

# 2018 BAR EXAMINATIONS LABOR LAW AND SOCIAL LEGISLATION

November 4, 2018

2:00 P.M. – 6:00 P.M.

## INSTRUCTIONS

1. This Questionnaire contains ten (10) pages including this page. Check the number of pages and their proper sequencing. You may write notes on this Questionnaire.

Read each question very carefully and write your answers in your Bar Examination Notebook in the same order as the questions. Write your answers only on the front page of every sheet. Note well the allocated percentage points for each question or sub-question. In your answers, use the numbering system in the questionnaire.

2. Answer the questions legibly, clearly, and concisely. Start each answer 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.

3. Your answer should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at a sound or logical conclusion. Always support your answer with the pertinent laws, rules, and/or jurisprudence.

**A MERE “YES” OR “NO” ANSWER WITHOUT ANY CORRESPONDING EXPLANATION OR DISCUSSION WILL NOT BE GIVEN FULL CREDIT. THUS, ALWAYS BRIEFLY BUT FULLY EXPLAIN YOUR ANSWERS ALTHOUGH THE QUESTION DOES NOT EXPRESSLY ASK FOR AN EXPLANATION. DO NOT REWRITE OR REPEAT THE QUESTION ON YOUR NOTEBOOK.**

4. 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 Notebook is considered cheating and can disqualify you.

**YOU CAN BRING HOME THIS QUESTIONNAIRE**

  
JUSTICE MARIANO C. DEL CASTILLO  
Chairperson  
2018 Bar Examinations

## I

Narciso filed a complaint against Norte University for the payment of retirement benefits after having been a part-time professional lecturer in the same school since 1974. Narciso taught for two semesters and a summer term for the school year 1974-1975, took a leave of absence from 1975 to 1977, and resumed teaching until 2003. Since then, his contract has been renewed at the start of every semester and summer, until November 2005 when he was told that he could no longer teach because he was already 75 years old. Norte University also denied Narciso's claim for retirement benefits stating that only full-time permanent faculty, who have served for at least five years immediately preceding the termination of their employment, can avail themselves of post-employment benefits. As part-time faculty member, Narciso did not acquire permanent employment status under the Manual of Regulations for Private Schools, in relation to the Labor Code, regardless of his length of service.

- (a) Is Narciso entitled to retirement benefits? (2.5%)
- (b) If he is entitled to retirement benefits, how should retirement pay be computed in the absence of any contract between him and Norte University providing for such benefits? (2.5%)

## II

Nayon Federation issued a charter certificate creating a rank-and-file Neuman Employees Union. On the same day, New Neuman Employees Union filed a petition for certification election with the Department of Labor and Employment (DOLE) Regional Office, attaching the appropriate charter certificate.

- a) The employer, Neuman Corporation, filed a motion to dismiss the petition for lack of legal personality on the part of the petitioner union. Should the motion be granted? (2.5%)
- b) The employer likewise filed a petition for cancellation of union registration against New Neuman Employees Union, alleging that Nayon Federation already had a chartered local rank-and-file union, Neuman Employees Union, pertaining to the same bargaining unit within the establishment. Should the petition for cancellation prosper? (2.5%)

## III

Due to his employer's dire financial situation, Nicanor was prevailed upon by his employer to voluntarily resign. In exchange, he demanded payment of salary differentials, 13<sup>th</sup> month pay, and financial assistance, as promised by his employer. Management promised to pay him as soon as it is able to pay off all retrenched rank-and-file employees. Five years later, and before management was able to pay Nicanor the amount promised to him, Nicanor died of a heart attack. His widow, Norie, filed a money claim against the company before the

National Labor Relations Commission (NLRC), including interest on the amount of the unpaid claim. She also claimed additional damages arguing that the supposed resignation letter was obtained from her spouse through undue pressure and influence. The employer filed a motion to dismiss on the ground that (A) the NLRC did not have jurisdiction over money claims, and (B) the action has prescribed.

- (a) Does the NLRC have jurisdiction to award money claims including interest on the amount unpaid? (2.5%)
- (b) Assuming that the NLRC has jurisdiction, has the action prescribed? (2.5%)
- (c) May Nicanor's spouse successfully claim additional damages as a result of the alleged undue pressure and influence? (2.5%)

#### IV

Natasha Shoe Company adopted an organizational streamlining program that resulted in the retrenchment of 550 employees in its main plant. After having been paid their separation benefits, the retrenched workers demanded payment of retirement benefits under a CBA between their union and management. Natasha Shoe Company denied the workers' demand.

