

INSTRUCTIONS

1. This Questionnaire contains nine (9) pages. Check and make sure that your Questionnaire has the correct number of pages. You may write on your Questionnaire as you answer the questions.

Read each question very carefully and write your answers in your Bar Examination Notebook in the same order of the questions. Answer the essay questions legibly, clearly, and concisely. Write your answers only on the front of every page of your Notebook. If the front pages are not sufficient, continue at the back of the first page and so on. Start every number on a separate page, but an answer to a sub-question under the same number may be written continuously on the same page and on the immediately succeeding pages until the answer is complete. Follow the numbering sequence of the Questionnaire in your answers.

2. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Answers must fully explain even if the questions do not expressly require explanations. A "Yes" or "No" answer *sans* explanation or discussion will not be given full credit.

3. Marking of your Notebook 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.

Good luck!

YOU CAN BRING HOME THE QUESTIONNAIRE.

JUSTICE LUCAS P. BERSAMIN
Chairman
2017 Bar Examinations

I

A.

What are the accepted tests to determine the existence of an employer-employee relationship? (5%)

B.

Applying the tests to determine the existence of an employer-employee relationship, is a jeepney driver operating under the boundary system an employee of his jeepney operator or a mere lessee of the jeepney? Explain your answer. (3%)

II.

Procopio was dismissed from employment for stealing his co-employee Raul's watch. Procopio filed a complaint for illegal dismissal. The Labor Arbiter ruled in Procopio's favor on the ground that Raul's testimony was doubtful, and, therefore, the doubt should be resolved in favor of Procopio. On appeal, the NLRC reversed the ruling because Article 4 of the *Labor Code* - which states that all doubts in the interpretation and implementation of the provisions of the *Labor Code*, including the implementing rules and regulations, shall be resolved in favor of labor - applied only when the doubt involved the "implementation and interpretation" of the *Labor Code*; hence, the doubt, which involved the

application of the rules on evidence, not the *Labor Code*, could not necessarily be resolved in favor of Procopio. Was the reversal correct? Explain your answer. (3%)

III.

A.

Andrew Manning Agency (AMA) recruited Feliciano for employment by Invictus Shipping, its foreign principal. Meantime, AMA and Invictus Shipping terminated their agency agreement. Upon his repatriation following his premature termination, Feliciano claimed from AMA and Invictus Shipping the payment of his salaries and benefits for the unserved portion of the contract. AMA denied liability on the ground that it no longer had an agency agreement with Invictus Shipping. Is AMA correct? Explain your answer. (3%)

B.

As a rule, direct hiring of migrant workers is not allowed. What are the exceptions? Explain your answer. (2.5%)

C.

Phil, a resident alien, sought employment in the Philippines. The employer, noticing that Phil was a foreigner, demanded that he first secures an employment permit from the DOLE. Is the employer correct? Explain your answer. (2.5%)

IV.

The Regional Tripartite Wages and Productivity Board (RTWPB) for Region 3 issued a wage order on November 2, 2017 fixing the minimum wages for all industries throughout Region 3.

(a) Is the wage order subject to the approval of the National Wages and Productivity Commission before it takes effect? (2%)

(b) The law mandates that no petition for wage increase shall be entertained within a period of 12 months from the effectivity of the wage order. Under what circumstances may the Kilusang Walang Takot, a federation of labor organizations that publicly and openly assails the wage order as blatantly unjust, initiate the review of the wage increases under the wage order without waiting for the end of the 12-month period? Explain your answer. (3%)

V.

A.

Percival was a mechanic of Pacific Airlines. He enjoyed a meal break of one hour. However, during meal breaks, he was required to be on stand-by for emergency work. During emergencies, he was made to forego his meals or to hurry up eating. He demanded payment of overtime for work done during his meal periods. Is Percival correct? Explain your answer. (3%)

B.

Distinguish a learner from an apprentice. (4%)

C.

Are there differences between a househelper and a homemaker? Explain your answer. (4%)

VI.

A.

One of Pacific Airline's policies was to hire only single applicants as flight attendants, and considered as automatically resigned the flight attendants at the moment they got married. Is the policy valid? Explain your answer. (2.5%)

B.

Tarcisio was employed as operations manager and received a monthly salary of 25,000.00 through his payroll account with DB Bank. He obtained a loan from Roberto to purchase a car. Tarcisio failed to pay Roberto when the loan fell due. Roberto sued to collect, and moved to garnish Tarcisio's payroll account. The latter vigorously objected and argued that salaries were exempt from garnishment. Is Tarcisio correct? Explain your answer. (3%)

VII.

Dr. Crisostomo entered into a retainer agreement with AB Hotel and Resort whereby he would provide medical services to the guests and employees of AB Hotel and Resort, which, in turn, would provide the clinic premises and medical supplies. He received a monthly retainer fee of 60,000.00, plus a 70% share in the service charges from AB Hotel and Resort's guests availing themselves of the clinic's services. The clinic employed nurses and allied staff, whose salaries, SSS contributions and other benefits he undertook to pay. AB Hotel and Resort issued directives giving instructions to him on the replenishment of emergency kits and forbidding the clinic staff from receiving cash payments from the guests.

In time, the nurses and the clinic staff claimed entitlement to rights as regular employees of AB Hotel and Resort, but the latter refused on the ground that Dr. Crisostomo, who was their employer, was an independent contractor. Rule, with reasons. (4%)

VIII.

