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BOOT CAMP

Answering Method

Write Better, Score Better

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Simplification:

The Toulmin Method

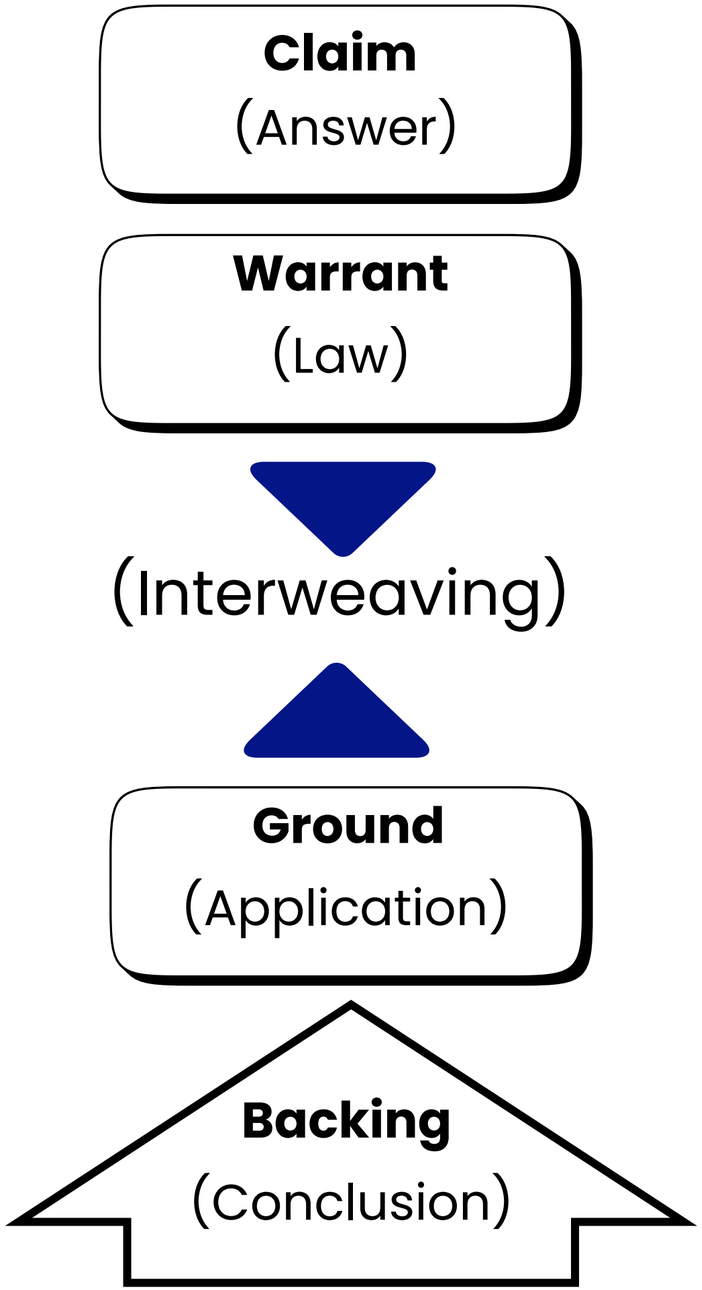

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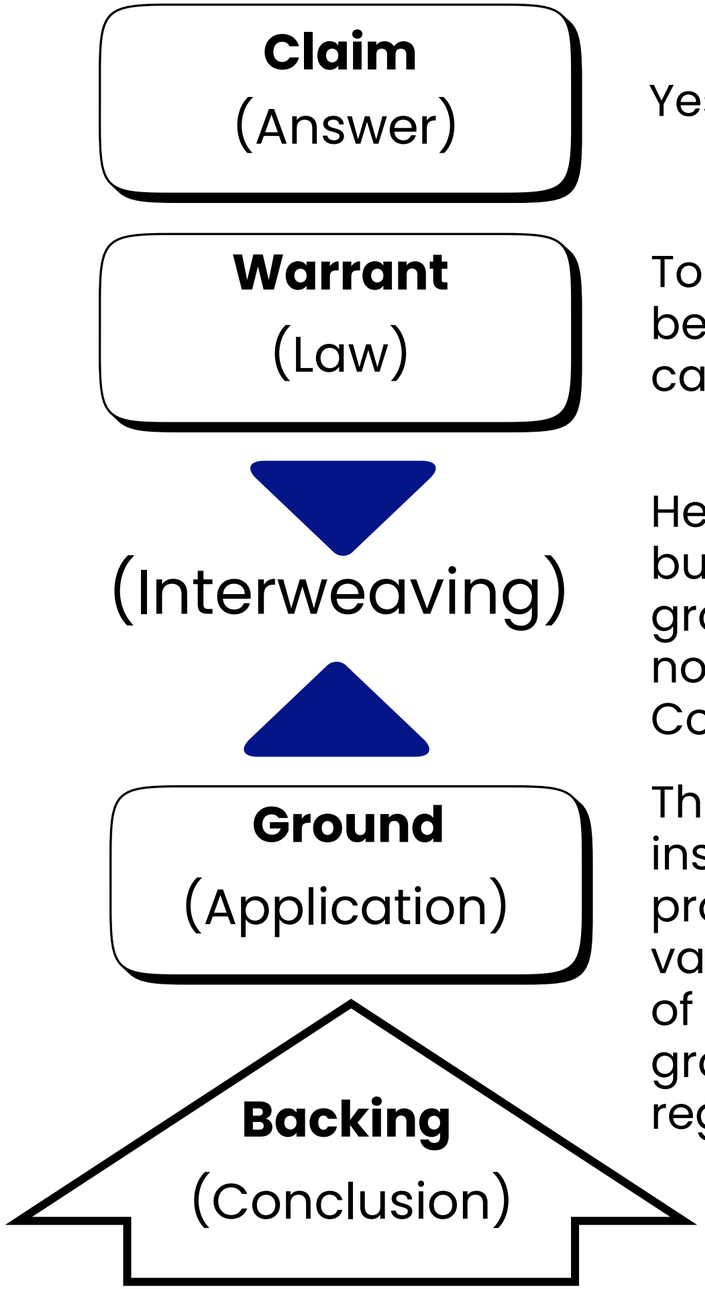
Illustration:



