



Republic of the Philippines  
Supreme Court  
Manila

2019 BAR EXAMINATIONS  
LABOR LAW AND SOCIAL LEGISLATION

NOVEMBER 3, 2019

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.
2. This Questionnaire is divided into two (2) parts: Part I and Part II. Write your answers to the questions in **Part I** (consisting of problem sets labelled **A.1. to A.10.**) in **Booklet I** and the answers to questions in **Part II** (consisting of problem sets labelled **B.11. to B.20.**) in **Booklet II**. **Answers written in the wrong booklet shall not be given any credit.**
3. Read each question carefully and note the points allocated for each question. In your answers, follow the sequence and the numbering system used in the Questionnaire. Answer each numbered question on a separate page; an answer to a sub-question under the same number set may be written continuously on the same page and succeeding pages until completed.
4. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Always support your answers with the pertinent laws, rules, and/or jurisprudence. A mere “yes” or “no” answer without any corresponding explanation or discussion may not be given full credit.
5. Marking of your booklets with your name or other identifying signs or symbols extraneous to the subject matter of the questions may be considered as cheating, and may disqualify you for the whole examinations.

**YOU CAN BRING HOME THE QUESTIONNAIRE.**

  
**JUSTICE ESTELITA M. PERLAS-BERNABE**  
Chairperson  
2019 Bar Examinations

# **PART I**

**Note:** As stated in the Instructions, **Part I** covers problem sets labelled **A.1. to A.10.** All answers to these questions should be written in **Booklet I.**

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## **A.1.**

**Define, explain or distinguish the following terms:**

- (a) Just and authorized causes (2%)**
- (b) Seasonal and project employees (2%)**
- (c) Strikes and lockouts (2%)**
- (d) *Bona fide* occupational qualifications (2%)**
- (e) Grievance machinery (2%)**

## **A.2.**

X is a member of the Social Security System (SSS). In 2015, he died without any spouse or children. Prior to the semester of his death, X had paid 36 monthly contributions. His mother, M, who had previously been receiving regular support from X, filed a claim for the latter's death benefits.

- (a) Is M entitled to claim death benefits from the SSS? Explain. (2.5%)**
- (b) Assuming that X got married to his girlfriend a few days before his death, is M entitled to claim death benefits from the SSS? Explain. (2.5%)**

## **A.3.**

A, B, and C were hired as resident-doctors by MM Medical Center, Inc. In the course of their engagement, A, B, and C maintained specific work schedules as determined by the Medical Director. The hospital also monitored their work through supervisors who gave them specific instructions on how they should perform their respective tasks, including diagnosis, treatment, and management of their patients.

One day, A, B, and C approached the Medical Director and inquired about the non-payment of their employment benefits. In response, the Medical Director told them that they are not entitled to any because they are mere "independent contractors" as expressly stipulated in the contracts which they admittedly signed. As such, no employer-employee relationship exists between them and the hospital.

**(a) What is the control test in determining the existence of an employer-employee relationship? (2%)**

**(b) Is the Medical Director's reliance on the contracts signed by A, B, and C to refute the existence of an employer-employee relationship correct? If not, are A, B, and C employees of MM Medical Center, Inc.? Explain. (3%)**

#### **A.4.**

Mrs. B, the personal cook in the household of X, filed a monetary claim against her employer, X, for denying her service incentive leave pay. X argued that Mrs. B did not avail of any service incentive leave at the end of her one (1) year of service and hence, not entitled to the said monetary claim.

**(a) Is the contention of X tenable? Explain. (2.5%)**

**(b) Assuming that Mrs. B is instead a clerk in X's company with at least 30 regular employees, will her monetary claim prosper? Explain. (2.5%)**

#### **A.5.**

Ms. F, a sales assistant, is one of the eight (8) workers regularly employed by ABC Convenience Store. She was required to report on December 25 and 30.

