



Republic of the Philippines
Supreme Court
Manila

2014 BAR EXAMINATIONS

LABOR LAW

October 5, 2014

2:00 P.M. – 6:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains TWELVE (12) 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 TWENTY-SEVEN (27) Essay and Multiple Choice Questions to be answered within *four (4) hours*.

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 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 page 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 Notebook.

4. MCQs are to be answered by writing in your Notebook the capital letter A, B, C, or D corresponding to your chosen answer.

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 Notebook that can serve as an 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 exam 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.

YOU CAN BRING HOME THIS QUESTIONNAIRE OR HAND IT TOGETHER WITH YOUR NOTEBOOK

J. DIOSDADO M. PERALTA
Chairman
2014 Bar Examinations

I.

Linda was employed by Sectarian University (*SU*) to cook for the members of a religious order who teach and live inside the campus. While performing her assigned task, Linda accidentally burned herself. Because of the extent of her injuries, she went on medical leave. Meanwhile, *SU* engaged a replacement cook. Linda filed a complaint for illegal dismissal, but her employer *SU* contended that Linda was not a regular employee but a domestic househelp. Decide. (4%)

II.

Lucy was one of approximately 500 call center agents at Hambergis, Inc. 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 (6) months after the expiration of her last contract, Lucy went to Hambergis personnel department to inquire why she was not yet being recalled to work. She was told that her performance during her last contract was “below average.” Lucy seeks your legal advice about her chances of getting her job back. What will your advice be? (4%)

III.

Lolong Law Firm (*LLF*), which employs around 50 lawyers and 100 regular staff, suffered losses for the first time in its history. The management informed its employees that it could no longer afford to provide them free lunch. Consequently, it announced that a nominal fee would henceforth be charged. Was *LLF* justified in withdrawing this benefit which it had unilaterally been providing to its employees? (1%)

- (A) Yes, because it is suffering losses for the first time.
- (B) Yes, because this is a management prerogative which is not due to any legal or contractual obligation.
- (C) No, because this amounts to a diminution of benefits which is prohibited by the Labor Code.
- (D) No, because it is a fringe benefit that has already ripened into a demandable right.

IV.

Linis Manpower, Inc. (*LMI*) had provided janitorial services to the Philippine Overseas Employment Administration (*POEA*) since March 2009. Its service contract was renewed every three months. However, in the bidding held in June 2012, *LMI* was disqualified and excluded. In 2013, six janitors of *LMI* formerly assigned at *POEA* filed a complaint for underpayment of wages. Both *LMI* and *POEA* were impleaded as respondents. Should *POEA*, a government agency subject to budgetary appropriations from Congress, be held liable solidarily with *LMI* for the payment of salary differentials due to the complainant? Cite the legal basis of your answer. (4%)

V.

Liwayway Glass had 600 rank-and-file employees. Three rival unions – A, B, and C – participated in the certification elections ordered by the Med-Arbiter. 500 employees voted. The unions obtained the following votes: A-200; B-150; C-50; 90 employees voted “no union”; and 10 were segregated votes. Out of the segregated votes, four (4) were cast by probationary employees and six (6) were cast by dismissed employees whose respective cases are still on appeal. (10%)

- (A) Should the votes of the probationary and dismissed employees be counted in the total votes cast for the purpose of determining the winning labor union?
- (B) Was there a valid election?
- (C) Should Union A be declared the winner?
- (D) Suppose the election is declared invalid, which of the contending unions should represent the rank-and-file employees?
- (E) Suppose that in the election, the unions obtained the following votes: A-250; B-150; C-50; 40 voted “no union”; and 10 were segregated votes. Should Union A be certified as the bargaining representative?

VI.

