WRITE BETTER, SCORE BETTER

the language and logic of labor law

Introduction

The two creations of *Reader's Digest* that I truly learned from when I was in college were its *Book of the Car* (1976) which taught me troubleshooting and *Write Better, Speak Better* (1982) which taught me how words could do wonders.

This work seeks to achieve similar results as *Reader's Digest* had envisioned in its two publications , *viz.,* to diagnose Bar answers and to show its users how to write better to score better. These are the objectives of this book. Certainly, there is an art of translating thought to word and reason to argument.

As a professor of *Labor Law* (1998 – present), I enjoy lecturing in both regular and review classes. Very honestly, however, I do not enjoy computing grades and, before that, reading and scoring answers. I always dread the day I shall come face to face with the sad reality that I have been teaching in vain because the lessons I teach with untold passion get unintentionally mangled beyond recognition due to poor grammar and lack of facility of expression. Knowing, however, that many of my students have not really been trained to write, I do my level best to see meaning in their answers even if there is really none. After all, what is essential is invisible to the human eye (*Antoine de Saint-Exupery, The Little Prince*). Yet I dread sending them to challenge the Bar examination in my subject because Bar examiners do not wake up to plan the grandest future for them. Indeed, they craft questions to make becoming lawyers extremely difficult for anyone. For examiners, what is essential is what is visible and pleasant to both their eyes and brains. He who thinks otherwise sees compassion where there is no compassion.

Writing better is achieved through constant practice. It has been said that there is no such thing as legal writing - only legal re-rewriting. It is from hours of writing and re-writing that style is developed. Obviously, putting a golf ball into the same hole as many times as "seven times seventy" times will not make one a good golfer. There are other greens to tame, not to mention the difficult bunkers between them. Here, the language and logic of *Labor Law* are passionately treated to inspire one to score better by writing better.

As to language, *Chapter II* features terms and phrases that form part of the literature of *Labor Law*. Mastering a law requires mastery of its peculiar language. *Labor Law* has its unique literature. To illustrate, one does not say "*X Co. is guilty of illegally dismissing Denver*." Guilty is to a conviction in a criminal case; whereas, liable is to a finding of illegal dismissal in a labor case. Hence, the correct disposition is "*X Co. is liable for illegally dismissing Denver*." From this finding, one concludes: "*Accordingly, it must be ordered to immediately reinstate him and to pay his*

backwages." Hence, the terms and phrases mentioned are showcased *via* Bar answers sourced from my book *QnAs in Labor Law*.

As to logic, *Labor Law* has its sense and non-sense. Like, does it matter which government agency has ordered the closure of an establishment or the suspension of its business operations resulting in loss of wages on the part of the affected workers, *i.e.*, for purposes of recovery of replacement wages under *Art. 128* of the *Labor Code*? In the *2008 Marcopper Case*, the *Supreme Court* ruled that the order must come from the *DOLE*; otherwise, the duty to pay replacement wages would not attach. In the case, the order of suspension was issued by the *DENR*; hence, the mining company could not be ordered to restore the lost wages. To clarify, however, the concern of this book is to help Bar takers craft logical answers and not to teach them to reject certain rulings. Hence, from *Chapter III* to *Chapter IV*, they are methodically taught how to answer Bar questions. There are simple rules to follow; there are simple techniques to apply; and there are simple reasoning patterns they can master between now and September. This is the good news.

I have featured the important decisions of the *Bar Chairman* in *Chapter V* and in other parts of this short work, using them to lend content to the writing methods I am happy to share.

May the September event, thru this wishful work, be a pleasant experience for all.

CHAPTER I

INTRODUCTION TO BAR ANSWERING METHODS

Centralbooks has commissioned eight Bar reviewers to update the answers to Bar questions asked since 2008. The eight are as follows: *Prof. Carlo Cruz* (Political Law); *Prof. Benedict Kato* (Labor Law); *Dean Vivian Paguirigan* (Civil Law); *Comm. Abelardo Domondon* (Taxation); *Dean Nilo Divina* (Commercial Law); *Judge Rowena Alejandria* (Criminal Law); *Prof. Manuel Riguera* (Remedial Law); and *Atty. Vinci Albano* (Legal Ethics).

Sample questions in *Labor Law*, to which I have suggested answers, are featured here to assist reviewees in a directional manner. Notably, the answers are concise, clear and coherent. In addition, they have the elements, *viz.*, law, language and logic. These questions and answers are in my book "*QnA in Labor Law*" (2023 edition), a *Centralbooks* publication. However, unlike in said book, the Bar answers are annotated here in order to be more helpful.

Hopefully, the following *QnAs* will inspire effort. They are given striking headings to help examinees remember the subject matter. The sample answers, which I have annotated to

give direction and guidance, should suffice for the purpose of demonstrating how questions should be answered.

2009 Bar, Question No. XIV

TWO-IN-ONE

Jolli-Mac Restaurant Company (Jolli-Mac) owns and operates the largest food chain in the country. It engaged Matiyaga Manpower Services, Inc. (MMSI), a job contractor registered with the Department of Labor and Employment, to provide its restaurants the necessary personnel, consisting of cashiers, motorcycle delivery boys and food servers, in its operations. The Service Agreement warrants, among others, that MMSI has a paid- up capital of P2,000,000.00; that it would train and determine the qualification and fitness of all personnel to be assigned to Jolli- Mac; that it would provide these personnel with proper Jolli-Mac uniforms; and that it is exclusively responsible to these personnel for their respective salaries and all other mandatory statutory benefits.

After the contract was signed, it was revealed, based on research conducted, that MMSI had no other clients except Jolli- Mac, and one of its major owners was a member of the Board of Directors of Jolli-Mac.

a. Is the Service Agreement between Jolli-Mac and MMSI legal and valid? Why or why not? (3%)

b. If the cashiers, delivery boys and food servers are not paid their lawful salaries, including overtime pay, holiday pay, 13th month pay, and service incentive leave pay, against whom may these workers file their claims? Explain. (2%)

Answer

a. No, the SA is not legal and valid for the following reasons:

First, MMSI is an in-house contractor owing to the fact that it is co-owned by Jolli-Mac which happens to be its sole client;

Second, MMSI is not substantially capitalized since its paid-up capital is below the required P5M capitalization; and

Third, the workers supplied by MMSI to Jolli-Mac are performing work directly related to the latter's trade.

b. The unpaid workers can proceed against Jolli-Mac for the payment of their salaries and mandatory benefits since it is their actual employer. In labor-only contracting, which obtains in the premises, the legal personality of the labor-only contractor mergers with that of its principal. Hence, its violations of Labor Law will impose on its principal the comprehensive solidary liability of rectifying said violations thru payment.

Bar 2008, Q No. II

ASS POWER: A PIP BED POWER

a. What issues or disputes may be the subject of voluntary arbitration under the Labor Code? (4%)

b. Can a dispute falling within the exclusive jurisdiction of the Labor Arbiter be submitted to voluntary arbitration? Why or why not? (3%)

c. Can a dispute falling within the jurisdiction of a voluntary arbitrator be submitted to compulsory arbitration? Why or why not? (3%)

Answer

a. The following may be brought to voluntary arbitration:

In the exercise of traditional jurisdiction, (a) all unresolved disputes arising from CBA interpretation or implementation; and (b) all unresolved disputes arising from the implementation or enforcement of company personnel policy (Art. 274, Labor Code); and

In the exercise of jurisdiction by stipulation, all disputes as may be agreed upon by the parties to a CBA or similar agreement to be brought to voluntary arbitration (Art. 275, Labor Code).

b. Yes.

A dispute pending before the Labor Arbiter may be brought to voluntary arbitration in observance of the constitutional stricture on preferential use of voluntary modes of dispute resolution. By agreement of the disputants, therefore, their issues may be brought out of the compulsory arbitration process (*Art. 224, Labor Code*) for resolution by a third party mutually chosen by them (*Arts. 274 and 275, Labor Code*).

c. Yes, a dispute originally taken cognizance of by a voluntary arbitration body may be brought for resolution to a compulsory arbitration body.

In an assumed case, the Secretary of Labor exercises broad, plenary, incidental, preemptive, discretionary and extraordinary power; hence, owing to the plenary nature of assumption power, all issues between the same parties pending elsewhere, including those being heard by a voluntary arbitrator, shall be subsumed to the assumed case for simultaneous resolution.

Comments

1. When I edited my answers, I noticed that I wrote (a) (b) (c). I removed the parentheses because the Bar examiner did not use parentheses. I would not have used 1 2 3 either because he used a b c.

2. As to sub-question "a", Civil Procedure teaches that law confers jurisdiction over the subject matter of a case. However, ***Sec. 3, Art. XIII*** of the ***Constitution*** instructs preferential use of voluntary modes of settling labor disputes, including voluntary arbitration. For this reason, parties to CBAs are allowed to stipulate on where to bring their dispute/s for resolution. Hence, there is such thing as jurisdiction by stipulation by authority of the Constitution (***Vivero Ruling***). For this reason, I outlined the VA's jurisdiction as traditional jurisdiction (***Art. 274, Labor Code***) and jurisdiction by stipulation (***Art. 275, Labor Code***).

3. As to sub-question "c", one needs to remember the characteristics of assumption power, *viz.*, plenary , incidental, preemptive, broad, extraordinary and discretionary (PIP BED). Knowing the meanings of these words can help one solve ostensibly tough problems.

Bar 2009, Q No. III

NULL & NULL
(SALARY FORMULA VOIDED TWICE)

Richie, a driver-mechanic, was recruited by Supreme Recruiters (SR) and its principal, Mideast Recruitment Agency (MRA), to work in Qatar for a period of two (2) years. However, soon after the contract was approved by POEA, MRA advised SR to forego Richie's deployment because it had already hired another Filipino driver-mechanic, who had just completed his contract in Qatar. Aggrieved, Richie filed with the NLRC a complaint against SR and MRA for damages corresponding to his two years' salary under the POEA-approved contract.

SR and MRA traversed Richie's complaint, raising the following arguments:

a. The Labor Arbiter has no jurisdiction over the case; (2%)
b. Because Richie was not able to leave for Qatar, no employer-employee relationship was established between them; (2%) and
c. Even assuming that they are liable, their liability would, at most, be equivalent to Richie's salary for only six (6) months, not two years. (3%).

Rule on the validity of the foregoing arguments with reasons.

Answer

a. The Labor Arbiter has jurisdiction.

Sec. 7, R.A. 10022 confers jurisdiction on the Labor Arbiter over the money claims, including damages, of OFWs arising from employer-employee relationship, contract, or law.

b. Actual deployment of an OFW signals the birth of employer-employee relationship between him and his foreign employer (***Paul v. Santiago v. CF Sharp Crew Management, Inc.***, G.R. No. 162419, 10 July 2007). Nevertheless, an un-deployed OFW can litigate before the Labor Arbiter over money claims arising from his perfected employment contract.

c. The lesser amount rule in ***Sec. 7, R.A. 10022*** has been declared as unconstitutional for violating the Due Process Clause and the Equal Protection Clause (***Sameer Overseas Placement Agency v. Joy Cabiles***, G.R. No. 170139, 5 August 2014). Hence, MRA and SR are liable for the payment of 2 years of salaries.

Comments

1. Relative to land-based OFWs, the focus will always be *Sec. 7, R.A. 10022*, *i.e.*, placement fees (plus legal interest), salaries for the unexpired portion of a pre-terminated employment contract, damages and attorney's fees. Expectedly, owing to the development of jurisprudence (***Serrano*** to ***Sameer***), the focus will more likely be the *lesser amount rule* which pertains to salary recovery.

2. The *lesser amount rule* provided (<u>past tense</u> because it was nullified in the 2009 ***Serrano vs. Gallant Maritime Services*** and re-nullified in the 2014 ***Sameer Overseas Placement Agency vs Joy Cabiles*** cases) that if the employment contract was at least 1 year, the salaries that were no longer earned by reason of the pre-termination of the contract should be computed by getting the equivalent of 3 monthly salaries and multiplying it buy the number of years there were in the unexpired portion. In contrast, a straight computation (unexpired portion x monthly salary) was to be given an illegally dismissed OFW with less than 1 year of contract. The distinction between "OFWs with at least 1 year" and "OFWs with less than 1 year" is void for being violative of the *Due Process Clause* and *Equal Protection Clause;* hence, regardless of period of contract, a straight computation shall be done.

3. An un-deployed OFW does not become a party to employer-employee relationship. However, he can sue before the Labor Arbiter on his perfected contract because it generates rights that he can enforce by verified complaint before the Labor Arbiter. His right to litigate is

founded on any of the following: (a) employer-employee relationship (if actually deployed); his employment contract (if un-deployed); or law.

4. *Lamadrid vs Cathay Pacific* (Chapter V, J Hernando Decisions) defines an OFW for purposes of the Labor Arbiter's jurisdiction. An OFW is a person engaged in remunerative activity in a country of which he is not a citizen.

Q No. IX

DISTORTING WAGE DISTORTION

a. What is wage distortion? Can a labor union invoke wage distortion as a valid ground to go on strike? Explain. (2%)

b. What procedural remedies are open to workers who seek correction of wage distortion? (2%)

Answer

a. A wage distortion is the elimination or serious contraction of the wage gap advantage enjoyed by one wage group over another as to destroy the hierarchy of positions and corresponding pay rates adopted by the employer based on rational considerations, *i.e.,* as long as the obliteration of the wage gap is by reason of a wage law, wage order, merger of companies, or CBA renegotiation.

A wage distortion dispute is non-strikable. The allowable strike grounds are bargaining deadlock and ULP to the exclusion of all others, *e.g.,*inter-union dispute, intra-union dispute, and labor standards disputes, like one arising from a wage distortion.

b. Workers who seek correction of a wage distortion have the following procedural remedies:

If the establishment is organized, they may bring the issue to the Grievance Machinery. If unresolved at that level, they may elevate it to voluntary arbitration.

If the establishment is unorganized, their remedy is to bring the issue to the NCMB which has ten (10) calendar days to resolve it; otherwise, it shall refer it to the Labor Arbiter.

Comments

1. One approach to *PD 442* is to go article by article. I have never adopted this approach as I prefer going structural and avoiding information overload. While I get impressed by students who can deliver definitions *verbatim*, I am more impressed by the few who understand the term defined and translate their understanding of it to a definition by

enumeration, definition by description, or definition by comparison. Relative to wage distortion, its definition is the most difficult in *Labor Law*. So I have to show its essential parts via a break-down definition.

2. A wage distortion occurs when:

(a) There are two or more wage groups assigned different wage rates; thus, they are separated by a wage gap;
(b) The wage gap is either eliminated or seriously contracted; and
(c) The cause of the elimination or contraction is a cause recognized by law.

Hence, this styled assemblage of (a) (b) (c) which I devised (distorted in the electric guitar sense to sound better):

> "A wage distortion is the elimination or serious contraction of the wage gap advantage enjoyed by one wage group over another as to destroy the hierarchy of positions and corresponding pay rates adopted by the employer based on rational considerations, *i.e.*, as long as the obliteration of the wage gap is by reason of a wage law, wage order, merger of companies, or CBA renegotiation."

3. One's knowledge of the distinction between organized establishment and unorganized establishment can help him answer several difficult questions in *Labor Law, e.g.:* (a) When can the Med-Arbiter automatically grant a CE petition?; (b) When do the economic provisions of a CBA take effect?; (c) What are the aspects of the duty to collectively bargain?; (d) Who can appeal a CE order?; and (e) How is a wage distortion dispute resolved?

4. If the employer has concluded a CBA with the EBR/SEBA, its establishment is organized; otherwise, it is unorganized. In other words, it is not enough that its workers have selected a union that is duly certified as their EBR/SEBA. To validate the distinction made here, here is sub-question (b), *supra,* again:

5. Why do workers go to the Grievance Machinery (GM) at one point, and why do they go to the NCMB at another? The answer is simple: They go to the GM because there is a GM to go to. And there is a GM to go to because there is a CBA with mandatory provisions, one of which is a GM. On the other hand, workers go to the NCMB because there is no GM to go to. The reason for this is there is no CBA with mandatory provisions, like a GM.

6. In like manner, the Med-Arbiter must hear a CE petition because of the possibility that the election is barred. The "Bar" in the *Contract Bar Rule* is the CBA.

7. If 5 & 6 are not enough illustrations, here is a third illustration: What are the aspects of the duty to collectively bargain? In organized establishments, the aspects are: (a) to meet promptly, expeditiously and in good faith; (b) to negotiate a CBA; and (b) to respect the current CBA while it is effective. In unorganized establishments, the third is omitted because there is no pre-existing CBA to continue honoring.

8. In *Heritage*, *Justice* (later *CJ*) *Bersamin* ruled that the company could not appeal the CE order. It must have been because it was unorganized (*D.O. 40-03*). But there was nothing in the case that directly showed that it was so. So what was the basis of *J Bersamin* in denying right to appeal to the company? The CE petition was automatically granted by the Med-Arbiter. He could do this because the hotel was unorganized; otherwise, he had to hear the petition.

Note:

Although it has been announced that the next Bar examinations will be purely essay-type, traditional methods of crafting questions have not been retired here if only for future purposes as Bar format is as fluid as anything. In other words, there is always that possibility of reversion; hence, there is no de-commissioning the other ways questions have been asked through the years. The other reason is, quite obviously, the so-called Bar areas have been asked thru various modes of questioning, *i.e.*, depending on the examiner's targets. Lower order thinking skills (ability to recall, name, enumerate) are tested with objective-type questions; whereas, higher order thinking skills (ability to distinguish, synthesize, analyze, judge, create) are tested with long essay-type questions.

Bar 2010, Q No. II

"A" INTRODUCES "A"

a. Distinguish the terms "conciliation," "mediation" and "arbitration." (3%)
b. Differentiate "surface bargaining" from "blue-sky bargaining." (2%)

Answer

a. Employer-employee relationship is an *inter-party* relationship, which means that the parties thereto get to determine the course of their affair with minimum State interference. Regardless, third-party mechanisms for dispute resolution are allowed. Third party participation is:

Conciliation if the third party helps the disputants meet and talk. He does not receive evidence from them, much less render a judgment binding on them.

Mediation if the third party, who does not also render a judgment upon evidence presented to him, helps the disputants identify their issue and proposes solutions on "take it" or "leave it" basis.