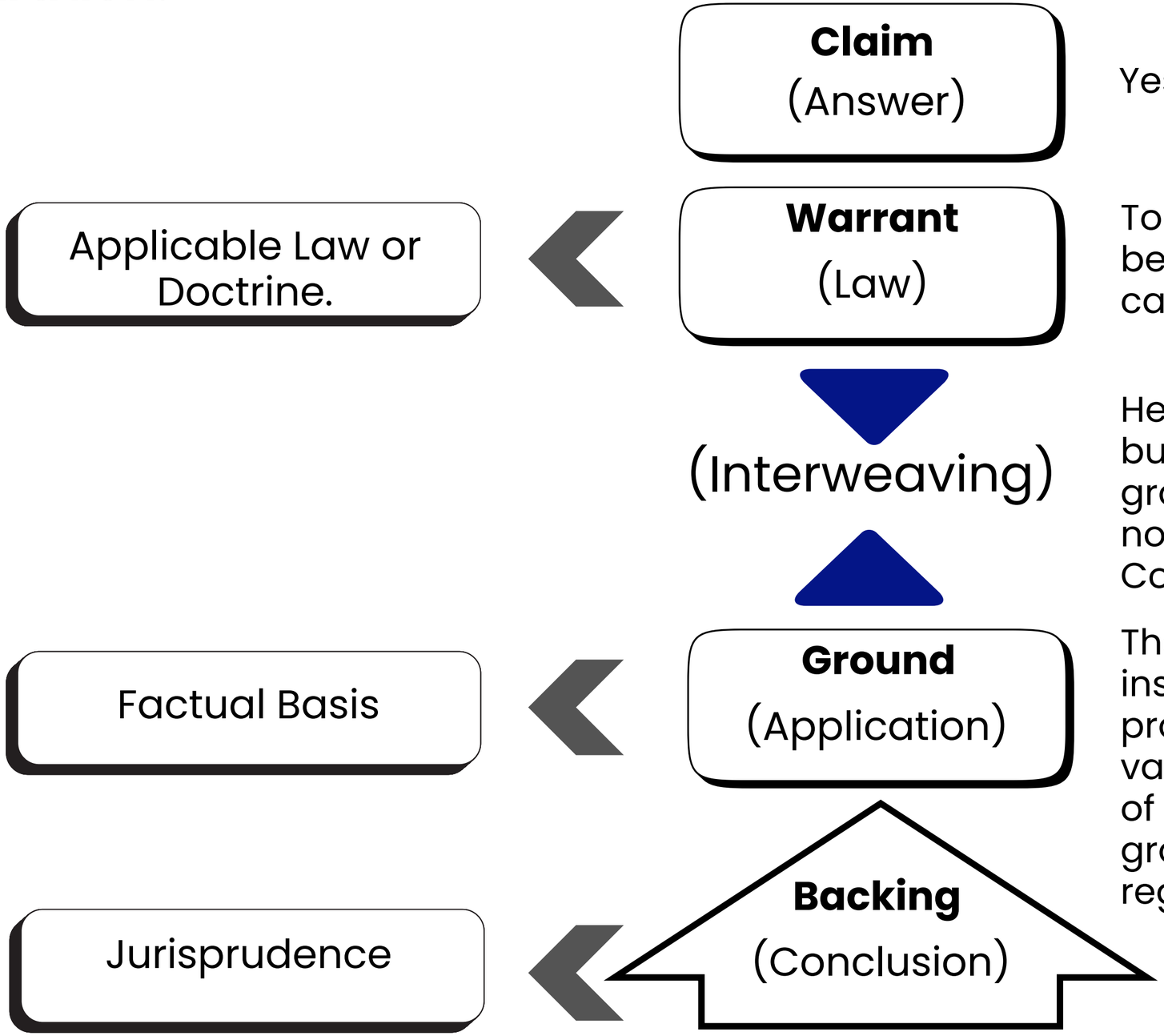
Yes, A was illegally dismissed.

