

INSTRUCTIONS

1. This Questionnaire contains nine (9) pages. Check the number of pages and make sure it has the correct number of pages and their proper numbers. All the items have to be answered within/our (4) hours. Since there are twenty (20) questions, you have twelve (12) minutes to answer each question, and six (6) minutes to answer each sub-question. You may write on the Questionnaire for notes relating to the questions.

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

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

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

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. You do not need to re-write or repeat the question in your Notebook.

3. Make sure you do not write your *name* or any *extraneous note/s* or *distinctive markings* on your Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner). Writing, leaving, or making any distinguishing or identifying mark in the exam Notebook is considered cheating and can disqualify you.

YOU CAN BRING HOME THE QUESTIONNAIRE.

JUSTICE PRESBITERO J. VELASCO, JR.

Chairman

2016 Bar Examinations

-I-

What are the requisites of a valid quitclaim? (5%)

-II-

Gregorio was hired as an insurance underwriter by the Guaranteed Insurance Corporation (Guaranteed). He does not receive any salary but solely relies on commissions earned for every insurance policy approved by the company. He hires and pays his own secretary but is provided free office space in the office of the company. He is, however, required to meet a monthly quota of twenty (20) insurance policies, otherwise, he may be terminated. He was made to agree to a Code of Conduct for underwriters and is supervised by a Unit Manager.

[a] Is Gregorio an employee of Guaranteed? Explain. (2.5%)

[b] Suppose Gregorio is appointed as Unit Manager and assigned to supervise several underwriters. He holds office in the company premises, receives an overriding commission on the commissions of his underwriters, as well as a monthly allowance from the company, and is supervised by a branch manager. He is governed by the Code of Conduct for Unit Managers. Is he an employee of Guaranteed? Explain. (2.5%)

-III-

Inggo is a drama talent hired on a per drama "participation basis" by DJN Radio Company. He worked from 8:00 a.m. until 5:00 p.m., six days a week, on a gross rate of P80.00 per script, earning an average of P20,000.00 per month. Inggo filed a complaint before the Department of Labor and Employment (DOLE) against DJN Radio for illegal deduction, non-payment of service incentive leave, and 13th month pay, among others. On the basis of the complaint, the DOLE conducted a plant level inspection.

The DOLE Regional Director issued an order ruling that Inggo is an employee of DJN Radio, and that Inggo is entitled to his monetary claims in the total amount of P30,000.00. DJN Radio elevated the case to the Secretary of Labor who affirmed the order. The case was brought to the Court of Appeals. The radio station contended that there is no employer-employee relationship because it was the drama directors and producers who paid, supervised, and disciplined him. Moreover, it argued that the case falls under the jurisdiction of the NLRC and not the DOLE because Inggo's claim exceeded P5,000.00.

[a] May DOLE make a prima facie determination of the existence of an employer-employee relationship in the exercise of its visitorial and enforcement powers? (2.5%)

[b] If the DOLE finds that there is an employee-employer relationship, does the case fall under the jurisdiction of the Labor Arbiter considering that the claim of Inggo is more than P5,000.00. Explain. (2.5%)

-IV-

Hagibis Motors Corporation (Hagibis) has 500 regular employees in its car assembly plant. Due to the Asian financial crisis, Hagibis experienced very low car sales resulting to huge financial losses. It implemented several cost-cutting measures such as cost reduction on use of office supplies, employment hiring freeze, prohibition on representation and travel expenses, separation of casuals and reduced work week. As counsel of Hagibis, what are the measures the company should undertake to implement a valid retrenchment? Explain. (5%)

-V-

Asia Union (Union) is the certified bargaining agent of the rank-and-file employees of Asia Pacific Hotel (Hotel).

The Union submitted its Collective Bargaining Agreement (CBA) negotiation proposals to the Hotel. Due to the bargaining deadlock, the Union, on December 20, 2014, filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB). Consequently, the Union conducted a Strike Vote on January 14, 2015, when it was approved.

The next day, waiters who are members of the Union came out of the Union office sporting closely cropped hair or cleanly shaven heads. The next day, all the male Union members came to work sporting the same hair style. The Hotel . prevented these workers from entering the premises, claiming that they violated the company rule on Grooming Standards.

On January 16, 2015, the Union subsequently staged a picket outside the Hotel premises and prevented other workers from entering the Hotel. . The Union members blocked the ingress and egress of customers and employees to the Hotel premises, which caused the Hotel severe lack of manpower and forced the Hotel to temporarily cease operations resulting to substantial losses.