Arbitration if the third party is a judge who receives the disputants' evidence and renders a judgment binding on them. It is voluntary if he has been pre-selected contractually by the disputants; and it is compulsory if it is law which confers on him the power to hear and resolve their dispute.

b. The distinction lies in the following:

Surface Bargaining is a bargaining attitude whereby one goes thru motions of negotiating a CBA without an honest intent to perfect it and be bound to its provisions.

Blue-sky Bargaining is a bargaining attitude manifesting uncompromising bargaining position thru unreasonable, unrealistic, impossible or difficult proposals.

Comments

1. I continue to honor the memory of the late *Prof. Samson S. Alcantara* by teaching my students his grand distinction between conciliation, mediation and voluntary arbitration. Before passing on, *Prof. Cesario A. Azucena* gave us the *inter-party* characteristic of employer-employee relationship also. I used the *Azucena* characterization to introduce the *Alcantara* distinction.

2. I am writing this book because, just like our departed legal eagles, I may never pass this way again.

Bar 2012, Q No. I

DEAN "O" vs JUSTICE "J"

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:

c. The Labor Secretary erroneously assumed jurisdiction over the dispute since College X could not be considered an industry indispensable to national interest;

d. 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

e. The strike being legal, the employment of the striking Union officers and members cannot be terminated. Rule on these contentions. Explain. (5%)

Answer

a. In labor-only contracting:

1. The contractor is not substantially capitalized or possessed with the investment in the form of tools, equipment machineries or work premises and, in confirmation of its labor-only contractor status, he does not exercise control over the means and methods of performance of the workers it supplies to its principal, or said workers perform work directly related to the latter's trade;

2. The contractor is a mere agent who recruits workers for its principal; hence, pursuant to the Principle of Merger of Legal Personalities, its violations of Labor Law and Social Legislation are attributable to its principal.

In job contracting:

1. The contractor is issued a certificate of registration to protect public interest, the secretary of Labor can exercise his discretionary power to assume jurisdiction over the dispute.

2. The strikers' pending motion for reconsideration does not affect the immediate character of the Secretary's Return to Work Order. In fact, said order has an injunctive effect; hence, immediately upon valid service thereof on the union (*University of the Immaculate Conception v. Sec. of Labor, G.R. No 151379, 14 Jan. 2005*)

b. Non-compliance with the Return to Work Order amounts to non-compliance with an injunction. Hence, pursuant to the *Injunction Test*, the union's defiance thereof renders its strike illegal. Being illegal, the union officers can be dismissed. As to the union members, they cannot be dismissed unless they have committed acts of illegality in the course of the strike.

Comments

1. The style employed in answering sub-question (a) is the *Dean Carlos Ortega* style. Of course, everybody knows the *Justice Jurado* style.

2. The *Ortega* style lists the terms to be distinguished separately; the points of distinction are identified; and comparisons are set forth observing 1-to-1 correspondence. 1 above must correspond to 1 below; 2 above to 2 below; and 3 above to 3 below, etc. Criss-

crossing must be guarded against. This was hard to do when the Bar examination was taken manually. With the introduction of the digital Bar examination, it has become easier to arrange and re-arrange sentences.

3. The *Jurado* style is as follows:

Labor-only contracting is distinguished from job contracting as follows:

As to contracting capacity:

An labor-only contractor is not substantially capitalized or possessed with investment in the form of tools, equipment machineries or work premises and, in confirmation of its labor-only contractor status, it does not exercise control over the means and methods of performance of the workers it supplies to its principal, or said workers perform work directly related to the latter's trade; whereas, a job contractor has net contracting financial capacity and carries on an independent business in which he has pervasive control over the means and methods of performance of its employees.

As to merger of legal personalities:

A labor-only contractor is a mere agent who recruits workers for its principal; hence, its violations of Labor Law and Social Legislation are attributable to its principal pursuant to the Principle of Merger of Legal Personalities; whereas, a job contractor is not an agent or manpower recruiter only thereby freeing its principal of liability under the same principle.

4. If there are several points of distinction, it is best to number them 123456.

Bar 2016, Q VIII

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

Answer

Learnership differs from apprenticeship as follows:

1. As to period of training. In learnership, the period shall not exceed 3 months; whereas, in apprenticeship, the period shall not exceed 6 months.

2. As to type of work. In learnership, the work is semi-skilled; whereas, in apprenticeship, the work is highly technical;

3. As to salary. In learnership, the employer is permitted to pay 75% of the applicable minimum wage. However, if the learner is employed in piece or incentive rate

jobs, he must be paid in full. In apprenticeship, the employer is permitted to pay a starting salary equivalent to 75% of the minimum wage. However, the SOLE may authorize the hiring of apprentices without compensation if training on the job is required by the school or is a requisite for graduation or board examination; and

4. As to qualifications. In learnership, the worker must be able to perform training-on-the job work; whereas, in apprenticeship, the worker must possess vocational aptitude and can comprehend and follow oral and written instructions.

5. The *Jurado Style* is the easier style to use. It identifies the points of comparison first then proceeds to the "A is x; whereas, B is y" part. I use both *Ortega* and *Jurado* styles to avoid monotony.

Bar 2013, Q No. X

TENU & REMU

For ten (10) separate but consecutive yearly contracts, Cesar has been deployed as an able-bodied seaman by Meritt Shipping, through its local agent, Ace Maritime Services (agency), in accordance with the 2000Philippine Overseas Employment Administration Standard Employment Contract (2000 POEA-SEC). Cesar's employment was also covered by a CBA between the union, AMOSl.JP, and Meritt Shipping. Both the 2000 POEA-SEC and the CBA commonly provide the same mode and procedures for claiming disability benefits. Cesar's last contract (for nine months) expired on July 15, 2013.

Cesar disembarked from the vessel M/V Seven Seas on July 16, 2013as a seaman on "finished contract". He immediately reported to the agency and complained that he had been experiencing spells of dizziness, nausea, general weakness, and difficulty in breathing. The agency referred him to Dr. Sales, a cardio-pulmonary specialist, who examined and treated him; advised him to take a complete rest for a while; gave him medications; and declared him fit to resume work as a seaman.

After a month, Cesar went back to the agency to ask for re-deployment. The agency rejected his application. Cesar responded by demanding total disability benefits based on the ailments that he developed and suffered while on board Meritt Shipping vessels. The claim was based on the certification of his physician (internist Dr. Reyes) that he could no longer undertake sea duties because of the hypertension and diabetes that afflicted him while serving on Meritt Shipping vessels in the last 10 years. Rejected once again, Cesar filed a complaint for illegal dismissal and the payment of total permanent disability benefits against the agency and its principal.

Assume that you are the Labor Arbiter deciding the case. Identify the facts and issues you would consider material in resolving the illegal dismissal and disability complaint. Explain your choices and their materiality, and resolve the case. (8%)

Answer

As to the tenurial issue, the facts and issues of consequence are as follows:

(1) Whether or not Cesar was tenured employee;

(2) Whether or not his 10-year service affects the contractual nature of his employment; and

(3) Whether or not he can be dissociated on the ground of contract expiration.

As to the remunerative issue, the facts and issues to consider are as follows:

(1) Whether or not Cesar's disability is by reason of a disease that is both work connected and contracted during the term of his employment contract.

(2) Whether or not Cesar complied with the 3-day reporting requirement;

(3) Whether or not the company-designated physician made a final, categorical and definitive assessment within 120/240 days.

(4) Whether or not Cesar disclosed the medical assessment of his physician of choice;

(5) Whether or not a third physician was selected prior to the filing of Cesar's complaint.

In resolution of the issues , I will rule as follows:

As to the tenurial issue, Cesar is a contractual employee (***Millares v. NLRC, G.R. No. 110524, 29 July 2002***) As such, his separation upon the expiration of the last contract is not a case of dismissal. Moreover, his non-deployment is covered by the **Principle of Freedom of Contracts** (***Art. 1306, New Civil Code***). Hence it is not productive of illegal dismissal.

As to the remunerative issue, Cesar's disability compensation claims must be dismissed for lack of cause of action. By not disclosing the medical opinion of his physician of choice, he deprived his employer of the opportunity to initiate the selection of a third physician. In effect, at the time of the filing of his complaint, he had no medical basis. (***Philippine Hammonia Ship Agency v. Fulogio Dumadag, G.R. No. 194362, 26 June 2013***)

Comments

1. Violation of right to security of tenure generates a tenurial dispute. In turn, a tenurial dispute generates a tenurial issue. Unlawful withholding of salaries and benefits gives rise to a labor standards dispute; hence, the issue requiring resolution is a remunerative issue.

2. Violation of right to self-organization is violation of organizational right. The issue arising from such violation is an organizational issue.

3. Disputes between labor organizations, usually fighting over majority representative status, generate representation issues.

Bar 2014, Q No. V

Major ELVOT CASVOT & Major VOT VALVOT

Liwayway Glass had 600 rank-and-file employees. Three rival unions — A, B, and C participated in the certification elections ordered by the Med-Arbiter. 500 employees voted. The unions obtained the following votes: A-200; B-150; C-50; 90 employees voted "no union"; and 10 were segregated votes. Out of the segregated votes, four (4) were cast by probationary employees and six (6) were cast by dismissed employees whose respective cases are still on appeal. (10%)

(A) Should the votes of the probationary and dismissed employees be counted in the total votes cast for the purpose of determining the winning labor union?

B) Was there a valid election?

(C) Should Union A be declared the winner?

(D) Suppose the election is declared invalid, which of the contending unions should represent the rank-and-file employees?

(E) Suppose that in the election, the unions obtained the following votes: A-250; B-150; C-50; 40 voted "no union"; and 10 were segregated votes. Should Union A be certified as the bargaining representative?

Answer

(A) Yes. The segregated votes should be counted as valid votes. Probationary employees are not among the employees who are ineligible to vote. Likewise, the pendency of the appeal of the six dismissed employees indicates that they have contested their dismissal before a forum of appropriate jurisdiction; hence, they continue to be employees for purposes of voting in a certification election (D.O. 40-03).

(B) Yes. The certification election is valid because it is not a barred election and majority of the eligible voters cast their votes.

(C) No. Union A should not be declared the winner because it failed to garner majority of the valid votes. The majority of 500 votes, representing valid votes, is 251 votes. Since Union A received 200 votes only, it did not win the election.

(D) None of the participating unions can represent the rank-and-file employees for purposes of collective bargaining because none of them enjoys majority representative status.

(E) If the 10 votes were segregated on the same grounds, Union A cannot still be certified as the bargaining representative because its vote of 250 is still short of the majority vote of 251. However, if the 10 votes were validly segregated, majority vote would be 246 votes. Since Union A received more than majority vote then it won the election.

Comments:

1. A CE is valid if it is not barred and majority of the eligible voters cast their votes (Not Barred + Major ELVOT CASVOT).

2. The CE winner is the participant (including No Union) that gets majority vote based on the valid votes (Major VOT VALVOT).

3. To arrive at ELVOT, the following, must be excluded:
   (a) Non-employees;
   (b) Non-members of the CBU sought to be represented;
   (c) CBU members on company payroll for less than 3 months;
   (d) Terminated employees, unless: (a) dismissed by reason of or on the occasion of ULP or current labor dispute; (b) they have not yet found substantially equivalent and permanent positions; and (c) they have contested their dismissal before a forum of appropriate jurisdiction.
   (e) Subversives
   (f) Confidential employees

3. To arrive at VALVOT, the following must be excluded:

   (a) Blank ballots;
   (b) Torn ballots;
   (c) Marked ballots

Bar 2015, Q No. VII

BAR JUMPERS

Ador is a student working on his master's degree in horticulture. To make ends meet, he takes on jobs to come up with flower arrangements for friends. His neighbor, Nico, is about to get married to Lucia and needs a floral arranger. Ador offers his services and Nico agrees. They shake hands on it, agreeing that Nico will pay Ador P20,000.00 for his services but that Ador will take care of everything. As Ador sets about to decorate the venue, Nico changes all of Ador's

plans and ends up designing the arrangements himself with Ador simply executing Nico's instructions.

a. Is there an employer-employee relationship between Nico and Ador? (4%)
b. Will Nico need to register Ador with the Social Security System (SSS)? (2%)

Answer

a. Ador is a worker paid on task basis; hence, there is employer-employee relationship between him and Nico. When the latter assumed the control of both result and manner of performance from Ador, all vestiges of the initial independent contractorship arrangement disappeared. What replaced it was employer-employee relationship.

b. Ador is a purely casual employee; hence, Nico need not report him for SSS coverage.

Comments

1. The structure of the question is similar to **Bar 2014, Q No. XIII**.

Don Luis, a widower, lived alone in a house with a large garden. One day, he noticed that the plants in his garden needed trimming. He remembered that Lando, a 17-year old out-of-school youth, had contacted him in church the other day looking for work. He contacted Lando who immediately attended to Don Luis's garden and finished the job in three days. (4%)

(A) Is there an employer-employee relationship between Don Luis and Lando?
(B) Does Don Luis need to register Lando with the Social Security System (SSS)?

Answer

(A) There is employer-employee relationship between Don Luis and Lando. Firstly, Lando who was looking for work finally rendered personal services for Don Luis. Secondly, Lando could not have been the master of his time, means and methods under the circumstances (Sec. 8, RA 8282).

(B) Don Luis does not need to register Lando with the SSS because he is a purely casual employee, hence outside SSS coverage (RA 8282). Neither should he report Lando for SSS coverage under the *Kasambahay Act* because, although a gardener, he is an occasional if not sporadic employee. Therefore, he is not a *kasambahay* who is entitled to SSS coverage (RA 10361).

2. The target of the Bar 2014 examiner was "purely casual employee" who had no SSS coverage. Since a casual employee was an employee then there had to be employer-employee relationship in sub-question (a).

3. Occasionally, sub-questions are interrelated; hence, one should detect their interplay before venturing into answering any of them. Like a Meralco guy who goes out in search of electrical jumpers, one must discover the Bar jumpers. This is a crucial task. Sometimes, however, there are sub-questions that are not inter-connected; hence, one may answer them independently of each other. For example:

Bar 2017, Q No. III

A. Andrew Manning Agency (AMA) recruited Feliciano for employment by lnvictus Shipping, its foreign principal. Meantime, AMA and lnvictus Shipping terminated their agency agreement. Upon his repatriation following his premature termination, Feliciano claimed from AMA and lnvictus 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 lnvictus 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 secure an employment permit from the DOLE. Is the employer correct? Explain your answer. (2.5%)

Answer

A. No, AMA is not correct.

The solidary liability of a manning agent is not affected by the pretermination of its contract with its foreign principal. Neither is it affected by the assumption of its responsibility by another manning agent.

B. The following are the exceptions to the ban on direct hiring:

(1) direct hiring of Filipinos by the diplomatic corps;
(2) direct hiring of Filipinos by foreign governments or international organization; and
(3) direct hiring as may be allowed by the Secretary of Labor and Employment (Art. 18, Labor Code)

C. No, <u>the employer is not correct</u>.

Under D.O. 75-06, certain aliens are not required to procure alien employment permits. Among those listed as exempt are resident aliens, like Phil. This is still the case under the present D.O. 186-17.

Note: In sub-question C, the answer opens this wise: "No, the employer is not correct." The additional words after "No" are needed to make the answer have a little body. But it may be re-styled as follows:

No.

The employer is not correct because, under D.O. 75-06, certain aliens are not required to procure alien employment permits. Among those listed as exempt are resident aliens, like Phil. This is still the case under the present D.O. 186-17.

The words after "No" have been used as the opening of the first sentence of the supporting argument. They may also be reserved for the re-conclusion as follows:

No.

Under D.O. 75-06, certain aliens are not required to procure alien employment permits. Among those listed as exempt are resident aliens, like Phil. This is still the case under the present D.O. 186-17.

Therefore, the employer is not correct.

Caveat: Do not underscore anything. The underscoring above is for emphasis only. Very importantly, those who have developed their own styles that have earned for them academic honors should stick to their manner of answering.

Bar 2016, Q No. 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 Pl,000,000.00. Wave provided the supervisors who supervised the TMRs, who, in tum, 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%)

Answer

a. Empire is the employer of the TMRs. When it entered into a contracting arrangement with Style, an apparent labor-only contractor for want of substantial capital or investment, it became the TMR's employer pursuant to the *Principle of Merger of Legal Personalities* (*Coca-Cola Bottlers Phil., Inc. v. Ricky E. dela Cruz, et al., 7 December 2009*). Albeit Wave was a legitimate job contractor, the service contract between them did not novate the legal obligations imposed by the first contract on Empire. Hence, it continued to be the employer of the TMRs beyond the date of termination of its contract with Style. As a result, it can be ordered to pay the withheld benefits.

b. Yes. The TMRs' fixed-term employment contracts are void. First, employer-employee relationship is a question of law. Since it existed as early as the time the TMRs were supplied by Style to Empire, its continuing existence cannot be stipulated against in the fixed-term employment contracts subsequently given the former. Setting aside the pre-existence of the relationship, the service agreement between Empire and Wave has no period. Therefore, the 5-month limit on the TMRs' tenure is without basis. As a consequence, they are deemed to have been engaged as long as the task or undertaking contracted out to Wave subsists. Under D.O. 18-A, it is the completion of said undertaking and not the expiration of the TMRs' contracts which controls.

Comment

The sub-questions are also not intertwined; hence, they can be answered independently of each other.

Bar 2017, Q No. 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%)

Answer

A. The acceptable tests for determining employer-employee relationship are as follows:

1. The Fourfold Test. Its component tests are:
   (a) the Selection Test;
   (b) the Wage Test;
   (c) the Dismissal Test; and
   (d) the Control Test.

2. Two-Tiered Test. It is the combination of
   (a) the Control Test; and
   (b) the Economic Dependence Test

3. Ecclesiastical Affair Test. It rules out employer-employee relationship on the basis of the origin of the dispute, *viz.,* ecclesiastical or church matter.

4. Intracorporate Controversy Test. It rules out employer-employee relationship based on nature of relationship and nature of controversy.

B. A jeepney driver is an employee. The same State-imposed restrictions which are for the operator to observe in running his business affair are cross-imposed by him on his driver. Hence, pursuant to the Control Test, the latter is an employee under the boundary system.

Comments

1. *Art. 295* of the *Labor Code* is not an EER test. Its function is to help determine regular employment; hence, it presupposes employment tie already (*Atok Big Wedge Co., Inc. vs Gison*, G.R. No. 169510, 11 August 2011). *J Hernando* stressed this too in the *Manila Hotel Case* (CHAPTER V).

2. Work for less than 8 hours daily does not negate employment tie (*Legend Hotel vs Realuyo*, G.R. No. 153511, 18 July 2012).

