# BAR EXAMINATIONS 2006
# LABOR AND SOCIAL LEGISLATION

***Suggested Answers***
***By***

**PROF. JOSELITO GUIANAN CHAN**

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**-I-**

**1. What is the purpose of labor legislation? 2.5%**

*Suggested Answer:*

Labor legislation refers to laws, statutes, rules, regulations and jurisprudence which set employment standards and govern the relations between capital and labor. Its purpose is to breathe life into the protection-to-labor clause of the Constitution *(Section 3, Article XIII, 1987 Constitution)* by affording protection to labor, promoting full employment, ensuring equal work opportunities regardless of sex, race or creed, regulating the relations between workers and employers and assuring that the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work are amply protected. *(Article 3, Labor Code).*

**2. What is the concept of liberal approach in interpreting the Labor Code and its Implementing Rules and Regulations in favor of labor? 2.5%**

*Suggested Answer:*

This concept of liberal approach is enshrined both in the Labor Code and the Civil Code. More specifically, the Labor Code declares that all doubts in the implementation and interpretation of the provisions of the Code, including its implementing rules and regulations, shall be resolved in favor of labor. The Civil Code likewise pronounces that *"in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer." (See Article 4, Labor Code; Article 1702, Civil Code).*

This concept, however, should not apply where the pertinent provisions of the Labor Code leave no room for doubt either in their interpretation or application. *(Bonifacio vs. Government Service Insurance System, 146 SCRA 276).*

**3. What property right is conferred upon an employee once there is an employer-employee relationship? Discuss briefly. 5%**

*Suggested Answer:*

Once an employer-employee relationship is established, such employment is treated, under our constitutional framework, as a property right. When a person has no property, his job may possibly be his only possession or means of livelihood and those of his dependents. When a

person loses his job, his dependents suffer as well. The worker should, therefore, be protected and insulated against any arbitrary deprivation of his job. *(Philips Semiconductors [Phils.], Inc. vs. Fadriquela, G. R. No. 141717, April 14, 2004; Philippine Geothermal, Inc. vs. NLRC, 189 SCRA 211 [1990]).*

**-II-**

**Wonder Travel and Tours Agency (WTTA) is a well known travel agency and an authorized sales agent of the Philippine Air Lines. Since majority of its passengers are overseas workers, WITA applied for a license for recruitment and placement activities. It stated in its application that its purpose is not for profit but to help Filipinos find employment abroad.**

**Should the application be approved? 5%**

*Suggested Answer:*

The application should not be approved for the simple reason that the law categorically declares that travel agencies and sales agencies of airline companies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment, whether for profit or not. *(Article 26 of the Labor Code).* It is, therefore, of no consequence that its purpose is not for profit but to help Filipinos find employment abroad.

(**Note:** It must be stressed that the *POEA Rules* disqualify not only travel agencies and sales agencies of airline companies but also the following, to wit:

a. Officers or members of the Board of any corporation or members in a partnership engaged in the business of a travel agency; and

b. Corporations and partnerships, when any of its officers, members of the board or partners, is also an officer, member of the board or partner of a corporation or partnership engaged in the business of a travel agency. *(Section 2, Rule I, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers* [February 4, 2002]*; Section 2, Rule I, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers* [May 23, 2003]*).*

**-III-**

**Can an overseas worker refuse to remit his earnings to his dependents and deposit the same in the country where he works to gain more interests? Explain. 5%**

*Suggested Answer:*

No, such refusal to remit his earnings to his dependents is not allowed under the law which considers mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the country in accordance

with rules and regulations prescribed by the Secretary of Labor. *(Article 22 of the Labor Code)*

The reason for this mandatory requirement is to protect the welfare of families, dependents and beneficiaries and to ensure that the foreign exchange earnings of these workers are remitted through authorized financial institutions of the Philippine government in line with the country's economic development program. Non-compliance with the laws and regulations on remittance of foreign exchange earnings and recourse to the use of unauthorized and unofficial financing institutions had led to the detriment of the country's balance of payments and economic development program. Consequently, it is imperative that the mandatory remittance requirement be fully complied with by all concerned through the institution of appropriate remittance facilities and the imposition of effective sanctions. *("Whereas" clauses, Executive Order No. 857; Section 2, Rule XIII, Book I, Rules to Implement the Labor Code; Section 1, Executive Order No. 857; Section 2, Rule III, Rules and Regulations Implementing Executive Order No. 857).*

**-IV-**

**For humanitarian reasons, a bank hired several handicapped workers to count and sort out currencies. Their employment contract was for six (6) months. The bank terminated their employment on the ground that their contract has expired prompting them to file with the Labor Arbiter a complaint for illegal dismissal. Will their action prosper? 5%**

*Suggested Answer:*

No, the complaint will not prosper because what they entered into was a valid fixed-term employment contract for six (6) months. Upon the expiration of the contract, there is no more employment relationship to speak of.

