees under Art 280 of the Labor Code. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. They fall under the exception of Art 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. We need not depart from the rulings of this court in the two aforementioned cases which indeed constitute *stare decisis* with respect to the employment status of seafarers. [Douglas Millares v. NLRC, et. al. 328 SCRA 79, (2000)]

Therefore, Tomas and Cruz are contractual employees. The ruling of the NLRC is correct.

**ANOTHER SUGGESTED ANSWER:**
No. The ruling of the NLRC is not correct. Such repeated re-hiring, which continued for twenty years cannot but be appreciated as sufficient evidence of the necessity and indispensability of petitioner's service to the [employer's] trade. Verily, as petitioners had rendered 20 years of service, performing activities that were necessary and desirable in the trade (of the employer), they are, by express provision of Art. 280 of the Labor Code, considered regular employees. [Millares v. NLRC, 328 SCRA 79 (2000)]

Employee; Contractual Worker vs. Casual Worker (2005)

How is the project worker different from a casual or contractual worker? Briefly explain your answers.

**ALTERNATIVE ANSWER:**
A "CONTRACTUAL WORKER" is a generic term used to designate any worker covered by a written contract to perform a specific undertaking for a fixed period. On the other hand, a "PROJECT WORKER" is used to designate workers in the construction industry, hired to perform a specific undertaking for a fixed period, co-terminus with a project or phase thereof determined at the time of the engagement of the employee. (Policy Instruction No. 19, DOLE) In addition, to be considered a true project worker, it is required that a termination report be submitted to the nearest public employment office upon the completion of the construction project. (Aurora Land Projects Corp. v. NLRC, G.R. No. 114733, January 2, 1997)
In contrast, there is no such requirement for an ordinary contractual worker.

**ALTERNATIVE ANSWER:**

A **PROJECT WORKER** performs job that is necessary and desirable to the nature of the business of the employer. On the other hand, a **CASUAL WORKER** performs job that is not necessary or desirable to the nature of the business of the employer. (Art. 280, Labor Code)

A project worker becomes a regular employee if the employer fails to submit as many reports to the DOLE on terminations as there were projects actually finished. (Audion Electric Co. v. NLRC, G.R. No. 106648, June 17, 1999) On the other hand, a casual worker becomes a regular employee if he has rendered service for at least one (1) year whether the same is continuous or broken. (Art. 280, Labor Code)

**Employee; Probationary Employees (1998)**

The services of an employee were terminated upon the completion of the probationary period of employment for failure to qualify, for the position. The employee filed a complaint for Illegal Dismissal on the ground that the employer failed to inform him in writing the reasonable standards for regular employment.

Will the complaint for Illegal Dismissal prosper? [5%]

**SUGGESTED ANSWER:**

Yes, the Complaint for Illegal Dismissal will prosper. The Labor Code provides:

Art. 281. **PROBATIONARY EMPLOYMENT,** — The services of an employee who has been engaged on a probationary basis may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known to the employee at the time of his engagement. The law is clear to the effect that in all cases involving employees engaged on probationary basis, the employer shall make known to the employee at the time he is hired, the standards by which he will qualify as a regular employee.

The Supreme Court in A.M. Oreta and Co., Inc. v. NLRC, 176 SCRA 218 (1989), ruled:

The employee's failure to inform the employee of the qualification for regularization is fatal. The failure violates the rules of fair play which is a cherished concept in labor law.

**ANOTHER SUGGESTED ANSWER:**

The complaint for illegal dismissal will prosper. The Labor Code (in Article 281) provides that a probationary employee may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the latter's engagement. In the question, the probationary employee was not informed of such reasonable standards at the time he was employed. Thus, if he is to be legally terminated, it should be because of gross and habitual neglect of duties.

**Employee; Probationary Employees (2001)**

What limitations, if any, do the law and jurisprudence impose on an employee's right to terminate the services of a probationary employee? (2%)

**SUGGESTED ANSWER:**

The Labor Code (in Art. 281) provides that the services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. If the probationary employee is being terminated for just cause, he must, of course, be given due process before his termination,

**Employee; Project Employee vs. Regular Employee (1996)**

Distinguish the project employees from regular employees.

**SUGGESTED ANSWER:**

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

**Employee; Project Employees vs. Casual Employees (2005)**

Mariano Martillo was a mason employed by the ABC Construction Company. Every time that ABC had a project, it would enter into an employment contract with Martillo for a fixed period that coincided with the need for his services, usually for a duration of three to six months.

Since the last project involved the construction of a 40-storey building, Martillo was contracted for 14 months. During this period, ABC granted wage increases to its regular employees, composed mostly of engineers and rank-and-file construction workers as a result of the just concluded CBA negotiations, feeling aggrieved and discriminated against, Martillo and other similarly-situated project workers demanded that increases be extended to them, inasmuch as they should now be considered regular employees and members of the bargaining unit. Briefly explain your answers. (6%)
LABOR LAW – Bar Q & A (as arranged by Topics) 1994-2006

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

ALTERNATIVE ANSWER:
The demand is without legal basis. The simple fact that the employment of petitioners as project employees had gone beyond one (1) year does not detract from, or legally dissolve, their status as project employees. The second paragraph of Article 280 of the Labor Code, providing that an employee who has served for at least one (1) year shall be considered a regular employee, relates to casual employees, not to project employees. (ALUTUCP v. NLRC, G.R. No. 109902, August 2, 1994)

In the case of Mercado, Sr. v. NLRC, G.R. No. 79869, September 5, 1991, the Supreme Court ruled that the proviso in the second paragraph of Article 280 of the Labor Code relates only to casual employees and is not applicable to those who fall within the definition of said Article's first paragraph, i.e., project employees. The familiar rule is that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, unless there is clear legislative intent to the contrary. No such intent is observable in Article 280 of the Labor Code.