- (a) What is the most procedurally peaceful means to resolve this dispute? (2.5%)
- (b) Can the workers claim both separation pay and retirement benefits? (2.5%)

#### V

Nelda worked as a chambermaid in Hotel Neverland with a basic wage of PhP560.00 for an eight-hour workday. On Good Friday, she worked for one (1) hour from 10:00 PM to 11:00 PM. Her employer paid her only PhP480.00 for each 8-hour workday, and PhP70.00 for the work done on Good Friday. She sued for underpayment of wages and non-payment of holiday pay and night shift differential pay for working on a Good Friday. Hotel Neverland denied the alleged underpayment, arguing that based on long-standing unwritten tradition, food and lodging costs were partially shouldered by the employer and partially paid for by the employee through salary deduction. According to the employer, such valid deduction caused the payment of Nelda's wage to be below the prescribed minimum. The hotel also claimed that she was not entitled to holiday pay and night shift differential pay because hotel workers have to work on holidays and may be assigned to work at night.

- (a) Does the hotel have valid legal grounds to deduct food and lodging costs from Nelda's basic salary? (2.5%)

- (b) Applying labor standards law, how much should Nelda be paid for work done on Good Friday? Show the computation in your test booklet and encircle your final answer. (2.5%)

## VI

A certification election was conducted in Nation Manufacturing Corporation, whereby 55% of eligible voters in the bargaining unit cast their votes. The results were as follows:

Union Nana : 45 votes  
Union Nada : 40 votes  
Union Nara : 30 votes  
No Union : 80 votes

Union Nana moved to be declared as the winner of the certification election.

- a) Can Union Nana be declared as the winner? (2.5%)
- b) Assume that the eligibility of 30 voters was challenged during the pre-election conference. The ballots of the 30 challenged voters were placed inside an envelope sealed by the DOLE Election Officer. Considering the said envelope remains sealed, what should be the next course of action with respect to the said challenged votes? (2.5%)

## VII

Nico is a medical representative engaged in the promotion of pharmaceutical products and medical devices for Northern Pharmaceuticals, Inc. He regularly visits physicians' clinics to inform them of the chemical composition and benefits of his employer's products. At the end of every day, he receives a basic wage of PhP700.00 plus a PhP150.00 "productivity allowance." For purposes of computing Nico's 13<sup>th</sup> month pay, should the daily "productivity allowance" be included? (2.5%)

## VIII

Nathaniel has been a salesman assigned by Newmark Enterprises (Newmark) for nearly two years at the Manila office of Nutrition City, Inc. (Nutrition City). He was deployed pursuant to a service agreement between Newmark and Nutrition City, the salient provisions of which were as follows:

- a) the Contractor (Newmark) agrees to perform and provide the Client (Nutrition City), on a non-exclusive basis, such tasks or activities that are considered contractible under existing laws, as may be needed by the Client from time to time;

- b) the Contractor shall employ the necessary personnel like helpers, salesmen, and drivers who are determined by the Contractor to be efficiently trained;
- c) the Client may request replacement of the Contractor's personnel if quality of the desired result is not achieved;
- d) the Contractor's personnel will comply with the Client's policies, rules, and regulations; and
- e) the Contractor's two service vehicles and necessary equipment will be utilized in carrying out the provisions of this Agreement.

When Newmark fired Nathaniel, he filed an illegal dismissal case against the wealthier company, Nutrition City, Inc., alleging that he was a regular employee of the same. Is Nathaniel correct? (2.5%)

## IX

Sgt. Nemesis was a detachment non-commissioned officer of the Armed Forces of the Philippines in Nueva Ecija. He and some other members of his detachment sought permission from their Company Commander for an overnight pass to Nueva Vizcaya to settle some important matters. The Company Commander orally approved their request and allowed them to carry their firearms as the place they were going to was classified as a "critical place." They arrived at the place past midnight; and as they were alighting from a tricycle, one of his companions accidentally dropped his rifle, which fired a single shot, and in the process hit Sgt. Nemesis fatally. The shooting was purely accidental. At the time of his death, he was still legally married to Nelda, but had been separated *de facto* from her for 17 years. For the last 15 years of his life, he was living in with Narda, with whom he has two minor children. Since Narda works as a *kasambahay*, the two children lived with their grandparents, who provided their daily support. Sgt. Nemesis and Narda only sent money to them every year to pay for their school tuition.

Nelda and Narda, both for themselves and the latter, also on behalf of her minor children, separately filed claims for compensation as a result of the death of Sgt. Nemesis. The Line of Duty Board of the AFP declared Sgt. Nemesis' death to have been "in line of duty", and recommended that all benefits due to Sgt. Nemesis be given to his dependents. However, the claims were denied by GSIS because Sgt. Nemesis was not in his workplace nor performing his duty as a soldier of the Philippine Army when he died.