3. Payment per piece or on task basis is just a mode of settling wage; hence, it does not negate employment tie.

Bar 2018, Q Nos. V, VI & VII

OMG COMPUTE

V

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

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

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

Answer

(a) No.

Even assuming the food and lodging qualified as facilities, the hotel should have first applied for a facility evaluation permit with the Office of the Regional Director. Absent said permit, it could not deduct the value of the food and lodging from the wage of Nelda.

(b) Nelda's take-home pay for working on Good Friday is as follows:

Salary for 1 hour work rendered	P 70.00
Holiday Pay	P560.00

Nightshift Pay (10:00 to 11:00 work) 7.00

Total . . . . . P 637.00

Explanation

1. Good Friday is a regular holiday; hence, it is governed by the "no work with pay" rule as to entitle Nelda to 100% of the prescribed wage rate of P560.00 per day.

2. If a covered employee works on a regular holiday, he gets additional 100% of the first 8 hours. Since Nelda worked for 1 hour only on Good Friday then she will get P70.00 which is 100% of her hourly rate based on minimum wage (P560.00/8 Hrs = P70).

3. Since Nelda worked from 10:00 pm to 11 pm on Good Friday, she is entitled to nightshift differential which is 10% of her basic hourly rate (P70.00 x 10%) or P7.00.

4. Therefore, Nelda's take-home pay is P637.00.

VI

Major VALVOT

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

Union Nana : 45 votes

Union Nada: 0 Votes

Union Nara: 30 votes

No Union 80 votes

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

a) Can Union Nana be declared as the winner? (2.5%)

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

Answer

(a) No.

To win a certification election, a participant must garner so much number of votes comprising majority of all valid votes (Major VALVOT). In this case, the majority vote is 97.5. With just 45 votes, Union Nana lost the election; hence, it cannot be certified.

(b) The necessity of opening the sealed envelopes must be determined. If the 30 challenged votes could materially alter the result of the election then they have to be opened. Since there is a possibility that at least 17.5 of the challenged votes were cast in favour of No Union, the envelopes must be opened. If added to its 80 votes, No Union would win the CE with 97.5 votes. Needless to say, No Union can win a certification election.

VII

IMAGINARY MONTH PAY

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

Answer

Since a productivity allowance is not performance-based, it is not under the category of wage-type bonus. As such, it is not part of Nico's basic salary (*Boie-Takeda Chemicals, Inc. v. Dela Serna, G.R. Nos. 92147 & 102552, 10 December 1993*). Therefore, it should be excluded because 13th month pay is computed based only on a covered employee's basic salary (P.D. 851).

Bar 2019, Part II, Q No. B.11

TWO-in-ONE

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%)

Answer

(a) Secretary of Labor

(i) *Ordinary Powers*. Visitorial and enforcement (*Art. 128, Labor Code*); appellate (review of compliance orders issued under *Art. 128, Labor Code*; and review of CE orders per *Art. 272, Labor Code);* rule-making (*Art. 5, Labor Code*); and, control and supervision (*The Heritage Hotel Manila v. NUWHRAIN-HHMSC, G.R. No. 178296. 12 Jan. 2011*).

(ii) *Extraordinary Powers*. Assumption power under *Art. 278 (g);* and suspension power under *Art. 292 (b),* both of the *Labor Code*.

(b) Bureau of Labor relations

(i) *Original Jurisdiction*. Jurisdiction over *intra-union* and *inter-union* disputes involving national unions, and like labor organizations (*Art. 232, Labor Code*).

(ii) *Appellate Jurisdiction*. Jurisdiction over appealed decisions of the DOLE Regional Director in *intra-union* and *inter-union* cases (*Art. 232, Labor Code; Barles v. Bitonio, G.R. No. 120270, 16 June 1999*).

(c) Voluntary Arbitrators

(i) *Traditional Jurisdiction*. Jurisdiction over unresolved disputes arising from CBA interpretation or implementation; and unresolved disputes arising from the enforcement or implementation company personnel policies (*Art.274 , Labor Code*).

(ii) *Jurisdiction by Stipulation*. Jurisdiction over such other disputes as may be expressly conferred by a CBA or similar agreement (*Vivero v. CA, G.R. No. 138938, 24 Oct. 2000*).

Bar 2022, Q No. 2

OMG COMPUTE AGAIN

Krys is a daily-paid factory worker who is required to render eight hours of work per day. Two days ago, he rendered only seven hours of work as he arrived late in the morning. Yesterday, Krys worked for nine hours as he was required to

assist in the processing of perishable goods. His supervisor, Rudy, told Krys that he would not get any overtime pay as his work for nine hours yesterday was meant to offset the one-hour shortfall in his work the day before.

a. Is Rudy correct? Explain briefly.

b. Assuming Krys is entitled to overtime pay, how much will he get as overtime pay if his daily wage is Php 640.00? Explain briefly. (5 points)

Answer

a. No.

Rudy is not correct. Overtime cannot offset undertime (*Art. 88, Labor Code*). The purpose of this prohibition is to protect the overtime rate of employees. On the second day when Krys rendered 1-hour overtime work, his overtime compensation did not consist only of his basic salary for his extra work. In addition, he was entitled to at least 25% thereof. Hence, if his hourly rate for the 1-hour overtime he rendered on the second day were used to offset the hourly rate he lost by reason of his undertime on the first day, the 25% overtime rate he is entitled to would be unlawfully withheld.

b. The overtime pay of Krys would be as follows:

Overtime Pay = (Hourly Rate x 1 Hour) + 25% thereof

= (P640.00/8) x 1 Hour + 25% thereof

= P80.00 x 1 Hour + 25% of P80.00

= P80.00 + P20.00

= P100.00

Explanation

1. *Art. 88* does not apply if there is only one day involved. For example: Today, Krys reports at 9:00 am instead of 8:00 am and retires at 6:00 pm instead of 5:00 pm. If paid P640.00 and nothing else more, nothing is stolen from him.

.

2. *Art. 88* does not apply because Krys may be late in the morning but does not incur undertime because he still does 8 hours. Similarly, he goes home late but does not do overtime work because his work from 5:00 pm to 6:00 is not overtime work. The reason is he does not

work beyond his normal hours of work because his work form 9:00 am to 6:00 pm is an 8-hour work only.

3. **Appendix " "**

The foregoing sample *QnAs* show how one can enjoy the Bar examination in *Labor Law* if he has mastered a handful of techniques in crafting answers, familiarized himself with the language of *Labor Law* (*Chapter II*) , and he is guided by its logic (*Chapter III*).

More annotated *QnAs* are found in **Appendix " "** of this book.

CHAPTER II
LANGUAGE OF LABOR LAW

A
TERMS

As at first, it bears remark that mastery of a law requires mastery of its unique language. What I did when I was a *Labor Arbitration Associate (LAA, 1991-1998)* was to buy index cards (no laptops then) on which I manually copied terms and phrases from the decisions of my favorite SC Justices. Foremost of them was *Associate Justice Isagani Cruz*, known as the justice with a lyrical pen. The others were *Justice Hugo Gutierrez* and *Justice Moran*. There were other great writers but I did not have all the time to copy terms and phrases from their *ponencias*. I chose *J Gutierrez* because I was impressed by a lecture he delivered. That he could write and lecture brilliantly appealed to me. For the elegance of his decisions, I included *J Moran*. And so, when I drafted decisions for my *Labor Arbiter*, I knew which of the many index cards to pull out from the box in which I systematically stored them. The terms and phrases gave life to my drafts. Indeed, they helped me express my thoughts quickly, accurately and elegantly. I did that for years until I could write *sans* index cards. In time, I developed a writing style of my own backed by my academic degree in *Philosophy*, especially *Logic* which I taught for years after leaving the seminary. Regardless of pre-Law course, however, one can develop the same skill. The only advice to heed is this: *Write to communicate thought, not to impress*.

The Bar examination in *Labor Law* is just months away. Does one have enough time to reform his writing style? If one looks straight ahead, the short distance made up of six months might bring about discouragement. But if one looks inward to discover the little horses waiting to be mounted and commanded, the months would mean nothing even if they should roll into one in the blink of an eye. The right question to ask is: When tired reading, not in the mood, or a little distracted, does one realize that he can devote the bad moment to productive writing exercises?

This portion is not a legal dictionary; otherwise, the author to read would be *Atty. Alvin Claridades* who has written one for *Centralbooks*. So I will just equip my readers with 50 useful words and about 20 helpful phrases. These they can master in just one week. They are the terms and phrases I have repeatedly employed in my suggested answers to the Bar questions given from 2008 to 2022. Incidentally, Bar 2011 was MCQ; hence, it is excluded. On the other hand, Bar 2012 had an essay part. One can see from my answers, including those to the Bar 2012 questions, that the selected terms and legal phrases have perennial use.

The featured terms and phrases can serve the purpose of varying one's manner of expressing his thoughts. For example, if he has already used "*just cause*" in a prior sentence and has to repeat it in a subsequent sentence, he may replace it with "*fault-based ground*". If he cannot recall *Sec. 18, Rule XI* of the *2011 NLRC Rules of Procedure*, as amended, he should not waste time recalling it. He can just refer to the provision as the *system of restitution* under the *2011 NLRC Rules of Procedure*, as amended. It will surely take longer to recall than to substitute. Why should one waste time waiting for a stubborn *ex* to return when she can find a better one? In love, she has a lifetime to waste waiting. But, in the Bar examination, she has 12 minutes only to resolve an essay-type problem.

These are some of the simple but tall words, together with rephrased postulates, with which I answered the 2008-2022 Bar questions:

1. **Brought**

Usual:

(a) Denver filed a complaint with the Labor Arbiter for recovery of salaries and benefits not paid by X Co.

(b) From the adverse decision of the Voluntary Arbitrator, Union A filed a petition for review with the Court of Appeals under Rule 43 of the Revised Rules of Court.

(c) X Co. filed a petition for certiorari with the Court of Appeals under Rule 65 of the Revised Rules of Court.

(d) Union A elevated the case to the Supreme Court on pure questions of law under Rule 45 of the Revised Rules of Court.

One can use the singular term "brought" to replace old familiar expressions as follows:

(a) Denver brought his remunerative claim by verified complaint before the Labor Arbiter.

(b) Union A brought to the Rule 43 Court the Voluntary Arbitrator's decision for review.

(c) X Co. brought the NLRC's dispositions to the Certiorari Court on error of jurisdiction.

(d) Union A brought before the Supreme Court the error of law of the Court of Appeals for correction under Rule 45, Revised Rules of Court.

Bar 2008, Q II

a. The following may be **brought** to voluntary arbitration:

In the exercise of traditional jurisdiction, (a) all unresolved disputes arising from CBA interpretation or implementation; and (b) all unresolved disputes arising from the implementation or enforcement of company personnel policy (*Art. 274, Labor Code*); and

In the exercise of jurisdiction by stipulation, all disputes as may be agreed upon by the parties to a CBA or similar agreement to be **brought** to voluntary arbitration (*Art. 275, Labor Code*).

b. Yes.

A dispute pending before the Labor Arbiter may be **brought** to voluntary arbitration in observance of the constitutional stricture on preferential use of voluntary modes of dispute resolution. By agreement of the disputants, therefore, their issues may be **brought** out of the compulsory arbitration process (*Art. 224, Labor Code*) for resolution by a third party mutually chosen by them (*Arts. 274 and 275, Labor Code*).

(c) Yes, a dispute originally taken cognizance of by a voluntary arbitration body may be **brought** for resolution to a compulsory arbitration body.

In an assumed case, the Secretary of Labor exercises discretionary, preemptive, incidental and plenary power. Hence, owing to the plenary nature of assumption power, all issues between the same parties pending elsewhere,

including those being heard by a voluntary arbitrator, shall be subsumed to the assumed case for simultaneous resolution.

2. **Injunctive Effect**

2008, Q VI

(c) The strike is illegal for being violative of an injunction; hence, the strikers must be held answerable. An assumption of jurisdiction order (AJO), whether it expressly directs return to work or not, has an injunctive effect; hence, it must be immediately complied with by the union upon proper service thereof.

2010 Q XIX

(b) Yes, the order was legal.

The injunctive effect of a return to work order compels the strikers to go back to work immediately upon due service thereof. Likewise, it compels the employer to admit the strikers back to work under the same terms and conditions which means actual admission. As exception, however, where the employment status of a striker is at issue then he cannot demand admission. Hence, strikers dismissed for a just or authorized cause must contest their dismissal and procure a reinstatement order first. After all, a return to work order is different from a reinstatement order.

3. **Rectification Case**

2009, QI

The P5,000.00 jurisdictional threshold does not apply to rectification cases under Art. 128 of the Labor Code. It only applies to recovery cases under Art. 129 of the Code.

4. **Lesser Amount Rule**

2009, QIII

(c) The "lesser amount rule" in *Sec. 7, R.A. 10022* has been declared as unconstitutional for violating the Due Process Clause and the Equal Protection Clause (*Sameer Overseas Placement Agency v. Joy Cabiles, G.R. No. 170139, 5 August 2014*). Hence, MRA and SR are liable for the payment of 2 years of salaries.

5. **Prescribed Pre-strike Procedure**

2009, Q VII

(a) The company's contention is meritorious. Observance of the applicable cooling-off period is mandatory; hence, being part of prescribed pre-strike procedure, its non-observance renders the strike illegal.

6. **Non-prejudicial**

2009, Q VII

(c) No. The Labor Arbiter's decision finding ULP is a prerequisite for the institution of the criminal action; how-ever, it is non-prejudicial. Such finding is based on substantial evidence; hence, although final, it cannot determine the outcome of the criminal case because a conviction for ULP as a crime must be upon proof beyond reasonable doubt. "Criminal and labor proceedings involving an employee arising from the same infraction are separate and distinct from one another and should not arrest any judgment from one to the other." *(St. Luke's Medical Center, Inc. v. Ma. Theresa V. Sanchez, G.R. No. 212054, 11 March 2015)*.

7. **Reinstatement Order**

2009, Q VIII

(a) Yes. The posting of an appeal bond does no stay the execution of a reinstatement order which, by force of *Art. 229, Labor Code* is immediately executory even pending appeal.

8. **Asymmetrical**

2010, Part I, QI

1. FALSE

Public policy frowns upon deeds of release, waivers and quitclaims owing to the asymmetrical relationship between employers and employees, especially when they do not represent a fair and reasonable compromise and they are not supported with substantial consideration.

9. **Non-discriminatory**

2010, QIII

Although single, A can claim maternity benefits under the system because social security law is morality-free and non-discriminatory, i.e., as long as she has complied with the reportorial requirements and has paid at least 3 monthly contributions during the 12-month period immediately preceding her caesarian section.

10. **Principle of Proportionality**

2010 , QXVIII

The company's weight standard is a bonafide occupational qualification given the fact it is a common carrier required to observe extraordinary diligence over passenger safety (Yrasuegi v. PAL, G.R. No. 168081, 17 October 2008).

However, a cannot be indiscriminately dismissed for her failure to lose those pounds is harsh as to violate the Principle of Proportionality. At most, she should have been suspended only.

11. **Substantially Capitalized**

2012, QX

(b) No. When the contractor, who is substantially capitalized or possessed with investment, carries on a business independent of its principal's, it does not matter if its workers are performing tasks directly related to the business of said principal as long as the latter does not control their means and methods of performance.

12. **PIP BED**

2013, Q VII

No. Assumption power is plenary, incidental, preemptive, broad, extraordinary and discretionary. Being plenary, the Secretary of Labor and Employment can resolve any and all issues involving the parties before him, including those brought to other labor tribunals, for simultaneous resolution. He can also resolve incidental issues so as to leave nothing undetermined or unresolved between the disputants.

13. **Contract of Adhesion**

2014, QII

By virtue of the nature of her job, Lucy attained tenure on the first day of her employment. As a regular employee, therefore, she could only be dismissed for a just or authorized cause. Expiration of her last contract was neither a just nor authorized cause. Hence, she was illegally dismissed. Moreover, her term employment contracts were contracts of adhesion; hence, they should be taken against Hambergis Inc. because of its obvious intent to use the periods to bar her regularization.

14. **Statutory Employer**

2014, QIV

The POEA, although a government agency, is a statutory employer by operation of *Article 106* of the *Labor Code*, as implemented by *D.O. 18-A* (now *D.O. 174*). As such, it can be held solidarity liable for salary differentials resulting from its job contractor's underpayment of salaries due its workers (*Meralco Industrial Eng'g Services Corp. v. NLRC, et al., G.R. No. 145402, 14 March 2008*).

15. **Legally Unoccupied**

2014, QVIII

(C) No. The positions left behind by strikers are deemed legally unoccupied. Moreover, the hiring of replacement workers does not terminate employer-employee relationship because a strike is a temporary stoppage of work only. Finally, replacement workers are deemed to have accepted their engagement subject to the outcome of the strike.

16. **Contracting Arrangement**

2014, QIX

I would declare the chambermaids to have been illegally dismissed.

The chambermaids are regular employees for performing work necessary or desirable in the main trade of the Luisa Court. As such, they enjoy security of tenure. The job contracting arrangement between Luisa Court and Malinis Janitorial Services is prohibited by *D.O. 174* because it has the effect of introducing workers to displace Luisa Court's regular workers.

17. **Lateral Transfer, Scalar Transfer**

2014, QXI

(C) Lionel has reasonable chances of winning. His recall to the USA was not a lawful lateral transfer that he could not refuse. On the contrary, it was a scalar transfer amounting to a promotion which he could validly refuse. Absent willful disobedience, therefore, his termination is groundless.

18. **Purely Casual**

2014, XIII

(B) Don Luis does not need to register Lando with the SSS because he is a purely casual employee, hence outside SSS coverage (*RA 8282*). Neither should he report Lando for SSS coverage under the Kasambahay Act because, although a gardener, he is an occasional if not sporadic employee. Therefore, he is not a kasambahay who is entitled to SSS coverage (*RA 10361*).

19. **In-the-Red**

2015, QIV

Having enjoyed the across-the-board bonuses for six years, Katrina's right to them has been vested already. Hence, none of them can be withheld or reduced without violating the Principle of Non-Diminution of Benefits. Benefits can be reduced when the company is in the red, i.e., its losses are substantial and duly established with financial statements duly certified to by an independent external auditor. In the problem, the company is in the black only because it has not proven its alleged losses to be substantial losses in accordance with law. Permitting reduction of pay at the slightest indication of losses is contrary to the policy of the State to afford full protection to labor and promote full employment *(Linton Commercial Co. v. Hellera, et al., 23 Feb. 2012)*.