ALTERNATIVE ANSWER:
If I were ABC's legal counsel, I will argue that the project workers are not regular employees but fixed-term employees. Stipulation in employment contracts providing for term employment or fixed period were agreed upon knowingly and voluntarily by the parties without force, duress or improper pressure, being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. (Pangilinan v. General Milling Corp., G.R. No. 149329, July 12, 2004)

Employee; Regular Employee; Constructive Dismissal (2005)

Kitchie Tempo was one of approximately 500 production operators at HITEC Semiconductors, Inc., and export-oriented enterprise whose business depended on orders for computer chips from overseas. She was hired as a contractual employee four years ago. Her contracts would be for a duration of five (5) months at a time, usually after a one-month interval. Her re-hiring was contingent on her performance for the immediately preceding contract.

Six months after the expiration of her last contract, Kitchie went to HITEC's personnel department to inquire why she was not yet being recalled for another temporary contract. She was told that her performance during her last stint was "below average."

Since there was no union to represent her, Kitchie seeks your advice as a labor lawyer about her chances of getting her job back. What will your advice be? (5%)

ALTERNATIVE ANSWER:
The repeated rehiring and the continuing need of Kitchie's services for 4 years are sufficient evidence of the necessity and indispensability of her services to HITEC's business or trade. (Magsalin v. National Organization for Working Men, et al., G.R. No. 148492, May 9, 2003) Where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the employment as regular with respect to such activity and while such activity exists. (Paguio v. NLRC, G.R. No. 147816, May 9, 2003)

Hence, Ritchie is considered a regular employee of HITEC and as such, she cannot be terminated except for cause and only after due process.

ALTERNATIVE ANSWER:
I will advice Kitchie to file a case of constructive dismissal with the Regional Arbitration branch of the NLRC having territorial jurisdiction over the workplace of the complainant because the constant re-hiring of Kitchie makes her a regular employee.

Employee; Regular Employees (1994)

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

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

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

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

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

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

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

**ALTERNATIVE ANSWER:**

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

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

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

**Employee; Regular Employees (1995)**

ILECO is an electric cooperative which accepted fresh graduates from a vocational school as lineman trainees for six (6) months after which they were hired as probationary employees for another ten (10) months. Thereafter, they were made regular employees. These employees then sought entitlement to salary increases under the existing Collective Bargaining Agreement (CBA) which were given at the time when they were not yet regular employees, hence, not yet members of the employees' union. ILECO denied their claims because they were not yet regular members when the CBA took effect and therefore not entitled to wage adjustments thereunder.

Resolve the Issue. Discuss fully.

**SUGGESTED ANSWER:**

In implementing a CBA that provides for salary increases to regular employees, it is but logical that said salary increases should be given to employees only from the time they are regular employees.

Given the facts mentioned in the question, the lineman trainees that ILECO hired became regular employees six (6) months after they were hired. The Labor Code provides that probationary employment shall not exceed six (6) months from the date the employee started working. Double probation, which happened in the case in question when the line man trainees were given an additional probationary period of another ten (10) months, may be considered as a circumvention of the rule on probationary employment.

Thus, because they were already regular employees after the first six (6) month period, from said date, they are entitled to the CBA increases provided for regular employee.

**ALTERNATIVE ANSWER:**

They are not entitled to the wage adjustments under the CBA that were given when they were not yet regular employees.

But if by virtue of their becoming regular employees, they are now part of the appropriate collective bargaining unit defined by the CBA, their not being union members is not a bar to their receipt of any wage adjustments given under the CBA, after they become regular employees.

**Employee; Regular Employees vs. Project Employee (1998)**

A Construction Group hired Engineer "A" as a Project Engineer in 1987. He was assigned to five (5) successive separate projects. All five (5) Contracts of Employment he signed, specified the name of the project, its duration, and the temporary-project nature of the engagement of his services. Upon completion of the fifth (5th) project in August 1998, his services were terminated. He worked for a total of ten (10) years (1987-1998) in the five (5) separate projects.

Six months after his separation, the Group won a bid for a large construction project. The Group did not engage the services of Engineer "A" as a Project Engineer for this new project; instead, it engaged the services of Engineer "B".

Engineer "A" claims that by virtue of the nature of his functions, i.e., Engineer in a Construction Group, and his long years of service he had rendered to the Group, he is a regular employee and not a project engineer at the time he was first hired. Furthermore, the hiring of Engineer "B" showed that there is a continuing need for his services.

Is the claim of Engineer "A" correct? [5%]

**SUGGESTED ANSWER:**

The claim of Engineer "A" that he is a regular employee and not a project employee is not correct. The Labor Code provides:

Art. 280. **Regular and Casual Employment.** - An employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except, where the employment has been fixed for a specific project or undertaking the completion of which has been determined at
the time of the engagement of the employee.
(underscoring supplied)

In all the five (5) successive contracts of employment of Engineer "A" the name of the project, its duration, and the temporary project nature of the engagement of his services are clearly stated: hence, Engineer "A" falls within the exemption of Art. 280. The Supreme Court has ruled as follows: Manansag v. NLRC, 218 SCRA 722 (1993)

The fact that the petitioners worked for several projects of private respondent company is no basis to consider them as regular employees. By the very nature of their employer's business, they will always remain project employees regardless of the number of projects in which they have worked.

De Ocampo v NLRC, 186 SCRA 361 (1990)
[Project employees] are not considered regular employees, their services, being needed only when there are projects to be undertaken. The rationale for this rule, is that if a project has already been completed, it would be unjust to require the employer to maintain them in the payroll while they are doing absolutely nothing except waiting for another project.