Under the law, it does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties. *(Article 280, Labor Code; Pangilinan vs. General Milling Corporation, G. R. No. 149329, July 12, 2004; St. Theresa's School of Novaliches Foundation vs. NLRC, G. R. No. 122955, April 15, 1998).*

It must be stressed that the validity of fixed-term contracts will be upheld for as long as the fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent or it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter. *(Philips Semiconductors [Phils.], Inc. vs. Fadriquela, G. R. No. 141717, April 14, 2004; Medenilla vs. Philippine Veterans Bank, G. R. No. 127673, March 13, 2000).*

**-V-**

**Can an employer and an employee enter into an agreement reducing or increasing the minimum percentage provided for night differential pay, overtime pay, and premium pay? 5%**

*Suggested Answer:*

While as a general rule, the parties may enter into any kind of stipulation in a contract and the same shall be considered as the law between them, however, it must be emphasized that a labor contract is not an ordinary contract since it is impressed with public interest. Thus, the parties are prohibited to enter into any stipulation which may result in the reduction of any employee benefits. In the instant case, the reduction by the employer, even with the consent of the employee, of the legally-mandated minimum percentage of such benefits as night differential pay, overtime pay and premium pay, is not valid. *(Article 100, Labor Code; See also Section 6, Rule II; Section 9, Rule III; Section 11, Rule IV; Section 6, Rule V; Section 6, Rule VI, Section 12, Rule XII; Section 20, Rule XIII; Section 15, Rule XIV, Book III, Rules to Implement the Labor Code; Republic Planters Bank, now known as PNB-Republic Bank, vs. NLRC, et al., G. R. No. 117460, Jan. 6, 1997; Davao Fruits Corporation vs. Associated Labor Union, G. R. No. 85073, Aug. 24, 1993, 225 SCRA 567).*

However, the same may not be said on the matter of increasing said benefits. The employer and the employee are not prohibited under the law to enter into an agreement for the increase of whatever benefit being mandated by law for the simple reason that any such increase certainly redounds to the benefit of the employee. Thus, the employer and the employee may legally and validly agree to increase the minimum percentage provided for night differential pay, overtime pay, and premium pay.

**-VI-**

**1. When is there a wage distortion?**

*Suggested Answer:*

Under the law, there is wage distortion if there is a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation. *(Article 124, Labor Code; See also Item [p], Definition of Terms, Rules Implementing Republic Act No. 6727; Section 4 [m], Rule I, Revised Rules of Procedure on Minimum Wage Fixing dated Nov. 29, 1995; Section 1[l], Rule II, NCMB Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings [Oct. 15, 2004]).*

**2. How should a wage distortion be settled?**

*Suggested Answer:*

A wage distortion may be settled unilaterally by the employer or through voluntary negotiations or arbitration. *(Associated Labor Unions-TUCP vs. NLRC, et al., G. R. No. 109328, Aug. 16, 1994, 235 SCRA 395).*

In *organized establishments*, where the application of any prescribed wage increase by virtue of a Wage Order issued by the Regional Tripartite Wages and Productivity Board results in distortions of the wage structure within an establishment, the employer and the union are required to negotiate to correct the distortions. Any dispute arising from wage distortions should be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) days from the time said dispute was referred to voluntary arbitration. *(Paragraph 1, Section 1, Rule VII, Revised Rules of Procedure on Minimum Wage Fixing dated Nov. 29, 1995; Article 124, Labor Code; Section 7, Chapter III, Rules Implementing Republic Act No. 6727).*

The rule is different in *unorganized establishments.* In cases where there are no collective agreements or recognized labor unions, the employers and workers are required to endeavor to correct such distortions. Any dispute arising therefrom should be settled through the National Conciliation and Mediation Board (NCMB) and, if it remains unresolved after ten (10) days of conciliation, should be referred to the appropriate branch of the National Labor Relations Commission (NLRC). *(Paragraph 2, Section 1, Rule VII, Revised Rules of Procedure on Minimum Wage Fixing dated Nov. 29, 1995; Article 124, Labor Code; Section 7, Chapter III, Rules Implementing Republic Act No. 6727).*

