

2009 BAR EXAMINATIONS

LABOR AND SOCIAL LEGISLATION

06 September 2009

2 P.M. – 5 P.M.

INSTRUCTIONS

This questionnaire is in TWO (2) PARTS: Part I with ten (10) questions (numbered I to X), contained in six (6) pages; and Part II with eight (8) questions (numbered XI-XVIII), contained in six (6) pages, for a total number of twelve (12) pages.

Write your answers to Part I and Part II in the corresponding portions indicated in the booklet.

Begin your answer to each numbered question on a separate page; an answer to a subquestion under the same number may be written continuously on the same page and succeeding pages until completed.

Answer the questions directly and concisely. Do not repeat the questions. Write legibly.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE.

GOOD LUCK!

ANTONIO EDUARDO B. NACHURA
CHAIRPERSON
2009 BAR EXAMINATIONS COMMITTEE

PLEASE CHECK THAT THIS SET CONTAINS THIRTEEN (13) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

PART I

I

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

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

[b] All confidential employees are disqualified to unionize for the purpose of collective bargaining.

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

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

[e] The visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standard laws can be exercised even when the individual claim exceeds ₱5,000.00.

II

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

[b] Clarito, an employee of Juan, was dismissed for allegedly stealing Juan's wristwatch. In the illegal dismissal case instituted by Clarito, the Labor Arbiter, citing Article 4 of the Labor Code, ruled in favor of Clarito upon finding Juan's testimony doubtful. On appeal, the NLRC reversed the Labor Arbiter holding that

Article 4 applies only when the doubt involves “implementation and interpretation” of the Labor Code provisions. The NLRC explained that the doubt may not necessarily be resolved in favor of labor since this case involves the application of the Rules on Evidence, not the Labor Code. Is the NLRC correct? Reasons. (3%)

III

Richie, a driver-mechanic, was recruited by Supreme Recruiters (SR) and its principal, Mideast Recruitment Agency (MRA), to work in Qatar for a period of two (2) years. However, soon after the contract was approved by POEA, MRA advised SR to forego Richie’s deployment because it had already hired another Filipino driver-mechanic, who had just completed his contract in Qatar. Aggrieved, Richie filed with the NLRC a complaint against SR and MRA for damages corresponding to his two years’ salary under the POEA-approved contract.

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

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

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

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

Rule on the validity of the foregoing arguments with reasons.

IV

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

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

V

[a] Baldo was dismissed from employment for having been absent without leave (AWOL) for eight (8) months. It turned out that the reason for his absence was his incarceration after he was mistaken as his neighbor’s killer. Eventually acquitted and released from jail, Baldo returned to his employer and demanded reinstatement and full backwages. Is Baldo entitled to reinstatement and backwages? Explain your answer. (3%)

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

VI

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

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

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

VII

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

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

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

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

Rule on the foregoing contentions with reasons.

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

VIII

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

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

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

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

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

Explain your answers.

IX

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

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

X

[a] State briefly the compulsory coverage of the Government Service Insurance Act. (2%)

[b] Can a member of a cooperative be deemed an employee for purposes of compulsory coverage under the Social Security Act? Explain. (2%)

***** END OF PART I *****

PART II

XI

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

[a] Seafarers who have worked for twenty (20) years on board the same vessel are regular employees.

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

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

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

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

XII

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

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

XIII

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

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

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

XIV

Jolli-Mac Restaurant Company (Jolli-Mac) owns and operates the largest food chain in the country. It engaged Matiyaga Manpower Services, Inc. (MMSI), a job contractor registered with the Department of Labor and Employment, to provide its restaurants the necessary personnel, consisting of cashiers, motorcycle delivery boys and food servers, in its operations. The Service Agreement warrants, among others, that MMSI has a paid-up capital of ₱2,000,000.00; that it would train and determine the

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

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

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

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

XV

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

1. Union A	-	70
2. Union B	-	71
3. Union C	-	42
4. Union D	-	33
5. No union	-	180
6. Spoiled votes	-	4

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

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

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

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

XVI

The Company and Triple-X Union, the certified bargaining agent of rank-and-file employees, entered into a Collective Bargaining Agreement (CBA) effective for the period January 1, 2002 to December 31, 2007.

For the 4th and 5th years of the CBA, the significant improvements in wages and other benefits obtained by the Union were:

- 1) Salary increases of ₱1,000 and ₱1,200 monthly, effective January 1, 2006 and January 1, 2007, respectively;
- 2) Vacation Leave and Sick Leave were adjusted from 12 days to 15 days annually for each employee;
- 3) Medical subsidy of ₱3,000 per year for the purchase of medicines and hospitalization assistance of ₱10,000 per year for actual hospital confinement;

- 4) Rice Subsidy of ₱600 per month, provided the employee has worked for at least 20 days within the particular month; and
- 5) Birthday Leave with Pay and Birthday Gift of ₱1,500.

As early as October 2007, the Company and the Union started negotiations to renew the CBA. Despite mutual good faith and earnest efforts, they could not agree. However, no union filed a petition for certification election during the freedom period. On March 30, 2008, no CBA had been concluded. Management learned that the Union would declare a bargaining deadlock on the next scheduled bargaining meeting.

As expected, on April 3, 2008, the Union declared a deadlock. In the afternoon of the same day, management issued a formal announcement in writing, posted on the bulletin board, that due to the CBA expiration on December 31, 2007, all fringe benefits contained therein are considered withdrawn and can no longer be implemented, effective immediately.

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

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

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

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

XVII

Alfredo was dismissed by management for serious misconduct. He filed suit for illegal dismissal, alleging that although there may be just cause, he was not afforded due process by management prior to his termination. He demands reinstatement with full backwages.

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

[b] Is Alfredo entitled to reinstatement and full backwages? Why or why not? (3%)

XVIII

[a] Cite four (4) instances when an illegally dismissed employee may be awarded separation pay in lieu of reinstatement. (3%)

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

***** END OF PART II *****

RETURN THIS QUESTIONNAIRE
WITH YOUR BOOKLET