ANOTHER SUGGESTED ANSWER:
The claim of Engineer "A" is not correct. The fact that he has been working for Construction Group for a total of ten (10) years does not make him a regular employee when it is very clear from the Contracts of Employment he signed that he was always being engaged as a project employee.

The tenure of a project employee is co-terminous with the project in connection with which his services were engaged. Thus, after the end of the project, the employer-employee relationship ceases to exist. Such project employee has no legal right to insist that he should be employed by the Construction Group for a subsequent project of said Group.

Employee; Regular vs. Project Employees (2002)
Design Consultants, Inc. was engaged by the PNCC to supervise the construction of the South Expressway Extension. Design Consultants, Inc. hired Omar as a driver for two (2) years. After his two-year contract expired, he was extended another contract for nine (9) months. These contracts were entered into during the various stages and before the completion of the extension project. Omar claims that because of these repeated contracts, he is now a regular employee of Design Consultants, Inc. Is he correct? Explain briefly. (5%)

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

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

Moreover, the re-hiring of Omar is sufficient evidence of the necessity or the indispensability of his services to the company's business. [Aurora Land Projects Corp v. NLRC, 266 SCRA 48(1997)]
Hence, Omar is correct in claiming that he is a regular employee of Design Consultants, Inc.

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

Prescriptive period; illegal dismissal (1994)
On October 30, 1980, A, an employee, was served notice of dismissal allegedly for gross dishonesty. Forthwith, the Union to which A was a member raised A's dismissal with the grievance machinery as provided for in its Collective Bargaining Agreement (CBA). At that point, negotiations for a new CBA was in progress. Hence, both the Union and the Company had very little time to address A's grievance. In fact, said grievance, as it were, slept the sleep of the dead, being resolved only with finality on November 23, 1983 when the General Manager of the Company affirmed A's dismissal on the fifth and the last step of the grievance machinery.

A filed an action for illegal dismissal with the Arbitration Branch of the NLRC on November 25, 1983. The Company immediately filed a Motion to Dismiss on the ground of prescription, invoking Article 290 of the Labor Code.
If you were the Labor Arbiter, how would you resolve the Company’s Motion to Dismiss?

SUGGESTED ANSWER:
As the Labor Arbiter, I will deny the Motion to Dismiss. Where an employee was dismissed and the matter of his dismissal was then referred to the grievance machinery pursuant to the provision in the existing collective bargaining agreement, and the grievance machinery had a final meeting after quite a long while thereafter, the complaint for illegal dismissal was then filed, the action was not barred by laches, as the pendency of the matter before the grievance machinery affected the ripeness of the cause of action for illegal dismissal.

(ALTERNATIVE ANSWER:
If I were the Labor Arbiter, I will deny the motion to dismiss because the action for Illegal dismissal has not yet prescribed. The prescriptive period for an action for illegal dismissal is four (4) years.

(Callanta vs. Carnation, 145 SCRA 268)

Prescriptive period; illegal dismissal (2002)

A. State your agreement or disagreement with the following statement and explain your answer briefly: A criminal case filed against an employee does not have the effect of suspending or interrupting the running of the prescriptive period for the filing of an action for illegal dismissal (2%)

B. State your agreement or disagreement with the following statement and explain your answer briefly: The period of prescription in Article 291 of the Labor Code applies only to money claims so that the period of prescription for other cases of injury to the rights of employees is governed by the Civil Code. Thus, an action for reinstatement for injury to an employee’s rights prescribes in four (4) years as provided in Article 1146 of the Civil Code. (3%)

SUGGESTED ANSWER:
A. I agree. The two (2) cases, namely: the criminal case where the employee is the accused; and the case for illegal dismissal, where the employee would be the complainant, are two (2) separate and independent actions governed by different rules, venues, and procedures. The criminal case is within the jurisdiction of the regular courts of law and governed by the rules of procedure in criminal cases. The action for the administrative aspect of illegal dismissal would be filed with the NLRC and governed by the procedural rules of the Labor Code.

ANOTHER SUGGESTED ANSWER:
I agree. An action for illegal dismissal is an administrative case which is entirely separate and distinct from a criminal action. Each may proceed independently of each other.

The right to file an action for illegal dismissal is not dependent upon the outcome of the criminal case. Guilt or innocence in the criminal case is not determinative of the existence of a just or authorized cause for a dismissal. (Pepsi-Cola Bottling Co. v. Guanzon 172 SCRA 571(1989))

SUGGESTED ANSWER:
B. I agree with the statement. A case of illegal dismissal filed by an employee who has been terminated without a just or authorized cause is not a money claim covered by Art. 291 of the Labor Code. An employee who is unjustly dismissed from work is entitled to reinstatement and to his backwages. A case of illegal dismissal is based upon an injury to the right to security of tenure of an employee. Thus, in accordance with Art 1146, it must be instituted within four years. (Callanta v. Carnation Phil. 145 SCRA 268(1986); Baliwag Transit v. Ople 171 SCRA 250(1989); International Harvester Macleod, Inc. v. NLRC, 200 SCRA 817(1991))

Prescriptive period; illegal dismissal (1997)

The general manager of Junk Food Manufacturing Corporation dismissed Andrew Tan, a rank-and-file employee, on the ground of insubordination. The general manager served on Andrew Tan the letter of termination effective upon receipt which was on 08 March 1992. Shocked by his unexpected dismissal, Andrew Tan confronted the general manager and hit the latter on the head with a leap pipe.

