

**BAR EXAMINATIONS 2013****LABOR LAW**

October 6, 2013

2:00 – 6:00 P.M.

**INSTRUCTIONS**

1. This Questionnaire contains SEVENTEEN (17) pages including these Instructions pages. Check the number of pages and the page numbers at the upper right hand corner of each page of this Questionnaire and make sure it has the correct number of pages and their proper numbers.

There are TEN (10) Essay Questions numbered I to X (with subquestions), and EIGHTEEN (18) Multiple Choice Questions (MCQs) numbered I to XVIII (with subquestions), to be answered within *four (4) hours*.

The essay portion contains questions that are worth 80% of the whole examination, while the MCQ portion contains questions worth 20%.

2. Read each question very carefully and write your answers in your Bar Examination Notebook *in the same order the questions are posed*. Write your answers only on the *front*, not the back, page of every sheet in your Examination Notebook. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

If the sheets provided in your Examination Notebook are not sufficient for your answers, use the back pages of every sheet of your Examination Notebook, starting at the back page of the first sheet and the back of the succeeding sheets thereafter.

3. Answer the Essay questions *legibly, clearly, and concisely*. Start each number on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

Your answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the question turns. It should

show your knowledge and understanding of the pertinent principles and theories of law involved and their qualifications and limitations. It should demonstrate your ability to apply the law to the given facts, and to reason logically in a lawyer-like manner to a sound conclusion from the given premises.

A mere “Yes” or “No” answer without any corresponding explanation or discussion will not be given any credit. Thus, always briefly but fully explain your answers although the question does not expressly ask for an explanation. At the same time, remember that a complete explanation does not require that you volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution to the problem. You do not need to re-write or repeat the question in your Examination Notebook.

4. MCQs are to be answered by writing in your Examination Notebook the capital letter (A, B, C, D, or E) corresponding to your chosen answer. *The MCQ answers should begin in the page following the last page of your essay answers.*

There is only one correct answer to every MCQ; choose the BEST answer from among the offered choices. Note that some MCQs may need careful analysis both of the questions and the choices offered.

5. Make sure you do not write *your name* or any *extraneous note/s* or *distinctive marking/s* on your Examination Notebook that can serve as identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner).

Writing, leaving or making any distinguishing or identifying mark in the Examination Notebook is considered cheating and can disqualify you for the Bar examinations.

You can use the questionnaire for notes you may wish/need to write during the examination.

**HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE**

  
J. ARTURO D. BRION  
Chairman  
2013 Bar Examinations

## ESSAY QUESTIONS

### I.

Jose and Erica, former sweethearts, both worked as sales representatives for Magna, a multinational firm engaged in the manufacture and sale of pharmaceutical products. Although the couple had already broken off their relationship, Jose continued to have special feelings for Erica.

One afternoon, Jose chanced upon Erica riding in the car of Paolo, a co-employee and Erica's ardent suitor; the two were on their way back to the office from a sales call on Silver Drug, a major drug retailer. In a fit of extreme jealousy, Jose rammed Paolo's car, causing severe injuries to Paolo and Erica. Jose's flare up also caused heavy damage to the two company-owned cars they were driving.

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

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

### II.

Gamma Company pays its regular employees P350.00 a day, and houses them in a dormitory inside its factory compound in Manila. Gamma Company also provides them with three full meals a day.

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

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

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



### III.

Inter-Garments Co. manufactures garments for export and requires its employees to render overtime work ranging from two to three hours a day to meet its clients' deadlines. Since 2009, it has been paying its employees on overtime an additional 35% of their hourly rate for work rendered in excess of their regular eight working hours.

Due to the slowdown of its export business in 2012, Inter-Garments had to reduce its overtime work; at the same time, it adjusted the overtime rates so that those who worked overtime were only paid an additional 25% instead of the previous 35%. To replace the workers' overtime rate loss, the company granted a one-time 5% across-the-board wage increase.