As to the withheld productivity-based bonuses, the basis of payment is not the company's performance but Katrina's. Therefore, Katrina is deemed to have earned them because of her excellent performance ratings for three quarters. On this basis, they cannot be withheld without violating *Art. 116* of the *Labor Code* because they are wage-type.

20. **Essential Element and Confirming Element**

2015 , QVIII

Yes.

People Plus is a labor-only-contractor because it is not substantially capitalized. Neither does it carry on an independent business in which it actually and directly uses its own investment in the form of tools, equipment, machineries or work premises. Hence, it is just an agent or recruiter of workers who perform work directly related to the trade of Star Crafts. Since both essential element and confirming element of labor-only contracting are present, Star Crafts as principal and the supplied workers are related as employer and employees.

As principal, Star Crafts will always be an employer in relation to the workers supplied by its contractor. Its status as employer is either direct or indirect depending on the latter's standing in law. Thus even if People Plus were a legitimate job contractor, still Star Crafts will be treated as a statutory employer for purposes of paying the workers' unpaid wages and benefits (*Art. 106, Labor Code; D.O. 18-A; D.O. 174*).

21. **Principle of Total Insulation**

2015, QXII

(a) I will resolve the case by applying the *Principle of Total Insulation*. Under this principle, BLANK and BLEACH have distinct and separate legal personalities regardless of the fact that they have common incorporators. Hence, unless BLEACH absorbs all the workers of BLANK then it does not succeed as employer. Since it has decided not to employ the complainants, BLEACH is totally insulated from whatever liabilities BLANK may have incurred by reason of its closure. There are no facts to justify imposition of unaltered responsibility on BLEACH since neither Principle of Piercing the Veil of Corporate Fiction nor Instrumentality Rule can be applied based on mere perception.

22. **In Personam**

2015, QXII

(b) The Successor Employer Doctrine rests on the *in personam* character of employer-employee relationship. A third party that buys the business of the employer does not become the new employer of the employees of the selling employer. For this reason, it is totally insulated from the liabilities of the latter in relation to its displaced employees. By way of exception, when established facts justify the application of the Principle of Piercing the Veil of Corporate Fiction or Instrumentality Rule then the liability of the first corporation may be imposed on the second in its original form pursuant to the Principle of Unaltered Responsibility.

23. **Peace-Keeping Mission**

2015, QXIV

The GSIS is not correct because Luis was just off-duty. A policeman, just like a soldier, is covered by the 24-Hour Duty Rule. He is deemed on round-the-clock duty unless on official leave, in which case his death outside performance of official peace-keeping mission will bar death claim. In this case, Luis was not on official leave and he died in the performance of a peace-keeping mission. Therefore, his death is compensable.

24. **System of Restitution**

2015 , QXX

The advantages of compulsory arbitration are:

(a) subject to pre-litigation mediation, a case can be initiated thru the filing of a verified complaint by a union member, unlike in voluntary arbitration where the Voluntary Arbitrator acquires jurisdiction primarily thru a submission agreement. In a case where the company is unwilling, the EBR (and only the EBR) may serve a notice to arbitrate; hence, a union member may be left out in the process if the EBR does not serve that notice;

(b) a monetary award is secured with the employer's appeal bond; and; (c) there is a system of restitution in compulsory arbitration.

Its disadvantages are:

(a) State interference with the affairs of labor and management is maximized, disregarding the inter-party nature of the relationship; and

(b) The system of appeals entails a longer process.

25. **Co-Extensive**

2016, QIII

(a) Yes. The Regional Director, exercising power co-extensive with his visitorial power under *Article 128* of the *Labor Code*, can make a prima facie determination of employer-employee relationship *(People's Broadcasting Service v. Secretary of Labor, G.R. No. 179652, 6 March 2012)*.

26. **Proximate Cause Theory ; Increased Risk Theory**

2017, XII

(C) Yes, it is compensable.

Under the Amended Rules on Employee Compensation (AREC), disability or death arising from disease is compensable if the disease is an occupational one, i.e., it is listed under Annex "A" of the AREC as such. If unlisted, it is still an occupational disease if covered by the *Proximate Cause Theory* or the *Increased Risk Theory*. In Rosa's case, she contracted the disease as a result of her performance of a work-related task. Hence, there being no efficient intervening cause breaking the chain of causes connecting that performance to her disease, the occupational character of her medical condition is beyond doubt (Proximate Cause Theory).

27. **Curative Legislation**

2018, QI

(a) Yes.

Although not a regular employee, Narciso is entitled to retirement benefits under the Labor Code. As held in ***De La Salle Araneta University vs. Bernardo***, *G.R. No. 190809, 13 February 2017,Art. 302* of the Labor Code, as renumbered, is a curative legislation which guarantees retirement benefits to "any employee" in the absence of a collective bargaining agreement (CBA) or similar contract. Moreover, the implementing rules of *R.A. 7641* employ the term "all employees"; hence, non-regular employees are not set apart from regular employees.

28. **Mode of Verification**

2018, QII

(a) No.

For the limited purpose of filing a petition for certification election, a charter has the legal personality even before it can formally be issued its certificate of registration (*Art. 241, Labor Code*). Moreover, a certification election

is a mode of verification only. Being investigative in character, which does not initiate a litigation between the union and the employer, the latter cannot move to dismiss the petition because it is just a standby *(Heritage Hotel Manila v. Sec. of Labor, et al., G.R. No. 172132, 23 July 2014)*. Finally, the relationship between a federation and its charter is that of an agency wherein the latter is the principal. As such, it can take back from its agent the delegated power to file a certification election petition on its behalf.

29. **Comprehensive Solidary Liability**

2018, QVIII

(a) No.

In job-contracting, the principal is a statutory employer but for a limited purpose only, i.e., to ensure payment of the wages unlawfully withheld by its service provider as required by *Art. 106* of the *Labor Code(Meralco Industrial Engineering Services, Inc. v. NLRC, G.R. No. 145402, 14 March 2008)*. Being substantially capitalized or in possession of required investment, Newmark is a legitimate job contractor. Hence, applying *Art. 106*, its act of illegally dismissing Nathaniel will not create comprehensive solidary liability on the part of its principal as to be liable therefor.

30. **Contractual Dispute Resolution Mechanism**

2019 , Part I, QA.1

(e) A grievance machinery is a contractual dispute resolution mechanism for all grievable disputes. It is a mandatory provision of a collective bargaining agreement (CBA), without which it cannot be registered.

31. **Principle of Merger of Legal Personalities,**

2019, Part I. QA.7

(b) Yes, it will prosper. In labor-only contracting, the legal personality of the principal merges with that of its labor-only contractor who is just its agent *(Coca-Cola Bottlers Phils., Inc. v. dela Cruz, et l., G.R. No. 184977, 7 Dec. 2009)*. Hence, pursuant to the *Principle of Merger of Legal Personalities*, the former as the real employer can be proceeded against for illegal dismissal despite the termination of subject contracting agreement.

32. **Logical Consequence**

2019, Part I, QA.9

(a) As to separation pay, the LA's decision fails to state that there is a bar to reinstatement; hence, he should have ordered reinstatement pursuant to the general rule prescribed by *Art. 294* of the *Labor Code*. Since the alternative relief of separation pay is an exception, it must be justified with a reinstatement bar. As to backwages, however, it cannot be deleted because it is a logical consequence of a finding of illegal dismissal *(ICT Marketing Services, Inc. v. Mariphil Sales, G.R. No. 202090, 9 Sept. 2015)*. Hence, absent any reason for limiting or withholding it, it should be awarded as it was awarded by the LA.

33. **Driven to Penury**

2019, Part II, B.12

(b) ABC Co. cannot claim reimbursement because Mr. X had nothing to do with the reinstatement given him. On the contrary, the company exercised its exclusive right to determine which type of reinstatement to give him. Had it informed him of the possibility of a reimbursement, he would not have chosen to be driven to penury at the end of the day thru a reimbursement by compulsion. In this case, the Principle of Unjust Enrichment has no application; hence, he can keep the salaries he received. *(Garcia, et al. v. PAL, G.R. No. 164856, 20 Jan. 2009)*.

34. **Controlling case authority / Controlling case law**

Bar 2008, Q XII

Insubordination, the ground relied upon by the company, has legal meaning; it has elements; and it has controlling case authority. On the overall, it obtains when an employee willfully violates a reasonable directive pertaining to his work and his violation is characterized by wrongful and perverse mental attitude. Here, the inability of Arnaldo to render work as requested by the General Manager has a valid excuse. In particular, responsible discharge of marital or familial duty can never be wrong or perverse. This cancels out the element of wrongful and perverse mental attitude.

35. **Statutory Benefits**

Bar 2009, Q XI

d. TRUE. The character of statutory benefits, like overtime pay, is that they are mandatory benefits; hence, their waiver is contrary to law.

Note: When one reads the *QnAs,* **Appendix " ",** it would be well if he/she starts highlighting the words that attract him/her and make them part of his vocabulary already.

B
PHRASES

1.

not confined to the four corners of

The reversal is not correct. The Liberal Interpretation Rule is not confined to the four corners of *Art. 4* of the *Labor Code*. Its full extent covers doubts and ambiguities arising from labor contracts (*Art. 1702. New Civil Code*) and evidence in labor proceedings *(Hocheng Philippines Corp. v. Antonio Farrales, G.R. No. 211497, 18 March 2015)*. Hence, the Labor Arbiter's application thereof is correct.

2.

want of substantial capital or investment

Empire is the employer of the TMRs. When it entered into a contracting arrangement with Style, an apparent labor-only contractor for want of substantial capital or investment, it became the TMR's employer pursuant to the *Principle of Merger of Legal Personalities (Coca-Cola Bottlers Phil., Inc. v. Ricky E. dela Cruz, et al., 7 December 2009)*. Albeit Wave was a legitimate job contractor, the service contract between them did not novate the legal obligations imposed by the first contract on Empire. Hence, it continued to be the employer of the TMRs beyond the date of termination of its contract with Style. As a result, it can be ordered to pay the withheld benefits.

3.

cannot be stipulated against

The TMRs' fixed-term employment contracts are void. First, employer-employee relationship is a question of law. Since it existed as early as the time the TMRs were supplied by Style to Empire, its continuing existence cannot be stipulated against in the fixed-term employment contracts subsequently given the former.

4.

not a contractual matter only ; impressed with public interest

The engagement of an employee is not a contractual matter only; it is, at the same time, impressed with public interest to the end that stipulations in employment contracts are subject to special laws for the protection of labor (*Art. 1700, New Civil Code*).

5.

labor law concept of control; control over means and methods of performance

Under the Control Test, the person who exercises labor law concept of control, actual or reserved, is the employer of the person over whom he exercises it. Labor law concept of control is control over means and methods of performance *(Orozco v. CA, Philippine Daily Inquirer &Magsanoc G.R. No. 155207, 13 Aug. 2008)*.

6.

held solidarity liable

The POEA, although a government agency, is a statutory employer by operation of *Article 106* of the *Labor Code*, as implemented by *D.O. 18-A* (now *D.O. 174*). As such, it can be held solidarity liable for salary differentials resulting from its job contractor's underpayment of salaries due its workers (*Meralco Industrial Eng'g Services Corp. v. NLRC, et al., G.R. No. 145402, 14 March 2008*).

7.

usually necessary or desirable in the usual trade

One who performs work which is usually necessary or desirable in the usual trade of his employer is conferred regular employment status by force of

law (*Art. 295, Labor Code*). Here, the work pool to which Pedro belongs is a pool of emergency workers whose services are vital, indispensable and necessary and without which the hotel cannot rest assured of its ability to run its business with just the help of its non-pool employees.

8.

pre-disclosed standards for regularization

Ms. A is a regular employee. She cannot be considered a fixed-term employee in the absence of a fixed-term employment contract, nor a probationary employee because it was not expressly communicated to her upon her engagement that her tenure was for six (6) months unless she survived pre-disclosed standards for regularization. When an employee is hired without being apprised of such standards, he is deemed a regular employee regardless of the employer's intent to hire him as a probationary employee *(Abbott Laboratories v. Alcaraz, G.R. No. 192571, 23 July 2013)*.

9.

withholding of work beyond six (6) months

Withholding of work beyond six (6) months amounts to constructive dismissal. Hence, I will order JKL to pay the complainants' full backwages, separation pay because their positions are occupied already, nominal damages for non-observance by JKL of prescribed pre-termination procedure, as well as moral and exemplary damages for its bad faith *(Lynvil Fishing Enterprises, Inc., et al. vs. Ariola, et al., G.R. No. 181974,1 February 2012), and 10% attorney's fees for compelling its employees to litigate against it (Art. 111, LC)*.

10.

serves a legitimate business purpose

A single status policy is valid only if it serves a legitimate business purpose; otherwise, it is discriminatory as to be within the proscriptive tone of *Art. 134* of the *Labor Code*, as renumbered. Since Pacific Airline's policy does not amount to a bona fide occupational qualification (BFQQ), it is productive of disparate treatment; hence, it is void. *(Star Paper Corp., et.al. v. Ronaldo Simbol, et.al., G.R. No. 164774, 12 April 2006)*.

11.

industry indispensable to the national interest

The Secretary of Labor may assume jurisdiction if, in his opinion, there is a labor dispute likely to result in a strike or lockout in an industry indispensable to the national interest (*Art. 278(g)*, *Labor Code*).

12.

financial statements duly certified by an independent external auditor

No, the reduction was not valid. There was a contractual breach. Applying *lex ex contractu* or *lex loci celebrationis*, Philippine law controls; hence, the substantial character of the alleged financial losses must have been proven with financial statements duly certified by an independent external auditor. Mere announcement of losses would not suffice. The threat of retrenchment was just a scheme to conveniently effect the illegal substitution of the POEA-approved employment contracts.

13.

reckoned from date of separation

Where, as here, the employee's choice is to commute his SIL then the 3-year prescriptive period is reckoned from date of separation, i.e., thru resignation, retirement or termination (*Rodriguez v. Park-n-Ride, 222980, 20 March 2017*).

14.

the twin-requisites of compensability

Victor's TB may be work-related and it may have developed on board, thereby satisfying the twin-requisites of compensability. However, despite his knowledge of his medical condition, he failed to report to his manning agent within three days from his arrival as required by *Sec. 20-B(3)* of the *POEA-SEC*. Since he already felt the manifestations of TB before his sign-off, he should have submitted to post-employment medical examination *(Jebsens Maritime Inc. v. Enrique Undag, G.R. No. 191491, 14 December 2011)*. The effect of his omission is forfeiture by him of disability benefits *(Coastal Safety Marine Services, Inc. v. Elmer T. Esguerra, G.R. No. 185352, 10 August 2011)*. In effect, the120-day rule has no application at all

15.

third physician whose finding shall be final and binding

In the event of conflicting medical assessments, the parties are required to select a third physician whose finding shall be final and binding on them. Under *Sec. 20 (B)* of the *2010 POEA-SEC*, the selection is consensual; however, jurisprudence has made it mandatory *(Philippine Hammonia Ship Agency, Inc. v. EulogioDumadag, G.R. No. 194362, 26 June 2013)*.

16.

final, categorical and definitive assessment

The Third Physician Rule has no application when the company-designated physician exceeds the 120-day treatment period without making a final, categorical and definitive assessment. Here, he allowed 209 days to elapse without issuing a fit-to-work assessment or a disability grade *(Apines v. Elburg Shipmanagement Phil., Inc., G.R. No. 202114. 9 Nov. 2016)*.

17.

should not arrest any judgment from one to the other

The Labor Arbiter's decision finding ULP is a prerequisite for the institution of the criminal action; how-ever, it is non-prejudicial. Such finding is based on substantial evidence; hence, although final, it cannot determine the outcome of the criminal case because a conviction for ULP as a crime must be upon proof beyond reasonable doubt. "Criminal and labor proceedings involving an employee arising from the same infraction are separate and distinct from one another and should not arrest any judgment from one to the other." *(St. Luke's Medical Center, Inc. v. Ma. Theresa V. Sanchez, G.R. No. 212054, 11 March 2015)*.

18.

assumption power is plenary and discretionary

The refusal of the Secretary to assume jurisdiction is valid. *Art. 278 (g)* of the *Labor Code* leaves it to his sound discretion to determine if national interest is in-volved. Assumption power is plenary and discretionary *(Philtranco Service Enterprises, Inc. v. Philtranco Workers Union-AGLO, G.R. No. 180962, 26 February*

2014). Thus, if in his opinion national interest is not involved then the company cannot insist that he assume jurisdiction.

19.

violation of its economic provisions

LFEU's claim that Libra Films committed ULP based on its violation of the CBA is not correct. For violation of a CBA to constitute ULP, the violation must be a violation of its economic provisions. Moreover, said violation must be gross and flagrant. Based on the allegation of the union, what was violated was the maintenance of membership clause which was a political provision; hence, no ULP was committed *(BPI Employees Union - Davao City v. BPI, G.R. No. 174912, 24 July 2013)*.

20.

represents a fair and reasonable compromise

In general, a quitclaim is valid if: (a) it represents a fair and reasonable compromise, and (b) it is supported with substantial consideration *(Periquet v. NLRC, G.R. No. 91298, 22 June 1990)*. As to the second requisite, the consideration should not be below 50% of the employee's money claim *(Catholic Vicariate of Baguio v. Hon. Patricia A. Sto. Tomas, G.R. No. 167334, 7 March 2008)*.

CHAPTER III

LOGIC
(TYPES OF REASONING)

Since the present Bar format is "entry-level essay questions", focus will be on how to answer essay-type questions.

A
DEDUCTIVE REASONING

Over the years, experts on Bar techniques have given reviewees trusted methods for approaching Bar questions. For me, I remain trusting of the methods taught us by *Prof. Abelardo Domondon*, *Dean Carlos Ortega* and *Prof. Samson Alcantara.*

Conclusion-Argument-Re-Conclusion
(*Prof. Domondon*)

The first part of an answer to an essay-type question is the conclusion, *i.e.,* in a deductive type of answer which is the preferred approach when one is sure of his answer. A deductive reasoning consists of the conclusion followed by the supporting argument which ,in turn, consists of a *major premise* and a *minor premise*.

Example:

The *Labor Arbiter* is correct.

The full extent of the *Liberal Interpretation Rule* is all doubts and ambiguities shall be resolved in favor of labor if they arise from:

(a) PD 442 provisions;
(b) ORILC provisions;
(c) Labor contracts; and
(d) Evidence in labor proceedings.