Junk Food Manufacturing filed a complaint in court against Andrew Tan for less serious physical injuries. Somehow, Andrew Tan was acquitted by the court assigned to hear the criminal case. A few days following his acquittal, or on 01 March 1996, Andrew Tan filed complaint against the company for illegal dismissal, reinstatement and the payment of backwages and damages.

a) Was the complaint filed by Andrew Tan for illegal dismissal within the reglementary period granted by law?
b) What reliefs may Andrew Tan be entitled to if the Labor Arbiter finds just cause for termination but that the requirements of notice and hearing are not complied with?

SUGGESTED ANSWER:
(a) Yes. The complaint was filed within four (4) years from the date Andrew Tan was dismissed by his employer. Illegal dismissal, as a cause of action, prescribes after four (4) years from the time the cause of action, namely, illegal dismissal took place. This is pursuant to the Civil Code which provides that actions upon an injury to the rights of
that the deal between Company A and Company B
was merely a merger, but it really was a projected
buy-out. While dire necessity as a reason for
signing a quitclaim is not acceptable reason to set
aside a quitclaim in the absence of showing that
the employee has been forced to execute it, such
reason gains importance if the consideration is
unconscionable, low and the employee has been
tricked into accepting it. (Wyeth-Suaco v. NLRC,
219 SCRA 356)

Resignation; Voluntary; Quitclaim (1994)
Nonoy Santos was employed as a middle
management employee in Company A. In the
course of his employment he was told by his
superiors of the possible merger between
Company A and Company B. Fearing that he might
lose his job upon the merger of the two
companies, he looked for and found another job.
Upon resignation he was given separation pay
equivalent to one month's pay per year of service,
although technically speaking, he is not entitled
thereto being a resigned employee. Mr. Santos
executed a quitclaim and Waiver upon receipt of
his separation pay benefits.

The Labor Arbiter and NLRC sustained Company
A's position that Santos' quitclaim is valid, and that
as a manager he knew the import of what he was
signing and, therefore, estopped from claiming
otherwise.

Are the Labor Arbiter and the NLRC correct?
SUGGESTED ANSWER:
The Labor Arbiter and the NLRC are correct.
Santos was not coerced into resigning. He
voluntarily resigned. Then, upon receipt of the
separation pay that technically he was not entitled
to receive, he voluntarily executed a quitclaim and
waiver. These facts show beyond doubt that he is
estopped from claiming he was a victim of
discrimination. (Enieda Monttuua vs. National Labor
Relations Commission, et al, G.R No. 71504, 17
December 1993, J. Nocon, 228 SCRA 538)

ALTERNATIVE ANSWER;
Both the Labor Arbiter and NLRC are not correct.
Santos resigned because of the uncertainty as to
the future of Company A, he was made to believe
that the deal between Company A and Company B
null and void. In a case (Veloso v. DOLE, 200 SCRA 201) the Supreme Court held that "dire necessity" is not an acceptable ground for annulling the releases, especially since it has not been shown that the employees had been forced to execute them. It has not been proven that the considerations for the quitclaims were unconscionably low and that the petitioners had been tricked into accepting them.

Retirement; Optional Retirement (2005)
(1) Ricky Marvin had worked for more than ten (10) years in IGB Corporation. Under the terms of the personnel policy on retirement, any employee who had reached the age of 65 and completed at least ten (10) years of service would be compulsorily retired and paid 30 days' pay for every year of service.

Ricky Marvin, whose immigrant visa to the USA had just been approved, celebrated his 60th birthday recently. He decided to retire and move to California where the son who petitioned him had settled. The company refused to grant him any retirement benefits on the ground that he had not yet attained the compulsory retirement age of 65 years as required by its personnel policy; moreover, it did not have a policy on optional or early retirement.

Taking up the cudgels for Ricky Marvin, the union raised the issue in the grievance machinery as stipulated in the CBA. No settlement was arrived at, and the matter was referred to voluntary arbitration.

If you were the Voluntary Arbitrator, how would you decide? Briefly explain the reasons for your award.

SUGGESTED ANSWER:
I will decide the case in accordance with the Retirement Law. (R.A. No. 7641) Under the law, Ricky Marvin is entitled to Optional Retirement at age 60 since he has served the Company for at least 5 years, in fact 10 years already. He will also receive 22.5 days for every year of service. (Capitol Wireless v. Confesor, G.R No. 117174, November 13, 1996)

Retirement; Retirement Benefits (1994)
A Collective Bargaining Agreement (CBA) between Company A and its employees provides for optimal retirement benefits for employees who have served the company for over 25 years regardless of age, equivalent to one-and-one-half months pay per year of service based on the employee's last pay. The CBA further provides that "employees whose services are terminated, except for cause, shall receive said retirement benefits regardless of age or service record with the company or to the applicable separation pay provided by law, whichever is higher." The Company, due to poor business conditions, decided to cease operations and gave its employees the required one month's advance notice as well as notice to DOLE, with the further advice that each employee may claim his corresponding separation or retirement benefits whichever is higher after executing the required waiver and quitclaim.

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

Who is correct, the employees or the Company?
SUGGESTED ANSWER:
The employees are correct. In the absence of a categorical provision in the Retirement Plan and the CBA that an employee who receives separation pay is no longer entitled to retirement benefits, the employee is entitled to the payment of both benefits pursuant to the social justice policy. (Conrado M. Aquino, et al v. National Labor Relations Commission, et al, G.R No. 87653, 11 February 1992)

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

b) Dino and his co-employees were correct. In the case of University of the East vs. NLRC, it was clarified that the retirement benefits arising from the CBA is an Obligation Ex Contractu while separation pay under Art. 284 is an Obligation Ex- Lege.

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

Retirement; Retirement Pay (2001)
B. Ukol was compulsorily retired by his employer, Kurot Bottling Corporation, upon the former's reaching 65 years of age, having rendered 30 years of service. Since there was no CBA, B. Ukol was paid his retirement benefits computed 15 days' pay for every year of service, based on B. Ukol's highest salary during each year of his
employment. Not satisfied, B. Ukol filed action with the Arbitration Branch of the NLRC claiming that his retirement benefits were not computed properly. Is B. Ukol's claim meritorious? What are the components of his retirement benefits? (2%).