Vigilant Union, the rank-and-file bargaining agent, charged the company with Unfair Labor Practice on the ground that (1) no consultations had been made on who would render overtime work; and (2) the unilateral overtime pay rate reduction is a violation of Article 100 (entitled *Prohibition Against Elimination or Diminution of Benefits*) of the Labor Code.

**Is the union position meritorious? (8%)**

### IV.

Bobby, who was assigned as company branch accountant in Tarlac where his family also lives, was dismissed by Theta Company after anomalies in the company's accounts were discovered in the branch. Bobby filed a complaint and was ordered reinstated with full backwages after the Labor Arbiter found that he had been denied due process because no investigation actually took place.

Theta Company appealed to the National Labor Relations Commission (NLRC) and at the same time wrote Bobby, advising him to report to the main company office in Makati where he would be reinstated pending appeal. Bobby refused to comply with his new assignment because Makati is very far from Tarlac and he cannot bring his family to live with him due to the higher cost of living in Makati.

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

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

## V.

Cris filed a complaint for illegal dismissal against Baker Company. The Labor Arbiter dismissed the complaint but awarded Cris financial assistance. Only the company appealed from the Labor Arbiter's ruling. It confined its appeal solely to the question of whether financial assistance could be awarded. The NLRC, instead of ruling solely on the appealed issue, fully reversed the Labor Arbiter's decision; it found Baker Company liable for illegal dismissal and ordered the payment of separation pay and full backwages.

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

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

**Decide the case. (8%)**

## VI.

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

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

## VII.

Philippine Electric Company is engaged in electric power generation and distribution. It is a unionized company with *Kilusang Makatao* as the union representing its rank-and-file employees. During the negotiations for their expired collective bargaining agreement (CBA), the parties duly served their proposals and counter-proposals on one another. The parties, however, failed to discuss the merits of their proposals and counter-proposals in any formal negotiation meeting because their talks already bogged down on the negotiation ground rules, *i.e.*, on the question of how they would conduct their negotiations, particularly on whether to consider retirement as a negotiable issue.

Because of the continued impasse, the union went on strike. The Secretary of Labor and Employment immediately assumed jurisdiction over the dispute to avert widespread electric power interruption in the country. After extensive discussions and the filing of position papers (before the National Conciliation and Mediation Board and before the Secretary himself) on the validity of the union's strike and on the wage and other economic issues (including the retirement issue), the DOLE Secretary ruled on the validity of the strike and on the disputed CBA issues, and ordered the parties to execute a CBA based on his rulings.

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

## VIII.

After thirty (30) years of service, Beta Company compulsorily retired Albert at age 65 pursuant to the company's Retirement Plan. Albert was duly paid his full retirement benefits of one (1) month pay for every year of service under the Plan. Thereafter, out of compassion, the company allowed Albert to continue working and paid him his old monthly salary rate, but without the allowances that he used to enjoy.

After five (5) years under this arrangement, the company finally severed all employment relations with Albert; he was declared fully retired in a fitting ceremony but the company did not give him any further retirement benefits. Albert thought this treatment unfair as he had rendered full service at his usual hours in the past five (5) years. Thus, he filed a complaint for the allowances that were not paid to him, and for retirement benefits for his additional five (5) working years, based either on the company's Retirement Plan or the Retirement Pay Law, whichever is applicable.

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

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

### IX.

Pablo works as a driver at the National Tire Company (*NTC*). He is a member of the *Malayang Samahan ng Manggagawa sa NTC*, the exclusive rank-and-file collective bargaining representative in the company. The union has a CBA with *NTC* which contains a union security and a check-off clause. The union security clause contains a maintenance of membership provision that requires all members of the bargaining unit to maintain their membership in good standing with the union during the term of the CBA under pain of dismissal. The check-off clause on the other hand authorizes the company to deduct from union members' salaries defined amounts of union dues and other fees. Pablo refused to issue an authorization to the company for the check-off of his dues, maintaining that he will personally remit his dues to the union.