On January 20, 2015, the Hotel issued notices to Union members, preventively suspending them and charging them with the following offenses: (1) illegal picket; (2) violation of the company rule on Grooming Standards; (3) illegal strike; and (4) commission of illegal acts during the illegal strike. The Hotel later terminated the Union officials and members who participated in the strike. The Union denied it engaged in an illegal strike and countered that the Hotel committed an unfair labor practice (ULP) and a breach of the freedom of speech.

[a] Was the picketing legal? Was the mass action of the Union officials and members an illegal strike? Explain. (2.5%)

[b] Rule on the allegations of ULP and violation of freedom of speech. Explain. (2.5%)

-VI-

Pedro, a bus driver of Biyahe sa Langit Transport, was involved in a collision with a car, damaging the bus. The manager accused him of being responsible for the damage and was told to submit his written explanation within 48 hours. Pedro submitted his explanation within the period. The day after, Pedro received a notice of termination stating that he is dismissed for reckless driving resulting to damage to company property, effective immediately. Pedro asks you, as his counsel, if the company complied with the procedural due process with respect to dismissal of employees.

[a] Explain the twin notice and hearing rule. (2.5%)

[b] Did the Biyahe sa Langit Transport comply with the prior procedural requirements for dismissal? (2.5%)

-VII-

Forbes Country Club (Club) owns a golf course and has 250 rank-and-file employees who are members of the Forbes Country Club Union (Union). The Club has a CBA with the Union and one of the stipulations is a Union Security Clause, which reads: "All regular rank-and-file employees who are members of the union shall keep their membership in good standing as a condition for their continued employment during the lifetime of this agreement."

Peter, Paul and Mary were the Treasurer, Assistant Treasurer, and Budget Officer of the Union, respectively. They were expelled by the Board of Directors of the Union for malversation. The Union then demanded that the Club dismiss said officials pursuant to the Union Security Clause that required maintenance of union membership. The Club required the three officials to show cause in writing why they should not be dismissed. Later, the Club called the three Union officials for a conference regarding the charges against them. After considering the evidence submitted by the

parties and their written explanations, the Club dismissed the erring officials. The dismissed officials sued the Club and the Union for illegal dismissal because there was really no malversation based on the documents presented and their dismissal from the Union was due to the fact that they were organizing another union.

[a] Is the dismissal of Peter, Paul and Mary by the Club valid? (2.5%)

[b] If the expulsion by the Union was found by the Labor Arbiter to be baseless, is the Club liable to Peter, Paul and Mary? Explain. (2.5%)

-VIII-

Differentiate learnership from apprenticeship with respect to the period of training, type of work, salary and qualifications. (5%)

-IX-

Zienna Corporation (Zienna) informed the Department of Labor and Employment Regional Director of the end of its operations. To carry out the cessation, Zienna sent a Letter Request for Intervention to the NLRC for permission and guidance in effecting payment of separation benefits for its fifty (50) terminated employees.

Each of the terminated employees executed a Quitclaim and Release before Labor Arbiter Nocomora, to whom the case was assigned. After the erstwhile employees received their separation pay, the Labor Arbiter declared the labor dispute dismissed with prejudice on the ground of settlement. Thereafter, Zienna sold all of its assets to Zandra Company (Zandra), which in tum hired its own employees.

Nelle, one of the fifty (50) terminated employees, filed a case for illegal dismissal against Zienna. She argued that Zienna did not cease from operating since the corporation subsists as Zandra. Nelle pointed out that aside from the two companies having essentially the same equipment, the managers and owners of Zandra and Zienna are likewise one and the same.

For its part, Zienna countered that Nelle is barred from filing a complaint for illegal dismissal against the corporation in view of her prior acceptance of separation pay.

Is Nelle correct in claiming that she was illegally dismissed? (5%)

-X-

Lazaro, an engineer, organized a union in Garantisado Construction Corporation (Garantisado) which has 200 employees. He immediately filed a Petition for Certification Election, attaching thereto the signatures of 70 employees. Garantisado vehemently opposed the petition, alleging that 25 signatories are probationary employees, while 5 are supervisors. It submitted the contracts of the 25 probationary employees and the job description of the supervisors. It argued that if 30 is deducted from 70, it gives a balance of 40 valid signatures which is way below the minimum number of 50 signatories needed to meet the alleged 25% requirement. If you are the Director of Labor Relations, will you approve the holding of a Certification Election. Explain your answer. (5%)

-XI-

Dion is an Accounting Supervisor in a trading company. He has rendered exemplary service to the company for 20 years. His co-employee and kumpadre, Mac, called him over the phone and requested him to punch his (Mac's) daily time card as he (Mac) was caught in a monstrous traffic jam. Dion acceded to Mac's request but was later caught by the Personnel Manager while punching Mac's time card. The company terminated the employment of Dion on the ground of misconduct. Is the dismissal valid and just? Explain. (5%)

-XII-

Amaya was employed as a staff nurse by St. Francis Hospital (SFH) on July 8, 2014 on a probationary status for six (6) months. Her probationary contract required, among others, strict compliance with SFH's Code of Discipline.