- (a) Are the dependents of Sgt. Nemesis entitled to compensation as a result of his death? (2.5%)
  - (b) As between Nelda and Narda, who should be entitled to the benefits? (2.5%)
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- (c) Are the minor children entitled to the benefits considering that they were not fully dependent on Sgt. Nemesis for support? (2.5%)

**X**

Nonato had been continuously employed and deployed as a seaman who performed services that were necessary and desirable to the business of N-Train Shipping, through its local agent, Narita Maritime Services (Agency), in accordance with the 2010 Philippine Overseas Employment Administration Standard Employment Contract (2010 POEA-SEC). Nonato's last contract (for five months) expired on November 15, 2016. Nonato was then repatriated due to a "finished contract." He immediately reported to the Agency and complained that he had been experiencing dizziness, weakness, and difficulty in breathing. The Agency referred him to Dr. Neri, who examined, treated, and prescribed him with medications. After a few months of treatment and consultations, Nonato was declared fit to resume work as a seaman. Nonato went back to the Agency to ask for re-deployment but the Agency rejected his application. Nonato filed an illegal dismissal case against the Agency and its principal, with a claim for total disability benefits based on the ailments that he developed on board N-Train Shipping vessels. The claim was based on the certification of his own physician, Dr. Nuñez, that he was unfit for sea duties because of his hypertension and diabetes.

- a) Was Nonato a regular employee of N-Train Shipping? (2.5%)
- b) Can Nonato successfully claim disability benefits against N-Train Shipping and its agent Narita Maritime Services? (2.5%)

**XI**

Your favorite relative, Tita Nilda, approaches you and seeks your advice on her treatment of her *kasambahay*, Noray. Tita Nilda shows you a document called a "Contract of Engagement" for your review. Under the Contract of Engagement, Noray shall be entitled to a rest day every week, provided that she may be requested to work on a rest day if Tita Nilda should need her services that day. Tita Nilda also claims that this Contract of Engagement should embody all terms and conditions of Noray's work as the engagement of a *kasambahay* is a private matter and should not be regulated by the State.

- a) Is Tita Nilda correct in saying that this is a private matter and should not be regulated by the State? (2.5%)
- b) Is the stipulation that she may be requested to work on a rest day legal? (2.5%)
- c) Are stay-in family drivers included under the Kasambahay Law? (2.5%)

**XII**

Nena worked as an Executive Assistant for Nesting, CEO of Nordic Corporation. One day, Nesting called Nena into his office and showed her lewd pictures of women in seductive poses which Nena found offensive. Nena complained before the General Manager who, in turn, investigated the matter and recommended the dismissal of Nesting to the Board of Directors. Before the Board of Directors, Nesting argued, that since the Anti-Sexual Harassment Law requires the existence of "sexual favors," he should not be dismissed from the service since he did not ask for any sexual favor from Nena. Is Nesting correct? (2.5%)

**XIII**

Nicodemus was employed as a computer programmer by Network Corporation, a telecommunications firm. He has been coming to work in shorts and sneakers, in violation of the "prescribed uniform policy" based on company rules and regulations. The company human resources manager wrote him a letter, giving him 10 days to comply with the company uniform policy. Nicodemus asserted that wearing shorts and sneakers made him more productive, and cited his above-average output. When he came to work still in violation of the uniform policy, the company sent him a letter of termination of employment. Nicodemus filed an illegal dismissal case. The Labor Arbiter ruled in favor of Nicodemus and ordered his reinstatement with backwages. Network Corporation, however, refused to reinstate him. The NLRC 1<sup>st</sup> Division sustained the Labor Arbiter's judgment. Network Corporation still refused to reinstate Nicodemus. Eventually, the Court of Appeals reversed the decision of the NLRC and ruled that the dismissal was valid. Despite the reversal, Nicodemus still filed a motion for execution with respect to his accrued backwages.

- (a) Were there valid legal grounds to dismiss Nicodemus from his employment? (2.5%)
- (b) Should Nicodemus' motion for execution be granted? (2.5%)

**XIV**

Nelson complained before the DOLE Regional Office about Needy Corporation's failure to pay his wage increase amounting to PhP5,000.00 as mandated in a Wage Order issued by the Regional Tripartite Wages and Productivity Board. Consequently, Nelson asked the DOLE to immediately issue an Order sustaining his money claim. To his surprise, he received a notice from the DOLE to appear before the Regional Director for purposes of conciliating the dispute between him and Needy Corporation. When conciliation before the Regional Director failed, the latter proceeded to direct both parties to submit their respective position papers in relation to the dispute. Needy Corporation argued, that since Nelson was willing to settle for 75% of his money claim during

conciliation proceedings, only a maximum of 75% of the said money claim may be awarded to him.