SUGGESTED ANSWER:
Ukol’s claim is meritorious. His retirement benefit is to be computed in accordance with Article 287, which reads: “In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee may retire ... and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six months being considered as one whole year. The same Article then explains that the term one-half (1/2) month salary means fifteen days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

The components of retirement pay are:
1. 15 days pay
2. 1/12 of the 13th month pay.
3. Cash equivalent of not more than five (5) days of service incentive leave.

(b) What exception(s) do(es) the law on retirement benefits provide(s) if any? (3%).

SUGGESTED ANSWER:
Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of the provision on retirement benefits in the Labor Code. Also, where there is a retirement plan of the employer that grants more than what the Labor Code grants.

SOCIAL LEGISLATIONS

Employees Compensation Act; Work-Connected Disability (1996)
Efrenia Reyes was a classroom teacher assigned by the Department of Education, Culture and Sports (DECS) in Panitan, Capiz. She has been in the government service since 1951 up to November, 1985 when she retired at 55 due to poor health.

In March, 1982, while she was teaching her Grade 1 pupils the proper way of scrubbing and sweeping the floor, she accidentally slipped. Her back hit the edge of a desk. She later complained of weak lower extremities and difficulty in walking. After an X-ray examination, she was found to be suffering from Pott's disease and was advised to undergo an operation. In 1985, she filed with the GSIS a claim for disability benefits under Presidential Decree No. 626, as amended. The GSIS granted the claim and awarded Efrenia permanent partial disability benefits.

After she underwent a surgical operation on her spine in November, 1985, her condition worsened.

In 1990, Efrenia filed with the GSIS a petition for conversion of her disability status to permanent total disabilities with corresponding adjustment of benefits. GSIS denied the claim stating that after Efrenia’s retirement, any progression of her ailment is no longer compensable.

Is the GSIS correct in denying the claim. Explain.

SUGGESTED ANSWER:
Considering that the disability of Reyes is work connected, the provisions of the Labor Code dealing with employees compensation should determine her right to benefits.

According to said provisions, if any employee under permanent partial disability suffers another injury which results in a compensable disability greater than the previous injury, the State Insurance Fund shall be liable for the income benefit of the new disability even after her retirement.

Was Reyes still an "employee" for the purpose of applying the above provision of the Labor Code? Liberally construing said provision. Reyes may be considered still as an employee so that she could receive additional benefits for the progression of her ailment.

ALTERNATIVE ANSWERS:
a) No. When an employee is constrained to retire at an early age due to his illness and the illness persists even after retirement, resulting in his continued unemployment, such condition amounts to total disability which should entitle him to the maximum benefits allowed by law. Her disability which should entitle her to the maximum falls within the definition of permanent total disability.

b) No, the GSIS erred in denying the claim. Note, that the original claim and grant of benefits was based on Presidential Decree No, 626, or Book IV, Title II of the Labor Code: Employees Compensation and State Insurance Fund. The same law does not provide for separation fee from employment as a basis for denial of benefits.

The worsening of the school teacher’s condition is a direct result, or a continuing result of the first injury which was deemed work-connected by the GSIS and hence compensable.

In Diopenes vs. GSIS, 205 SCRA 331 (1992), the Supreme Court cautioned against a too strict
interpretation of the law which may be detrimental to claimants and advised the GSIS of the constitutional mandate on protection to labor and the promotion of social Justice. Said the Court:
The GSIS and the ECC should be commended for their vigilance against unjustified claims that will only deplete the funds intended to be disbursed for the benefit only of deserving disabled employees. Nevertheless, we should caution against a too strict interpretation of the rules that will result in the withholding of full assistance from those whose capabilities have been diminished if not completely impaired as a compensation of their service in the government. A humanitarian impulse dictated by no less than the Constitution itself under the social justice policy, calls for a liberal and sympathetic approach to the legitimate appeals of disabled public servants. Compassion for them is not a dole but a right.

GSIS; Benefits (2004)
B. Atty. CLM, a dedicated and efficient public official, was the top executive of a government owned and controlled corporation (GOCC). While inspecting an ongoing project in a remote village in Mindanao, she suffered a stroke and since then had been confined to a wheelchair. At the time she stopped working because of her illness in line of duty, Atty. CLM was only sixty years old but she had been an active member of the GSIS for thirty years without any break in her service record. What benefits could she claim from the GSIS? Cite at least five benefits. (5%)

SUGGESTED ANSWER:
The benefits Atty. CLM could claim from the GSIS are:
(1) Employees compensation which shall include both income and medical and related benefits, including rehabilitation;
(2) Temporary total disability benefit;
(3) Permanent total disability benefit;
(4) Separation benefit; and
(5) Retirement benefit.

GSIS; Death Benefit (1999)
FACTS: Pitoy Mondero was employed as a public school teacher at the Marinduque High School from July 1, 1983 until his untimely demise on May 27, 1997.

On April 27, 1997, a memorandum was issued by the school principal, which reads: "You are hereby designated to prepare the MODEL DAM project, which will be the official entry of or school the forthcoming Division Search for Outstanding Improvised Secondary Science Equipment for Teachers to be held in Manila on June 4, 1997. You are hereby instructed to complete this MODEL DAM on or before the scheduled date of the contest."

Mordero complied with his superior's instruction and constructed an improvised electric microdam, which he took home to enable him to finish it before the deadline. On May 27, 1997, while working on the MODEL DAM Project in his house, he came to contact with a live wire and was electrocuted. He was immediately brought to a clinic for emergency treatment but was pronounced dead on arrival. The death certificate showed that he died of cardiac arrest due to accidental electrocution.