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

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

### X.

For ten (10) separate but consecutive yearly contracts, Cesar has been deployed as an able-bodied seaman by Meritt Shipping, through its local agent, Ace Maritime Services (*agency*), in accordance with the 2000 Philippine Overseas Employment Administration Standard Employment Contract (*2000 POEA-SEC*). Cesar's employment was also covered by a CBA between the union, AMOSUP, and Meritt Shipping. Both the 2000 *POEA-SEC* and the CBA commonly provide the same mode and procedures for claiming disability benefits. Cesar's last contract (for nine months) expired on July 15, 2013.

Cesar disembarked from the vessel *M/V Seven Seas* on July 16, 2013 as a seaman on "finished contract". He immediately reported to the agency and complained that he had been experiencing spells of dizziness, nausea,

general weakness, and difficulty in breathing. The agency referred him to Dr. Sales, a cardio-pulmonary specialist, who examined and treated him; advised him to take a complete rest for a while; gave him medications; and declared him fit to resume work as a seaman.

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

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

### MULTIPLE CHOICE QUESTIONS

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

- (A) any disputed issue they may agree to voluntarily arbitrate
- (B) only matters that do not fall within the exclusive jurisdiction of the Labor Arbiter
- (C) any disputed issue but only after conciliation at the National Conciliation and Mediation Board fails
- (D) any disputed issue provided that the Labor Arbiter has not assumed jurisdiction over the case on compulsory arbitration
- (E) only matters relating to the interpretation or implementation of a collective bargaining agreement

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

- (A) Yes, because the right to strike is guaranteed by the Constitution and cannot be denied to any group of employees.
- (B) No, because only an exclusive bargaining agent may declare a strike against the employer.

- (C) Yes, because the right to strike is a basic human right that the country's international agreements and the International Labor Organization recognize.
- (D) Yes, but only in case of unfair labor practice.
- (E) No, in the absence of a recognized bargaining agent, the workers' recourse is to file a case before the Department of Labor and Employment.

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

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

- (A) No, because the arrangement will circumvent worker's right to security of tenure.
- (B) No. If allowed, the arrangement will serve as starting point in weakening the security of tenure guarantee.
- (C) Yes, if the messengers are hired through a contractor.
- (D) Yes, because the business is temporary and the contracted undertaking is specific and time-bound.
- (E) No, because the fixed term provided is invalid.

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

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

- (A) three (3) years
- (B) four (4) years
- (C) five (5) years
- (D) six (6) years
- (E) ten (10) years

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

- (A) three (3) years
- (B) four (4) years
- (C) five (5) years
- (D) six (6) years
- (E) ten (10) years

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

**In this situation, LMN's employees are entitled to \_\_\_\_\_ as separation pay. (1%)**

- (A) one-half month pay for every year of service
- (B) one month pay for every year of service
- (C) one-half month pay
- (D) one month pay
- (E) no separation pay at all

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

**Is she entitled to retirement pay from PQR? (1%)**

- (A) Yes, but only to one month pay.
- (B) No, because she was not a regular employee.
- (C) Yes, at the same rate as regular employees.
- (D) No, because retirement pay is deemed included in her contracted per piece pay.
- (E) No, because homeworkers are not entitled to retirement pay.

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

- (A) 50% of the applicable minimum wage
- (B) 75% of the applicable minimum wage
- (C) 100% of the applicable minimum wage
- (D) the wage that the parties agree upon, depending on the capability of the disabled.
- (E) the wage that the parties agree upon, depending on the capability of the disabled, but not less than 50% of the applicable minimum wage

VIII. What is the financial incentive, if any, granted by law to SPQ Garments whose cutters and sewers in its garments-for-export operations are 80% staffed by deaf and deaf-mute workers? (1%)

- (A) Additional deduction from its gross income equivalent to 25% of amount paid as salaries to persons with disability.
- (B) Additional deduction from its gross income equivalent to 50% of the direct costs of the construction of facilities for the use of persons with disability.
- (C) Additional deduction from its net taxable income equivalent to 5% of its total payroll.
- (D) Exemption from real property tax for one (1) year of the property where facilities for persons with disability have been constructed.
- (E) The annual deduction under (A), plus a one-time deduction under (B).

