

Set A

**MULTIPLE CHOICE QUESTIONS (MCQs)
INSTRUCTIONS**

The following questionnaire consists of seventy-five (75) MCQs numbered 1 up to 75 contained in TWENTY ONE (21) pages.

Answer each question on the MCQ. Answer Sheet by shading completely the appropriate circle corresponding to the letter you have chosen. (Read the Marking Instructions on the Answer Sheet)

Avoid erasures on the Answer Sheet. If you need to make corrections, erase completely the answer you want to change.

Do not explain your answers in the MCQ portion of the exam. You will not earn any credit for that.

Keep the Answer Sheet clean. Do not make unnecessary marks on it. Do not fold, roll, scratch, crumple or tear it.

You may write on the questionnaire and use it as scratch paper but make sure to transfer your answer to the Answer Sheet. Provide ample time to transfer for the answers if you choose to do this.

Answer first the MCQs completely before going to the essay-type questions.

HAND IN YOUR ANSWER SHEET. THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.

GOODLUCK!!!

MARTIN S. VILLARAMA, JR.

Chairperson

2012 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS TWENTY TWO (22) PAGES (INCLUDING THIS PAGE).

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LABOR LAW

1. The workers worked as cargadores at the warehouse and ricemills of farm A for several years. As cargadores, they loaded, unloaded and piled sacks of rice from the warehouse to

the cargo trucks for delivery to different places. They were paid by Farm A on a piece-rate basis. Are the workers considered regular employees?

- a. Yes, because Farm A paid wages directly to these workers without the intervention of any third party independent contractor;
- b. Yes, their work is directly related, necessary and vital to the operations of the farm;
- c. No, because Farm A did not have the power to control the workers with respect to the means and methods by which the work is to be accomplished;
- d. A and B.

2. The following are excluded from the coverage of Book III of the Labor Code of the Philippines (Conditions of employment) except:

- a. Field personnel;
- b. Supervisors;
- c. Managers;
- d. Employees of government-owned and controlled corporations.

3. Work may be performed beyond eight (8) hours a day provided that:

- a. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 25% thereof;
- b. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 30% thereof;
- c. Employee is paid for overtime work an additional compensation equivalent to his regular wage plus at least 20% thereof;
- d. None of the above.

4. May the employer and employee stipulate that the latter's regular or basic salary already includes the overtime pay, such that when the employee actually works overtime he cannot claim overtime pay?

- a. Yes, provided there is a clear written agreement knowingly and freely entered into by the employees;
- b. Yes, provided the mathematical result shows that the agreed legal wage rate and the overtime pay, computed separately, are equal to or higher than the separate amounts legally due;
- c. No, the employer and employee cannot stipulate includes the overtime pay;

d. A and B.

5. The following are instances where an employer can require an employee to work overtime, **except:**

a. In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;

b. When the country is at war or when other national or local emergency has been declared by the national assembly or the chief executive;

c. When there is urgent work to be performed on machines, installations, or equipment or some other cause of similar nature;

d. Where the completion or contribution of the work started before the eight hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

6. Z owns and operates a carinderia. His regular employees are his wife, his two (2) children, the family maid, a cook, two (2) waiters, a dishwasher and a janitor. The family driver occasionally works for him during store hours to make deliveries. On April 09, the dishwasher did not report for work. The employer did not give his pay for that day. Is the employer correct?

a. No, because employees have a right to receive their regular daily wage during regular holidays;

b. Yes, because April 09 is not regular holidays;

c. Yes, because of the principle of "a fair days wage for a fair days work";

d. Yes, because he employs less than ten (10) employees.

7. For misconduct or improper behavior to be just cause for dismissal, the following guidelines must be met, **except:**

a. It must be serious;

b. It must relate to the performance of the employees duties;

c. It should not be used as a subterfuge for causes which are improper, illegal or unjustified;

d. It must show that the employee has become unfit to continue working for the employer.

8. The Company lawyer sent a memo to the employee informing him of the specific charges against him and giving him an opportunity to explain his side. In a subsequent letter, the employee was informed that, on the basis of the results of the investigation conducted, his

written explanation, the written explanation of other employees as well as the audit report, the management has decided to terminate his employment. The employee contended that his termination was illegal for lack of procedural due process. Is the employees contention correct?

- a. No, the employees written explanation and written explanation of the other employees were sufficient basis for the employer to terminate his employment;
- b. Yes, because the employer did not abide by the two-notice rule;
- c. Yes, because he was not properly afforded the chance to explain his side in a conference;
- d. No, because the written notice of the cause of dismissal afforded him ample opportunity to be heard and defend himself, and the written notice of the decision to terminate him which states the reasons therefor, complies with the two-notice rule.

9. The Supreme Court categorically declared that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for cause other than:

- a. Serious Misconduct;
- b. Gross and habitual neglect of duties;
- c. Willful disobedience to lawful orders;
- d. Fraud or willful breach of trust.

10. K is a legitimate contractor hired by G for six (6) months. On the third month, G remitted to K the salaries and wages of the employees. However, K absconded with the money leaving the employees unpaid. The disgruntled employees demanded from G the payment of their salaries. Is G liable?