Pepay Palaypay (Pitoy Mondero's common-law wife for more than twenty years) and a Pitoy Mordero Jr. (his only son) filed a claim for death benefits with the Government Service Insurance System (GSIS), which was denied on the ground that Pitoy Mordeno's death did not arise out of and in the course of employment and therefore not compensable because the accident occurred in his house and not in the school premises.

Is Pepay Palaypay entitled to file a claim for death benefits with the GSIS? Why? (2%)
SUGGESTED ANSWER:
The beneficiaries of a member of the GSIS are entitled to the benefits arising from the death of said member. Death benefits are called survivorship benefits under the GSIS Law.

Not being a beneficiary, Pepay Palaypay to not entitled to receive survivorship benefits. She is not a beneficiary because she to a common-law wife and not a legal dependent spouse.

Is the cause of death of Pitoy Mordeno (cardiac arrest due to accidental electrocution in his house) compensable? Why? (3%)
SUGGESTED ANSWER:
Yes. To be compensable under the GSIS Law, the death need not be work connected.

GSIS; Death Benefits; Dependent; 24-hour Duty Rule (2005)
Odeck, a policeman, was on leave for a month. While resting in their house, he heard two of his neighbors fighting with each other. Odeck rushed to the scene intending to pacify the protagonists. However, he was shot to death by one of the protagonists. Zhop, a housemaid, was Odeck's surviving spouse whom he had abandoned for another woman years back. When she learned of Odeck's death, Zhop filed a claim with the GSIS for death benefits. However, her claim was denied because: (a) when Odeck was killed, he was on leave; and (b) she was not the dependent spouse of Odeck when he died.
Resolve with reasons whether GSIS is correct in denying the claim. (5%)

**ALTERNATIVE ANSWER:**
Yes, because under the law, a dependent is one who is a legitimate spouse living with the employee. (Article 167[i], Labor Code) In the problem given, Zhop had been abandoned by Odeck who was then living already with another woman at the time of his death.

Moreover, Odeck was on leave when he was killed. The 24-hour duty rule does not apply when the policeman is on vacation leave. (Employees’ Compensation Commission v. Court of Appeals, G.R. No. 121545, November 14, 1996) Taking together jurisprudence and the pertinent guidelines of the ECC with respect to claims for death benefits, namely:
(a) that the employee must be at the place where his work requires him to be;
(b) that the employee must have been performing his official functions; and
(c) that if the injury is sustained elsewhere, the employee must have been executing an order for the employer, it is not difficult to understand then why Zhop’s claim was denied by the GSIS. (Tancinco v. Government Service Insurance System, G.R. No. 132916, November 16, 2001)

In the present case, Odeck was resting at his house when the incident happened; thus, he was not at the place where his work required him to be. Although at the time of his death Odeck was performing a police function, it cannot be said that his death occurred elsewhere other than the place where he was supposed to be because he was executing an order for his employer.

**ALTERNATIVE ANSWER:**
GSIS is correct in denying the claim not on the grounds provided in the problem but for the reason that uniformed members of the PNP are not covered by R.A. No. 8291 or the GSIS Law of 1997.

Ms. Sara Mira is an unwed mother with three children from three different fathers. In 1999, she became a member of the Social Security System. In August 2000, she suffered a miscarriage, also out of wedlock, and again by a different father. Can Ms. Mira claim maternity benefits under the Social Security Act of 1997? Reason. (5%)

**SUGGESTED ANSWER:**
Yes, she can claim maternity benefit. Entitlement thereto is not dependent on the claimant’s being legally married. (Sec. 14-A, Social Security Act of 1997).

**Paternity Leave (2002)**
How many times may a male employee go on Paternity Leave? Can he avail himself of this benefit for example, 50 days after the first delivery by his wife? (3%)

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

**Paternity Leave; Maternity Leave (2005)**
Mans Weto had been an employee of Nopolt Assurance Company for the last ten (10) years. His wife of six (6) years died last year. They had four (4) children. He then fell in love with Jovy, his co-employee, and they got married.

In October this year, Weto's new wife is expected to give birth to her first child. He has accordingly filed his application for paternity leave, conformably with the provisions of the Paternity Leave Law which took effect in 1996. The HRD manager of the assurance firm denied his application, on the ground that Weto had already used up his entitlement under the law. Weto argued that he has a new wife who will be giving birth for the first time, therefore, his entitlement to paternity leave benefits would begin to run anew. (6%)

(a) Whose contention is correct, Weto or the HRD manager?

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

**ALTERNATIVE ANSWER:**
Weto's contention is correct. R.A. No. 8187 provides that paternity leave of (7) days with full pay shall be granted to all married employees in the private and public sectors for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting.
cohabiting. With the death of Weto's first wife, the first (4) deliveries provided by law, shall apply to the new legitimate spouse of Weto with whom he is cohabiting.

ALTERNATIVE ANSWER:
Since R.A. No. 8282 is silent on the matter, the doubt should be resolved in favor of the second wife.

(b) Is Jovy entitled to maternity leave benefits?
Yes, Jovy's maternity benefit is personal to her and she is entitled under the law to avail herself of the same for the first four times of her deliver. (R.A. No. 8282)

SSS; Compulsory Coverage (1995)
Big Foot Company of Paete, Laguna, has been in the business of manufacturing wooden sandals for export since 5 November 1980. On 5 January 1994 it employed an additional labor complement of thirty workers, two supervisors and two department managers. On 5 February 1994 it hired five carpenters to fix the roof and walls of its factory which were destroyed by typhoon "Huaning."