Marciano was hired as Chief Engineer on board the vessel MN Australia. His contract of employment was for nine months. After nine months, he was re-hired. He was hired a third time after another nine months. He now claims entitlement to the benefits of a regular employee based on his having performed tasks usually necessary and desirable to the employer's business for a continuous period of more than one year. Is Marciano's claim tenable? Explain your answer. (3%)

IX.

Section 255 (245) of the *Labor Code* recognizes three categories of employees, namely: managerial, supervisory, and rank-and-file.

(a) Give the characteristics of each category of employees, and state whether the employees in each category may organize and form unions. Explain your answer. (5%)

(b) May confidential employees who assist managerial employees, and who act in a confidential capacity or have access to confidential matters being handled by persons exercising managerial functions in the field of labor relations form, or assist, or join labor unions? Explain your answer. (2.5%)

X.

A.

The labor sector has been loudly agitating for the end of labor-only contracting, as distinguished from job contracting. Explain these two kinds of labor contracting, and give the effect of a finding that one is a labor-only contractor. Explain your answers. (4%)

B.

What are the grounds for validly terminating the services of an employee based on a just cause? (5%)

C.

Give the procedure to be observed for validly terminating the services of an employee based on a just cause? (4%)

XI.

A.

The modes of determining the exclusive bargaining agent of the employees in a business are: (a) voluntary recognition; (b) certification election; and (c) consent election. Explain how they differ from one another. (4%)

B.

Marcel was the Vice President for Finance and Administration and a member of the Board of Directors of Mercedes Corporation. He brought a complaint for illegal suspension and illegal dismissal against Mercedes Corporation, which moved to dismiss the complaint on the ground that the complaint pertained to the jurisdiction of the RTC due to the controversy being intracorporate based on his positions in the corporation. Marcel countered that he had only been removed as Vice President for Finance and Administration, not as a member of the Board of Directors. He also argued that his position was not listed as among the corporate offices in Mercedes Corporation's by-laws. Is the argument of Marcel correct? Explain your answer. (2.5%)

C.

State the jurisdiction of the Voluntary Arbitrator, or Panel of Voluntary Arbitrators in labor disputes? (4%)

XII.

A.

Juanito initiated a case for illegal dismissal against Mandarin Company. The Labor Arbiter decided in his favor, and ordered his immediate reinstatement with full backwages and without loss of seniority and other benefits. Mandarin Company did not like to allow him back in its premises to prevent him from influencing his co-workers to move against the interest of the company; hence, it directed his payroll reinstatement and paid his full backwages and other benefits even as it appealed to the NLRC.

A few months later, the NLRC reversed the ruling of the Labor Arbiter and declared that Juanito's dismissal was valid. The reversal ultimately became final.

May Mandarin Company recover the backwages and other benefits paid to Juanito pursuant to the decision of the Labor Arbiter in view of the reversal by the NLRC? Rule, with reasons. (2.5%)

B.

Gene is a married regular employee of Matibay Corporation. The employees and Matibay Corporation had an existing CBA that provided for funeral or bereavement aid of 15,000.00 in case of the death of a legal dependent of a regular employee. His widowed mother, who had been living with him and his family for many years, died; hence, he claimed the funeral aid. Matibay Corporation denied the claim on the basis that she had not been his legal dependent as the term *legal dependent* was defined by the Social Security Law.

(a) Who may be the legal dependents of Gene under the Social Security Law? (2.5%)

(b) Is Gene entitled to the funeral aid for the death of his widowed mother? Explain your answer. (2%)

C.

Rosa was granted vacation leave by her employer to spend three weeks in Africa with her family. Prior to her departure, the General Manager of the company requested her to visit the plant of a client of the company in Zimbabwe in order to derive best manufacturing practices useful to the company. She accepted the request because the errand would be important to the company and Zimbabwe was anyway in her itinerary. It appears that she contracted a serious disease during the trip. Upon her return, she filed a claim for compensation, insisting that she had contracted the disease while serving the interest of her employer.

Under the *Labor Code*, the sickness or death of an employee, to be compensable, must have resulted from an illness either definitely accepted as an occupational disease by the Employees' Compensation Commission, or caused by employment subject to proof that the risk of contracting the same is increased by working conditions.

Is the serious disease Rosa contracted during her trip to Africa compensable? Explain your answer. (2.5%)

XIII.

A.

Given that the liability for an illegal strike is individual, not collective, state when the participating union officers and members may be terminated from employment because of the illegal strike. Explain your answer. (4%)

B.

A sympathetic strike is stoppage of work to make common cause with other strikers in another establishment or business. Is the sympathetic strike valid? Explain your answer. (1%)

C.

Due to business recession, Ballistic Company retrenched a part of its workforce. Opposing the retrenchment, some of the affected employees staged a strike. Eventually, the retrenchment was found to be justified, and the strike was declared illegal; hence, the leaders of the strike, including the retrenched employees, were declared to have lost their employment status.

Are the striking retrenched employees still entitled to separation pay under Sec. 298 (283) of the *Labor Code* despite the illegality of their strike? Explain your answer. (2%)

XIV.

Pursuant to his power under Sec. 278(g) (263(g)) of the *Labor Code*, the Secretary of Labor assumed jurisdiction over the 3-day old strike in Armor Steel Plates, Inc., one of the country's bigger manufacturers of steel plates, and ordered all the striking employees to return to work. The striking employees ignored the order to return to work.

(a) What conditions may justify the Secretary of Labor to assume jurisdiction? (2.5%)

(b) What are the consequences of the assumption of jurisdiction by the Secretary of Labor, and of the disobedience to the return to work? Explain your answer. (2.5%)

-NOTHING FOLLOWS-