

**2010 BAR EXAMINATIONS**

**LABOR AND SOCIAL LEGISLATION**

5 September 2010

2 P.M. – 5 P.M.

**INSTRUCTIONS**

This questionnaire is in TWO (2) PARTS: Part I with thirteen (13) questions (numbered I to XIII), contained in seven (7) pages; and Part II with twelve (12) questions (numbered XIV-XXV), contained in six (6) pages, for a total number of thirteen (13) 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 question directly and concisely. Do not repeat the question. Write legibly.

**HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE**

**GOOD LUCK!!!**

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**CONCHITA CARPIO MORALES**

*Chairperson*

*2010 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.** Explain your answer briefly.

1. Deeds of release, waivers and quitclaims are always valid and binding. (2%)
2. The relations between employer and employee are purely contractual in nature. (2%)
3. As a general rule, direct hiring of Overseas Filipino Workers (OFWs) is not allowed. (2%)

**II**

- A. Distinguish the terms “conciliation,” “mediation” and “arbitration.” (3%)
- B. Differentiate “surface bargaining” from “blue-sky bargaining.” (2%)

**III**

A, single, has been an active member of the Social Security System for the past 20 months. She became pregnant out of wedlock and on her 7<sup>th</sup> month of pregnancy, she was informed that she would have to deliver the baby through caesarean section because of some complications. Can A claim maternity benefits? If yes, how many days can she go on maternity leave? If not, why is she not entitled? (3%)

#### IV

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

#### V

Company XYZ has two recognized labor unions, one for its rank-and-file employees (RFLU), and one for supervisory employees (SELU). Of late, the company instituted a restructuring program by virtue of which A, a rank-and-file employee and officer of RFLU, was promoted to a supervisory position along with four (4) other colleagues, also active union members and/or officers. Labor Union KMJ, a rival labor union seeking recognition as the rank-and-file bargaining agent, filed a petition for the cancellation of the registration of RFLU on the ground that A and her colleagues have remained to be members of RFLU. Is the petition meritorious? Explain. (3%)

#### VI

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

A was dismissed from employment as a consequence of the strike.

- A. Was the strike legal? Explain. (3%)
- B. Was A's dismissal valid? Why or why not? (3%)

## VII

A was an able seaman contracted by ABC Recruitment Agency for its foreign principal, Seaworthy Shipping Company (SSC). His employment contract provided that he would serve on board the *Almieda II* for eight (8) months with a monthly salary of US\$450. In connection with his employment, he signed an undertaking to observe the drug and alcohol policy which bans possession or use of all alcoholic beverages, prohibited substances and un-prescribed drugs on board the ship. The undertaking provided that: (1) disciplinary action including dismissal would be taken against anyone in possession of the prohibited substances or who is impaired by the use of any of these substances, and (2) to enforce the policy, random test sampling would be done on all those on board the ship.

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

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

- A. Was A's dismissal valid? Explain. (3%)
- B. Is his claim for salaries for the unexpired portion of his contract tenable? Explain. (3%)

### VIII

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

### IX

A was working as a medical representative of RX pharmaceutical company when he met and fell in love with B, a marketing strategist for Delta Drug Company, a competitor of RX. On several occasions, the management of RX called A's attention to the stipulation in his employment contract that requires him to disclose any relationship by consanguinity or affinity with co-employees or employees of competing companies in light of a possible conflict of interest. A seeks your advice on the validity of the company policy. What would be your advice? (3%)

### X

A, an employee of XYZ Cooperative, owns 500 shares in the cooperative. He has been asked to join the XYZ Cooperative Employees Association. He seeks your advice on whether he can join the association. What advice will you give him? (3%)

## XI

Because of continuing financial constraints, XYZ, Inc. gave its employees the option to voluntarily resign from the company. A was one of those who availed of the option. On October 5, 2007, he was paid separation benefits equivalent to seven (7) months pay for his six (6) years and seven (7) months of service with the company and he executed a waiver and quitclaim.

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

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

## XII

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

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

**XIII**

A is employed by XYZ Company where XYZ Employees Union (XYZ-EU) is the recognized exclusive bargaining agent. Although A is a member of rival union XYR-MU, he receives the benefits under the CBA that XYZ-EU had negotiated with the company.

XYZ-EU assessed A a fee equivalent to the dues and other fees paid by its members but A insists that he has no obligation to pay said dues and fees because he is not a member of XYZ-EU and he has not issued an authorization to allow the collection. Explain whether his claim is meritorious. (3%)

**- END OF PART I -**

**PART II****XIV**

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

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

**XV**

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

- A.** Should A be a member of the supervisory union? Explain. (2%)
- B.** Assuming that A is ineligible to join the union, should the registration of *Samahang Manggagawa ng Terracota* be cancelled? Explain. (3%)

**XVI**

On the first day of collective bargaining negotiations between rank-and-file Union A and B Bus Company, the former proposed a ₱45/day increase. The company insisted that ground rules for negotiations should first be established, to which the union agreed. After agreeing on ground rules on the second day, the union representatives reiterated their proposal for a wage increase. When company representatives suggested a discussion of political provisions in the Collective Bargaining Agreement as stipulated in the ground rules, union members went on mass leave the next day to participate in a whole-day prayer rally in front of the company building.