Hence, when the *Labor Arbiter* resolved the doubt generated by the respondent's evidence in favor of the complainant, he correctly applied the rule.

Note: The supporting argument has this form of argument:

All published laws are binding.
The *Batas Kasambahay* was published.
Therefore, the *Batas Kasambahay* is binding.

Under the *Domondon Method*, the first sentence is the examinee's conclusion which consists of his answer to the very question/s asked. So he has to go to the bottom of the problem for the question/s. Sometimes, what he finds there is an instruction, *e.g.,* "Resolve (5%)". In that case, he has an issue/s to resolve. Therefore, he has to read the entire problem to identify the issue/s he needs to resolve. His conclusion is his responsive answer to the question or instruction.

Example:

2022 Bar, Q 10

As Human Resources Manager of a five-star hotel, you were told in confidence by several fearful employees in the housekeeping department that Joy, the head of housekeeping, was a harsh disciplinarian who would pinch the ears of her staff or rap their heads to drill instructions on the proper way to clean and tidy up the hotel rooms. One day, the assistant housekeeper urgently called you to the supply room of the hotel,

where you found housekeeping staff Erika and Patricia slumped on the floor with bloody faces. The assistant housekeeper reported that she saw Joy beat up Erika and Patricia with a mop for allegedly stealing complimentary toiletries for guests. Erika and Patricia were hospitalized for a couple of days due to the injuries they sustained.

a. Can Joy be placed on preventive suspension pending administrative investigation? If so, for what maximum period? Explain briefly.

b. If Joy is placed on preventive suspension, is she entitled to receive her wages and other benefits during the period? Explain briefly. (5 points)

Answer

a. Yes.

Joy can be placed under preventive suspension for a maximum period of 30 days pending her investigation. This is to protect her subordinates from acts of reprisal, especially witnesses against her, particularly the assistant housekeeper who told on her. Serious threat against the life of co-employees warrants preventive suspension (*Secs. 3 & 4, Rule XIV, ORILC; Maricalum Mining Corp. vs Decorion, 158673, 12 April 2006*).

b. No.

The period of a preventive suspension is not compensable. The only time compensation is due is when the employer extends the maximum 30-day period for the purpose of pursuing and concluding the ongoing investigation. In such case, the suspended employee shall be entitled to his salaries for the extended period. If dismissed, he is not required to reimburse (*Sec. 4, Rule XIV, ORILC*).

Non-responsive Answers:

1. Question: Is the appeal <u>meritorious</u>?
   Incorrect: The appeal should not be given due course.
   Correct: The appeal is not <u>meritorious</u>.

2. Question: <u>Would</u> you order a run-off election?
   Incorrect: There is a valid reason for holding a run-off election.
   Correct: I <u>will</u> order a run-off election/I <u>would</u> order a run-off election.

3. Question: What course of action <u>can</u> you take to protect the rights of the workers?
   Incorrect: I will file a wage replacement complaint under Art. 128 of the Labor Code.

Correct: I <u>can</u> file a recovery complaint for wage replacement under Art. 128 of the labor Code owing to the closure of X Co. by the DOLE for its violation of health and safety standards law.

The reason for giving responsive conclusions is to show mental discipline. A wayward mind is one which wanders and not wonders.

As a time-management tool, therefore, an examinee should just respond to the very question asked instead of wasting time thinking of how to open his answer to impress the examiner. In this connection, it is prohibited Bar practice to open answers with "I respectfully submit"; "It is my considered view"; and other introductions that make one's answer cheap in tone.

1
Styling the Major Premise

Substitute Opening Lines

Out of 20 essay-type questions, 3-4 of them may be answered with the use of these substitute terms to lend creativity to one's unsure answers. Most of the time, minutes are wasted in the course of finding phrases with which to open answers.

1. **Pre-employment Law**

Under *Book II* of the *Labor Code*, a leaner dismissed without fault on his part on the third month of his learnership is regularized by such illegality. Therefore, he shall be reinstated as a regular employee regardless of the expiration of his 3-month manpower development training.

<u>Substitute</u>

Pre-employment Law regularizes a learner if illegally dismissed on the third month of his manpower training. Therefore, even assuming the 3-month period of his learnership contract has expired, he should be restored to his position as a regular employee.

2. **Crew Claims Law**

The *POEA-SEC* for Filipino seafarers aboard ocean-going vessels provides for a system of dispute resolution in the event of conflicting medical assessments (*Sec. 20*).

<u>Substitute</u>

Crew Claims Law provides for a system of dispute resolution in the event of conflicting medical assessments (*Third Physician Rule*).

3. **Remunerative Law**

Art. 96 (as amended by *R.A. 11360*) limits service charges to covered employees, to the exclusion of managers.

Substitute

Remunerative Law, by force of the new services charges law, excludes managers from the coverage of service charges.

4. **Occupational Health and Safety Law**

Violations of provisions of *Book IV* of the *Labor Code* on health and safety give the *DOLE* justification to order either closure of business establishments or suspension of business operations.

Substitute

Health and Safety Standards Law, when violated, empowers the *DOLE* to order the closure of establishments or the suspension of their operations.

5. **Organizational Law**

Art. 255 of the *Labor Code* disqualifies managers from organizing. This is not a violation of the constitutional guarantee on self-organization as held by the Supreme Court.

Substitute

Organizational right is constitutionally guaranteed (*Sec. 8, Art. III and Sec. 3, Art. XIII, 1987 Constitution*). However, organizational law (*Art. 255, Labor Code*) denies to managers the exercise of such right.

6. **Tenurial Law**

Art. 295 is not an employer-employee relationship test. Its function is to help determine regular employment status based on nature of work or length of service. Pursuant thereto, one who performs work that is usually necessary or desirable in the usual trade of his employer, like Denver, is a regular employee. Hence, pursuant to *Art. 294* of the *Code*, he cannot be dismissed unless for a just or authorized cause.

Substitute

Tenurial Law prohibits the dismissal of a regular employee except when culpable or at fault (*Art. 297, Labor Code*) or denied continuing employment upon an authorized cause (*Arts.*

298 & 299, Labor Code). This law applies to Denver who is performing work that is vital and indispensable to the usual business of his employer (*Art. 295, Labor Code).*

7. **Retirement Law**

Absent CBA and private retirement plan, a retiree shall be paid his retirement benefits based on 22.5 days (unless without SILP and 13th month pay coverage) pursuant to *Art. 302* of the *Labor Code*.

Substitute

Retirement Law applies in the absence of a CBA or contractual plan providing for retirement benefits. Under *Art. 302, Labor Code*, the computation is based on 22.5 days; provided, the retiree is entitled to service incentive leave and 13th month pay. If not, his benefit shall be computed based on 15 days only.

Note: We have no substitute for social legislation. So we just say: Under Social Security Law; Under GSIS Law; Under the Expanded Maternity Leave Act; etc…

2
The Minor Premise

The minor premise is the interplay between the identified law or doctrine with the facts of the problem. In this part of the argument, the facts must show that the relevant law so identified applies or does not apply.

Example:

Bar 2013, Q IX

Pablo works as a driver at the National Tire Company (NTC). He is a member of the Malayang Samahanng Manggagawasa NTC, the exclusive rank-and-file collective bargaining representative in the company. The union has a CBA with NTC which contains a union security and a check-off clause. The union security clause contains a maintenance of membership provision that requires all members of the bargaining unit to maintain their membership in good standing with the union during the term of the CBA under pain of dismissal. The check-off clause on the other hand authorizes the company to deduct from union members' salaries defined amounts of union dues and other fees. Pablo refused to issue an authorization to the company for the check-off of his dues, maintaining that he will personally remit his dues to the union.

(a) Would the NTC management commit unfair labor practice if it desists from checking off Pablo's union dues for lack of individual authorization from Pablo? (4%)

(b) x x x

Answer

(a) For a violation of a CBA to amount to unfair labor practice (ULP), it must be of an economic provision; provided, the employer's violation is gross and flagrant. A check-off clause is a political provision because it is a mechanism, similar to the union security clause, to ensure the contracting union's political viability. For this reason, the company's failure to deduct and remit Pablo's union dues would not constitute ULP.

(b) x x x

3
The Conclusion

a. Conclusion

These are formal synonyms for the word "therefore":

1. Consequently
2. Ergo
3. Accordingly
4. Thus
5. Hence

b. Re-Conclusion

In a deductive answer, the last sentence is the re-conclusion. It should not be a mere textual repetition of the conclusion. It must enhance and provide elegance to the entire answer by giving it both visual balance and style.

Example:

Conclusion: The petition for certification election was prematurely filed.

Re-Conclusion:

1. Therefore, the onset of the freedom period being a day away, the petition was prematurely filed; or

2. Therefore, applying the Contract Bar Rule, the petition is premature; or

3. Therefore, the CBA being registered contrary to the allegation of Union A, its petition is a barred petition as it was prematurely filed before the onset of the freedom period.

Bar 2019, PART I, Q A.9

After due proceedings, the Labor Arbiter (LA) declared Mr. K to have been illegally dismissed by his former employer, AB,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%)

Answer

(a) As to separation pay, the LA's decision fails to state that there is a bar to reinstatement; hence, he should have ordered reinstatement pursuant to the general rule prescribed by *Art. 294* of the *Labor Code*. Since the alternative relief of separation pay is an exception, it must be justified with a reinstatement bar. As to backwages, however, it cannot be deleted because it is a logical consequence of a finding of illegal dismissal (*ICT Marketing Services, Inc. v. Mariphil Sales, G.R. No. 202090, 9 Sept. 2015*). **Hence,** absent any reason for limiting or withholding it, it should be awarded as it was awarded by the LA.

(b) After the denial of the appellant's motion for reconsideration, the NLRC's decision and order of denial can be assailed under *Rule 65* of the *Rules of Court* thru the filing a petition for certiorari within 60 days from receipt of said denial order. Correction of error of jurisdiction, resulting in the nullification of the

assailed dispositions, should be sought based on the NLRC's grave abuse of its appellate power amounting to lack of, or excess of jurisdiction.

Bar 2017, Q 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%)

Answer

A. No, the policy is not valid.

A single status policy is valid only if it serves a legitimate business purpose; otherwise, it is discriminatory as to be within proscriptive tone of Art. 134 of the Labor Code, as renumbered. Since Pacific Airline's policy does not amounts to a bona fide occupational qualification (BFQQ), it is productive of disparate treatment; **hence**, it is void. (Star Paper Corp., et.al. v. Ronaldo Simbol, et.al., G.R. No. 164774, 12 April 2006).

B. Yes, Tarcisio is correct.

The law proscribing garnishment is supposed to pertain to a worker's wage only. However, given the purpose of the prohibition which is to prevent virtual loss of employment, it also covers salaries. Garnishment as a creditor's remedy sometimes results in loss of employment by the debtor, resulting in the disruption of employment, production and consumption which constitutes a substantial burden on local commerce.

Difference between 2019 and 2017

2019: **Hence,** absent any reason for limiting or withholding it, it should be awarded as it was awarded by the LA.

2017: Since Pacific Airline's policy does not amount to a bona fide occupational qualification (BFQQ), it is productive of disparate treatment; **hence**, it is void.

Bar 2022, Q 1

Kotse Corp. operates a mobile phone application "Kotse PH" that allows users to book private cars on demand to their destination, and matches them with nearby available "driver-partners." The destination is only made known to the driverpartners when the users have boarded the vehicle. Kotse Corp. has an accreditation process for its driver-partners who are required to submit bio-data, professional driver's license, and negative drug test result, as well as pass an exam on road safety. After accreditation, the driver-partners are free to choose their own work hours but Kotse Corp. requires them to complete at least a total 40 hours per week or else the driver's share in the fare will be reduced. The fare is determined by the application software depending on distance, time, and the demand for rides. The fare is paid by the user or passenger through the application and Kotse Corp. remits the driver's share of 75% of the fare every two weeks. Kotse Corp. keeps 25% as its commission. The driver-partners are evaluated by the users or passengers through a five-star rating system. Driver-partners who consistently have an average rating of two stars or below may be removed from Kotse Corp.'s roster of driver-partners. The driverpartners use their own vehicles, pay for fuel, and secure their own vehicle insurance.

Is there an employer-employee relationship between Kotse Corp. and its driver-partners? Explain briefly. (5 points)

Answer

There is none.

The affair is a partnership. Although Kotse Corp. is a common carrier (*LTFRB, et al. vs Hon. Carlos A. Valenzuela, G.R. 242860, 11 March 2019),* its legal tie to its driver-partners is not an employment affair. In employment affair, drivers do not co-invest in the common carrier's business. Kotse Corp. is a booking agent that connects its partners to prospective passengers. The desired result is not achieved thru the exercise of pervasive control over means and methods of performance but thru the interplay of mutual investments. The payment received by Kotse Corp. is not business income from which a payroll is funded in accordance with a wage structure. The accreditation criteria do not pertain to employee selection either but to the qualification of partners, *i.e.,* in addition to their material investment. **Hence**,

pursuant to the *Principle of Primacy of Facts*, the relationship between Kotse Corp. and its driver-partners is one of partnership owing to the substantial contribution of the latter (*Corporal, Sr., et al. vs NLRC, et al., G.R. 129315, 2 Oct. 2000*).

Note:

1. A re-conclusion is not necessary if the problem is assigned 2% or 3%. A re-conclusion is convenient when the answer is relatively long because the point assignment is 5% up. It is to remind the examiner of one's initial conclusion.

2. Not all answers are ended formally.

Example:

Bar 2022, Q 6

Sonic Build Corp. employed Leo and Dan in its cement factory and assigned them the tasks of, among others, directing and supervising rank-and-file employees. Leo and Dan are required to ensure that such employees obey company rules and regulations, and recommend to the company's Human Resources Department any required disciplinary action against erring employees. There is only one union representing rank-and-file employees. May Leo and Dan join the union? Explain briefly. (5 points)

Answer

No.

Leo and Dan are supervisors because they effectively recommend managerial action on employee discipline and they do not perform said task in a clerical or routinary manner as they have discretion (*Art. 219(m), Labor Code*). Since they do not belong to the collective bargaining unit (CBU) composed of rank-and file employees, conflict of interest bars their membership in the sole union.

Relative to the *Domondon Method*, I have always taken it to mean that it applies to deductive reasoning. It consists of the examinee's conclusion, argument, and re-conclusion. A re-conclusion is necessary in a relatively long answer; its purpose is to remind the examiner of one's conclusion and to give visual balance to his answer. The first sentence is the conclusion. A space is observed and the next paragraph, indented at that, consists of the supporting argument. A space is observed again and one indents his re-conclusion which should not be a mere textual repetition of the conclusion.

B
INDUCTIVE REASONING

As to how one opens his answer and how he closes it, therefore, much depends on the type of reasoning he employs. In the inductive type of reasoning, justification precedes the conclusion.

Example:

Bar 2020-2021, Q

Answer

Organizational capacity is determined by law.

Under *Art. 253* of the *Labor Code*, employees of charitable institutions have organizational right. Although NGO employees are not expressly granted said right, they may be included in the category of employees of charitable institutions. The reason is NGOs are not engaged in profitable undertakings.

Therefore, by analogical inference, the employees of X NGO are deemed with organizational capacity.

1
Follow Through Method
(*Prof. Alcantara*)

I have also treated the *Alcantara Method* as the method to use in inductive reasoning. It is dangerous to open one's answer with a doubtful conclusion. If it is incorrect, chances are the examiner will not proceed to read the justification. This is among the human factors in the Bar examination. Unless the examiner immediately sees a redeeming factor, he is likely to just give the answer a short shrift treatment. On this matter, an impressive format and legal English may possibly catch his attention.

The *Alcantara Method* reserves the conclusion for last. The premises are laid down first in a methodical fashion which he called the "follow through" method. After making a statement, one must ask the relevant question, *e.g.,* why, how, when, where, or what, and answer it. His answer becomes his second sentence.

This is better illustrated than explained with the following example:

Statement: Tenurial right, just like any, is not absolute.

Why is tenurial right not absolute?

It is subject to the right of an employer to dismiss for a just or authorized cause.

What are just and authorized causes?

A just cause is a fault-based ground for a valid dismissal listed under Art. *297* of the *Labor Code*. On the other hand, an authorized cause is one listed under *Arts. 298* and *299* of the *Labor Code.*

Which was the ground for Denver's dismissal?

Denver was dismissed on the ground of willful disobedience, a just cause.

How did Denver commit willful disobedience?

Denver willfully disobeyed a reasonable workplace rule pertaining to his task; he had been duly informed thereof from the start of his employment; and his disobedience is characterized by wrongful and perverse mental attitude.

What now?

Therefore, Denver was validly dismissed.

The answers to the questions asked after the statement "*Tenurial right, just like any, is not absolute*.", when assembled, will become a respectable inductive argument as follows:

Tenurial right, just like any, is not absolute. It is subject to the right of an employer to dismiss for a just or authorized cause. A just cause is a fault-based ground for a valid dismissal listed under Art. 297 of the Labor Code. On the other hand, an authorized cause is one listed under Arts. 298 and 298 of the Labor Code. Denver was dismissed on the ground of willful disobedience, a just cause. Denver willfully disobeyed a reasonable workplace rule pertaining to his task; he had been duly informed thereof from the start of his employment; and his disobedience is characterized by wrongful and perverse mental attitude.

Therefore, Denver was validly dismissed.

The known advantage of a brief, clear and coherent (achieved thru the *Alcantara Method*) answer is that the examiner will read one's justification before coming to his possibly half-correct conclusion. By then, the examiner would have already seen reasoning ability, law, language, logic and effort. Would he likely assign the answer a zero score?

If one wishes to give the inductive argument visual balance, he may separate the first statement as follows:

Tenurial right, just like any, is not absolute.

Right to security of tenure is subject to the right of an employer to dismiss for a just or authorized cause. A just cause is a fault-based ground for a valid dismissal listed under Art. 297 of the Labor Code. On the other hand, an authorized cause is one listed under Arts. 298 and 298 of the Labor Code. Denver was dismissed on the ground of willful disobedience, a just cause. Denver willfully disobeyed a reasonable workplace rule pertaining to his task; he had been duly informed thereof from the start of his employment; and his disobedience is characterized by wrongful and perverse mental attitude.

Therefore, Denver was validly dismissed.

This is very easy to do now because the Bar examination is digital. Careful to ensure that one's mind is faster than his fingers, an examinee can artfully assemble and re-assemble the parts of his answer. So the technique is to encode everything his mind dictates. Editing comes next. If one aspires for perfection at once, chances are he would not be able to finish the exam. And if his fingers are unusually faster than his brain, chances are the parts of his answer would collide.