- a. No, because G has already remitted the employees salaries to K, validly excusing G from liability;
- b. Yes, because he is jointly and solidarily liable for whatever monetary claims the employees may have against K;
- c. Yes, because of the principle of "a fair days wage for a fair days work";
- d. B and C.

11. Corporation X is owned by Ls family. L is the President. M, Ls wife, occasionally gives loans to employees of Corporation X. It was customary that loan payment were paid to M by directly deducting from the employees monthly salary. Is this practice of directly deducting payments of debts from the employees wages allowed?

- a. Yes, because where the employee is indebted to the employer, it is sanctioned by the

law on compensation under Article 1706 of the Civil Code;

- b. Yes, because it has already become customary such that no express authorization is required;
- c. No, because an employees payment of obligation to a third person is deductible from the employees wages if the deduction is authorized in writing;
- d. No, because Article 116 of the Labor Code absolutely prohibits the withholding of wages and kickbacks. Article 116 provides for no exception.

12. Union X staged a strike in front of Company B because of A CBA deadlock. During the strike, Company B hired replacement workers. Upon resuming their employment, the strikers found that Company B hired replacement workers in their place. Is Company B obliged to reinstate the returning workers?

- a. No, because the strike caused work stoppage;
- b. No, because it is a valid exercise of management prerogative;
- c. Yes, because workers who go on strike do not lose their employment status;
- d. Yes, because workers are entitled to such retention every time during a valid strike.

13. Which of the following is not a valid reason for a strike?

- a. There is a bargaining deadlock;
- b. There is a prevailing intra-union dispute;
- c. The company engaged in unfair labor practice;
- d. There is a flagrant violation of CBAs economic provisions.

14. Iya, 15 years old, signed up to model a clothing brand. She worked from 9am to 4pm on weekdays and 1pm to 6pm on Saturdays for two (2) weeks. She was issued a child working permit under RA 9231. Which of the following statements is the most accurate?

- a. Working permit for Iyas employment is not required because the job is not hazardous;
- b. Her work period exceeds the required working hours for children aged 15 years old;
- c. To require a 15-year old to work without obtaining the requisite working permit is a form of child labor;
- d. Iya, who was engaged in a work that is not child labor, is a working child.

15. Under employees compensation, the so-called "Theory of Increased Risks" is relevant when:

- a. There is a need to categorize a disability as permanent and total;

- b. It is not clear as to how an injury was sustained;
- c. The ailment or sickness is not classified as an occupational disease;
- d. There is a prima facie finding that the employee had willful intention to hurt himself.

16. Which of the following injuries/death is not compensable?

- a. Injuries sustained by a technician while at a field trip initiated by the Union and sponsored by the Company;
- b. Injuries received by a janitor at a Union election meeting;
- c. Death of a bank teller because of a bank robbery;
- d. Death of a professor who was hit by a van on his way home from work.

17. The provisions of the Labor Code on the Working Conditions and Rest Periods of employees are inapplicable to the following employees, except :

- a. A supervisor in a fast food chain;
- b. A family driver;
- c. A laborer without any fixed salary, but receiving a compensation depending upon the result of his work;
- d. A contractual employee.

18. Bugay, an employee with only six (6) months of service, was dismissed due to redundancy. He is, under Art. 283 of the Labor Code, entitled to a separation pay of:

- a. One (1) month pay;
- b. One (1) year pay, Art. 283 of the Labor Code being explicit that "a fraction of at least six (6) months shall be considered one (1) whole year";
- c. Six (6) months pay;
- d. One (1) year and six (6) months pay, as Art. 4 of the Labor Code mandates that "(a)ll doubts in the implementation and interpretation of this Code xxx shall be resolved in favor of labor".

19. The power to suspend or cancel a license to recruit employees is vested on:

- a. The Secretary of Labor and Employment;
- b. The POEA Administrator;
- c. A and B 'concurrently;

d. Neither of them.

20. The State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. Which of the following is not a guarantee, on the part of the receiving country, for the protection of the rights of OFW's?

- a. It has existing labor and social laws protecting the rights of migrant workers;
- b. It promotes and facilitates re-integration of migrants into the national mainstream;
- c. It is a signatory to and/or ratifier of multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- d. It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino workers.

21. Which is not a procedural requirement for the correction of wage distortion in an unorganized establishment?

- a. Both employer and employee will attempt to correct the distortion;
- b. Settlement of the dispute through National Conciliation and Mediation Board (NCMB);
- c. Settlement of the dispute through voluntary arbitration in case of failure to resolve dispute through CBA dispute mechanism;
- d. A and B.

22. In what situation is an employer permitted to employ a minor?

- a. 16-year old child actor as a cast member in soap opera working 8 hours a day, 6 days a week;
- b. A 17-year old in deep sea-fishing;
- c. A 17 -year old construction worker;
- d. A 17-year old assistant cook in a family restaurant.