- A.** The company filed a petition for assumption of jurisdiction with the Secretary of Labor and Employment. The Union opposed the petition, arguing that it did not intend to stage a strike. Should the petition be granted? Explain. (2%)
  
- B.** The Union contended that assuming that the mass leave will be considered as a strike, the same was valid because of the refusal of the company to discuss the economic provisions of the CBA. Rule on the contention. (2%)
  
- C.** Union member AA, a pastor who headed the prayer rally, was served a notice of termination by management after it filed the petition for assumption of jurisdiction. May the company validly terminate AA? Explain. (2%)

**XVII**

A was hired to work in a sugar plantation performing such tasks as weeding, cutting and loading canes, planting cane points, fertilizing and cleaning the drainage. Because his daily presence in the field was not required, A also worked as a houseboy at the house of the plantation owner. For the next planting season, the owner decided not to hire A as a plantation worker but as a houseboy instead. Furious, A filed a case for illegal dismissal against the plantation owner. Decide with reason. (3%)

**XVIII**

Flight attendant A, five feet and six inches tall, weighing 170 pounds ended up weighing 220 pounds in two years. Pursuant to the long standing Cabin and Crew Administration Manual of the employer airline that set a 147-pound limit for A's height, management sent A a notice to "shape up or ship out" within 60 days. At the end of the 60-day period, A reduced her weight to 205 pounds. The company finally served her a Notice of Administration Charge for violation of company standards on weight requirements. Should A be dismissed? Explain. (3%)

**XIX**

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

- A.** Was the order to assume jurisdiction legal? Explain. (2%)
- B.** Under the same set of facts the Secretary instead issued an Order directing all striking workers to return to work within 24 hours, except those who were terminated due to redundancy. Was the Order legal? Explain. (3%)

**XX**

A, a driver for a bus company, sued his employer for non-payment of commutable service incentive leave credits upon his resignation after five years of employment. The bus company argued that A was not entitled to service incentive leave since he was considered a field personnel and was paid on commission basis and that, in any event, his claim had prescribed. If you were the Labor Arbiter, how would you rule? Explain. (6%)

**XXI**

A was approached for possible overseas deployment to Dubai by X, an interviewer of job applicants for Alpha Personnel Services, Inc., an overseas recruitment agency. X required A to submit certain documents (passport, NBI clearance, medical certificate) and to pay ₱25,000 as processing fee. Upon payment of the said amount to the agency cashier, A was advised to wait for his visa. After five months, A visited the office of Alpha Personnel Services, Inc. during which X told him that he could no longer be deployed for employment abroad. A was informed by the Philippine Overseas Employment Administration (POEA) that while Alpha Personnel Services, Inc. was a licensed agency, X was not registered as its employee, contrary to POEA Rules and Regulations. Under POEA Rules and Regulations, the obligation to register personnel with the POEA belongs to the officers of a recruitment agency.

- A.** May X be held criminally liable for illegal recruitment? Explain. (2%)
- B.** May the officers having control, management or direction of Alpha Personnel Services, Inc. be held criminally liable for illegal recruitment? Explain. (3%)

**XXII**

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

**XXIII**

A worked as a roomboy in La Mallorca Hotel. He sued for underpayment of wages before the NLRC, alleging that he was paid below the minimum wage. The employer denied any underpayment, arguing that based on long standing, unwritten policy, the Hotel provided food and lodging to its housekeeping employees, the costs of which were partly shouldered by it and the balance was charged to the employees. The employees' corresponding share in the costs was thus deducted from their wages. The employer concluded that such valid deduction naturally resulted in the payment of wages below the prescribed minimum. If you were the Labor Arbiter, how would you rule? Explain. (3%)

**XXIV**

Rank-and-file workers from Peacock Feathers, a company with 120 employees, registered their independent labor organization with the Department of Labor and Employment (DOLE) Regional Office. Management countered with a petition to cancel the union's registration on the ground that the minutes of ratification of the union constitution and by-laws submitted to the DOLE were fraudulent. Specifically, management presented affidavits of ten (10) out of forty (40) individuals named in the list

of union members who participated in the ratification, alleging that they were not present at the supposed January 1, 2010 meeting held for the purpose. The union argued that the stated date of the meeting should have read “January 11, 2010,” instead of “January 1, 2010,” and that, at any rate, the other thirty (30) union members were enough to register a union. Decide with reason. (3%)

## **XXV**

Company C, a toy manufacturer, decided to ban the use of cell phones in the factory premises. In the pertinent Memorandum, management explained that too much texting and phone-calling by employees disrupted company operations. Two employees-members of Union X were terminated from employment due to violation of the memorandum-policy. The union countered with a prohibitory injunction case (with prayer for the issuance of a temporary restraining order) filed with the Regional Trial Court, challenging the validity and constitutionality of the cell phone ban. The company filed a motion to dismiss, arguing that the case should be referred to the grievance machinery pursuant to an existing Collective Bargaining Agreement with Union X, and eventually to Voluntary Arbitration. Is the company correct? Explain. (3%)

**- NOTHING FOLLOWS -**

**RETURN THIS QUESTIONNAIRE  
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