**3. Can the issue of wage distortion be raised in a notice of strike? Explain. 10%**

*Suggested Answer:*

No, a strike is illegal if based on alleged salary distortion. It is specifically provided in the law that ***"any issue involving wage distortion shall not be a ground for a strike/lockout."*** *(Republic Act No. 6727, otherwise known as the Wage Rationalization Act; See also Section 16, Chapter I, Implementing Rules of Republic Act No. 6727; Ilaw at Buklod ng Manggagawa [IBM] vs. NLRC, G. R. No. 91980, June 27, 1991).*

The reason for the prohibition is that it is the legislative intent that solution to the problem of wage distortions should be sought by voluntary negotiation or arbitration, and not by strikes, lockouts or other concerted activities of the employees or management.

**-VII-**

**Inday was employed by Herrera Home Improvements, 'Inc. (Herrera Home) as interior decorator. During the first year of her employment, she did not report for work fur one month. Hence, her employer dismissed her from the service. She filed with the Labor Arbiter a complaint for illegal dismissal alleging she did not abandon her work and that in terminating her employment, Herrera Home deprived her of her right to due process. She thus prayed that she be reinstated to her position.**

**Inday hired you as her counsel. In preparing the position paper to be submitted to the Labor Arbiter, explain the standards of due**

**process which should have been observed by Herrera Home in terminating your client's employment. 5%**

*Suggested Answer:*

As Inday's counsel, I will cite the fact that she was not afforded due process. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work. *(New Ever Marketing, Inc. vs. CA, G. R. No. 140555, July 14, 2005).*

For the ground of abandonment to be validly invoked, two (2) notices are required to be served on Inday, *viz.*:

1. *first* notice asking her to explain why she should not be declared as having abandoned her job; and
2. *second* notice to inform her of the employer's decision to dismiss her on the ground of abandonment.

In the instant case, there is no showing that Inday's employer ever complied with the foregoing procedural due process requisites. The said notices should have been sent to her last known address. It must be noted that this notice requirement is not a mere technicality but a requirement of due process to which every employee is entitled to insure that the employer's prerogative to dismiss or lay-off is not abused or exercised in an arbitrary manner. *(Kingsize Manufacturing Corporation vs. NLRC, G. R. Nos. 110452-54, Nov. 24, 1994; Cebu Royal Plant [SMC] vs. Deputy Minister of Labor, Aug. 12, 1987).*

**-VIII-**

**The modes of determining an exclusive bargaining agreement are:**

**a. voluntary recognition**
**b. certification election**
**c. consent election**

**Explain briefly how they differ from one another. 5%**

*Suggested Answer:*

**a.** *"Voluntary Recognition"* refers to the process by which a legitimate labor union is recognized by the employer as the exclusive bargaining representative or agent in a bargaining unit. It is proper only in case there is only one (1) legitimate labor organization existing and operating in an unorganized establishment. It cannot be extended in case there are two or more unions in contention.

**b.** *"Certification election"* refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is conducted only upon the order of the Department of Labor and Employment. *(Section 1 [h], Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]).*

**c.** *"Consent Election"* refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an

appropriate bargaining unit for purposes of collective bargaining or negotiation. It is voluntarily agreed upon by the parties, with or without the intervention by the Department of Labor and Employment. *(Section 1 [h], Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]).*

*Voluntary recognition* differs from the two others in that the union which has been extended recognition voluntarily by the employer as the sole and exclusive bargaining agent does not have to go through the process of secret balloting and other procedural steps required in the conduct of *certification election* or *consent election.*

To distinguish *consent election* and *certification election*, the *former* is an agreed one, its purpose being merely to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit; while the *latter* is aimed at determining the sole and exclusive bargaining agent of all the employees in an appropriate bargaining unit for the purpose of collective bargaining. From their very nature, the *former* is a separate and distinct process and has nothing to do with the import and effect of a *certification election*.