Suppose, the examinee is very sure of his answer?

Deductive Argument:

Denver was validly dismissed for a just cause.

Willful disobedience, the just cause relied upon by ABC Co., obtains when these requisites are present:

1. *The employee willfully disobeys a reasonable workplace rule;*
2. *The rule violated pertains to his work;*
3. *He had been duly informed thereof from the start of his employment; and*
4. *His willful disobedience is characterized by wrongful and perverse mental attitude.*

The point of contention is the fourth requisite. Allegedly, Denver had no intention to display recalcitrant and rebellious attitude towards his lady supervisor. However, the CCTV footage indicates otherwise. It shows that he pulled down his pants to show his ass to her after being told to finalize his monthly report.

Therefore, based on the legal sufficiency of the just cause relied upon, Denver's right to remain employed was validly foreclosed.

Note:

1. **Major Premise**. It is the part that embodies the requisites of willful disobedience. Since the examinee knows all of them, he must expose them by numbering them 1 2 3 4 or a d c d. It is 1 2 3 4 if the problem comes as A B C. It is a b c d if the problem comes as 1 2 3 4.

Question:

A. What are the component tests of the Four-fold Test? Explain each of them.

B. x x x

Answer:

A. The component tests of the Four-fold Test are as follows:

1. the Selection Test;
2. the Wage Test;
3. the Dismissal Test; and
4. the Control Test

As to the first, selection may be established with: (a) job offers; (b) employment contracts; (c) company IDs; (d) company uniforms; and (d) like evidence.

As to the second, obligation to pay wage or salary may be established with payslips or payroll sheets in the name of the engaging party; deduction of SSS, Pag-Ibig and Philheatlh contributions which are employee contributions; and withholding of tax on salary.

As to the third, evidence of the exercise by the engaging party of the twin-powers of discipline and dismissal over the engaged party is of consequence.

As to the fourth, exercise of pervasive control over the means and methods of performance by the user of services over the provider of said services indicates employment affair.

B. x x x

2. **Minor Premise**. It is the part that shows that the contested element is present. To justify its existence, reference must be made to the facts of the problem. So the minor premise is the interplay between the applicable law, principle, or requisites and the facts of the problem.

3. **Re-Conclusion.** Since the answer is a little long, the conclusion must be repeated. But it should not just be cut and pasted at the bottom. The words "*based on the legal sufficiency of the just cause relied upon"* add elegance to the answer.

2
Either Or Method
(*Dean Ortega*)

A question may be conquered with one's knowledge of a distinction in *Labor Law, e.g.:* organized establishment vs unorganized establishment; just cause vs authorized cause;

reinstatement order vs return to work order; or closed shop vs union shop. One's argument takes the form of a disjunctive syllogism: Either P or Q. Not P. Therefore, Q. However, in crafting the answer, "Either P or Q" is mental; hence, it is not actually expressed in the answer. What is expressed is the Q (because it is Not P) and its legal consequences.

The *Ortega Method* can be used in crafting the supporting argument in both deductive and inductive reasoning.

Example:

> Since X Co. is unorganized for the reason that no CBA has been concluded, X Union should have ventilated its cause before the NCMB. Its recourse to voluntary arbitration *via* notice to arbitrate is unprocedural owing to the fact that, should the NCMB fail to resolve the dispute in 10 days, the procedure is for it to refer the unresolved dispute to the Labor Arbiter.

Ortega and Alcantara Combined

> Either X Co. is organized or unorganized.
> It is not organized. (*Why?)*
> Therefore, it is unorganized. (*So what?)*
>
> The logical consequence of X Co. not being organized, which observation is based on the fact that there is no CBA between the parties, is that jurisdiction gets assigned to the Labor Arbiter thru referral by the NCMB. In unorganized establishments, such as X Co., law requires the disputants to follow such course. In contrast, in organized establishments, the disputants submit shall their issues to the Grievance Machinery which has 7 days to resolve the dispute brought; otherwise, it be elevated to voluntary arbitration.

In an inductive answer where the conclusion is suspended or delayed, one worries about the opening sentence of his argument. Again, there is no time to waste. So he should build on the facts of the problem, *i.e.,* after reading it and highlighting the relevant or material facts. Relevancy and materiality are determined by the very issue requiring resolution, or by the very question requiring an answer. Hence, if the examiner wants an answer to "*Is Narciso entitled to retirement benefits under Art. 302?"* then the relevant or material facts would be: Narciso's age, length of service, daily rate, whether 13th month pay and service incentive leave are being given him, and nature of business of his employer and number of his employees. These should be highlighted because one needs them in crafting his argument.

Thus:

> Assuming there is no CBA or company retirement plan providing for the conditions for retirement, *Art. 302* of the *Labor Code* requires that the applicant for retirement benefits be age 60 or 65; he must have at least five years of service; and his employer, if engaged in retail or service, must have more than 10 employees. These requisites are in attendance because: Narciso is 65; he has 5 years and 1 month of

service behind him; his employer is not engaged in retail and service; and, even assuming it is so engaged, Narciso is its 11th employee.

Therefore, Narciso is entitled to retirement benefits.

Why go inductive? The reason is one is not sure if the workers provided by the company's manpower service provider are its employees for all legal intents and purposes for want of details in the problem regarding the capital or investment of said contractor. Narciso is a supplied worker under various service agreements executed over a period of 5 years.

In the example, the opening sentence is an assemblage of meaningful component sentences arranged around *Art. 302*. Said sentences are separated by *semi colons* as follows:

> *Assuming there is no CBA or company retirement plan providing for the conditions for retirement, Art. 302 of the Labor Code requires that the applicant for retirement benefits be age 60 or 65; he must have at least five years of service; and his employer, if engaged in retail or service, must have more than 10 employees.*

If one does not know the answer, her answer must at least be chubby because, in the Bar, chubby is the new sexy.

C
NOTES ON THE PARTS OF AN ARGUMENT

Premises

Major Premise: An IRR that is amendatory of the statutory provision it is supposed to implement is void.

Minor Premise: Sec. 8(b), Rule IV, Book III, ORILC, amends Art. 82 in relation to Art. 94, both of the Labor Code.

Conclusion: Therefore, Sec. 8(b), Rule IV, Book III, ORILC is void.

Sources of the Major Premise

1. **Definition**

Example:

An OFW is one engaged in a remunerative activity in a country whereof he is not a citizen.

2. **Distinction**

(a) Retrenchment requires proof of substantial losses; whereas, redundancy does not.

(b) Resignation is a voluntary relinquishment of a position when personal reasons cannot be sacrificed in favor of the exigencies of the employer's business; whereas, constructive dismissal is a forced self-termination when continued employment has been rendered impossible by the employer.

3. **Enumeration**

(a) For purpose of SSS coverage, employer-employee relationship is tested with these twin-facts: (i) one uses the services of another; and (ii) one controls the other's means and methods of performance.

(b) A dismissal on the ground of loss of trust and confidence requires that: (i) the employee be a manager or occupant of a position of trust and confidence; and the withholding of trust be with some factual basis.

4. **Law**

(a) *Art. 82* of the *Labor Code*, owing to *ejusdem generis*, denies holiday pay coverage to workers paid on task basis who are field personnel at the same time.

(b) The *Full Protection Clause* prohibits both disparate treatment and disparate impact.

5. **Principle**

(a) The *Principle of Proportionality* requires the imposition of a less drastic penalty owing to the triviality of Nardo's infraction, as well as his length of service.

(b) Because employment affair is impressed with public interest, the *Principle of Non-Oppression* requires employers and employees to exercise their rights responsibly.

<u>Sources of the Minor Premise</u>

The facts of the problem help supply the minor premise. Either they justify the application or non-application of the definition; support the negation of one disjunct leading to the affirmation of the other; show the attendance or non-attendance of all requisites; or command application or non-application of the law or principle identified.

Illustrations:

1. **Definition**

An OFW is one engaged in remunerative activity in a country whereof he is not a citizen. Lamadrid leased an apartment in Hongkong while working as a salaried flight crew of Cathay Pacific. Being an OFW, she could file a complaint against the airline company with the Labor Arbiter for relief under *Sec. 7, R.A. 10022.*

2. **Distinction**

Resignation is a voluntary relinquishment of a position when personal reasons cannot be sacrificed in favor of the exigencies of the employer's business; whereas, constructive dismissal is a forced self-termination when continued employment has been rendered impossible by the employer. Hence, since John quit his work because of the company president's discriminatory acts towards him that rendered continued employment impossible, unreasonable and unlikely for him, his loss of employment amounts to constructive dismissal. This said, the company's defense of resignation must be rejected.

3**.** **Enumeration**

For purpose of SSS coverage, employer-employee relationship is tested with these twin-facts: (a) one uses the services of another; and (b) one controls the other's means and methods of performance. Ronald is the master of his time, means and methods; he has free reign over his script; and he has the freedom to showcase his artistic skills and talents. This said, the second requisite is missing. Therefore, X Co. does not have the duty to report him for SSS coverage.

4. **Law**

(a) *Art. 82* of the *Labor Code*, owing to *ejusdem generis*, denies holiday pay coverage to workers paid on task basis who are field personnel at the same time. As a taxi driver, Roger is both a worker paid on task basis and field personnel. Therefore, his claim for holiday pay must be denied.

(b) The *Full Protection Clause* prohibits both disparate treatment and disparate impact. Hence, while it is true that the "no couples policy" of ABC Corp. does not violate *Art. 134* of the *Labor Code* because it does not single out women, it is still void because it is productive of disparate impact or indirect discrimination which the *Full Protection Clause* equally prohibits.

5. **Principle**

(a) The *Principle of Proportionality* requires the imposition of a less drastic penalty owing to the simple nature of Nardo's misconduct as shown by his lack of improper or corrupt motive. Applying this principle, a mere suspension would have

sufficed. Consequently, he must be reinstated albeit without backwages because he is not entirely blameless.

(b) Because employment affair is impressed with public interest, the *Principle of Non-Oppression* requires employers and employees to exercise their rights responsibly to shield the public from the consequences of their excesses. Here, the union carried out the strike despite service upon it of the SOLE's AJO. Such unjustifiable disregard of the injunctive effect of subject order renders the strike illegal.

Note: Argumentation is the process of interweaving the major premise with the minor premise. The conclusion is the necessary offshoot of such interplay.

Bar 2018, Q XII

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

Answer

No.

The essence of sexual harassment is unwanted sexual attention. That Nena found the lewd pictures offensive is an indication of the unwanted nature of Nesting's overt act. Demand, requirement or request for sexual favour need not be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. If the combined acts, *i.e.,* prepositioning the lewd pictures and summoning Nena into Nesting's office for her to view them, "resound with defeaning clarity the unspoken request for sexual favor", sexual harassment is deemed committed. (*Domingo v. Rayala, G.R. Nos.155831& 155840, 18 February 2008*).

CHAPTER IV

CRAFTING ARGUMENTS

Unless the Bar examiner were inclined to recycle a previously given Bar question, he would normally select a law (statutory or case) or legal principle on which to anchor his problem. His objective would be to find out if the examinee knows that law or principle and, of course, whether or not it applies to the facts copied, modified, or invented by him. Some questions are hypothetical; others are case-based. But even those based on decided cases might be given a twist. The facts may be lifted from a case; however, the examiner might require the resolution of an issue not actually resolved by the Supreme Court. To illustrate: the facts of a case in which a jurisdictional issue was resolved may be given; however, a different issue may be the target, *e.g.*, cause of action. Regardless of the issue, the ultimate target would be employer-employee relationship because it is the determinant of both jurisdiction (*Reasonable Causal Connection Rule*) and cause of action (second element, *viz.*, correlative obligation to respect the right asserted).

This part is the heart of an answer.

It requires one to exhibit his knowledge of the applicable law or principle. Hence, he must be able to read the mind of the examiner to avoid going off on a tangent. Since one goes to the Bar knowing enough Labor Law (60% at least), he should not spoil his opportunity to exhibit that knowledge by giving off-tangent, reckless, and poorly crafted answers. There is no perfect beauty, only a perfect outfit. This said, it is time to design and put together the pieces (conclusion-argument-re-conclusion) to dress up even imperfect answers.

A
FORMATTING

Format

Ranked No. 1 in the SAG Awards for best dressed is *Jessica Chastain*. But I will feature the 8th placer, *Zendaya*, because 8 is my favorite number. I was impressed by this write-up on her:

> "*Generally, when it comes to red carpet dressing, Zendaya can do no wrong and her outfit for the SAG Awards 2023 red carpet was testament to that. In one of the hottest hues for the spring/summer season, Zendaya wowed in one of the best pink dresses, which was a custom Valentino design. With strapless, corset bodice, the dress fluted into an A-line train that was covered in intricately formed roses, creating a 3D effect. The neat bodice highlighted the star's frame, while the nipped-in waist, and fuller skirt helped to create an hourglass silhouette that exuded Hollywood glamour to the max.*" (*womanandhome.com*)

The truth is *Zendaya* had small boobs, yet she was hot in her outfit at the SAG Awards. So let us dress up our imperfect answers. An examinee's absolute redeemer, next to content, is "*format*".

Deductive Reasoning

Identify the applicable law or principle and argue that, based on the facts, it applies or it does not apply. So the major premise of the argument is a statement of that law or principle. For example:

> Under the *Cognate Offenses Rule*, a re-punishment is permissible if the previously punished offenses and the present offense prompting the dismissal are related offenses or offenses of the same nature or class under *Art. 297* of the *Labor Code*.

That the principle identified and explained applies or does not apply depends on the facts of the problem. Hence, if the offenses belong to different classes of just causes because the previously punished ones are tardiness, absenteeism and gross inefficiency which belong to the class of *Gross and Habitual Neglect of Duty* and the present offense is violation of workplace rule which belongs to the class of *Willful Disobedience* then totalization cannot be resorted to without violating the employee's right against excessive punishment.

In crafting the minor premise, therefore, one should point out the non-identity of the offenses committed.

Note: After stating the rule, the question to ask and answer (*Follow Through Method*, *supra*) is "<u>so what</u>?"

> Under the *Cognate Offenses Rule*, a re-punishment is permissible if the previously punished offenses and the present offense prompting the dismissal are related offenses or offenses of the same nature or class under *Art. 297* of the *Labor Code*.

<u>What then</u>?

> Based on the infractions of Denver, the required identity of offenses is missing. First, his previous offenses are tardiness, absenteeism and gross negligence which belong to the class of gross and habitual neglect of duty. Second, his final offense is violation of safety rules which belongs to the class of willful disobedience.

This brief, clear and coherent argument should now be followed by the re-conclusion:

> Therefore, X Co. is not allowed to totalize.

In its complete Bar form, the answer shall read as follows:

> The totalization defense is not meritorious.
>
> Under the *Cognate Offenses Rule*, a re-punishment is permissible if the previously punished offenses and the last offense prompting the dismissal are related offenses or offenses of the same nature or class under *Art. 297* of the *Labor Code*. Based on the infractions of Denver, the required identity of offenses is missing. First, his previous offenses are tardiness, absenteeism and gross negligence

which belong to the class of gross and habitual neglect of duty. Second, his present offense is violation of safety rules which belongs to the class of willful disobedience.

Therefore, X Co. is not allowed to totalize.

Note: The re-conclusion is not a mere textual repetition of the conclusion.

Inductive Reasoning

The infractions of Denver consist of the following: First, his previous offenses, *viz.*, tardiness, absenteeism and gross negligence. Second, his present offense which is his violation of safety rules. His prior offenses belong to the class of gross and habitual neglect of duty; whereas, his present offense belongs to the class of willful disobedience. In other words, his past and present offenses are not identical offenses under *Art. 297* of the *Labor Code*. Consequently, their totalization is prohibited by the *Cognate Offenses Rule.*

Note: If one is very sure of his answer, he should sandwich his argument between his conclusion and re-conclusion. If not, he should postpone his conclusion which must be responsive at all times.

Bar Situation: One is not sure of the answer; he is not sure of the meaning of *Cognate Offenses Rule* (it just seems applicable); he is not sure of the reason behind the prohibition against double punishment; *etc.* The only sure thing is leaving the item blank is punishable. In such situation, he can do something like this:

The infractions of Denver consist of the following: First, his previous offenses, *viz.*, tardiness, absenteeism and gross negligence. Second, his final offense which is his violation of safety rules. His prior offenses belong to the class of gross and habitual neglect of duty; whereas, his last offense belongs to the class of willful disobedience. In other words, his past and present offenses are not identical offenses under *Art. 297* of the *Labor Code*. Consequently, their totalization is prohibited by the *Cognate Offenses Rule.*

Therefore, the defense of X Co. is not meritorious.

Actually, something is missing in both answers, *viz.*, the reason behind the *Cognate Offenses Rule*. This rule allows totalization in a situation where the past and present offenses belong to the same class because prior punishments have failed to deter the employee from committing the same nature of offenses. It means that he is incorrigible; therefore, his employer should not be imposed his continuing unwanted services. Regardless of this omission, remember that *Zendaya* is still No. 8 despite her small bumpers. Given the limited time, answers cannot be booby all the time.

Envisioning and Writing Answers

This part will feature selected Bar *QnAs.* I will explain the *how* and *why* behind my suggested answers. Thus:

1. **How long or short should an answer be?**

Bar 2008, Q V

The Pizza Corporation (PizCorp) and Ready Supply Cooperative (RSC) entered into a "service agreement" where RSC in consideration of service fees to be paid by PizCorp's will exclusively supply PizCorp with a group of RSC motorcycle-owning cooperative members who will henceforth perform PizCorp's pizza delivery service. RSC assumes under the agreement full obligation for the payment of the salaries and other statutory monetary benefits of its members deployed to PizCorp. The parties also stipulated that there shall be no employer-employee relationship between PizCorp and the RSC members. However, if PizCorp is materially prejudiced by any act of the delivery impose disciplinary sanctions on, including the power to dismiss, the erring RSC member/s.

a. Is the contractual stipulation that there is no employer-employee relationship binding on labor officials? Why? Explain fully. (3%)

b. Based on the test/s for employer-employee relationship, determine the issue of who is the employer of the RSC members. (4%)

c. Assume that RSC has a paid-up capitalization of P1,000,000.00. Is RSC engaged in "labor only" contracting, permissible job contracting, or simply recruitment? (3%)

Answer

a. No.