**Should ABC Convenience Store pay her holiday pay? Explain. (2.5%)**

#### **A.6.**

D, one of the sales representatives of OP, Inc., was receiving a basic pay of ₱50,000.00 a month, plus a 1% overriding commission on his actual sales transactions. In addition, beginning three (3) months ago, or in August 2019, D was able to receive a monthly gas and transportation allowance of ₱5,000.00 despite the lack of any company policy therefor.

In November 2019, D approached his manager and asked for his gas and transportation allowance for the month. The manager declined his request, saying that the company had decided to discontinue the aforementioned allowance considering the increased costs of its overhead expenses. In response, D argued that OP, Inc.'s removal of the gas and transportation allowance amounted to a violation of the rule on non-diminution of benefits.



**Is the argument of D tenable? Explain. (2.5%)**

**A.7.**

W Gas Corp. is engaged in the manufacture and distribution to the general public of various petroleum products. On January 1, 2010, W Gas Corp. entered into a Service Agreement with Q Manpower Co., whereby the latter undertook to provide utility workers for the maintenance of the former's manufacturing plant. Although the workers were hired by Q Manpower Co., they used the equipment owned by W Gas Corp. in performing their tasks, and were likewise subject to constant checking based on W Gas Corp.'s procedures.

On February 1, 2010, Mr. R, one of the utility workers, was dismissed from employment in line with the termination of the Service Agreement between W Gas Corp. and Q Manpower Co. Thus, Mr. R filed a complaint for illegal dismissal against W Gas Corp., claiming that Q Manpower Co. is only a labor-only contractor. In the course of the proceedings, W Gas Corp. presented no evidence to prove Q Manpower Co.'s capitalization.

**(a) Is Q Manpower Co. a labor-only contractor? Explain. (2.5%)**

**(b) Will Mr. R's complaint for illegal dismissal against W Gas Corp. prosper? Explain. (2.5%)**

**A.8.**

Ms. T was caught in the act of stealing the company property of her employer. When Ms. T admitted to the commission of the said act to her manager, the latter advised her to just tender her resignation; otherwise, she would face an investigation which would likely lead to the termination of her employment and the filing of criminal charges in court.

Acting on her manager's advice, Ms. T submitted a letter of resignation. Later on, Ms. T filed a case for constructive dismissal against her employer. While Ms. T conceded that her manager spoke to her in a calm and unforceful manner, she claimed that her resignation was not completely voluntary because she was told that should she not resign, she could be terminated from work for just cause, and worse, criminal charges could be filed against her.

**(a) What is the difference between resignation and constructive dismissal? (2%)**

**(b) Will Ms. T's claim for constructive dismissal prosper? Explain. (3%)**

### A.9.

After due proceedings, the Labor Arbiter (LA) declared Mr. K to have been illegally dismissed by his former employer, ABC, Inc. As a consequence, the LA directed ABC, Inc. to pay Mr. K separation pay in lieu of reinstatement as well as his full backwages.

While ABC, Inc. accepted the finding of illegal dismissal, it nevertheless filed a motion for reconsideration, claiming that the LA erred in awarding both separation pay and full backwages, and instead, should have ordered Mr. K's reinstatement to his former position without loss of seniority rights and other privileges, but without payment of backwages. In this regard, ABC, Inc. pointed out that the LA's ruling did not contain any finding of strained relations or that reinstatement was no longer feasible. In any case, it appears that no evidence was presented on this score.

- (a) Is ABC, Inc.'s contention to delete the separation pay, and instead, order reinstatement without backwages correct? Explain. (3%)
- (b) Assuming that on appeal, the National Labor Relations Commission (NLRC) upholds the decision of the LA, where, how, and within what timeframe should ABC, Inc. assail the NLRC ruling? (2%)

### A.10.

For purposes of prescription, within what periods from the time the cause of action accrued should the following cases be filed:

- (a) Money claims arising from employer-employee relations (1%)
- (b) Illegal dismissal (1%)
- (c) Unfair labor practice (1%)
- (d) Offenses under the Labor Code (1%)
- (e) Illegal recruitment (1%)

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**- END OF PART I -**

**Note:** This marks the end of Part I. The forthcoming problem sets will fall under Part II and the answers therefor should be written in Booklet II.