To be valid, a dismissal must be for a just or authorized cause (Art. 294, Labor Code).

Here, A was a regular employee but he was dismissed on the ground of inefficiency which is not a just cause (Art. 297, Labor Code)

Therefore, as jurisprudence instructs that only a probationary employee can be validy dismissed on the ground of inefficiency, A's dismissal is groundless because he is a regular employee.

Illustration:



EXPLANATORY NOTES

The Claim

In Bar language, the claim is the answer. If the question calls for an affirmative or negative answer, it is expressed as Yes or No. If the question calls for a remedy, it is expressed as "I will file an appeal with the SOLE within five days from receipt of the RD's order denying the company's motion for reconsideration." In role playing situations, the answer comes as "I will dismiss the CE petition."

Rule: The claim or answer must be responsive. Read "Write Better, Score Better" under the E-Book section of this platform.

Example: As Med-Arbiter, I will not dismiss the CE petition.

The Warrant

This is the legal foundation of the claim or answer. It is a statutory provision, IRR, doctrine, or principle. It is the law to apply or to not apply depending on the circumstances.

Rule: That which can be fully answered with one rule need not be answered with several. **Read "Write Better, Score Better"** under the E-Book section of this platform.

Example: A CE petition is valid if sufficient in both form and substance.

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The Ground

This is the factual basis of the claim or answer. It is sourced from the facts of the Bar problem.

Rule: Whether to apply or not to apply the identified law or doctrine depends on the facts.

Example: The CE petition is not verified.

The Backing

Rule: Jurisprudence is the best backing. It instructs how law or doctrine should be applied.

Example: Nevertheless, jurisprudence instructs that a certification election is not a litigation; hence, a CE petition is not an initiatory pleading that absolutely requires verification.

Conclusion

The conclusion should be consistent with the claim or answer. It may be a textual repetition thereof; it may be a rephrase; or it may be a very brief elucidation.

Example: Therefore, as Med-Arbiter, I will not dismiss the petition but simply allow the petitioner to cure the questioned procedural infirmity.

ANSWER

As Med-Arbiter, I will not dismiss the CE petition.

A CE petition is valid if sufficient in both form and substance. Here, the CE petition is not verified. Nevertheless, jurisprudence instructs that a certification election is not a litigation; hence, a CE petition is not an initiatory pleading that absolutely requires verification.

Therefore, as Med-Arbiter, I will not dismiss the petition but simply allow the petitioner to cure the questioned procedural infirmity.

Score

Weight: 5

4 / 5.00

Points Distribution

Correct Answer – 1	Correct Application - 1	Format - 1
Correct Legal Basis – 1	Correct Conclusion - 1	Grammar – A Plus/An Irritant

DEFECTIVE ANSWER

Verbatim

No. The arguments of AR was not correct. Under the Transportation Law, even did not declare common carrier when the accidendent happened and shall not observed due diligence they are liable for the suffering incurred. Thus, AR was liable for that matter the denial of liability has no basis and legal ground.

Score

Weight: 5

2 / 5.00

Points Distribution

Correct Answer – 1	Correct Application - 1	Format - 1
Correct Legal Basis – 1	Correct Conclusion - 1	Grammar – A Plus/An Irritant

COMMENTS

2/5
answer is correct; conclusion is correct; argument is faulty; grammar is an irritant

The arguments ... was	... even did not declare	accidendent shall not observed

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PART 1

HOW "NOT" TO ANSWER

PROBLEMATIC ANSWERS

BAR QUESTION

QUESTION :

On May 31, 2024, the collective bargaining agreement between Gretel Corporation, Inc. (GCI) and Gretel Labor Union (GLU) expired. After several negotiations, GCI and GLU signed a new collective bargaining agreement on August 31, 2024, which obliged the company to pay a wage increase in favor of the employees. GLU then demanded salary differentials starting June 1, 2024. However, GCI argued that the provisions of the new collective bargaining agreement as to the wage increase shall be prospective in application beginning August 31, 2024. When shall the salary increase be reckoned? Explain.

BAD

ANSWER (Underscoring supplied):

"It shall be reckoned starting from Aug. 31. Labor Law provides that once a CBA has expired and but both parties subsequently agree to enter into a new CBA, the terms and conditions of the old CBA also expires and the terms of the new CBA must be followed starting from the date the new agreement was finalized. Given this, since the initial CBA has already expired, GCI is correct in arguing that the wage increase prospectively applies beginning August 31, the date the new CBA was signed by both parties."