23. The most important factor in determining the existence of an employer-employee relationship is the:

- a. Power to control the method by which employees are hired and selected;
- b. Power to control the manner by which employees are transferred from one job site to another;
- c. Power to control the results achieved by giving guidelines to the employees;
- d. Power to control the results to be achieved and the employee's method of achieving

the task.

24. A neighbor's gardener comes to you and asks for help because his employer withheld his salary for two (2) months amounting to P4,000.00. Where will you advise him to file his complaint?
- Labor Arbiter;
 - DOLE Regional Director;
 - Conciliator/Mediator;
 - MTC Judge.
25. What is the nature of the liabilities of the local recruitment agency and its foreign principal?
- The local agency is jointly liable with the foreign principal; severance of relations between the local agent and the foreign principal dissolves the liability of the local agent recruiter;
 - Local agency is solidarily liable with the foreign principal; severance of relations between the local agent and the foreign principal dissolves the liability of the foreign principal. only;
 - Local agency is solidarily liable with the foreign principal; severance of relations between the local agent and foreign principal does not affect the liability of the foreign principal;
 - Local agency is jointly liable with the foreign principal; severance of the relations between the local agent and the foreign principal does not affect the liability of the local recruiter.
26. Which phrase is the most accurate to complete the statement - A private employment agency is any person or entity engaged in the recruitment and placement of workers:
- for a fee, which is charged directly from the workers.
 - for a fee, which is charged directly from employers.
 - for a fee, which is charged directly or indirectly from workers, employers or both.
 - for a fee, which is charged from workers or employers, which covers both local and overseas employment.
27. Who has jurisdiction over a money claim instituted by an overseas Filipino worker?
- Labor Arbiter;
 - National Labor Relations Commission;

- c. Labor Arbiter concurrently with the regular courts.;
- d. National Labor Relations Commission concurrently with the regular courts.

28. Which of the following is not a valid wage deduction?

- a. Where the worker was insured with his consent by the employer, and the deduction is allowed to recompense the employer for the amount paid by him as the premium on the insurance;
- b. When the wage is subject of execution or attachment, but only for debts incurred for food, shelter, clothing and medical attendance;
- c. Payment for lost or damaged equipment provided the deduction does not exceed 25/o of the employee's salary for a week;
- d. Union dues.

29. Is the contractor a necessary party in a case where labor contracting is the main issue and labor-only contracting is found to exist?

- a. Yes, the contractor is necessary in the full determination of the case as he is the purported employer of the worker;
- b. Yes, no full remedy can be granted and executed without impleading the purported contractor;
- c. No, the contractor becomes a mere agent of the employer-principal in labor contracting;
- d. No, the contractor has no standing in a labor contracting case.

30. Who among the following is not entitled to 13th month pay?

- a. Stephanie, a probationary employee of a cooperative bank who rendered six (6) months of service during the calendar year before filing her resignation;
- b. Rafael, the secretary of a Senator;
- c. Selina, a cook employed by and who lives with an old maid and who also tends the sari-sari store of the latter;
- d. Roger, a house gardener who is required to report to work only thrice a week.

31. Which type of employee is entitled to a service incentive leave?

- a. managerial employees;
- b. field personnel;

- c. government workers;
 - d. part-time workers.
32. A wage order may be reviewed on appeal by the National Wages and Productivity Commission under these grounds, except:
- a. grave abuse of discretion;
 - b. non-conformity with prescribed procedure;
 - c. questions of law;
 - d. gross under or over-valuation.
33. The following may file a Petition for Certification Election, except:
- a. The employer;
 - b. The legitimate labor organization;
 - c. The Federation on behalf of the chapter;
 - d. The Workers' Association.
34. The following are grounds to deny the Petition for Certification Election, except:
- a. The petitioning union is illegitimate or improperly registered;
 - b. Non-appearance for two consecutive schedules before the Med-Arbiter by petitioning union;
 - c. The inclusion of members outside the bargaining unit;
 - d. Filed within an existing election bar.
35. In response to Company X's unfair labor practices, a union officer instructed its members to stop working and walk out of the company premises. After three (3) hours, they voluntarily returned to work.

Was there a strike and was it a valid activity?

- a. Yes, it was a strike; yes, it was a valid activity;
- b. Yes, it was a strike; no, it was not a valid activity;
- c. No, it was not a strike; yes, it was a valid activity;
- d. No, it was not a strike; no, it was not a valid activity.

36. Which of the following is not considered an employer by the terms of the Social Security Act?
- A self-employed person;
 - The government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the government;
 - A natural person, domestic or foreign, who carries on in the Philippines, any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment;
 - A foreign corporation.
37. Jennifer, a receptionist at Company X, is covered by the SSS. She was pregnant with her fourth child when she slipped in the bathroom of her home and had a miscarriage. Meanwhile, Company X neglected to remit the required contributions to the SSS. Jennifer claims maternity leave benefits and sickness benefits. Which of these two may she claim?
- None of them;
 - Either one of them;
 - Only maternity leave benefits;
 - Only sickness benefits.
38. H files for a seven-day paternity leave for the purpose of lending support to his wife, W, who suffered a miscarriage through intentional abortion. W also filed for maternity leave for five weeks. H and W are legally married but the latter is with her parents, which is a few blocks away from H's house. Which of the following statements is the most accurate?
- Paternity leave shall be denied because it does not cover aborted babies;
 - Paternity leave shall be denied because W is with her parents;
 - Maternity leave shall be denied because it does not cover aborted babies;
 - Maternity leave shall be denied because grant of paternity leave bars claim for maternity leave.
39. Which of the following is not a privilege of a person with disability under the Magna Carta for disabled persons?
- At least 20%_ discount on purchase of medicines in all drugstores;
 - Free transportation in public railways;
 - Educational assistance in public and private schools through scholarship grants;
 - A and C.