On October 16, 2014, Dr. Ligaya, filed a Complaint with the SFH Board of Trustees against Amaya for uttering slanderous remarks against the former. Attached to the complaint was a letter of Minda, mother of a patient, who confirmed the following remarks against Dr. Ligaya:

"Bakit si Dr. Ligaya pa ang napili mong 'pedia' eh ang tandatanda na n'un? E makakalimutin na yun xx x Alam mo ba, kahit wala namang diperensya yung baby, ipinapa-iso/ate nya?"

The SFH President asks you, being the hospital's counsel, which of these two (2) options is the legal and proper way of terminating Amaya: a) terminate her for a just cause under Article 288 of the Labor Code (Termination by Employer); or b) terminate her for violating her probationary contract. Explain. (5%)

-XIII-

Matibay Shoe and Repair Store, as added service to its customers, devoted a portion of its store to a shoe shine stand. The shoe shine boys were tested for their skill before being allowed to work and given ID cards. They were told to be present from the opening of the store up to closing time and were required to follow the company rules on cleanliness and decorum. They bought their own shoe shine boxes, polish, and rags. The boys were paid by their customers for their services but the payment is coursed through the store's cashier, who pays them before closing time. They were not supervised in their work by any managerial employee of the store but for a valid complaint by a customer or for violation of any company rule, they can be refused admission to the store. Were the boys employees of the store? Explain. (5%)

-XIV-

Tess, a seamstress at Marikit Clothing Factory, became pregnant. Because of morning sickness, she frequently absented herself from work and often came to the factory only four (4) days a week. After two (2) months, the personnel manager told her that her habitual absences rendered her practically useless to the company and, thus, asked her to resign. She begged to be retained, citing her pregnancy as reason for her absences. Tess asked for leave of absence but her request was denied. She went on leave nevertheless. As a result, she was thus dismissed for going on leave without permission of management.

Tess filed a complaint for illegal dismissal. The company's defense: she was legally dismissed because of her numerous absences without leave and not because of her pregnancy. On the other hand, Tess argues that her dismissal was an act of discrimination, based as it was on her pregnancy

which the company treated as a disease. Whose position is meritorious-the company's or Tess'? Explain. (5%)

-XV-

Jim is the holder of a certificate of public convenience for a jeepney. He entered into a contract of lease with Nick, whereby they agreed that the lease period is for one (1) year unless sooner terminated by Jim for any of the causes laid down in the contract. The rental is thirty thousand pesos (P30,000.00) monthly. All the expenses for the repair of the jeepney, together with expenses for diesel, oil and service, shall be for the account of Nick. Nick is required to make a deposit of three (3) months to answer for the restoration of the vehicle to its good operating condition when the contract ends. It is stipulated that Nick is not an employee of Jim and he holds the latter free and harmless from all suits or claims which may arise from the implementation of the contract. Nick has the right to use the jeepney at any hour of the day provided it is operated on the approved line of operation.

After five (5) months of the lease and payment of the rentals, Nick became delinquent in the payment of the rentals for two (2) months. Jim, as authorized by the contract, sent a letter of demand rescinding the contract and asked for the arrearages. Nick responded by filing a complaint with the NLRC for illegal dismissal, claiming that the contract is illegal and he was just forced by Jim to sign it so he can drive. He claims he is really a driver of Jim on a boundary system and the reason he was removed is because he failed to pay the complete daily boundary , of one thousand (P1,000.00) for 2 months due to the increase in the number of tricycles.

[a] Jim files a motion to dismiss the NLRC case on the ground that the regular court has jurisdiction since the agreement is a lease contract. Rule on the motion and explain. (2.5%)

[b] Assuming that Nick is an employee of Jim, was Nick validly dismissed?

-XVI-

In a case for illegal dismissal and non-payment of benefits, with prayer for Damages, Apollo was awarded the following: 1) P200,000.00 as back.wages; 2) P80,000.00 as unpaid wages; 3) P20,000.00 as unpaid holiday pay; 4) PS,000.00 as unpaid service incentive leave pay; 5) P50,000.00 as moral damages; and 6) P10,000.00 as exemplary damages. Attorney's fees of ten percent (10%) of all the amounts covered by items 1 to 6 inclusive, plus interests of 6% per annum from the date the same were unlawfully withheld, were also awarded.