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COMMENTS

Grammar, Choice of Terms, Aug. 31, CBA		
Date of Signing	**Date Agreed Upon**	**6-Month Rule**

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WORSE

ANSWER (Underscoring supplied):

"Under the Labor Code, the application of the stipulations and negotiations agreed upon by the employer and employee-members shall commence upon the beginning of the CBA. In this case, since the renewal of the new collective bargaining agreement commenced on 31 August 2024, the wage increase in favor of the employees will commence in the first payment of salaries and wages after the signing of the new CBA."

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COMMENTS

Defective Grammar		
Aimless	6-Month Rule not applied	Improper Terms

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WORST

ANSWER (Underscoring supplied):

"The salary increase shall be reckoned on August 31, 2024.

The Labor Code and prevailing jurisprudence provides that salary increases shall be applied prospectively. The SC further held that applying salary increases retroactively will cause industrial disharmony between several employers and the constitutional guarantee that the employers will also be protected will be violated.

In this case, GLU had signed the bargaining Agreement on August 31. They had agreed that the increases will begin on the same date. As such, the reckoning period is August 31, 2024."

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COMMENTS

The law and jurisprudence mentioned do not exist.		
SC said nothing about industrial disharmony <u>among employers</u>.	No agreement to make the salary increases take effect on date of signing.	The examinee changed the facts of the problem.

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RE-WRITING the PROBLEMATIC ANSWERS

1

BAD

"It shall be reckoned starting from Aug. 31. Labor Law provides that once a CBA has expired and but both parties subsequently agree to enter into a new CBA, the terms and conditions of the old CBA also expires and the terms of the new CBA must be followed starting from the date the new agreement was finalized. Given this, since the initial CBA has already expired, GCI is correct in arguing that the wage increase prospectively applies beginning August 31, the date the new CBA was signed by both parties."

RECTIFIED

When parties agree to renegotiate their expired CBA, the economic provisions (e.g., salary increases)shall take effect on the day following the date of expiry of the old economic provisions (31 May 2024) and not the date of signing of the new CBA (31 August 2024). This rule applies here; hence, the salary increases shall be effective on 1 June 2024.

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2

BAD

"Under the Labor Code, the application of the stipulations and negotiations agreed upon by the employer and employee-members shall commence upon the beginning of the CBA. In this case, since the renewal of the new collective bargaining agreement commenced on 31 August 2024, the wage increase in favor of the employees will commence in the first payment of salaries and wages after the signing of the new CBA."

RECTIFIED

On the date agreed upon by the parties, the provisions of a perfected CBA take effect. When the economic provisions are renegotiated, the new economic provisions, *e.g.,* salary increases, shall be effective on the day following date of expiry of the old economic provisions under three conditions, *viz.,* (1) the company is organized, as here; (2)the CBA is voluntary, as here; and (3) the new economic provisions are concluded with six months from date of expiry of the old economic provisions, as here.

Therefore, the reckoning date is 1 June 2024.

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3

WORST

"The salary increase shall be reckoned on August 31, 2024.

The Labor Code and prevailing jurisprudence provides that salary increases shall be applied prospectively. The SC further held that applying salary increases retroactively will cause industrial disharmony between several employers and the constitutional guarantee that the employers will also be protected will be violated.

In this case, GLU had signed the bargaining Agreement on August 31. They had agreed that the increases will begin on the same date. As such, the reckoning period is August 31, 2024."

RECTIFIED

The reckoning date is 1 June 2024.

The new economic provisions of a CBA shall take effect in accordance with the 6-Month Rule which applies when the CBA is voluntary because it is the product of negotiations; and the company is an organized establishment because there is a pre-existing CBA. If, as here, the new economic provisions are concluded within six months from date of expiry of the old economic provisions then the new economic provision, like salary increases, shall be retroacted to the day immediately following date of expiry of the old economic provisions which is 31 May 2024. Therefore, the salary increase shall take effect on 1 June 2024.

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PART 1

HOW TO ANSWER

Answer

SUMMARY

1. The Toulmin Method *vis-a-vis* ALAC
2. Brevity
   Clarity
   Coherence
3. Law
   Language
   Logic

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ANSWER

Major Premise	**Legal Basis** (Warrant & Backing)
Minor Premise	**Application** (Ground = Facts)
Conclusion	**Conclusion**

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SUMMARY

Claim

ANSWER : Yes, Rio is correct.

Warrant Ground Backing

The Magna Carta of Seafarers vests jurisdiction on the Voluntary Arbitrator if the seafarer's employment contract is covered by a CBA. Hence, although the CBA has no express stipulation reassigning jurisdiction from the Labor Arbiter as jurisprudence requires, the letter of the Magna Carta controls because it is the latest law on the matter.

Qualifier Refutation

Therefore, Rio is correct in bringing his disability compensation claim to voluntary arbitration.

Consistency

A L A C

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EXERCISE 1

Arrange the following sentences into an ALAC answer. Provide the necessary punctuations, conjunctions , upper case and conclusion.