The stipulation against employer-employee relationship is not valid for these reasons: (1) employer-employee relationship is a question of law; and (2) it is a question of fact. As a question of law, controlling case law supplies its cognitive significance; hence, if it exists within the contemplation of the Four-fold Test then it exists in law. As a question of fact, actual work circumstances determine whether its legal meaning has factual representation in the affair between two persons; hence, if the control element is actualized in said affair then employer-employee relationship exists as a fact.

For the foregoing reasons, parties to contracts cannot stipulate against the existence of employer-employee relationship.

b. PizCorp is the employer of the RSC members.

Since PizCorp exercises labor law concept of control - or control over means and methods of performance as distinct from other types of control, *e.g.*, editorial right, built-in control in insurance, sound business practice, and post production control - then it is the actual employer of the supplied manpower.

The exercise by PizCorp of disciplinary powers does not evidence its right to dismiss only. It also manifests its right of control because the grounds for its exercise cover an unspecified number of infractions, foremost of which is non-observance of directives and orders on how the contractor-supplied employees should perform their assigned tasks.

c. RSC is engaged in labor-only contracting.

RSC's paid-up capital of P1,000,000.00 falls short of the contracting financial capacity of P5,000,000.00 prescribed by D.O. 174. Moreover, not only does it lack substantial capital; its manpower is also controlled by its principal as to means and methods of performing its work.

In sum, the illegal status of RSC is evidenced by its having both the essential and confirming elements of a labor-only contractor.

Note: As to format, Question No. V is a 3-in-1. To the question on length, one must look at the point assignments, in this case 3%-4%-3%. I suggest that if the point assignment is less than 5%, one need not always give the "conclusion-argument-reconclusion" type of an answer. To do so might be an over-treatment which is an unnecessary over-spending of time given the fact that there are 2 more sub-questions to answer and 19 more main questions to challenge. Another point to consider is the use by the examiner of a b c. One should not change them to 1 2 3. The reason is simple: to avoid disorientation or confusion when he checks the answers.

Take note also of this other *Domondon* method. If you know the answer, expose it; if not, conceal it. One way of exposing is to assign numbers to preconditions, , requisites, or elements in this manner: The stipulation against employer-employee relationship is not valid for these reasons: (1) employer-employee relationship is a question of law; and (2) it is a question of fact. One can also use: First …. Second …. Third….

As to substance, the battleground in Bar 2008, Q V was contracting law. This is a favorite topic in the Bar; hence, one does not proceed to take it unless he has mastered the four corners of the law. I will just focus on item a. Thus:

Sub-Question

a. Is the contractual stipulation that there is no employer-employee relationship binding on labor officials? Why? Explain fully. (3%)

Answer

Unnecessary

No, the contractual stipulation that there is no employer-employee relationship is not binding on labor officials.

According to *Prof. Domondon*, the additional words after the conclusion "*No*", *i.e.*, "the contractual stipulation that there is no employer-employee relationship is not binding on labor officials" do not add meaning to "*No*". "*No*" means "the contractual stipulation that there is no employer-employee relationship is not binding on labor officials". In other words, that which can be expressed in one word need not be expressed in so many.

Preferred

a. No.

The stipulation against employer-employee relationship is not valid for these reasons: (1) employer-employee relationship is a question of law; and (2) it is a question of fact. As a question of law, controlling case law supplies its cognitive significance; hence, if it exists within the contemplation of the *Four-fold Test* then it exists in law. As a question of fact, actual work circumstances determine whether its legal meaning has factual representation in the affair between two persons; hence, if the control element is actualized in said affair then employer-employee relationship exists as a fact.

For the foregoing reasons, parties to contracts cannot stipulate against the existence of employer-employee relationship.

Options

1. The re-conclusion can be crafted with the use of the omitted words as follows: "For the foregoing reasons, the contractual stipulation that there is no employer-employee relationship is not binding on labor officials."; or

2. It can be in the form of a re-articulation: "For the foregoing reasons, parties to contracts cannot stipulate against the existence of employer-employee relationship."

Confession

I violated the suggested rule on length of answer (before I could suggest it) in **Question No. V** of **Bar 2013** as follows:

Cris filed a complaint for illegal dismissal against Baker Company. The Labor Arbiter dismissed the complaint but awarded Cris financial assistance. Only the company appealed from the Labor Arbiter's ruling. It confined its appeal solely to the question of whether financial assistance could be awarded. The NLRC, instead of ruling solely on the appealed issue, fully reversed the Labor Arbiter's decision; it found Baker Company liable for illegal dismissal and ordered the payment of separation pay and full backwages.

Through a petition for certiorari under Rule 65 of the Rules of Court, Baker Company challenged the validity of the NLRC ruling. It argued that the NLRC acted with grave abuse of discretion when it ruled on the illegal dismissal issue, when the only issue brought on appeal was the legal propriety of the financial assistance award.

Cris countered that under Article 218(c) of the Labor Code, the NLRC has the authority to "correct, amend, or waive any error, defect or irregularity whether in substance or in form" in the exercise of its appellate jurisdiction.

Decide the case. (8%)

Answer

The NLRC exceeded its appellate jurisdiction.

Art. 225 (c) of the Labor Code, unlike old interpretation rulings, does not permit the NLRC to resolve issues not raised on appeal for lack of appellate jurisdiction over unbrought issues (Sec. 4 (d), Rule VI, 2011 NLRC Rules of Procedure, as amended).

Question No. V was assigned **8%** but I gave an answer consisting of just two sentences. If I were the examiner, I would have been offended. The answer would have been worth 2% only. Hence, I should have expounded more as follows:

The NLRC exceeded its appellate jurisdiction.

Art. 225 (c) of the *Labor Code*, unlike old interpretation rulings, does not permit the NLRC to resolve issues not raised on appeal for lack of appellate jurisdiction over un-brought issues (*Sec. 4 (d), Rule VI, 2011 NLRC Rules of Procedure*, as amended).

The power of the NLRC to resolve an issue requires that said issue be raised on appeal. If not, it does not acquire appellate jurisdiction over it. Under old rulings, un-brought issues could be resolved by the NLRC owing to the expanded reading accorded *Art. 218(c)* which ostensibly assigned it the power to correct, amend, or waive any error, defect or irregularity whether in substance or in form. In contrast, the present Art. 255 (formerly *Art. 218*) limits its review power to issues

raised by the appellant only. In fact, following amendment, its own *2011 Rules of Procedure* now limits its review power to raised issues only. (*Rule VI, supra)*

Note: My initial answer was on target; and it was substantially correct. But it would not have merited 8%. So I needed to expound on it in a separate paragraph to avoid giving a crowded answer.

2. Should one quote a codal provision verbatim?

Bar 2009, Q IX

a. What is wage distortion? Can a labor union invoke wage distortion as a valid ground to go on strike? Explain. (2%)

b. What procedural remedies are open to workers who seek correction of wage distortion? (2%)

Answer

a. A wage distortion is the elimination or serious contraction of the wage gap advantage enjoyed by one wage group over another as to destroy the hierarchy of positions and corresponding pay rates adopted by the employer based on rational considerations, *i.e.,* as long as the obliteration of the wage gap is by reason of a wage law, wage order, merger of companies, or CBA renegotiation.

A wage distortion dispute is non-strikable. The allowable strike grounds are bargaining deadlock and ULP to the exclusion of all others, *e.g.,*inter-union dispute, intra-union dispute, and labor standards disputes, like one arising from a wage distortion.

b. Workers who seek correction of a wage distortion have the following procedural remedies:

If the establishment is organized, they may bring the issue to the Grievance Machinery. If unresolved at that level, they may elevate it to voluntary arbitration.

If the establishment is unorganized, their remedy is to bring the issue to the NCMB which has ten (10) calendar days to resolve it; otherwise, it shall refer it to the Labor Arbiter.

Again , should one quote a codal provision verbatim?

I have been teaching *Labor Law* since 1998, *i.e.,* right after passing the Bar. In 2004, I became the understudy of the late *Prof. Alcantara* at the *Lex Bar Review*. But God knows I have not memorized the definition of wage distortion in *Art. 97* of the *Labor Code*. But did I have

to? To be able to memorize was to be a parrot – not so desirable. But to be able to break down the long, winding and difficult definition into its parts and re-articulate them in meaningful words was to be a falcon. Why not eagle? Because many prefer bigger birds. Incidentally, I train my students to be bigger birds. I do not compel them to memorize. So here is my understanding of wage distortion (take it or take it):

> *A wage distortion is the elimination or serious contraction of the wage gap advantage enjoyed by one wage group over another as to destroy the hierarchy of positions and corresponding pay rates adopted by the employer based on rational considerations, i.e., as long as the obliteration of the wage gap is by reason of a wage law, wage order, merger of companies, or CBA renegotiation.*

My own articulation incorporates doctrinal pronouncements. The art of re-articulation, if perfected, can earn rewards. The following are additional samples:

No Work with Pay Effect

Bar 2010, Q IV

A, a worker at ABC Company, was on leave with pay on March 31, 2010. He reported for work on April 1 and 2, Maundy Thursday and Good Friday, respectively, both regular holidays. Is A entitled to holiday pay for the two successive holidays? Explain. (3%)

Answer:

Yes.

For having been on leave with pay on the day immediately preceding the two regular holidays, A enjoys the benefit of the "no work with pay" effect of a regular holiday. Therefore, he is entitled to 200% of his basic salary (Sec. 6, Rule IV, Book III, ORILC).

I had wanted to say that a covered employee was entitled to holiday pay as long as he was present at work on the day immediately preceding the regular holiday subject of his claim because, by provision of law, an un-worked regular holiday was a paid day. I also wanted to say that there were substitutes for being present at work on the immediately preceding day, like being on leave with pay as when the employee was in *Boracay* to enjoy his service incentive leave benefit. Finally, I had wanted to say that since Maundy Thursday and Good Friday came after the day on which the claimant was on paid leave then he was entitled to double holiday pay. But in the Bar, one cannot be talkative. So I suggested this: "For having been on leave with pay on the day immediately preceding the two regular holidays, A enjoys the benefit of the "**no work with pay**" effect of a regular holiday. Therefore, he is entitled to 200% of his basic salary (Sec. 6, Rule IV, Book III,

ORILC)." I gave 2 sentences for 3%. If every sentence merited 1% then I would have earned 2%.

Fault-based ground; Contractual Dispute Resolution Mechanism

Bar 2019, PART I, Q 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%)

Answer

(a) A just cause is a **fault-based ground** for dismissal under *Art. 297, Labor Code*; whereas, an authorized cause is a non-fault ground for dismissal under *Articles 298* and *299* of the *Labor Code*.

(b) A seasonal employee is one engaged for the duration of the season for which he has been engaged; whereas, a project employee is one whose employment is co-terminus with the specific project or undertaking for which he has been engaged; provided, its scope or duration was made known to him upon his engagement (*Art. 295, Labor Code*).

(c) Strikes are carried out thru temporary stoppage of work; whereas, lockouts are carried out thru temporary withholding of work (*Art. 279, Labor Code*).

(d) A *bona fide occupational qualification(BFOQ)* is an occupational requirement based on quality or attribute. It is valid if it serves a legitimate business purpose, it is work-related, and its possession enhances an employee's productivity at work (*Star Paper Corp., et al. v. Simbol, et al., G.R. No. 164774, 12 April 2006*).

(e) A grievance machinery is a **contractual dispute resolution mechanism** for all grievable disputes. It is a mandatory provision of a collective bargaining agreement (CBA), without which it cannot be registered.

Appendix " "

The important Bar *QnAs* are found in **Appendix " "** of this book. From reading the suggested answers, one can see how the featured techniques have been applied.

B
PRACTICAL REASONING PATTERNS

The following are the practical reasoning patterns that I have repeatedly used in answering Bar questions. They can be learned in a day only.

1
Expose-Explain Method: For Enumeration-Based Answers

A question that calls for enumeration is best answered by employing this method. If one knows the items, he is advised to expose them. Thereafter, he should proceed to explain them one after the other.

Example:

> Henry is not entitled to service incentive leave because:
>
> (a) he is a worker paid on task basis; and
> (b) at the same time, he is a field personnel.
>
> As to the first, Henry is paid P1,700.00 per engagement to drive hotel guests to Mt. Pulag and back; hence, he is a worker paid on task basis. And, as to the second, he is unsupervised and performs his work away from the place of business of the Manor Hotel. Therefore, being a worker paid on task basis and a field personnel at the same time, he has no service incentive leave coverage (*Ejusdmen Generis*).

Note: One would have written "pursuant to the rule of construction known as *Ejusdmen Generis*". I use parentheses to invite attention to the basis of my answer. Hence, I style my answer as follows: "Therefore, being a worker paid on task basis and a field personnel at the same time, he has no service incentive leave coverage (*Ejusdmen Generis*)."

The following is much more simple because the items are explained as they are enumerated:

Bar 2022, Q 9

Sigaw Corp., a media entity, produces television shows. To streamline its processes, it created a database of camera crew and sound engineers whom it usually engages for its television shows. Sigaw Corp. pays them only "talent fees" each time they are engaged for a show. After several years of this set-up, the camera crew and sound engineers filed a complaint for regularization against Sigaw Corp. before the Labor Arbiter. On the other hand, Sigaw Corp., claims that they are not regular employees but independent contractors or talents because they are engaged and paid for their specific technical skills. Rule on the complaint. Explain briefly. (5 points)

Answer

The camera crew and sound engineers are regular employees for the following reasons: First, they were not engaged to showcase any unique artistic skills and talents, much less in consideration of their celebrity status. On the contrary, they were engaged to perform work directly related to the trade of Sigaw Corp. as a TV network that produces shows. Second, the tasks they perform are necessary, desirable, vital and indispensable to the trade of Sigaw Corp. These facts militate against the independent contractorship insisted on by the company (*Del Rosario, et al. vs ABS-CBN, G.R. 202481, 8 Sept. 2020)*.

2
Using the Follow-Thru Method of Prof. Alcantara

Victor was illegally dismissed by the Atom Small Wedge Mining Company for the following reasons:

1. His dismissal was not for a just cause; and
2. He was not accorded due process.

Note: After the enumeration, there are two questions to ask and answer. The answer to the first becomes the first sentence of the next paragraph and the answer to the second becomes the second sentence. As to the first item, the question is "what", *i.e.,* on <u>what</u> ground was Victor dismissed? And as to the second item, the question is "how", *i.e.,* <u>how</u> was Victor dismissed? These questions have to be answered. Thus:

As to ground, Victor was a regular employee because his work as a miner was vital and indispensable to the mining business of the company. As such, he could only be dismissed for a just or authorized cause. That he was dismissed on the ground of poor performance, an unlisted ground under *Arts. 297, 298* and *299* of the *Labor Code,* makes his dismissal illegal. And, as to due process, Victor was not

served the required notices under *Art. 292* of the *Labor Code*. In fact, his dismissal was carried out verbally only.

The parts should then be assembled as follows:

Victor was illegally dismissed by the Atom Small Wedge Mining Company for the following reasons:

1. His dismissal was not for a just cause; and
2. He was not accorded due process.

As to ground, Victor was a regular employee because his work as a miner was vital and indispensable to the mining business of the company. As such, he could only be dismissed for a just or authorized cause. That he was dismissed on the ground of poor performance, an unlisted ground under *Arts. 297, 298* and *299* of the *Labor Code,* makes his dismissal illegal. And, as to due process, Victor was not served the required notices under *Art. 292* of the *Labor Code*. In fact, his dismissal was carried out verbally only.

Note: The name Victor appears twice. The second time, the pronoun "he" should have been used. However, there are two items under discussion, *e.g.*, ground and due process. Hence, it is Victor as to ground and Victor again as to due process for better connection, if not clarity.

3
Disjunctive Syllogism: For Distinction-Based Answers

In Symbolic Logic, Disjunctive Syllogism has it that the denial of one disjunct leaves the other affirmed. Thus, p or q; not p; ergo, q.

Bar 2019, Part II, Q 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 tiled 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) x x x

Answer

(a) The LA did not err. Even if the office occupied by Mr. X may have been listed in the corporate by-laws as a corporate office, it should have been shown that he was appointed to it by the Board of Directors. Absent evidence, Mr. X was a corporate employee; hence, the tenurial issue he brought to the LA was not an intracorporate issue. *(Cosare v. Broadcom Asia, Inc., et al., G.R. No. 2011 298, 5 Feb. 2014)*. Moreover, mere membership in the governing board does not make one a corporate officer. Unless elected as President, Secretary or Treasurer, a member of the board would not qualify as a corporate officer (*Sec. 24, Revised Corporation Code*).

(b) x x x

Note: Either X is a corporate officer or he is a corporate employee. If a corporate officer, the dispute brought would be an intracorporate controversy; hence, the LA would have no jurisdiction. If a corporate employee, the LA would have jurisdiction because the dispute would be a labor dispute. But X is not a corporate officer; therefore, he is a corporate employee. Consequently, the LA has jurisdiction because the dispute brought is a labor dispute.

The answer to the Bar question is founded on Disjunctive Syllogism.

The following is based on Disjunctive Syllogism too, but its application is more creative already.

Bar 2022, Q 4

Due to Bitoy's repeated unwanted sexual advances towards his co-worker Diego, Diego went to the Personnel Manager to report Bitoy's behavior. The Personnel Manager started a disciplinary action case against Bitoy. In his written explanation, Bitoy denied the allegation of sexual advances. He also pointed out that sexual harassment only pertains to a superior-subordinate relationship, where the perpetrator is the superior and the victim is the subordinate. Since Diego is not his subordinate, as they are co-workers with the same rank, Bitoy cannot be subject to disciplinary action. Is Bitoy's contention correct? Explain briefly. (5 points)

Answer

No.

Bitoy's contention is not correct. His sexual advances are acts of sexual harassment under the *2019 Safe Spaces Act (R.A. 11313).* Under the *1995 Anti-Sexual Harassment Act (R.A. 7877)*, the gravamen of the offense of sexual harassment is abuse of authority (*Philippine Aeolus Automotive United Corp. vs NLRC, G.R. 124617, 28 April 2000*). It is not so under *R.A. 11313* where the essence of sexual harassment is unwanted sexual attention or offensive sexual intrusion in public spaces, *e.g.*, workplace. Hence, despite lack of superior-subordinate relationship between the two, Bitoy is liable for sexual harassment.