40. Which of the following is not a regular holiday?

- a. New Year's Eve;
- b. Eidil Fitr;
- c. Father's Day;
- d. Independence Day.

41. Which is a characteristic of a labor-only contractor?

- a. Carries an independent business different from the employer's;
- b. The principal's liability extends to all rights, duties and liabilities under labor standards laws including the right to self-organization;
- c. No employer-employee relationship;
- d. Has sufficient substantial capital or investment in machinery, tools or equipment directly or intended to be related to the job contracted.

42. What is not an element of legitimate contracting?

- a. The contract calls for the performance of a specific job, work or service;
- b. It is stipulated that the performance of a specific job, work or service must be within a definite predetermined period;
- c. The performance of specific job, work or service has to be completed either within or outside the premises of the principal;
- d. The principal has control over the performance of a specific job, work or service.

43. Which is a characteristic of the learner?

- a. A person is hired as a trainee in an industrial occupation;
- b. Hired in a highly technical industry;
- c. Three (3) months practical on-the-job training with theoretical instruction;
- d. At least 14 years old.

44. What is not a prerequisite for a valid apprenticeship agreement?

- a. Qualifications of an apprentice are met;
- b. A duly executed and signed apprenticeship agreement;

- c. The apprenticeship program is approved by the Secretary of Labor;
- d. Included in the list of apprenticeable occupation of TESDA.

45. Which is not a constitutional right of the worker?

- a. The right to engage in peaceful concerted activities;
- b. The right to enjoy security of tenure;
- c. The right to return on investment;
- d. The right to receive a living wage.

46. Employee-employer relationship exists under the following, except :

- a. Jean, a guest relations officer in a nightclub and Joe, the nightclub owner;
- b. Atty. Sin' Cruz, who works part-time as the resident in house lawyer of X Corporation;
- c. Paul, who works as registered agent on commission basis in an insurance company;
- d. Jack and Jill, who work in X Company, an unregistered Association.

47. With respect to legitimate independent contracting, an employer or one who engages the services of a bona fide independent contractor is -

- a. An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor not only for unpaid wages but also for all the rightful claims of the employees under the Labor Code;
- b. Treated as direct employer of his contractor's employees in all instances; he becomes subsidiarily liable with the contractor only in the event the latter fails to pay the employees' wages and for violation of labor standard laws;
- c. An indirect employer, by operation of law, of his contractor's employees; he becomes solidarily liable with the contractor only in the event the latter fails to pay the employees' wages and for violation of labor standard laws;
- d. Treated as direct employer of his contractor's employees in all instances; the principal becomes solidarily liable with the contractor not only for unpaid wages but also for all the rightful claims of the employees under the Labor Code;

48. Kevin, an employee of House of Sports, filed a complaint with the DOLE requesting the investigation and inspection of the said establishment for labor law violations such as underpayment of wages, non-payment of 13th month pay, non-payment of rest day pay, overtime pay, holiday pay, and service incentive leave pay. House of Sports alleges that DOLE has no jurisdiction over the employees' claims where the aggregate amount of the claims of each employee exceeds P5,000.00, whether or not accompanied with a claim for reinstatement. Is the argument of House of Sports tenable?

- a. Yes, Article 1 ~9 of the Labor Code shall apply, and thus, the Labor Arbiter has jurisdiction;
- b. No, Article 128 (b) of the Labor Code shall apply, and thus, the DOLE Regional Director has jurisdiction;
- c. Yes, if the claim exceeds P5,000.00, the DOLE Secretary loses jurisdiction;
- d. No, a voluntarily arbitrator has jurisdiction because the matter involved is a grievable issue.

49. Which of the following is not compensable as hours worked?

- a. Travel away from home;
- b. Travel from home to work;
- c. Working while on call;
- d. Travel that is all in a day's work.

50. It is defined as any union or association of employees which exists in whole or in part for the purpose of collective bargaining with employers concerning terms and conditions of employment.

- a. Bargaining representative;
- b. Labor organization;
- c. Legitimate labor organization;
- d. Federation.

51. This process refers to the submission of the dispute to an impartial person for determination on the basis of the evidence and arguments of the parties. The award is enforceable to the disputants.

- a. Arbitration;
- b. Mediation;
- c. Conciliation;
- d. Reconciliation.

52. The Regional Director or his representative may be divested of his enforcement and visitorial powers under the exception clause of Article 128 of the Labor Code and, resultantly, jurisdiction may be vested on the labor arbiter when three (3) elements are present. Which of the following is not one of the three (3) elements?