Moreover, *consent election* is voluntarily agreed upon by the parties, with or without the intervention by the DOLE; while *certification election* is ordered by the DOLE. *(Section 1 [h], Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]).*

By law, as a result of the *consent election*, the right to be the exclusive representative of all the employees in any appropriate collective bargaining unit is vested in the labor union *"designated or selected"* for such purpose *"by the majority of the employees"* in the unit concerned. *(United Restauror's Employees and Labor Union-PAFLU vs. Torres, 26 SCRA 435 [1968]).*

**-IX-**

**Armstrong Corporation, a foreign corporation, intends to engage in the exploration of Philippine natural resources. Mr. Antonio Reyes offered the forest land he owns to the president of the corporation. May Armstrong Corporation enter into a financial and technical assistance agreement (FTAA) with Mr. Reyes to explore, develop, and utilize the land? Explain. 5%**

*Suggested Answer:*

No. Mr. Reyes cannot enter into a financial and technical assistance agreement (FTAA) with the foreign corporation for the following reasons:

1. He cannot own forest land. Forest land is an inalienable public domain. It is owned by the State. *(Section 2, Article XII, 1987 Constitution).*

2. A private individual like him cannot enter into such agreement. It is only the President who is allowed under the Constitution to enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and

utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. *(Ibid.)*

3. It is only the State which has the full control and supervision over the exploration, development and utilization of natural resources. Consequently, it is only the State which may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. It is noteworthy that there is not even a showing in this case that Armstrong Corporation has that permissible capital ownership. *(Ibid.)*

**(NOTE: It seems that this problem/question should have been asked in Political Law and not in Labor Law, it being clear that it carries no single principle which may be deemed germane to Labor Law).**

**-X-**

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

**1. As counsel for the corporation, what steps will you take prior to its closure? 2.5%**

*Suggested Answer:*

Prior to closure, it is imperative that my client should show good faith by first considering other less drastic means such as cost-reduction measures to avoid or minimize losses and consequently, to prevent closure. Closure should only be a measure of last resort when other less drastic means - *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. - have been tried and found to be wanting, inadequate or insufficient.

If the foregoing cost-reduction measures failed and closure appears to be the only viable course to take, then, I will recommend to my client that the due process requirement be complied with by serving separate notices to the employees to be terminated and to the Department of Labor and Employment (DOLE) at least one (1) month before the intended date of effectivity of the termination. *(Catatista vs. NLRC, G. R. No. 102422, Aug. 03, 1995; Armed Forces of the Philippines Mutual Benefit Association vs. Armed Forces Mutual Benefit Association, Inc. Employees Union, 97 SCRA 723).*

**2. Are the employees entitled to separation pay? 2.5%**

*Suggested Answer:*

Since the closure of the business was "***due to serious business losses and financial reverses during the last five (5) years"***, the employees to be terminated are not entitled to any separation pay. Under the law, they are entitled to separation pay only if the closure is not due to

serious business losses and financial reverses. *(Article 283, Labor Code; North Davao Mining Corporation vs. NLRC, [G. R. No. 112546, March 13, 1996]; See also Cama vs. Joni's Food Services, Inc., [G. R. No. 153021, March 10, 2004]).*

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

**1. Is the closure allowed by law? 2.5%**

*Suggested Answer:*

Yes. A careful examination of Article 283 of the Labor Code indicates that closure or cessation of business operation as a valid and authorized ground of terminating employment is not limited to those resulting from business losses or financial reverses. An employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service. It would, indeed, be stretching the intent and spirit of the law if management's prerogative to close or cease its business operations be unjustly interfered with just because said business operation or undertaking is not suffering from any loss. Said provision, in fact, provides for the payment of separation pay to employees terminated because of closure of business not due to losses, thus implying that termination of employees other than closure of business due to losses may be valid. *(J.A.T. General Services vs. NLRC, G. R. No. 148340, Jan. 26, 2004; See also Industrial Timber Corporation vs. NLRC, 339 Phil. 395, 405 [1997]).*

It is only when it is manifest that the closure is motivated not by a desire to avoid further losses but to discourage the workers from organizing themselves into a union for more effective negotiations with management, that the State is bound to intervene and declare the closure as illegal. *(Me-Shurn Corporation vs. Me-Shurn Workers Union – FSM, G. R. No. 156292, Jan. 11, 2005; Carmelcraft Corporation vs. NLRC, 186 SCRA 393, June 6, 1990).*

**2. Are the employees entitled to separation benefits? 2.5%**

*Suggested Answer:*

Since the ground invoked to justify the closure is ***"due to old age of the brothers and sisters"***, hence, **not** due to serious business losses and financial reverses, the employees are entitled to the payment of separation pay in the amount of one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one (1) whole year. *(Article 283, Labor Code; North Davao Mining Corporation vs. NLRC, [G. R. No. 112546, March 13, 1996]; See also Cama vs. Joni's Food Services, Inc., [G. R. No. 153021, March 10, 2004]).*