1. the prescriptive period for assailing a dismissal is four years pursuant to Art. 1146 of the New Civil Code
2. hence, the last day of the 4-year prescriptive period was 9 August 2025
3. he sought SEnA assistance on 15 August 2025
4. denver was directly dismissed on 8 August 2021
5. yes, the complaint is barred by prescription
6. the date of filing of the SEnA request is the reckoning date for purposes of prescription

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ALAC

Yes, the complaint is barred by prescription.

The prescriptive period for assailing a dismissal is four years pursuant to Art. 1146 of the New Civil Code. Denver was directly dismissed on 8 August 2021; hence, the last day of the 4-year prescriptive period was 9 August 2025. The date of filing of the SEnA request is the reckoning date for purposes of prescription but he belatedly sought SEnA assistance on 15 August 2025.

Therefore, the dismissal of the complaint on the ground of prescription is proper.

EXERCISE 2

Interweave “regardless of whether the disputants stand in the proximate relation of employer and employee” (Art. 219-l, Labor Code) with the following facts. Use prepositions.

1. Sonny was supplied by Dragon Security Agency, Inc., a licensed security provider with substantial capital, to Texas Instruments (TI).
2. After five years of continued posting with TI, Sonny demanded regularization from TI.
3. TI opposed the demand of Santos on the ground that he was not its employee.
4. Nevertheless, Santos filed a complaint against TI for regularization with the Labor Arbiter.
5. However, the Labor Arbiter dismissed the complaint for lack of jurisdiction.

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INTERWEAVING

A labor dispute may obtain between parties not actually related as employer and employee due to the phrase "regardless of whether the disputants stand in the proximate relation of employer and employee" in Art. 219 (l) of the Labor Code. Hence, notwithstanding the fact that the contracting arrangement between Dragon Security Agency, Inc. and TI was a legitimate job contracting arrangement as to limit Sonny's employment status in relation to TI to unpaid salaries only (Art. 106, Labor Code), still the dispute was a labor dispute which should have been entertained by the Labor Arbiter by giving due course to the complaint for the purpose of receiving evidence of employer-employee relationship between Sonny and TI.

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Pointer 1
LONG BAR QUESTIONS

POINTERS

1. Do not read the facts yet.
2. Go to the bottom and find the issue/s.
3. Recall the applicable law.
4. Determine which facts are relevant to the resolution of the issues/s.
5. Read the facts and mark the relevant facts.
6. Understand your instruction and answer accordingly.

Exempli Gratia:

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Question 15 (Bar 2022)

In 2019, as a response to a viral #UniversityDoBetter movement, a university announced that it would create the position of independent gender auditor answerable only to the university's Board of Regents.

The #UniversityDoBetter movement had arisen when a high school student started to post on social media complaints alleging sexual improprieties by some professors. Others soon followed with their own stories. Even traditional media outlets covered their stories. True to its promise, the university engaged one of its former professors with profound feminist views as gender auditor.

The contract stipulated a performance review after five months of the gender auditor's being engaged. The gender auditor's performance was never the subject of any assessment by the Board of Regents.

For about two years, the gender auditor submitted several candid findings on the behavior of some members of the university's faculty and administration. In January 2021, the gender auditor submitted a report that the university's management, including the Board of Regents, enabled and facilitated a hostile environment not only for women but also for those whose sexual orientation, gender identity, or gender expression were considered "nonconforming," i.e., members of the lesbian, gay, bisexual, transgender, queer, intersex, asexual, and other gender and sexual minorities (LGBTQIA+) community. This report leaked and stirred a controversy, causing the university president to be dismissed from their post.

In January 2022, after the president's dismissal, the gender auditor received a letter from the Board of Regents, requiring the submission of a performance assessment to determine whether the gender auditor can be considered a regular employee.

The gender auditor seeks your advice because you passed the #BestBarEver2020_21 and were recognized for exemplary performance.

Is the gender auditor still a probationary employee? Explain briefly.

Answer 1:

No. The gender auditor is no longer a probationary employee for the following reasons:

First, he survived the stipulated probationary period of 5 months. Hence, pursuant to Art. 296 of the Labor Code, he became a regular employee on the day immediately following the expiry of his 5-month pre-regularization employment.

Second, his engagement as independent gender auditor was in the nature of compliance by the university with its statutory duty to act on all complaints for sexual harassment (Sec. 5, R.A. 7877). Instead of forming a Committee on Decorum and Investigation (CODI), the university deployed a one-man investigating team to look into complaints. Said statutory requirement attached to the position offered him the character of a necessary and desirable position in the usual affairs of the university with its tuition-paying students.

Therefore, the gender auditor was able to attain regular employment status .

Answer 2:

No. The gender auditor was able to attain regular employment status for the following reasons:

First, he survived the stipulated probationary period of 5 months. Hence, pursuant to Art. 296 of the Labor Code, he became a regular employee on the day immediately following the expiry of his 5-month pre-regularization employment.

Second, his engagement as independent gender auditor was in the nature of compliance by the university with its statutory duty to act on all complaints for sexual harassment (Sec. 5, R.A. 7877). Instead of forming a Committee on Decorum and Investigation (CODI), the university deployed a one-man investigating team to look into complaints. Said statutory requirement attached to the position offered him the character of a necessary and desirable position in the usual affairs of the university with its tuition-paying students.