- a. Employer contests the findings of the labor regulations officers and raises issues thereon;
- b. In order to resolve any issues raised, there is a need to examine evidentiary matters;
- c. The issues raised should have been verifiable during the inspection;
- d. The evidentiary matters are not verifiable in the normal course of inspection .

53. In what instances do labor arbiters have jurisdiction over wage distortion cases?

- a. When jurisdiction is invoked by the employer and employees in organized establishments;
- b. When the case is unresolved by Grievance Committee;
- c. After the panel of voluntarily arbitrators has made a decision and the same is contested by either party;
- d. In unorganized establishments when the same is not voluntarily resolved by the parties before the NCMM.

54. Is a termination dispute a grievable issue?

- a. Yes, if the dismissal arose out of the interpretation or Implementation of the CBA;
- b. No, once there's actual termination, the issue is cognizable by a Labor Arbiter;
- c. Yes, it is in the interest of the parties that the dispute be resolved on the establishment level;
- d. No, a voluntary arbitrator must take cognizance once termination is made effective.

55. Peter worked for a Norwegian cargo vessel. He worked as a deckhand, whose primary duty was to assist in the unloading and loading of cargo and sometimes, assist in cleaning the ship. He signed a five-year contract starting in 2009. In 2011, Peter's employers began treating him differently. He was often maltreated and his salary was not released on time. These were frequently protested to by Peter. Apparently exasperated by his frequent protestations, Peter's employer, a once top official in China, suddenly told him that his services would be terminated as soon as the vessel arrived at the next port, in Indonesia. Peter had enough money to go back home, and immediately upon arriving, he filed a money claim with the NLRC against his former employer's local agent. Will Peter's case prosper?

- a. Yes, he is entitled to full reimbursement of his placement fee, with interest at 12% per annum, plus salary for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired portion, whichever is higher;
- b. Yes, he is entitled to full reimbursement of his placement fee, with interest at 12% per annum, plus his salary for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired portion, whichever is less;

- c. Yes, he is entitled to his salaries for the unexpired portion of his employment contract, plus full reimbursement of his placement fee with interest at 12/o per annum;
- d. Yes, he is entitled to his salaries for three (3) months for every year of the unexpired portion of his employment contract, plus full reimbursement of his placement fee with interest at 12/o per annum.

56. The following are exempt from the rules on minimum wages, except:

- a. Household or domestic helpers; .
- b. Homeworkers engaged in needle work;
- c. Workers' in duly registered establishment in the cottage industry;
- d. Workers in the duly registered cooperative.

57. Which of the following is a right and/or condition of membership in a labor organization?

- a. No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;
- b. The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and bylaws of the organization;
- c. No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;
- d. All of the above.

58. Which phrase most accurately completes the statement - Members of cooperatives:

- a. can invoke the right to collective bargaining because it is a fundamental right under the Constitution.
- b. can invoke the right to collective bargaining because they are permitted by law.
- c. cannot invoke the right to collective bargaining because each member is considered an owner.
- d. cannot invoke the right to collective bargaining because they are expressly prohibited by law.

59. Which of the following is not true in unfair labor practices committed by an employer?

- a. Unfair labor practices cannot be committed unless the union has been formed and registered;

- b. The commission of unfair labor practice requires an employer-employee relationship;
- c. The offense of unfair labor practice prescribes in one (1) year;
- d. The list of unfair labor practices is exclusive.

60. Which of the following is correct with respect to the extent of the application of security of tenure?

- a. It applies to managerial and to all rank-and-file employees i f not yet regular, but not to management trainees;
- b. It applies to managerial and to all rank-and-file employees including those under probation;
- c. It applies to seasonal and project employees, if they are hired repeatedly;
- d. It applies to all kinds of employees except those employed on a part-time basis.

61. Which of the following is not a procedural due process requirement in the termination of an employee for just cause?

- a. A written notice to the employee specifying the grounds for his termination;
- b. A written notice to the DOLE at least thirty (30) days before the effectivity of termination;
- c. A written notice to the employee stating that upon consideration of the circumstances, grounds have been established to justify his termination;
- d. An opportunity for the employee to present his evidence.

62. Under current jurisprudence, when the dismissal is for a just or authorized cause but due process is not observed, the dismissal is said to be:

- a. Void for denial of due process; hence, the employee should be reinstated;
- b. Void for lack. of due process, the employee should be paid full backwages;
- c. Valid, for the dismissal is with just/authorized cause, but the employer shall be liable for nominal damages;
- d. Valid, even if due process is not observed, hence reinstatement should not be ordered.

63. What is the quantum of evidence required in labor cases?

- a. The degree of proof which produces the conclusion that the employee is guilty of the offense charged in an unprejudiced mind;

- b. Such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion;
- c. That degree of proof which is greater in weight than the opposing party's evidence;
- d. Such evidence which must be highly and substantially more probable to be true than not which convinces the trier of facts of its factuality.