Who among the aforementioned persons are compulsorily covered by the Social Security Law and when should they be considered effectively covered? Discuss fully.

SUGGESTED ANSWER:
Assuming that all of them were not yet over sixty years of age, the additional labor complement of thirty workers, two supervisors and two department managers were compulsorily covered by the Social Security Law on 5 January 1994, when they were employed. According to said law, workers are covered on the day of their employment.

But the five carpenters which the company hired to fix the roof and walls of its factory were not under the compulsory coverage of the Social Security Law because said carpenters are casual employees. The Social Security Law provides that employment purely casual and not for the purpose of occupation or the business of the employer are not under its compulsory coverage.

SSS; Compulsory Coverage (1999)
Marvin Patrimonio is a caddy rendering caddying services for the members and guests of the Barili Golf & Country Club. As such caddy, he is subject to Barili golfs rules and regulations governing Caddies regarding conduct, dress, language, etc. However, he does not have to observe any working hours, he is free to leave anytime he pleases; and he can stay away for as long as he likes. Nonetheless, if he is found remiss in the observance of club rules, he can be disciplined by being barred from the premises of Barili Golf.

Is Marvin within the compulsory coverage of the Social Security System? Why? (5%)

SUGGESTED ANSWER:
Because he is not an employee of the Barili Golf & Country Club, Marvin is not within the compulsory coverage of the Social Security System. Marvin is not an employee of the club because under the specific circumstances of his relations with the club, he is not under the orders of the club as regards employment which would have made him an employee of the club. (See Manila Golf & Country Club, Inc. v. IAC, 237 SCRA 207)

But Marvin is within the compulsory coverage of the SSS as a self-employed person. (See Section 9-A, Social Security Law of 1957)

SSS; Compulsory Coverage (2000)
The Collective Bargaining Agreement of the Golden Corporation Inc. and the Golden Corporation Workers Union provides a package of welfare benefits far superior in comparison with those provided for in the Social Security Act of 1997. The welfare plan of the company is funded solely by the employer with no contributions from the employees. Admittedly, it is the best welfare plan in the Philippines. The company and the union jointly filed a petition with the Social Security System for exemption from coverage. Will the petition for exemption from coverage prosper? Reason. (5%)

SUGGESTED ANSWER:
No, because coverage under the SSS is compulsory where employer-employee relations exist. However, if the private plan is superior to that of the SSS, the plan may be integrated with the SSS plan. Still, it is integration and not exemption from SSS law. (Philippine Blooming Mills Co., Inc. v. Social Security System, 17 SCRA 107(1966); RA. No. 1161 as amended by RA No. 8282).

SSS; Compulsory Coverage (2002)
The owners of FALCON Factory, a company engaged in the assembling of automotive components, decided to have their building renovated. Fifty (50) persons, composed of engineers, architects and other construction workers, were hired by the company for this purpose. The work was estimated to be completed in three (3) years. The employees contended that since the work would be completed after more than one (1) year, they should be subject to compulsory coverage under the Social Security Law. Do you agree with their contention? Explain your answer fully. (5%)

SUGGESTED ANSWER:
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No. Under Section 8 (j) of RA 1161, as amended, employment of purely casual and not for the purpose of the occupation or business of the employer are excepted from compulsory coverage. An employment is purely casual if it is not for the purpose of occupation or business of the employer.

In the problem given, Falcon Factory is a company engaged in the assembling of automotive components.

The fifty (50) persons (engineers, architects and construction workers) were hired by Falcon Factory to renovate its building. The work to be performed by these fifty (60) people is not in connection with the purpose of the business of the factory. Hence, the employ of these fifty (50) persons is purely casual. They are, therefore, excepted from the compulsory coverage of the SSS law.

ANOTHER SUGGESTED ANSWER:
I agree with the contention that the employees hired by the owners of FALCON factory as construction workers in the renovation of its building should be under the compulsory coverage of the Social Security Law.

It is true that in connection with FALCON Factory, which is engaged in the assembling of automotive components, the construction workers may be considered casual employees because their employment is not for the purpose of occupation of business of FALCON Factory. As such, in accordance with Section 8(j) of the Social Security Law, they are excepted form the compulsory coverage of the SSS law.

But they could also be considered project employees of FALCON Factory and as such could be under the compulsory coverage of the SSS, applying Art 4 of the Labor Code that provides that all doubts in the implementation and interpretation of the provisions of Labor Law shall be resolved in favor of labor. The employees here therefore, should be considered as under the compulsory coverage of the Social Security System.

SSS; GSIS; Beneficiality; Portability
How are the "portability" provisions of Republic Act No. 7699 beneficial or advantageous to SSS and GSIS members in terms of their creditable employment services in the private sector or the government, as the case may be, for purposes of death, disability or retirement? Please explain your answer briefly. (3%)
SUGGESTED ANSWER:
Portability provisions of R.A. No. 7699 shall benefit a covered worker who transfers employment from one sector to another or is employed in both sectors, whose creditable services or contributions in both systems credited to his service or contribution record in each of the system and shall be totalized for purposes of old-age, disability, survivorship and other benefits. (Sec. 3, R.A. No. 7699)

The "portability" provisions of R.A. No. 7699 allow the transfer of funds for the account and benefit of the worker who transfers from one system to another.

This is advantageous to the SSS and GSIS members for purposes of death, disability or retirement benefits. In the event the employees transfer from the private sector to the public sector, or vice-versa, their creditable employment services and contributions are carried over and transferred as well.

SSS; GSIS; Jurisdiction; Benefit Claims (1995)
Is it necessary for an employee to litigate in order to establish and enforce his right to compensation? Explain.
SUGGESTED ANSWER:
No. All that an employee does to claim employee's compensation is to file a claim for said benefits with the SSS (for those in the private sector) or GSIS (for those in the public sector).