Therefore, the gender auditor is no longer a probationary employee.

Answer 3:

No.

The gender auditor is no longer a probationary employee for the following reasons: First, he survived the stipulated probationary period of 5 months. Hence, pursuant to Art. 296 of the Labor Code, he became a regular employee on the day immediately following the expiry of his 5-month pre-regularization employment.Second, his engagement as independent gender auditor was in the nature of compliance by the university with its statutory duty to act on all complaints for sexual harassment (Sec. 5, R.A. 7877). Instead of forming a Committee on Decorum and Investigation (CODI), the university deployed a one-man investigating team to look into complaints. Said statutory requirement attached to the position offered him the character of a necessary and desirable position in the usual affairs of the university with its tuition-paying students.

Therefore, the gender auditor was able to attain regular employment status .

CONCLUSION

ARGUMENT

RE-CONCLUSION

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No. The gender auditor was able to attain regular employment status for the following reasons:

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Second, his engagement as independent gender auditor was in the nature of compliance by the university with its statutory duty to act on all complaints for sexual harassment (Sec. 5, R.A. 7877). Instead of forming a Committee on Decorum and Investigation (CODI), the university deployed a one-man investigating team to look into complaints. Said statutory requirement attached to the position offered him the character of a necessary and desirable position in the usual affairs of the university with its tuition-paying students.

Therefore, the gender auditor is no longer a probationary employee.

Answer:

No. The gender auditor was able to attain regular employment status for the following reasons:

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Therefore, the gender auditor is a regular employee.

Pointer 2
EMPLOYER-EMPLOYEE RELATIONSHIP

OTHER AFFAIRS

1. What “other” affair is insisted on versus employer-employee relationship?
2. What are the determinants of such “other “ affair?
3. Are there facts tending to show control over means and methods of performance?
4. If none, apply the Principle of Primacy of Facts and affirm the “other “ affair.

Exempli Gratia:

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QUESTION 1 (Bar 2022)

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 driver partners 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: J Lopez, **DUSOL V. LAZO**, G.R. No. 200555, 20 January 2021. **Emp-Emp Relationship v. Partnership** (Substantial Contribution & Agreement to Divide Profits). Also, the latest Lazada Case.

Pointer 3
EXPOSE-EXPLAIN METHOD

SIMPLE PRESENTATION

1. If sure of your answer, give your conclusion.It must be responsive.
2. Leave a space, indent and give your grounds as (1) or (a) and (2) or (b) etc.
3. Leave a space, indent and argue your first ground. “As to the first,”
4. Leave a space, indent and argue your second ground.As to the second,” etc.

Exempli Gratia:

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Question 14 (Bar 2020-2021)

Upon the owner's instructions, the restaurant manager served a notice of termination on a cashier who has been employed in that restaurant for more than five years. Effective immediately, the notice was based on the alleged insubordination of the cashier.

The owner had ordered the termination immediately after learning from the manager that the cashier was asking whether the restaurant was remitting Social Security System contributions deducted from employees' salaries.

Will an action for illegal dismissal filed by the cashier prosper? Explain briefly.

Answer:

Yes. The cashier's action for illegal dismissal will prosper for the following reasons:

(a) his dissociation as a regular employee is not for a just or authorized cause; and
(b) he was denied statutory due process.

As to the first, an at-will employment is repugnant to the tenurial guarantee of both **Art. 294** of the **Labor Code** and **Sec. 3, Art. XIII** of the **Constitution**. The statutory guarantee requires that employees who have attained tenure under **Art. 295** of the **Labor Code**, which the cashier has attained owing to the nature of his work as necessary, desirable, vital and indispensable to the restaurant business of his employer – not to mention his 5-year tenure – can only be dismissed based on fault or culpability *(**Art. 297, Labor Code**)* or as authorized by Book VI *(**Arts. 298** and **299, Labor Code**)*.

The alleged insubordination, although a listed just cause, lacks factual support. A just cause has legal meaning; it has elements; and it has governing case law. Applicable case law requires that the disobedience be characterized by wrongful and perverse attitude ***(Gold City Integrated Port Services v. NLRC, 89 SCRA 811).*** Before then, **Art. 297** of the **Labor Code** requires willfulness. Hence, absent violation of any reasonable workplace rule or work-related instruction made known earlier to the cashier, the basis of his dismissal cannot possibly come within the legal meaning of insubordination,

As to the second, **Art. 292** of the **Labor Code** requires observance of the prescribed pre-termination procedure consisting of a notice to explain and a notice of termination, which notices must be connected by observance of the ample opportunity to be heard prescript. Here, none of these requirements has been observed.