64. Which of the following statements is the most accurate?

- a. Domestic helpers with monthly income of at least P3,000.00 are compulsory members of the SSS Law;
- b. House helpers with monthly income of at least P2,000.00 are compulsory members of the SSS Law;
- c. Domestic helpers, 55 years of age and who worked for at least five (5) years, are covered by the Retirement Pay Law under optional retirement, in the absence of a CBA;
- d. Domestic helpers in the personal service of another are not entitled to 13th month pay.

65. The decision of the Labor Arbiter in a labor dispute case is:

- a. immediately executory;
- b. requires a writ of execution;
- c. is immediately executory insofar as the reinstatement of the employee is concerned;
- d. is stayed by the appeal of the employer and posting of appeal bond.

66. Which of the following is cognizable by the Bureau of Labor Relations Med-Arbiters?

- a. Unfair labor practice for violation of the CBA filed by the Workers Union of Company X against Company X;
- b. Claim for back wages filed by overseas contract worker Xena against her Saudi Arabian employer;
- c. Contest for the position of MG Union President brought by Ka Joe, the losing candidate in the recent union elections;
- d. G contesting his removal as Chief Executive Officer of Company Z.

67. J refused to comply with his deployment assignment with K, a manning agency. K filed a complaint against him for breach of contract before the Philippine Overseas Employment Administration (POEA). The POEA penalized J with one (1) year suspension from overseas deployment. On appeal, the suspension was reduced to six (6) months by the Secretary of

Labor. Is the remedy of appeal still available to J and where should he file his appeal?

- a. Yes, he can file an appeal before the Court of Appeals via a Petition for Certiorari under rule 65;
- b. Yes, he can file an appeal before the Supreme Court via a Petition for Certiorari under Rule 65;
- c. Yes, he can file an appeal before the Office of the President since this is an administrative case;
- d. Yes, he can file an appeal before the National Labor Relations Commission because there is an employer-employee relationship.

68. R was employed as an instructor of Cruz College located in Santiago City, Isabela. Pursuant to a stipulation in R's employment contract that the college has the prerogative to assign R in any of its branches or tie-up schools as the necessity demands, the college proposed to transfer him to Ilagan, a nearby town. R filed a complaint alleging constructive dismissal since his re-assignment will entail an indirect reduction of his salary or diminution of pay considering that additional allowance will not be given to cover for board and lodging expenses. R, however, failed to prove that allowances were given in similar instances in the past. Is R's contention that he will suffer constructive dismissal in view of the alleged diminution of benefit correct?

- a. Yes, such transfer should require an automatic additional allowance; the non-granting of said allowance amounts to a diminution of benefit;
- b. No, R failed to present evidence that the college committed to provide the additional allowance or that they were consistently granting such benefit as to have ripened into a practice which cannot be peremptorily withdrawn. Hence, there is no violation of the rule against diminution of pay;
- c. No, R's re-assignment did not amount to constructive dismissal because the college has the right to transfer R based on contractual stipulation;
- d. B and C.

69. At what particular point does a labor organization acquire a legal personality?

- a. On the date the agreement to organize the union is signed by the majority of all its members;
- b. On the date the application for registration is duly filed with the Department of Labor.;
- c. On the date appearing on the Certificate of Registration;
- d. On the date the Certificate of Registration is actually issued.

70. How many years of service is the underground mine employee required to have rendered in order to be entitled to retirement benefits?

- a. 5;
- b. 10;
- c. 15;
- d. 20.

71. What is the prescriptive period of all criminal offenses penalized under the Labor Code and the Rules Implementing the Labor Code?

- a. 3 years;
- b. 4 years;
- c. 5 years;
- d. 10 years.

72. What is the nature of employment of househelpers?

- a. Seasonal;
- b. Fixed-term;
- c. Regular;
- d. Probationary.

73. The appeal to the NLRC may be entertained only on any of the following grounds, except:

- a. If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- c. If made purely on questions of fact and law;
- d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant

74. The following are unfair labor practices of employers, except:

- a. Interrogating its employees in connection with their membership in the union or their union activities which hampers their exercise of free choice;
- b. The grant of profit-sharing benefits to managers, supervisors and all rank-and-file employees not covered by the CBA;
- c. The cessation of a company's operations shortly after the organization of a labor

union and the resumption of business barely a month after;

- d. Withdrawal by the employer of holiday pay benefits stipulated under a supplementary agreement with the union.

75. According to Article 78 of the Labor Code., a handicapped worker is one whose earning capacity is impaired by the following, except :

- a. Age;
- b. Physical Deficiency;
- c. Mental Deficiency;
- d. Psychological Deficiency.

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO HEAD WATCHER.

**2012 BAR EXAMINATIONS
LABOR LAW**

7 October 2012

3:30 P.M. - 5 P.M.

Set B

**ESSAY TYPE QUESTIONS
INSTRUCTIONS**

The following questionnaire consists of ten (10) questions (numbered I to X) contained in SIX (6) pages.

Begin your answer to each numbered question on a separate page; an answer to a sub-question/s under the same number may be written continuously on the same page and succeeding pages until completed.

Answer the question directly and concisely. Do not repeat the question. Write legibly.