Lina has been working as a steward with a Miami, U.S.A.-based Loyal Cruise Lines for the past 15 years. She was recruited by a local manning agency, Macapagal Shipping, and was made to sign a 10-month employment contract everytime she left for Miami. Macapagal Shipping paid for Lina’s round-trip travel expenses from Manila to Miami. Because of a food poisoning incident which happened during her last cruise

assignment, Lina was not re-hired. Lina claims she has been illegally terminated and seeks separation pay. If you were the Labor Arbiter handling the case, how would you decide? (4%)

VII.

Non-lawyers can appear before the Labor Arbiter if: (1%)

- (A) they represent themselves
- (B) they are properly authorized to represent their legitimate labor organization or member thereof
- (C) they are duly-accredited members of the legal aid office recognized by the DOJ or IBP
- (D) they appear in cases involving an amount of less than Php5,000

VIII.

As a result of a bargaining deadlock between Lazo Corporation and Lazo Employees Union, the latter staged a strike. During the strike, several employees committed illegal acts. Eventually, its members informed the company of their intention to return to work. (6%)

- (A) Can Lazo Corporation refuse to admit the strikers?
- (B) Assuming the company admits the strikers, can it later on dismiss those employees who committed illegal acts?
- (C) If due to prolonged strike, Lazo Corporation hired replacements, can it refuse to admit the replaced strikers?

IX.

Luisa Court is a popular chain of motels. It employs over 30 chambermaids who, among others, help clean and maintain the rooms. These chambermaids are part of the union rank-and-file employees which has an existing collective bargaining agreement (CBA) with the company. While the CBA was in force, Luisa Court decided to abolish the position of chambermaids and outsource the cleaning of the rooms to *Malinis* Janitorial Services, a *bona fide* independent contractor which has invested in substantial equipment and sufficient manpower. The chambermaids filed a case of illegal dismissal against Luisa Court. In response, the company argued that the decision to outsource resulted from the new management's

directive to streamline operations and save on costs. If you were the Labor Arbiter assigned to the case, how would you decide? (4%)

X.

Luisa was hired as a secretary by the Asian Development Bank (*ADB*) in Manila. Luisa's first boss was a Japanese national whom she got along with. But after two years, the latter was replaced by an arrogant Indian national who did not believe her work output was in accordance with international standards. One day, Luisa submitted a draft report filled with typographical errors to her boss. The latter scolded her, but Luisa verbally fought back. The Indian boss decided to terminate her services right then and there. Luisa filed a case for illegal dismissal with the Labor Arbiter claiming arbitrariness and denial of due process. If you were the Labor Arbiter, how would you decide the case? (4%)

XI.

Lionel, an American citizen whose parents migrated to the U.S. from the Philippines, was hired by JP Morgan in New York as a call center specialist. Hearing about the phenomenal growth of the call center industry in his parents' native land, Lionel sought and was granted a transfer as a call center manager for JP Morgan's operations in Taguig City. Lionel's employment contract did not specify a period for his stay in the Philippines. After three years of working in the Philippines, Lionel was advised that he was being recalled to New York and being promoted to the position of director of international call center operations. However, because of certain "family reasons," Lionel advised the company of his preference to stay in the Philippines. He was dismissed by the company. Lionel now seeks your legal advice on: (6%)

- (A) whether he has a cause of action
- (B) whether he can file a case in the Philippines
- (C) what are his chances of winning

XII.

Which of the following groups does not enjoy the right to self-organization? (1%)

- (A) those who work in a non-profit charitable institution
- (B) those who are paid on a piece-rate basis

- (C) those who work in a corporation with less than 10 employees
- (D) those who work as legal secretaries

XIII.

Don Luis, a widower, lived alone in a house with a large garden. One day, he noticed that the plants in his garden needed trimming. He remembered that Lando, a 17-year old out-of-school youth, had contacted him in church the other day looking for work. He contacted Lando who immediately attended to Don Luis's garden and finished the job in three days. (4%)

- (A) Is there an employer-employee relationship between Don Luis and Lando?
- (B) Does Don Luis need to register Lando with the Social Security System (SSS)?

XIV.