Pointer 4
DEFINITIONS

IN or OUT

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Question No. 19 (Bar 2023)

Consolacion is a Hong Kong-based, Filipino flight attendant of Hiroshi Airlines (HA), a Japanese airline licensed to do business in the Philippines. She was dismissed from employment as she was accused of stealing wine bottles and cheese from the Melbourne-bound aircraft of HA. Consolacion then instituted a complaint for illegal dismissal and money claims against HA with the Labor Arbiter (LA). In its defense, HA asserted that the LA had no jurisdiction to hear the dispute as the incident occurred in a foreign jurisdiction and involved a foreign entity. Does the LA have jurisdiction over the case? Explain.

Answer:

Yes.

The LA has jurisdiction over the complaints of OFWs arising from employer-employee relationship, contract, or law (*Sec. 7, R.A. 10022*).

Consolacion was an OFW because she was engaged in remunerative activity as a flight attendant in *Hong Kong,* a country whereof she was not a citizen as contemplated by *Sec. 3, R.A. 10022* (*Salvacion La Madrid vs. Cathay Pacific Airways, Ltd.,* G.R. No.200658, 23 June 2021)

Note: RA 11641

RA 11641

OFW Definition: Sec 3 (g)

Overseas Filipino Worker (OFW) – refers to a Filipino who is to be engaged, is engaged, or has been engaged in remunerated activity in a country of which he or she is not an immigrant, citizen, or permanent resident or is not awaiting naturalization, recognition, or admission, whether land-based or sea-based regardless of status; **excluding** a Filipino engaged under a government-recognized exchange visitor program for cultural and educational purposes. For purposes of this provision, a person engaged in remunerated activity covers a person who has been contracted for overseas employment but has yet to leave the Philippines, regardless of status, and includes "**Overseas Contract Workers**". The term "OFW" is synonymous to "Migrant Worker";

RA 10022

Sec. 2 (a)

"Overseas Filipino worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker."

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RA 11641

Definition: Sec. 3

(j) **Seafarer** – refers to an OFW who is engaged in employment in any capacity on board a merchant marine vessel plying international waters or other sea-based craft of similar category. For purposes of this Act, it shall include fishers onboard commercial fishing vessels on international waters or as defined under relevant maritime conventions, cruise ship personnel, yacht crew, those serving on mobile offshore and drilling units in the high seas, and other persons similarly situated.

Pointer 5
DISTINCTION

Disjunctive Syllogism

Either the vessel is engaged in maritime navigation or inland navigation. It is not a RoRo; hence, it is not engaged in inland navigation. Therefore, being engaged in maritime navigation as it crosses ocean boundaries, Denver is a seafarer because he works aboard it as a cook.

QUESTION:

Discuss and differentiate between the procedural requirements in termination of employment for (i) just and (ii) authorized causes. Explain briefly. (5 points)

ANSWER:

The prescribed pre-termination procedures are as follows:

(1)Termination for a Just Cause. Art. 292 of the Labor Code requires service of two notices on the employee sought to be dismissed as follows: The first shall apprise him of the ground on which his intended dismissal is to be effected. The second shall notify him of his employer's final decision to dismiss him. In between these notices, the employee must be given ample opportunity to come to the defense of his livelihood.

(2)Termination for an Authorized Cause. A termination under Art. 298 of the Labor Code requires notice to both DOLE-RD and employee 30 days before the intended dismissal. Under Art. 299, a medical termination shall be preceded by two notices, the first of which is to apprise the sick of employee of his employer's intention to dismiss him and the second is the communication of the latter's final decision to effect the intended dismissal. In between, the employee shall be given the opportunity to produce medical evidence to prove his fitness for continued employment.

The difference between above termination procedures is, in the event of violation thereof, the employer shall be assessed nominal damages as follows: P30,000.00 if he violates statutory due process as prescribed by Art. 292; and P50,000.00 if he violates the 30-day notice rule or the procedure for a medical termination.

B.17 (Bar 2019)

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

In her first volleyball season, the University placed ninth (9th) out of 10 participating teams. Soon after the end of the season, the Vice-President for Sports informed Ms. A that she was a mere probationary employee and hence, she need not come back for the next season because of the poor performance of the team.

In any case, the Vice-President for Sports claimed that Ms. A was a fixed-term employee whose contract had ended at the close of the year.

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

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

Answer:

(a) 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)*.

(b) The violation of Mr. A's right to statutory due process requires the assessment of the University with nominal damages. The amount is P30,000.00 because a dismissal for failure to qualify is akin to a dismissal for a just cause *(Abbott Laboratories v. Alcaraz, G.R. No. 192571, 23 July 2013).*

Question VII (Bar 2018)

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%)

Question VII (Bar 2018)

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 & 102 552, 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*)**.

Distinctions in Labor Law

1. LSL
2. LRL
3. SocLeg

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Pointer 6

FOLLOW-THROUGH METHOD

WHY-HOW-WHAT-WHEN-WHERE

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Ask Relevant Questions and Answer Them

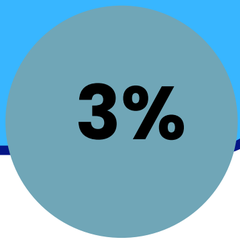
Conclusion
"Yes, Denver was illegally dismissed."
HOW?