In the event that the claim is denied on the SSS/GSIS level, claimant may appeal to the Employees Compensation Commission where he may prove the causal connection between injury and nature of work.

SSS; Prescriptive Period; Benefit Claims (2001)
(b) In 1960, Juan hired Pablo to drive for the former's lumber company. In 1970, Pablo got sick and was temporarily layed-off. In 1972, Pablo recovered and resumed working for the same lumber company, now run by Juan's wife since Juan had already passed away. In 1996, Pablo retired. When Pablo applied for retirement benefits with the SSS that same year, he discovered that the lumber company never enrolled him as an employee, much less remitted his contributions that were deducted from his salary. The lumber company agreed to pay for Pablo's contributions plus penalties but maintained that most of Pablo's claims had already prescribed under Art. 1150 of the Civil Code. (Art. 1150 provides "The time for prescription of all kinds of actions, when there is no special provision which ordeins otherwise, shall be counted from the day they may be brought."). Is the Lumber company's contention correct? Why?
SUGGESTED ANSWER:
The lumber company's contention is not correct. The Social Security Law (in Sec. 22(b) provides that the right to institute the necessary action against an employer may be commenced within twenty (20) years from the time the delinquency is known or the assessment is made by the SSS, or from the time the benefit accrues, as the case may be.

SSS; GSIS; Employees Compensation Act (1997)
State the respective coverages of (a) the Social Security Law: (b) the Revised government Service Insurance Act and (c) the Employees Compensation Act.

SUGGESTED ANSWER:
(a) Coverage of SSS (Sec. 9. RA 8282) shall be compulsory upon all employees not over sixty years of age and their employers.
   ✔ Filipinos recruited in the Philippines by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis.
   ✔ Coverage in the SSS shall also be compulsory upon all self-employed persons earning P1,800 or more per annum.

(b) Membership in the Government Service Insurance System (Art. 3, RA8291) shall be compulsory for all permanent employees below 60 years of age upon appointment to permanent status, and for all elective officials for the duration of their tenure.
   ✔ Any person, whether elected or appointed, in the service of an employer is a covered employee if he receives compensation for such service.

(c) Coverage in the State Insurance Fund (Art, 168, Labor Code) shall be compulsory upon all employers and their employees not over sixty (60) years of age; Provided, that an employee who is over (60) years of age and paying contributions to qualify for the retirement or life insurance benefit administered by the System shall be subject to compulsory coverage.

The Employees Compensation Commission shall ensure adequate coverage of Filipino employees employed abroad, subject to regulations as it may prescribe. (Art, 170)

Any person compulsorily covered by the GSIS including the members of the Armed Forces of the Philippines, and any person employed as casual, emergency, temporary, substitute or contractual, or any person compulsorily covered by the SSS are covered by the Employees Compensation Program.

State Insurance Fund (1994)
Samson Security Agency (SAMSON) undertook to provide 24 hours security service to Jarillo Realty (JARILLO) in the latter's construction operations. The contract between SAMSON and JARILLO expressly stipulated that Samson's security guards are its employees and not that of JARILLO. SAMSON undertook to hold JARILLO free from any liability whatsoever resulting from injuries which its (SAMSON's) guards may suffer or be exposed to suffer as guards of JARILLO's construction operations.

To facilitate payment, JARILLO undertook to pay directly to the guards the agreed wages, which are subsequently deducted from the monthly payments to SAMSON under its contract with JARILLO. JARILLO, in turn, charges SAMSON for the equipment supplied to the guards such as uniforms, pistols and ammunition and cost of training of guards JARILLO wants replaced.

During a storm, several scaffolding of JARILLO fell and killed two (2) guards whose families later sued JARILLO. JARILLO, in turn, impleaded SAMSON as third-party defendant before the Arbiter.

Decide who should be held liable.

SUGGESTED ANSWER:
Liability lies against the State Insurance Fund administered by the SSS. This is a case of death in connection with the employees' work.

Jarillo is deemed to be the employer of the guards in view of the direct payment of wages to the guards. Thus, if there are benefits arising from employer-employee relationship, Jarillo should be held answerable.

NOTE: The law involved, namely the law on employees compensation and State Insurance Fund was expressly excluded from this years bar examination in Labor and Social Legislation.

What is the extent of an employer's intervention in the compensation process and the payment of benefits to employees under the State Insurance Fund? Explain.

SUGGESTED ANSWER:
The new law establishes a State Insurance Fund built up by the contributions of employers based on the salaries of their employees. The employer does not intervene in the compensation process and it has no control over the payment of benefits.

Unlike under the Workmen's Compensation Act, employers are no longer directly liable for the income and medical and related benefits that are to be paid to covered employees if they should suffer from work connected injury or sickness or death. The payment of employees compensation is
now from the State Insurance Fund which is constituted from the contributions collected from employers.

**Stray Questions**

**Stray Problem; Political Law; Power of the President; FTAA (2006)**
Armstrong Corporation, a foreign corporation, intends to engage in the exploration of Philippine natural resources. Mr. Antonio Reyes offered the forest land he owns to the president of the corporation. May Armstrong Corporation enter into a financial and technical assistance agreement (FTAA) with Mr. Reyes to explore, develop, and utilize the land? Explain. (5%)

**SUGGESTED ANSWER:**
NO. Only the President may enter into financial and technical assistance agreements for large-scale exploration development and utilization of natural resources (Art. XII, Sec. 2, 1987 Constitution). Moreover, forest lands are inalienable lands of the state (La Bugal — B’laran Tribal Association, Inc. v. Ramos, G.R. No. 127882, December 1, 2004). N.B. This appears to be a proper question for Political Law.