Luisito has been working with Lima Land for 20 years. Wanting to work in the public sector, Luisito applied with and was offered a job at Livecor. Before accepting the offer, he wanted to consult you whether the payments that he and Lima Land had made to the Social Security System (SSS) can be transferred or credited to the Government Service Insurance System (GSIS). What would you advice? (4%)

XV.

Our Lady of Peace Catholic School Teachers and Employees Labor Union (*OLPCS-TELU*) is a legitimate labor organization composed of vice-principals, department heads, coordinators, teachers, and non-teaching personnel of Our Lady of Peace Catholic School (*OLPCS*).

OLPCS-TELU subsequently filed a petition for certification election among the teaching and non-teaching personnel of *OLPCS* before the Bureau of Labor Relations (*BLR*) of the Department of Labor and Employment (*DOLE*). The Med-Arbiter subsequently granted the petition and ordered the conduct of a joint certification election for the teaching and non-teaching personnel of *OLPCS*.

May OLPCS-TELU be considered a legitimate labor organization?
(5%)

XVI.

Samahang East Gate Enterprises (*SEGE*) is a labor organization composed of the rank-and-file employees of East Gate Enterprises (*EGE*), the leading manufacturer of all types of gloves and aprons.

EGE was later requested by SEGE to bargain collectively for better terms and conditions of employment of all the rank-and-file employees of EGE. Consequently, EGE filed a petition for certification election before the Bureau of Labor Relations (*BLR*).

During the proceedings, EGE insisted that it should participate in the certification process. EGE reasoned that since it was the one who filed the petition and considering that the employees concerned were its own rank-and-file employees, it should be allowed to take an active part in the certification process.

Is the contention of EGE proper? Explain. (5%)

XVII.

Philhealth is a government-owned and controlled corporation employing thousands of Filipinos. Because of the desire of the employees of Philhealth to obtain better terms and conditions of employment from the government, they formed the Philhealth Employees Association (*PEA*) and demanded Philhealth to enter into negotiations with PEA regarding terms and conditions of employment which are not fixed by law. (4%)

- (A) Are the employees of Philhealth allowed to self-organize and form PEA and thereafter demand Philhealth to enter into negotiations with PEA for better terms and conditions of employment?
- (B) In case of unresolved grievances, can PEA resort to strikes, walkouts, and other temporary work stoppages to pressure the government to accede to their demands?

XVIII.

The procedural requirements of a valid strike include: **(1%)**

- (A) a claim of either unfair labor practice or deadlock in collective bargaining
- (B) notice of strike filed at least 15 days before a ULP-grounded strike or at least 30 days prior to the deadlock in a bargaining-grounded strike
- (C) majority of the union membership must have voted to stage the strike with notice thereon furnished to the National Conciliation and Mediation Board (*NCMB*) at least 24 hours before the strike vote is taken
- (D) strike vote results must be furnished to the *NCMB* at least seven (7) days before the intended strike

XIX.

Lincoln was in the business of trading broadcast equipment used by television and radio networks. He employed Lionel as his agent. Subsequently, Lincoln set up Liberty Communications to formally engage in the same business. He requested Lionel to be one of the incorporators and assigned to him 100 Liberty shares. Lionel was also given the title Assistant Vice-President for Sales and Head of Technical Coordination. After several months, there were allegations that Lionel was engaged in “under the table dealings” and received “confidential commissions” from Liberty’s clients and suppliers. He was, therefore, charged with serious misconduct and willful breach of trust, and was given 48 hours to present his explanation on the charges. Lionel was unable to comply with the 48-hour deadline and was subsequently barred from entering company premises. Lionel then filed a complaint with the Labor Arbiter claiming constructive dismissal. Among others, the company sought the dismissal of the complaint alleging that the case involved an intra-corporate controversy which was within the jurisdiction of the Regional Trial Court (*RTC*).

If you were the Labor Arbiter assigned to the case, how would you rule on the company’s motion to dismiss? **(5%)**

XX.