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

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

- (A) he has been continuously employed for more than one year
- (B) his contract of employment has been repeatedly renewed, from project to project, for several years
- (C) he performs work necessary and desirable to the business, without a fixed period and without reference to any specific project or undertaking
- (D) he has lived up to the company's regularization standards
- (E) All of the above.

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

**What can *Samahang Tunay* still do within the company as a union considering that it still has members who continue to profess continued loyalty to it? (1%)**

- (A) It can still represent these members in grievance committee meetings.
  - (B) It can collect agency fees from its members within the bargaining unit.
  - (C) It can still demand meetings with the company on company time.
  - (D) As a legitimate labor organization, it can continue to represent its members on non-CBA-related matters.
  - (E) None of the above.
  - (F) All of the above.
- 

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

**Is the union demand meritorious? (1%)**

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

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

**Who is correct? (1%)**

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

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

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

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

**As the company's retained legal counsel, how will you respond to Hector? (1%)**

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

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

For reasons of its own, BM Institute no longer wanted to continue with Aleta's teaching services. Thus, after the contract for her second year expired, BM Institute advised Aleta that her contract would no longer be renewed. This advice prompted Aleta to file a complaint for illegal dismissal against BM Institute.

**Will the complaint prosper? (1%)**

- (A) Yes, because no just or authorized cause existed for the termination of her probationary employment.
- (B) Yes, because under the Labor Code, Aleta became a regular employee after 6 months and she may now only be dismissed for cause.

- (C) No, because there was no dismissal to speak of. Her employment was automatically terminated upon the expiration of her year-to-year fixed term employment.
- (D) No, because BM Institute may dismiss its faculty members at will in the exercise of its academic freedom.
- (E) No, because Aleta was still on probationary employment.

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

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

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

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

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

filed a case with the NLRC for discrimination when Ricardo refused their demand.

**XVI(1) Will the case prosper? (1%)**

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

**XVI(2).** In order to improve the Cebu service and sales, Ricardo decided to assign some of its Makati-based employees to Cebu to train Cebu employees and expose them to the Makati standard of service. A chef and three waiters were assigned to Cebu for the task. While in Cebu, the assigned personnel shared in the Cebu service charge collection and thus received service charge benefits lesser than what they were receiving in Makati.

**If you were the lawyer for the assigned personnel, what would you advice them to do? (1%)**

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

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

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

- (A) Constant and Able should be held solidarily liable for the unpaid wages and benefits, as well as backwages and separation pay, based on Article 109 of the Labor Code which provides that "every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code."
- (B) Constant and Able should be held solidarily liable for the unpaid wages and benefits, and should order Constant, as the workers' direct employer, to be solely liable for the backwages and separation pay.
- (C) Constant and Able should be held solidarily liable for the unpaid wages and benefits and the backwages since these pertain to labor standard benefits for which the employer and contractor are liable under the law, while Constant alone – as the actual employer – should be ordered to pay the separation pay.
- (D) Constant and Able should be held solidarily liable for the unpaid wages and benefits, and Constant should be held liable for their backwages and separation pay unless Able is shown to have participated with malice or bad faith in the workers' dismissal, in which case both should be held solidarily liable.
- (E) The above statements are all inaccurate.

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

**Is the dismissal of the Petition for Certification Election by the Med-Arbiter proper? (1%)**

- (A) Yes, because Article 245 of the Labor Code prohibits supervisory employees from joining the union of the rank and file employees and provides that a union representing both rank and file and supervisory employees as members is not a legitimate labor organization.
- (B) No, because the grounds for the dismissal of a petition for certification election do not include mixed membership in one union.
- (C) No, because a final order of cancellation of union registration is required before a petition for certification election may be dismissed on the ground of lack of legal personality of the union.
- (D) No, because Delta Company did not have the legal personality to participate in the certification election proceedings and to file a motion to dismiss based on the legitimacy status of the petitioning union.