HAND IN YOUR NOTEBOOK. THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.

GOODLUCK!!!

MARTIN S. VILLARAMA, JR.
Chairperson
2012 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS SEVEN (7) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

I.

- a. Distinguish Labor-Only contracting and Job-Only contracting. (5%)

- b. A deadlock in the negotiations for the collective bargaining agreement between College X and the Union prompted the latter, after duly notifying the DOLE, to declare a strike on November 5. The strike totally paralyzed the operations of the school. The Labor Secretary immediately assumed jurisdiction over the dispute and issued on the same day (November 5) a return to work order. Upon receipt of the order, the striking union officers and members, on November 1, filed a Motion for Reconsideration thereof questioning the Labor Secretary's assumption of jurisdiction, and continued with the strike during the pendency of their motion. On November 30, the Labor Secretary denied the reconsideration of his return to work order and further noting the strikers' failure to immediately return to work, terminated their employment. In assailing the Labor Secretary's decision, the Union contends that:
 1. The Labor Secretary erroneously assumed jurisdiction over the dispute since College X could not be considered an industry indispensable to national interest;
 2. The strikers were under no obligation to immediately comply with the November 5 return to work order because of their then pending Motion for Reconsideration of such order; and
 3. The strike being legal, the employment of the striking Union officers and members cannot be terminated. Rule on these contentions. Explain. (5%)

II.

In the Collective Bargaining Agreement (CBA) between Dana Films and its rank-and-file Union (which is directly affiliated with MMFF, a national federation), a provision on the maintenance of membership expressly provides that the Union can demand the dismissal of any member employee who commits acts of disloyalty to the Union as provided for in its Constitution and By-Laws. The same provision contains an undertaking by the Union (MMFF) to hold Dana Films free from any and all claims of any employee dismissed. During the term of the CBA, MMFF discovered that certain employee-members were initiating a move to disaffiliate from MMFF and join a rival federation, FAMAS. Forthwith, MMFF sought the dismissal of its employee-members initiating the disaffiliation movement from MMFF to FAMAS. Dana Films, relying on the provision of the aforementioned CBA, complied with MMFF's request and dismissed the employees identified by MMFF as disloyal to it.

- a. Will an action for illegal dismissal against Dana Films and MMFF prosper or not? Why? (5%)

b. What are the liabilities of Dana Films and MMFF to the dismissed employees, if any? (5%)

III.

- a. On August 01, 2008, Y, a corporation engaged in the manufacture of textile garments, entered into a collective bargaining agreement with Union X in representation of the rank and-file employees of the corporation. The CBA was effective up to June 20, 2011. The contract had an automatic renewal clause which would allow the agreement after its expiry date to still apply until both parties would have been able to execute a new agreement. On May 10, 2011, Union X submitted to Y's management their proposals for the negotiation of a new CBA. The next day, Y suspended negotiations with Union X since Y had entered into a merger with Z, a corporation also engaged in the manufacture of textile garments. Z assumed all the assets and liabilities of Y. Union X filed a complaint with the Regional Trial Court for specific performance and damages with a prayer for preliminary injunction against Y and Z and Z filed a Motion to Dismiss based on lack of jurisdiction. Rule on the Motion to Dismiss. (5%)
- b. X was one of more than one hundred (100) employees who were terminated from employment due to the closure of Construction Corporation A. The Cruz family owned Construction Company A. Upon the closure of Construction Company A, the Cruzes established Construction Company B. Both corporations had the same president, the same board of directors, the same corporate officers, and all the same subscribers. From the General Information Sheet filed by both companies, it also showed that they shared the same address and/or premises. Both companies also hired the same accountant who prepared the books for both companies.

X and his co-employees amended their Complaint with the Labor Arbiter to hold Construction Corporation 8 joint and severally liable with Construction Company A for illegal dismissal, backwages and separation pay. Construction Company 8 interposed a Motion to Dismiss contending that they are juridical entities with distinct and separate personalities from Construction Corporation A and therefore, they cannot be held jointly and severally liable for the money claims of workers who are not their employees. Rule on the Motion to Dismiss. Should it be granted or denied? Why? (5%)

IV.

- a. Juicy Bar and Night Club allowed by tolerance fifty (50) Guest Relations Officers (GROs) to work without compensation in its establishment under the direct supervision of its Manager from 8:00 P.M. To 4:00 A.M. everyday, including Sundays and holidays. The GROs, however, were free to ply their trade elsewhere at anytime, but once they enter the premises of the night club, they were required to stay up to closing time. The GROs earned their keep exclusively from commissions for food and drinks, and tips from generous customers. In time, the GROs formed the Solar Ugnayan ng mga Kababaihang Inaapi (SUKI), a labor union duly registered with DOLE. Subsequently, SUKI filed a petition for Certification Election in order to be recognized as the exclusive bargaining agent of its members. Juicy Bar and Night Club opposed the petition for Certification Election on the singular ground of absence of employer-employee relationship between the GROs on one hand and the night club on the other hand. May the GROs form SUKI as a labor organization for purposes of collective bargaining? Explain briefly. (5%)

- b. A spinster school teacher took pity on one of her pupils, a robust and precocious 12-year old boy whose poor family could barely afford the cost of his schooling. She lives alone at her house near the School after her housemaid had left. In the afternoon, she lets the boy do various chores as cleaning, fetching water and all kinds of errands after school hours. She gives him rice and P100.00 before the boy goes home at 7:00 every night. The school principal learned about it and charged her with violating the law which prohibits the employment of children below 15 years of age. In her defense, the teacher stated that the work performed by her pupil is not hazardous. Is her defense tenable? Why? (5%)

V.