[a] Robbie, the employer, contests the award of attorney fees amounting to 10% on all the amounts adjudged on the ground that Article 111 of the Labor Code authorizes only 10% "of the amount of wages recovered". Rule on the issue and explain. (2.5%)

[b] Robbie likewise questions the imposition of interests on the amounts in question because it was not claimed by Apollo, and the Civil Code provision on interests does not apply to a labor case. Rule on the issue and explain. (2.5%)

-XVII-

Baldo, a farm worker on *pakyaw* basis, had been working on Dencio's land by harvesting abaca and coconut, processing copra, and clearing weeds from year to year starting January 1993 up to his death in 2007. He worked continuously in the sense that it was done for more than one harvesting

season.

[a] Was Dencio required to report Baldo for compulsory social security coverage under the SSS law? Explain. (2.5%)

[b] What are the liabilities of the employer who fails to report his employee for social security coverage? Explain. (2.5%)

-XVIII-

Empire Brands (Empire) contracted the services of Style Corporation (Style) for the marketing and promotion of its clothing line. Under the contract, Style provided Empire with Trade Merchandising Representatives (TMRs) whose services began on September 15, 2004 and ended on June 6, 2007, when Empire terminated the promotions contract with Style.

Empire then entered into an agreement for manpower supply with Wave Human Resources (Wave). Wave owns its condo office, owns equipment for the use by the TMRs, and has assets amounting to P1,000,000.00. Wave provided the supervisors who supervised the TMRs, who, in turn, received orders from the Marketing Director of Empire. In their agreement, the parties stipulated that Wave shall be liable for the wages and salaries of its employees or workers, including benefits, and protection due them, as well as remittance to the proper government entities of all withholding taxes, Social Security Service, and Philhealth premiums, in accordance with relevant laws.

As the TMRs wanted to continue working at Empire, they submitted job applications as TMRs with Wave. Consequently, Wave hired them for a term of five (5) months, or from June 7, 2007 to November 6, 2007, specifically to promote Empire's products.

When the TMRs' 5-month contracts with Wave were about to expire, they sought renewal thereof, but were refused. Their contracts with Wave were no longer renewed as Empire hired another agency. This prompted them to file complaints for illegal dismissal, regularization, non-payment of service incentive leave and 13th month pay against Empire and Wave.

[a] Are the TMRs employees of Empire? (2.5%)

[b] Were the TMRs illegally dismissed by Wave? (2.5%)

-XIX-

Filmore Corporation was ordered to pay P49 million to its employees by the Labor Arbiter. It interposed an appeal by filing a Notice of Appeal and paid the corresponding appeal fee. However, instead of filing the required appeal bond equivalent to the total amount of the monetary award, Filmore filed a Motion to Reduce the Appeal Bond to P4,000,000.00 but submitted a surety bond in the amount of P4.9 million. Filmore cited financial difficulties as justification for its inability to post the appeal bond in full owing to the shutdown of its operations. It submitted its audited financial statements showing a loss of P40 million in the previous year. To show its good faith, Filmore also filed its Memorandum of Appeal.

The NLRC dismissed the appeal for non-perfection on the ground that posting of an appeal bond equivalent to the monetary award is indispensable for the perfection of the appeal and the reduction of the appeal bond, absent any showing of meritorious ground to justify the same, is not warranted. Is

the dismissal of the appeal correct? Explain. (5%)

-XX-

Mario Brothers, plumbing works contractor, entered into an agreement with Axis Business Corporation (Axis) for the plumbing works of its building under construction. Mario Brothers engaged the services of Tristan, Arthur, and Jojo as plumber, pipe fitter, and threader, respectively. These workers have worked for Mario Brothers in numerous construction projects in the past but because of their long relationship, they were never asked to sign contracts for each project. No reports to government agencies were made regarding their work in the company.

During the implementation of the works contract, Axis suffered financial difficulties and was not able to pay Mario Brothers its past billings. As a result, the three (3) employees were not paid their salaries for two (2) months and their 13th month pay. Because Axis cannot pay, Mario Brothers cancelled the contract and laid off Tristan, Arthur, and Jojo. The 3 employees sued Mario Brothers and Axis for illegal dismissal, unpaid wages, and benefits.

[a] Mario Brothers claims the 3 workers are project employees. It explains that the agreement is, if the works contract is cancelled due to the fault of the client, the period of employment is automatically terminated. Is the contractor correct? Explain. (2.5%)

[b] Can Axis be made solidarily liable with Mario Brothers to pay the unpaid wages and 13th month pay of Tristan, Arthur, and Jojo? Explain. (2.5%)

-END