2nd Paragraph
1st sentence is the answer to the question.
"Denver's dismissal was not for a just cause."
WHAT is the ground?

2nd Sentence
"The ground relied upon by X Co. Is breach of trust."

WHY
Is it not a just cause?

3rd Sentence
However, he is not a manager, or occupant of a position of trust.



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Q XIII (Bar 2018)

Nicodemus was employed as a computer programmer by Network Corporation, a telecommunications firm. He has been coming to work in shorts and sneakers, in violation of the "prescribed uniform policy" based on company rules and regulations. The company human resources manager wrote him a letter, giving him 10 days to comply with the company uniform policy. Nicodemus asserted that wearing shorts and sneakers made him more productive, and cited his above-average output. When he came to work still in violation of the uniform policy, the company sent him a letter of termination of employment. Nicodemus filed an illegal dismissal case. The Labor Arbiter ruled in favor of Nicodemus and ordered his reinstatement with backwages. Network Corporation, however, refused to reinstate him. The NLRC 1st Division sustained the Labor Arbiter's judgment. Network Corporation still refused to reinstate Nicodemus. Eventually, the Court of Appeals reversed the decision of the NLRC and ruled that the dismissal was valid. Despite the reversal, Nicodemus still filed a motion for execution to with respect to his accrued backwages.

a. Were there valid legal grounds to dismiss Nicodemus from his employment? (2.5%)
b. Should Nicodemus' motion for execution be granted? (2.5%)

Answer:

a. Yes.

The acts of Nicodemus constituted willful disobedience. The company rule he violated was a reasonable workplace rule; it pertained to his duty; it was made known to him; he wilfully violated it; and his willful violation is characterized by wrongful and perverse mental attitude *(Montallana v. La Consolacion College Manila, et al., G.R. No. 208890, 8 December 2014)* as shown by his persistence and incorrigibility. In fact, habituality is not even an element of insubordination. *(Aparente v. NLRC, G.R. No. 117652, 27 April 2000)*

b. Yes.

Nicodemus is entitled to reinstatement wages. Had Network Corporation complied with the reinstatement order, he would have been momentarily restored to both his work and pay. Absent justification for the non-reinstatement, the duty to pay the wages he would have earned had he been reinstated and allowed to work until reversal of the judgment must be imposed on the company *(Garcia, et al. v. PAL, Inc., G.R. No. 164856, 20 January 2009).*

Pointer 7
COMPUTATION

DO NOT PANIC

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Q VI (Bar 2018)

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: 40 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. 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 favor 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.

Certification Election: Double Majority Rule

Not Barred
Major ELVOT CASVOT
Validity

Major VOT VALVOT
Winner

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Pointer 8

IDENTIFYING THE ISSUE TO RESOLVE

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Answer:

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

(1) Whether or not Cesar was a 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 his 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. Eulogio Dumadag, G.R. No. 194362, 26 June 2013***)

Pointer 9
PROPORTIONALITY

POINT ASSIGNMENT DETERMINES LENGTH OF ANSWER.

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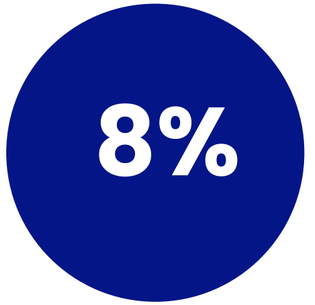
V (Bar 2013)

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 225(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 interpretative 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).*

Answer:

The NLRC exceeded its appellate jurisdiction.

Art. 225 (c) of the *Labor Code*, unlike old interpretative 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).*

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*)

Pointer 10
ANALOGY

IF YOU DO NOT KNOW THE ANSWER,
GIVE AN ANSWER.

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Question 13 (Bar 2020-2021)

A nongovernmental organization operating in the Philippines which seeks to promote equality and human dignity in the workplace has 40 rank-and-file employees.

Can the employees of this cause-oriented, non-governmental organization form a labor union? Explain briefly.

Answer:

Yes, they can.

Organizational right is constitutionally guaranteed to all workers (***Sec. 3, Art. XIII, Constitution***). Workers, in turn, are members of the labor force, whether employed or not (***Art. 13, Labor Code***). Workers with employers are employees whose right to self- organization, i.e., to join, form or assist, is expressly secured by **Art. 253** of the **Labor Code**. NGO employees are akin to the employees of charitable institutions as expressly listed by said provision; hence, they have organizational capacity. Notably, the NGO employees in the problem mean to promote workplace democracy and just and humane conditions of work which are constitutional labor principles. Hence, there is more reason to allow them to pursue such legitimate ends thru their exercise of the right to form a labor union.

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Art. 110
Board Member = Manager

EO 180
Director (Manager)

Art. 82
Family Driver (PIPSOA)

Art. 13
License (Authority)

POEA-SEC
Sickness Allowances = Sickness Benefits

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Thank You!