- (a) Was DOLE's action to conduct mandatory conciliation in light of Nelson's complaint valid? (2.5%)
- (b) Should the Regional Director sustain Needy Corporation's argument? (2.5%)

### XV

Nexturn Corporation employed Nini and Nono, whose tasks involved directing and supervising rank-and-file employees engaged in company operations. Nini and Nono are required to ensure that such employees obey company rules and regulations, and recommend to the company's Human Resources Department any required disciplinary action against erring employees. In Nexturn Corporation, there are two independent unions, representing rank-and-file and supervisory employees, respectively.

- a) May Nini and Nono join a union? (2.5%)
- b) May the two unions be affiliated with the same Union Federation? (2.5%)

### XVI

Nagrab Union and Nagrab Corporation have an existing CBA which contains the following provision: "New employees within the coverage of the bargaining unit who may be regularly employed shall become members of Nagrab Union. Membership in good standing with the Nagrab Union is a requirement for continued employment with Nagrab Corporation." Nagrab Corporation subsequently acquired all the assets and rights of Nuber Corporation and absorbed all of the latter's employees. Nagrab Union immediately demanded enforcement of the above-stated CBA provision with respect to the absorbed employees. Nagrab Corporation refused on the ground that this should not apply to the absorbed employees who were former employees of another corporation whose assets and rights it had acquired.

- (a) Was Nagrab Corporation correct in refusing to enforce the CBA provision with respect to the absorbed employees? (2.5%)
  - (b) May a newly-regularized employee of Nagrab Corporation (who is not part of the absorbed employees) refuse to join Nagrab Union? How would you advise the human resources manager of Nagrab Corporation to proceed? (2.5%)
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**XVII**

Upon compliance with the legal requirements on the conduct of a strike, Navarra Union staged a strike against Newfound Corporation on account of a collective bargaining deadlock. During the strike, some members of Navarra Union broke the windows and punctured the tires of the company-owned buses. The Secretary of Labor and Employment assumed jurisdiction over the dispute.

- (a) Should all striking employees be admitted back to work upon the assumption of jurisdiction by the Secretary of Labor and Employment? Will these include striking employees who damaged company properties? (2.5%)
- (b) May the company readmit strikers only by restoring them to the payroll? (2.5%)

**XVIII**

Nestor and Nadine have been living in for the last 10 years without the benefit of marriage. Their union has produced four children. Nadine was three months pregnant with her 5<sup>th</sup> child when Nestor left her for another woman. When Nadine was eight months pregnant with her 5<sup>th</sup> child, she applied for maternity leave benefits. Her employer refused on the ground that this was already her 5<sup>th</sup> pregnancy and that she was only living in with the father of her child, who is now in a relationship with another woman. When Nadine gave birth, Nestor applied for paternity leave benefits. His employer also denied the application on the same grounds that Nadine's employer denied her application.

- (a) Can Nadine's employer legally deny her claim for maternity benefits? (2.5%)
- (b) Can Nestor's employer legally deny his claim for paternity benefits? (2.5%)

**XIX**

Northeast Airlines sent notices of transfer, without diminution in salary or rank, to 50 ground crew personnel who were front-liners at Northeast Airlines counters at the Ninoy Aquino International Airport (NAIA). The 50 employees were informed that they would be distributed to various airports in Mindanao to anticipate robust passenger volume growth in the area. North Union, representing rank-and-file employees, filed unfair labor practice and illegal dismissal cases before the NLRC, citing, among others, the inconvenience of the 50 concerned employees and union discrimination, as 8 of the 50 concerned ground crew personnel were union officers. Also, the Union argued that Northeast Airlines could easily hire additional employees from Mindanao to boost its ground operations in the Mindanao airports.



- a) Will the transfer of the 50 ground crew personnel amount to illegal dismissal? (2.5%)
- b) Will the unfair labor practice case prosper? (2.5%)

**XX**

In Northern Lights Corporation, union members Nad, Ned, and Nod sought permission from the company to distribute flyers with respect to a weekend union activity. The company HR manager granted the request through a text message sent to another union member, Norlyn.

While Nad, Ned, and Nod were distributing the flyers at the company assembly plant, a company supervisor barged in and demanded that they cease from distributing the flyers, stating that the assembly line employees were trying to beat a production deadline and were thoroughly distracted. Norlyn tried to show the HR manager's text message authorizing flyer distribution during work hours, but the supervisor brushed it aside.

As a result, Nad, Ned, and Nod were suspended for violating company rules on trespass and highly-limited union activities during work hours. The Union filed an unfair labor practice (ULP) case before the NLRC for union discrimination.

- a) Will the ULP case filed by the Union prosper? (2.5%)
- b) Assume the NLRC ruled in favor of the Union. The Labor Arbiter's judgment included, among others, an award for moral and exemplary damages at PhP50,000.00 each for Nad, Ned, and Nod. Northern Lights Corporation argued that any award of damages should be given to the Union, and not individually to its members. Is Northern Lights Corporation correct? (2.5%)

**-NOTHING FOLLOWS-**