The weekly work schedule of a driver is as follows: Monday, Wednesday, Friday - drive the family car to bring and fetch the children to and from school. Tuesday, Thursday, Saturday - drive the family van to fetch merchandise from suppliers and deliver the same to a boutique in a mall owned by the family.

- a. Is the driver a house helper? (5%)
- b. The same driver claims that for work performed on Tuesday, Thursday and Saturday, he should be paid the minimum daily wage of a driver of a commercial establishment. Is the claim of the driver valid? (5%)

VI.

- a. For humanitarian reasons, a bank hired several handicapped workers to count and sort out currencies. The handicapped workers knew that the contract was only for a period of six-months and the same period was provided in their employment contracts. After six months, the bank terminated their employment on the ground that their contract has expired. This prompted the workers to file with the Labor Arbiter a complaint for illegal dismissal. Will their action prosper? Why or why not? (5%)
- b. Mam-manu Aviation Company (Mam-manu) is a new airline company recruiting flight attendants for its domestic flights. It requires that the applicant be single, not more than 24 years old, attractive, and familiar with three (3) dialects, viz: Ilonggo, Cebuano and Kapampangan. Ingga, 23 years old, was accepted as she possesses all the qualifications. After passing the probationary period, Ingga disclosed that she got married when she was 18 years old but the marriage was already in the process of being annulled on the ground that her husband was afflicted with a sexually transmissible disease at the time of the celebration of their marriage. As a result of this revelation, Ingga was not hired as a regular flight attendant. Consequently, she filed a complaint against Mam-manu alleging that the pre-employment qualifications violate relevant provisions of the Labor Code and are against public policy. Is the contention of Ingga tenable? Why? (5%)

VII.

- a. Ingg, an electronics technician, worked within the premises of Pit Stop, an auto accessory shop. He filed a Complaint for illegal dismissal, overtime pay and other benefits against Pit

Stop. Pit Stop refused to pay his claims on the ground that Inggu was not its employee but was an independent contractor . . . It was common practice for shops like Pit Stop to collect the service fees from customers and pay the same to the independent contractors at the end of each week. The auto shop explained that Inggu was like a partner who worked within its premises, using parts provided by the shop, but otherwise Inggu was free to render service in the other auto shops. On the other hand, Inggu insisted that he still was entitled to the benefits because he was loyal to Pit Stop, it being a fact that he did not perform work for anyone else. Is Inggu correct? Explain briefly. (5%)

b. The modes of determining an exclusive bargaining agreement are:

1. voluntary recognition
2. certification election
3. consent election

Explain briefly how they differ from one another. (5%)

VIII.

ABC Tomato Corporation, owned and managed by three (3) elderly brothers and two (2) sisters, has been in business for 40 years. Due to serious business losses and financial reverses during the last five (5) years, they decided to close the business.

- a. As counsel for the corporation, what steps will you take prior to its closure? (3%)
- b. Are the employees entitled to separation pay? (2%)

If the reason for the closure is due to old age of the brothers and sisters:

- c. Is the closure allowed by law? (2%)
- d. Are the employees entitled to separation benefits? (3%)

IX.

Dennis was a taxi driver who was being paid on the "boundary" system basis. He worked tirelessly for Cabrera Transport Inc. for fourteen (14) years until he was eligible for retirement. He was entitled to retirement benefits. During the entire duration of his service, Dennis was not given his 13th month pay or his service incentive leave pay.

- a. Is Dennis entitled to 13th month pay and service leave incentive pay? Explain. (5%)
- b. Since he was not given his 13th month pay and service incentive leave pay, should Dennis be paid upon retirement, in addition to the salary equivalent to fifteen (15) days for every year of service, the additional 2.5 days representing one-twelfth (1/12) of the 13th month pay as well

as the five (5) days representing the service incentive leave for a total of 22.5 days? Explain. (5%)

X.

- a. XYZ Manpower Services (XYZ) was sued by its employees together with its client, ABC Polyester Manufacturing Company (ABC). ABC is one of the many clients of XYZ. During the proceedings before the Labor Arbiter, XYZ was able to prove that it had substantial capital of Three Million Pesos. The Labor Arbiter ruled in favor of the employees because it deemed XYZ as a labor only contractor. XYZ was not able to prove that it had invested in tools, equipment, etc. Is the Labor Arbiter's ruling valid? Explain. (5%)
- b. Does the performance by a contractual employee, supplied by a legitimate contractor, of activities directly related to the main business of the principal make him a regular employee of the principal? Explain. (5%)

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

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