Note: The problem calls for an answer based on the distinction between *R.A. 7877* and *R.A. 11313*. Either the act complained of is a violation of the first or of the second. If of the first then authority is needed because the gravamen of the offense punished by *R.A. 7877* is abuse of authority. If of the first, authority is not required because what is punished by *R.A. 11313* is the violation of a person's safe space in a public place – or else, unwanted sexual attention in a public space – including online space. In either case, however, the offense committed is sexual harassment. Take note, however, that *R.A. 11313* punishes non-sexual acts too, *e.g.*, persistent insult of a person based on his physical appearance. What is sexual about calling somebody "mutant ninja turtle" everyday because his back is hunched and he goes to karate school? But this is punishable under *R.A. 11313* – not under *R.A. 7277* because the physical condition of a hunchback is not a disability – unless his physical condition has the effect of impairing his earning capacity.

4
Fit-In Method: For Definition-Based Answers

This is a very simple technique. A seemingly tough essay-type question may actually be answered with a simple definition. Do the facts fit the definition? On this point, it pays to master the few definitions in certain provisions of the *Labor Code*, *e.g., Arts. 13* and *219,* as well as interpretative rulings thereon.

Bar 2022, Q 6

Sonic Build Corp. employed Leo and Dan in its cement factory and assigned them the tasks of, among others, directing and supervising rank-and-file employees. Leo and Dan are required to ensure that such employees obey company rules and regulations, and recommend to the company's Human Resources Department any required disciplinary action against erring employees. There is only one union representing rank-and-file employees. May Leo and Dan join the union? Explain briefly. (5 points)

Answer

No.

Leo and Dan are supervisors because they effectively recommend managerial action on employee discipline and they do not perform said task in a clerical or routinary manner as they have discretion (*Art. 219(m), Labor Code*). Since they do not belong to the collective bargaining unit (CBU) composed of rank-and file employees, conflict of interest bars their membership in the sole union.

Note: *J Hernando* has decided two cases based on definitions. The cases are found in Chapter V.

5

Parenthesis Method: For Codal-Based Answers

Bar 2019, PART II, Q 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 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%)

Answer

(a) Except for the representation aspect of the CBA, the other provisions can be renegotiated not later than 3 years from date of the CBA's effectivity (*Art.265, Labor Code*).

(b) Another union can file a petition for certification election during the freedom period of the CBA which is the last 60 days of its political life (*Art. 265, Labor Code*).

Bar 2018, Q II

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

a. The employer, Neuman Corporation, filed a motion to dismiss the petition for lack of legal personality on the part of the petitioner union. Should the motion be granted? (2.5%)

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

Answer

(a) No.

For the limited purpose of filing a petition for certification election, a charter has the legal personality even before it can formally be issued its certificate of registration (*Art. 241, Labor Code*). Moreover, a certification election is a mode of verification only. Being investigative in character, which does not initiate a litigation between the union and the employer, the latter cannot move to dismiss the petition because it is just a standby *(Heritage Hotel Manila v. Sec. of Labor, et al., G.R. No. 172132, 23 July 2014)*. Finally, the relationship between a federation and its charter is that of an agency wherein the latter is the principal. As such, it can take back from its agent the delegated power to file a certification election petition on its behalf.

(b) No.

The only recognized grounds for cancellation of a certificate of registration under *Art. 247* of the *Labor Code*, as renumbered, are: (a) misrepresentation, false statement or fraud relative to the adoption or ratification of the union's constitution and by-laws (CBL); (b) misrepresentation, false statement, or fraud relative to the election of its union officers; and (c) voluntary dissolution. The ground invoked being outside the statutory list, the cancellation petition filed by the federation should not be allowed to prosper.

Note: In the answer to sub-question (a), *Art. 241* is placed between parentheses to invite attention. To avoid monotony, *Art. 247* in the answer to sub-question (b) is a run-in. Take note that the provisions are not quoted *verbatim*.

C
HOW TO NOT ANSWER

After knowing basic answering techniques, it is time to diagnose and cure the following defective answers:

On 13TH Month Pay and SSS

Paul and Mary are entitled to 13TH month pay, as the labor code provides, those who are entitled to a 13th month pay are rank-and-file employees in the private sector regardless of their position, designation, or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one month during the calendar year. As to SSS coverage, Both must first be employed in an occupation subject to, as the case of Paul and Mary who was engaged by Peter to work for him 5 months before Christmas but it should be reported to SSS for coverage but in this case, which they are not reported to SSS for coverage.

Comments:

1. The answer is reckless. Entitlement to 13th month pay is not by prescription of the Labor Code but of PD 851.

2. Capitalization and grammar were not checked before submission.

(a) "as the labor code provides" should be "as the Labor Code provides";
(b) "As to SSS coverage, Both must first be employed" should be "As to SSS coverage, both must first be employed".
(c) "as the case of Paul and Mary who was engaged by Peter" should be "as in the case of Paul and Mary who were engaged by Peter"
(d) "but in this case, which they are not reported to SSS for coverage" should be "In this case, however, they have not been reported to the SSS for coverage".

3. Sentence construction is defective.

"As to SSS coverage, Both must first be employed in an occupation subject to, as the case of Paul and Mary who was engaged by Peter to work for him 5 months before Christmas but it should be reported to SSS for coverage but in this case, which they are not reported to SSS for coverage."

The sentence is too long that the parts of the examinee's sentence are like Russian soldiers shooting at all directions. To avoid confusion, he should have used simple sentences as follows:

" Paul and Mary have SSS coverage. First, they are the employees of Peter. Second, their coverage is compulsory from the first day of their employment. Hence, they should have been reported to the System."

4. The answer is in bad format. It would have been impressive if written in simple sentences as follows:

Paul and Mary are entitled to 13th month pay. PD 851 guarantees 13th month pay to land-based rank-and-filers which they both are. Moreover, they have worked for at least a month. This said, Peter's duty to report them for coverage attached on the first day of their employment under him.

On Jurisdiction

The substantial issue of the case is if all five retirees are guilty for illegal dismissal and unlawful withholding of salaries and the procedural issue is whether or not Quantum of proof required in illegal dismissal cases is provided.

Yes, the LA can resolve the said issues, as provided in the new rules of procedure of the NLRC, Labor Arbiters shall have original and exclusive jurisdiction to hear and decide all cases involving all workers, whether agricultural or non-agricultural, as well as claims of overseas Filipino workers provided for by law.

Comments:

1. The answer consists of two paragraphs made up of very long sentences. Because they are very long, they fail to communicate clear thought. As the answer suggests, the examiner was asking the examinees to identify the issues that required resolution and whether the Labor Arbiter could resolve them.

2. The following would have convinced the examiner that the examinee understood the problem:

The issues up for resolution are as follows: (1) Whether or not the employer is liable for illegal dismissal and unlawful withholding of salaries; and (2) Whether or not the employer can be imposed the burden of proving payment.

3. He would have convinced the examiner as well that he knew how to resolve the issues had he crafted his second paragraph as follows:

As to the first issue, *Art. 224* of the *Labor Code* confers jurisdiction on the Labor Arbiter (LA) over termination disputes and money claims arising from employment affair that exceed P5,000.00. Relative to the remunerative issue, the aggregate claim

of the employee is P10,000.00; hence, it is within the jurisdiction of the LA. Therefore, he can resolve both tenurial and remunerative issues. And as to burden of proof, the salary underpayment was sufficiently shown by the complainant; hence, it is the burden of the employer to prove full payment of his salaries.

4. The following errors, grammatical or otherwise, would not have escaped the attention of the examiner:

(a) "if all five retirees are guilty for illegal dismissal and unlawful withholding";

Correct: guilty of (better yet, liable for)

(b)" whether or not Quantum of proof required in illegal dismissal cases is provided."

Correct: quantum of proof; required in labor proceedings was met.

(b) "Yes, the LA can resolve the said issues, as provided in the new rules of procedure of the NLRC, Labor Arbiters"

Correct: Labor Arbiter (LA) first. Thereafter, Labor Arbiter can be referred to as LA.

On Organizational Right

Jane cannot join the union of rank and filers at TI, sine she is considered a confidential employee, as define by the Labor Code, a confidential employee means an employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of such management position Even though Jane is a clerk, she is responsible in updates of the employee's 201 File, requires to be privy to sensitive and confidential records. Shane on the other hand can join the union of rank-and-filers at TI since she works as a receptionist and the nature of her work does not requires to be privy to sensitive and confidential records.

Comments:

1. The answer consists also of two very long sentences. No examiner would enjoy reading it.

2. Breakdown:

Jane cannot join the union of rank and filers at TI. She is a confidential employee as shown by the following: (1) she has access to labor relations information possessed by the officer having custody of said information; and (2) her access to subject information is inherent in her job.

In relation to the first, Jane is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of such management position. And, in relation to the second, even though Jane is a clerk, she is responsible in updates of the employee's 201 File, requires to be privy to sensitive and confidential records. Shane on the other hand can join the union of rank-and-filers at TI since she works as a receptionist and the nature of her work does not requires to be privy to sensitive and confidential records.

Had the examinee used the expose-explain method, he would have impressed the examiner immediately as not to waste time reading his explanation which may contain several grammatical defects (underscored). First impression may save the day for an examinee.

CREW CLAIMS

Denver, after being certified as fit for sea duty, took a plane to Japan where he would board his assigned vessel. The first thing he did upon arrival was to call his wife, Kristine. Before he ended the call, Kristine asked him reluctantly why he did not give her the usual pre-departure marital ritual. He explained that he was feeling extreme pain on his left testicle. After just two weeks, Denver was medically repatriated due to his inability to continue performing his assigned tasks as an Able Seaman by reason of his medical condition.

(a) Because Denver was quarantined upon arrival, he was unable to physically report within 3 days to his manning agency. Hence, he just sent this message thru FB Messenger to the lady Crewing Manager of the company: "Hello Girl. Pinas na me. See you soon. Mwah!" Would his message have any significance to his intended claim for disability compensation? Explain. (25%)

Answer: Yes. The message he sent would have significance to his intended claim for disability compensation claim since there has been a physical impossibility for him to personally report to his manning agency. His act of sending a message through FB messenger is an exception to the rule when the seafarer is not able to report within the 3-day reporting requirement.

(b) The Crewing Manager replied: "Loko ka. Magagalit si Kristine. Selosa un, d b? Baka sugurin p ako nina Jun, Cha at Mercy na kakmpi nya. Bakit ka umuwi?" Denver replied: "Alam na you. Di ko na kaya e." "Ano balak mo?" Denver did not reply due to battery drain. You are the company lawyer. Would you get Kristine's permission to use this online exchange as evidence in the event Denver files a money claim against your client? Discuss briefly.

Answer: No. I would not get Kristine's permission to use this online exchange as evidence. Since this evidence could be appreciated in favor of Denver, thus, against my client. As the company lawyer, if Denver failed to present this online exchange as evidence, it would mean that he did not comply with the 3-day reporting requirement, thus, his money claims would be forfeited. As the company lawyer, my client is the company and not the seafarer. Thus, there was no need for me to get Kristine's permission.

Comments:

1. The question should have read: "Would you get the permission of the Claims Manager" because the communication was between Denver and her, not between him and his wife Kristine. The lesson is an examinee should not perpetuate the examiner's error. In one Bar examination, the examiner asked the examinees to distinguish between certification election, consent election and voluntary recognition. The question read: "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%)" Unfortunately, he did not know that voluntary recognition was replaced with SEBA request as early as November 2015.

2. This was how I politely answered the question:

Before the SEBA rule, the modes for EBR selection were as follows:

(1) Voluntary Recognition. Thru this mode of election, the lone legitimate labor organization is given recognition by the employer as the workers' sole representative for purposes of collective bargaining.

(2) Certification Election. After the Med-Arbiter allows a CE petition, the assigned election officer will conduct an election between the participating unions and No Union. The winner is the participant that gets majority vote based on the valid votes cast.

(3) Consent Election. During a pre-election conference, the Med-Arbiter may ask the concerned unions if they would rather agree on ground rules for the conduct among themselves of an election. Either they engage the supervision of the DOLE Regional Director or not.

3. In like manner, the examinee should not have submitted to the error involving Kristine. He could have politely answered this way:

No. I would not get the other person's permission to use this online exchange as evidence. Since this evidence could be appreciated in favor of Denver, thus, against my client.

EMPLOYER-EMPLOYEE RELATIONSHIP

The arrangement between Denver and his dorm buddy is not governed by Labor Standards Law, Labor Relations Law and Social Security Law for there is no ER-EE Relationship.

Under the Four-Fold Test, factors to determine the existence of ER-EE Relationship include 1.) Selection and engagement of employee 2.) Payment of wages 3.) Power of dismissal and 4.) Power of control. The control test assumes primacy in the overall consideration. There is an Er-Ee relationship when the person for whom the services are performed reserves the right to control not only the end achieved but also the manner and means used to achieve that end.

In the problem above, it is was explicitly stated that his dorm buddy would manage all of Denver's lectures and charge the subscribers a minimal fee. They failed the Control Test, hence their relationship is not one of ER-EE. Morever the remuneration in the form of token professional fee is not the wage that Four- fold Test contemplates, hence there is not ER-EE relationship.

Comments:

1. First Paragraph

The arrangement between Denver and his dorm buddy is not governed by Labor Standards Law, Labor Relations Law and Social Security Law for there is no ER-EE Relationship.

Note: "ER-EE Relationship" is informal, hence improper. "Labor Standards Law, Labor Relations Law and Social Security Law" are the types of Labor Law. They should just be referred to as Labor Law.

A Re-write:

Since the relationship between Denver and his dorm buddy is not an employer-employee relationship then it is not governed by Labor Law.

2. Second Paragraph

Under the Four-Fold Test, factors to determine the existence of ER-EE Relationship include 1.) Selection and engagement of employee 2.) Payment of wages 3.) Power of dismissal and 4.) Power of control. The control test assumes primacy in the overall consideration. There is an Er-Ee relationship when the person for whom the services are performed reserves the right to control not only the end achieved but also the manner and means used to achieve that end.

Note: "ER-EE Relationship" and "Er-Ee relationship" are informal. Item 1 reads: **"** 1.) Selection and engagement of employee." It presumes that someone is an employee already whereas the Four-fold Test, of which selection is a component test, is supposed to test employer-employee relationship.

Re-write:

Under the Four-fold Test, employer-employee relationship is manifested by the following facts: (1) selection by one of another; (2) payment of wages by one to another; (3) exercise by one of the power to dismiss over another; and (4) exercise by one of the power of control over the means and methods of performance of another.

3. Third Paragraph

In the problem above, it is was explicitly stated that his dorm buddy would manage all of Denver's lectures and charge the subscribers a minimal fee. They failed the Control Test, hence their relationship is not one of ER-EE. Morever the remuneration in the form of token professional fee is not the wage that Four- fold Test contemplates, hence there is not ER-EE relationship.

Note: "In the problem above" is too tall a phrase. "They failed the Control Test" suggests that Denver and his dorm buddy took an exam. Repeated use of "ER-EE" shows stubbornness.

A Re-write:

Under the Four-fold Test, employer-employee relationship is manifested by the following facts: (1) selection by one of another; (2) payment of wages by one to another; (3) exercise by one of the power to dismiss over another; and (4) exercise by one of the power of control over the means and methods of performance of another.

Here, the relationship cannot be considered as an employer-employee relationship because Denver does not exercise right of pervasive control over his buddy's means and methods of performance. In fact, the latter is the master of his means and methods. Moreover, his services are paid with the professional fee of an independent contractor.

4. The three paragraphs should have been arranged in such a way that clarity and coherence would be achieved. Thus:

Under the Four-fold Test, employer-employee relationship is manifested by the following facts: (1) selection by one of another; (2) payment of wages by one to another; (3) exercise by one of the power to dismiss over another; and (4) exercise by one of the power of control over the means and methods of performance of another.

Here, the relationship cannot be considered as an employer-employee relationship because Denver does not exercise right of pervasive control over his buddy's means and methods of performance. In fact, the latter is the master of his means and methods. Moreover, his services are paid with the professional fee of an independent contractor.

Since the relationship between Denver and his dorm buddy is not an employer-employee relationship then it is not governed by Labor Law.

ON SOCIAL JUSTICE

Yes, the options can be balanced. The Milan Case thought that both employer and employee are social utility and there are instances where the Court may find a middle ground to protect both parties' interests. Hence, the Labor Arbiter has the jurisdiction over the matter. First, although the illegal dismissal was not included in the complaint the Labor Arbiter may hear the case because as the Supreme Court held, "complaint" is just a checklist of cause of actions and what really important is the "position paper" of the parties which actually contains his/her causes of actions. In this case, Nestor was able to alleged such complaint in his position paper. Secondly, although illegal dismissal was never the subject of SEnA proceedings, following Article 234 of the Labor Code, the Labor Arbiter may still take cognizance of the matter provided that it was endorsed or referred to it by the duly authorized officer. Lastly, it

doesn't mean that by taking cognizance of the case instead of dismissal for failure to alleged illegal dismissal in the complaint, X Co., the employer, is already prejudiced. X Co., is still protected because it is accorded also the chance to submit its position paper and its reply. Hence, the Labor Arbiter will hear both sides through the position papers, supported by documents and affidavits, that they'll submit and render decision in accordance to it.

Comments:

1. The Bar Examinations should be a test of English to the extent of 15% only; otherwise, a candidate who has the mind of a lawyer but not the pen of *Justice Isagani Cruz* would fail . If the examination in which the foregoing answer was given were an examination in English, the examinee would have expected to re-enroll the subject. Quite honestly, he knew what he was talking about. His problem was he could not answer in *Ilocano.*

2. I believe the examinee was really thinking as follows:

Mabalin nga solbaren ni Apo Arbiter dajay issue ti illegal dismissal uray haan a nainayon ijay complaint. Ta gamin adda makunkuna a Checklist Rule nga agkunkuna nga iti maysa a darum ket arig na laeng iti checklist dagiti an-anekneken iti maysa a maseknan. Kurang a talaga ti karga na isu nga ipalubos ti linteg nga iti maysa nga agidardarum ket ikabil na amin nga cause of action na ijay position paper na ta ijay na nga pekkelpekkelen ida nga nalalaing.

3. Unfortunately, the Bar Examination is a written examination in English. So examinees "who think in the dialect" should be careful when they express their thoughts in English. I remember that I had just actually wanted to read this simple answer:

The *Checlist Rule* permits the Labor Arbiter to entertain the belatedly brought issue of illegal dismissal, *i.e.,* even if not mediated in accordance with *Art. 234* of the *Labor Code*. A complaint is just a checklist of causes that is not complete unto itself, not to mention that it is not assisted by counsel. It is really in the complainant's position paper that he gets to lay down his causes of action and establish their elements.