## **PART II**

**Note:** As stated in the Instructions, **Part II** covers problem sets labelled **B.11.** to **B.20.** All answers to these questions should be written in **Booklet II.**

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### **B.11.**

**Briefly discuss the powers and responsibilities of the following in the scheme of the Labor Code:**

- (a) Secretary of Labor (2%)**
- (b) Bureau of Labor Relations (2%)**
- (c) Voluntary Arbitrators (2%)**

### **B.12.**

Due to serious business reverses, ABC Co. decided to terminate the services of several officers receiving “fat” compensation packages. One of these officers was Mr. X, its Vice-President for External Affairs and a member of the Board of Directors. Aggrieved, Mr. X filed a complaint for illegal dismissal before the National Labor Relations Commission (NLRC) – Regional Arbitration Branch.

ABC Co. moved for the dismissal of the case on the ground of lack of jurisdiction, asserting that since Mr. X occupied the position of Vice-President for External Affairs which is listed in the by-laws of the corporation, the case should have been filed before the Regional Trial Court.

The Labor Arbiter (LA) denied ABC Co.’s motion and proceeded to rule that Mr. X was illegally dismissed. Hence, he was reinstated in ABC Co.’s payroll pending its appeal to the NLRC.

- (a) Did the LA err in denying ABC Co.’s motion to dismiss on the ground of lack of jurisdiction? Explain. (2.5%)**
- (b) Assuming that jurisdiction is not at issue and that the NLRC reverses the LA’s ruling of illegal dismissal with finality, may ABC Co. claim reimbursement for the amounts it paid to Mr. X during the time that he was on payroll reinstatement pending appeal? Explain. (2.5%)**

### **B.13.**

Mr. A signed a one (1)-year contract with XYZ Recruitment Co. for deployment as welding supervisor for DEF, Inc. located in Dubai. The employment contract, which the Philippine Overseas Employment Administration (POEA) approved, stipulated a salary of US\$600.00 a month.

Mr. A had only been in his job in Dubai for six (6) months when DEF, Inc. announced that it was suffering from severe financial losses and thus intended to retrench some of its workers, among them Mr. A. DEF, Inc. hinted, however, that employees who would accept a lower salary could be retained.

Together with some other Filipino workers, Mr. A agreed to a reduced salary of US\$400.00 a month and thus, continued with his employment.

- (a) Was the reduction of Mr. A's salary valid? Explain. (2.5%)**
- (b) Assuming that the reduction was invalid, may Mr. A hold XYZ Recruitment Co. liable for underpayment of wages? Explain. (2.5%)**

### **B.14.**

Upon a review of the wage rate and structure pertaining to its regular rank and file employees, K Corporation found it necessary to increase its hiring rates for employees belonging to the different job classification levels to make their salary rates more competitive in the labor market.

After the implementation of the new hiring salary, Union X, the exclusive bargaining agent of the rank and file employees, demanded a similar salary adjustment for the old employees. It argued that the increase in hiring rates resulted in wage distortion since it erased the wage gap between the new and old employees. In other words, new employees would enjoy almost the same salary rates as K Corporation's old employees.

- (a) What is wage distortion? (2%)**
- (b) Did a wage distortion arise under the circumstances which legally obligated K Corporation to rectify the wages of its old employees? Explain. (3%)**

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## **B.15.**

On December 1, 2018, GHI Co., an organized establishment, and Union J, the exclusive bargaining agent therein, executed a five (5)-year collective bargaining agreement (CBA) which, after ratification, was registered with the Bureau of Labor Relations.