Lito was anticipating the bonus he would receive for 2013. Aside from the 13th month pay, the company has been awarding him and his other

co-employees a two to three months bonus for the last 10 years. However, because of poor over-all sales performance for the year, the company unilaterally decided to pay only a one month bonus in 2013. Is Lito's employer legally allowed to reduce the bonus? **(4%)**

XXI.

An accidental fire gutted the JKL factory in Caloocan. JKL decided to suspend operations and requested its employees to stop reporting for work. After six (6) months, JKL resumed operations but hired a new set of employees. The old set of employees filed a case for illegal dismissal. If you were the Labor Arbiter, how would you decide the case? **(4%)**

XXII.

Despite a reinstatement order, an employer may choose not to reinstate an employee if: **(1%)**

- (A)** there is a strained employer-employee relationship
- (B)** the position of the employee no longer exists
- (C)** the employer's business has been closed
- (D)** the employee does not wish to be reinstated.

XXIII.

Luningning Foods engaged the services of Lamitan Manpower, Inc., a *bona fide* independent contractor, to provide "tasters" that will check on food quality. Subsequently, these "tasters" joined the union of rank-and-file employees of *Luningning* and demanded that they be made regular employees of the latter as they are performing functions necessary and desirable to operate the company's business. *Luningning* rejected the demand for regularization. On behalf of the "tasters", the union then filed a notice of strike with the Department of Labor and Employment (*DOLE*). In response, *Luningning* sought a restraining order from the Regional Trial Court (*RTC*) arguing that the *DOLE* does not have jurisdiction over the case since it does not have an employer-employee relationship with the employees of an independent contractor. If you were the *RTC* judge, would you issue a restraining order against the union? **(4%)**

XXIV.

Lanz was a strict and unpopular Vice-President for Sales of Lobinsons Land. One day, Lanz shouted invectives against Lee, a poor performing sales associate, calling him, among others, a “brown monkey.” Hurt, Lee decided to file a criminal complaint for grave defamation against Lanz. The prosecutor found probable cause and filed an information in court. Lobinsons decided to terminate Lanz for committing a potential crime and other illegal acts prejudicial to business. Can Lanz be legally terminated by the company on these grounds? (4%)

XXV.

Lizzy Lu is a sales associate for Luna Properties. The latter is looking to retrench Lizzy and five other sales associates due to financial losses. Aside from a basic monthly salary, Lizzy and her colleagues receive commissions on the sales they make as well as cost of living and representation allowances. In computing Lizzy’s separation pay, Luna Properties should consider her: (1%)

- (A) monthly salary only
- (B) monthly salary plus sales commissions
- (C) monthly salary plus sales commissions, plus cost of living allowance
- (D) monthly salary plus sales commissions, plus cost of living allowance and representation allowance

XXVI.

Liwanag Corporation is engaged in the power generation business. A stalemate was reached during the collective bargaining negotiations between its management and the union. After following all the requisites provided by law, the union decided to stage a strike. The management sought the assistance of the Secretary of Labor and Employment, who assumed jurisdiction over the strike and issued a return-to-work order. The union defied the latter and continued the strike. Without providing any notice, *Liwanag* Corporation declared everyone who participated in the strike as having lost their employment. (4%)

- (A) Was *Liwanag* Corporation’s action valid?
- (B) If, before the DOLE Secretary assumed jurisdiction, the striking union members communicated in writing their desire to return

to work, which offer *Liwanag* Corporation refused to accept, what remedy, if any, does the union have?

XXVII.

The jurisdiction of the National Labor Relations Commission does not include: (1%)

- (A) exclusive appellate jurisdiction over all cases decided by the Labor Arbiter
- (B) 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 does not exceed five thousand pesos (Php5,000)
- (C) original jurisdiction to act as a compulsory arbitration body over labor disputes certified to it by the Regional Directors
- (D) power to issue a labor injunction

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