**(a) When can the union ask, at the earliest, for the renegotiation of all the terms of the CBA, except its representation aspect? Explain. (2.5%)**

**(b) When is the earliest time that another union can file for a petition for certification election? Explain. (2.5%)**

## **B.16.**

W Ship Management, Inc. hired Seafarer G as bosun in its vessel under the terms of the 2010 Philippine Overseas Employment Administration - Standard Employment Contract (POEA-SEC).

On his sixth (6<sup>th</sup>) month on board, Seafarer G fell ill while working. In particular, he complained of stomach pain, general weakness, and fresh blood in his stool. When his illness persisted, he was medically repatriated on January 15, 2018. On the same day, Seafarer G submitted himself to a post-employment medical examination, wherein he was referred for further treatment. As of September 30, 2018, Seafarer G has yet to be issued any fit-to-work certification by the company-designated physician, much less a final and definitive assessment of his actual condition. Since Seafarer G still felt unwell, he sought an opinion from a doctor of his choice who later issued an independent assessment stating that he was totally and permanently disabled due to his illness sustained during work.

Seafarer G then proceeded to file a claim for total and permanent disability compensation. The company asserts that the claim should be dismissed due to prematurity since Seafarer G failed to first settle the matter through the third-doctor conflict resolution procedure as provided under the 2010 POEA-SEC.

**(a) What is the third-doctor conflict resolution procedure under the 2010 POEA-SEC? Explain. (2%)**

**(b) Will Seafarer G's claim for total and permanent disability benefits prosper despite his failure to first settle the matter through the third-doctor conflict resolution procedure? Explain. (3%)**

**(c) Assuming that Seafarer G failed to submit himself to a post-employment medical examination within three (3) working days**

**from his return, what is the consequence thereof to his disability claim? Explain. (2%)**

**B.17.**

Ms. A is a volleyball coach with five (5) years of experience in her field. Before the start of the volleyball season of 2015, she was hired for the sole purpose of overseeing the training and coaching of the University's volleyball team. During her hiring, the Vice-President for Sports expressed to Ms. A the University's expectation that she would bring the University a championship at the end of the year.

In her first volleyball season, the University placed ninth (9<sup>th</sup>) out of 10 participating teams. Soon after the end of the season, the Vice-President for Sports informed Ms. A that she was a mere probationary employee and hence, she need not come back for the next season because of the poor performance of the team. In any case, the Vice-President for Sports claimed that Ms. A was a fixed-term employee whose contract had ended at the close of the year.

**(a) Is Ms. A a probationary, fixed-term, or regular employee? Explain your reasons as to why she is or she is not such kind of an employee for each of the types of employment given. (5%)**

**(b) Assuming that Ms. A was dismissed by the University for serious misconduct but was never given a notice to explain, what is the consequence of a procedurally infirm dismissal from service under our Labor law and jurisprudence? Explain. (2%)**

**B.18.**

**When resolving a case of unfair labor practice (ULP) filed by a union, what should be the critical point of analysis to determine if an act constitutes ULP? (2.5%)**

**B.19.**

Because of dwindling sales and the consequent limitation of production, rumors were rife that XYZ, Inc. would reduce its employee force. The next day, the employees of XYZ, Inc. received a notice that the company will have a winding down period of 10 days, after which there will be a six (6)-month suspension of operations to allow the company to address its precarious financial position.



On the fourth (4<sup>th</sup>) month of suspension of its operations, XYZ, Inc. posted an announcement that it will resume its operations in 60 days but at the same time announced that instead of closing down due to financial losses, it will retrench 50% of the work force.

**(a) Is the announcement that there would be retrenchment affecting 50% of the work force sufficient compliance with the legal requirements for retrenchment? Explain. (2.5%)**

**(b) Assuming that XYZ, Inc., instead of retrenchment, extended the suspension of its operations from six (6) months to eight (8) months, would the same be legally permissible? If not, what are the consequences? (2.5%)**

### **B.20.**

**Discuss the differences between compulsory and voluntary/ optional retirement as well as the minimum benefits provided under the Labor Code for retiring employees of private establishments. (2.5%)**

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**- END OF PART II -**

Nothing follows