**-XI-**

**As a result of bargaining deadlock between ROSE Corporation and ROSE Employees Union, its members staged a strike. During the strike, several employees committed illegal acts. The company**

**refused to give in to the union's demands. Eventually, its members informed the company of their intention to return to work. 10%**

**1. Can ROSE Corporation refuse to admit all the strikers?**

*Suggested Answer:*

No. An employer cannot refuse to re-admit strikers who want to return to work. An employer, in fact, is required under the law to provide for the admission of all workers under the same terms and conditions prevailing before the strike. An employer who refuses to re-admit returning workers may be liable, upon filing of proper petition, for the payment of wages and other benefits, from the date of actual refusal until the workers are re-admitted. *(No. 24, Guidelines Governing Labor Relations).*

**2. Assuming the company admits all the strikers, can it later on dismiss those employees who committed illegal acts?**

*Suggested Answer:*

Yes. The re-admission by the employer of all the strikers who voluntarily returned to work does not have the effect of rendering as moot and academic, the issue of the legality of the strike. The employer may still pursue the declaration of the illegality of the strike and secure the dismissal of the union officers and union members who committed illegal acts during the strike. *(Insurefco Pulp vs. Insurefco, 95 Phil. 761).*

[**Note:** In the 2004 case of ***Unlicensed Crews Employees Union – Associated Labor Unions [TASLI-ALU] vs. CA,*** [G. R. No. 145428, July 7, 2004], it was pronounced that an employer may be considered to have waived its right to proceed against the striking employees for alleged commission of illegal acts during the strike when, during a conference before the Chairman of the NLRC, it agreed to reinstate them and comply fully with the return-to-work order issued by the Secretary of Labor and Employment. *(See also Reformist Union of R.B. Liner, Inc. vs. NLRC, 266 SCRA 713 [1997])].*

**3. If due to the prolonged strike, ROSE Corporation hired replacements, can it refuse to admit the replaced strikers?**

*Suggested Answer:*

It depends.

The general rule is that mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. *(Article 264, Labor Code).*

Thus, in an *unfair labor practice* strike, replacements hired by the employer during the strike may not be permanently employed. The employer is duty-bound to discharge them when the strikers are reinstated to their former positions. *(The Insular Life Assurance Co., Employees Association vs. Insular Life Assurance Co., 37 SCRA 244; Norton & Harrison Company and Jackbilt Concrete Blocks Co. Labor Union vs. Norton & Harrison Co. and Jackbilt Concrete Blocks Co., G. R. No. L-*

*18461, Feb. 10, 1967; Feati University vs. Bautista, G. R. No. L-21278, Dec. 27, 1966).*

In an *economic* strike, however, the hiring of replacements may be done on a permanent basis. And in the event that the strikers decide to resume their work, the employer is not duty-bound to dismiss said permanent replacements. *(Consolidated Labor Association of the Philippines vs. Marsman & Co., G. R. Nos. L-17038 and L-17057, July 31, 1964).*

**-XII-**

**During their probationary employment, eight (8) employees were berated and insulted by their supervisor. In protest, they walked out. The supervisor shouted at them to go home and never to report back to work. Later, the personnel manager required them to explain why they should not be dismissed from employment for abandonment and failure to qualify for the positions applied for. They filed a complaint for illegal dismissal against their employer.**

**As a Labor Arbiter, how will you resolve the case? 10%**

*Suggested Answer:*

As Labor Arbiter, I will declare that the employees were dismissed illegally. Under the factual setting of this case, the act of the supervisor in shouting at them "*to go home and never to report back to work*" obviously amounts to dismissal. Hence, when the Personnel Manager later on asked them to explain their side, it was nothing but a fruitless attempt at giving a semblance of due process to the probationary employees. Due process certainly cannot be instituted belatedly after the employees were earlier effectively dismissed. As probationary employees, they enjoyed security of tenure during the period of probation, hence, they cannot be terminated during the period of probationary employment and before the expiration thereof except for cause or causes provided by law.

As to the charge of abandonment, there is no question that the employees did not abandon their probationary employment. They were fired without any just cause and without due process. Moreover, the immediate filing of complaint for illegal dismissal by the employees praying for their reinstatement negates the finding of abandonment. They cannot, by any reasoning, be said to have abandoned their work. *(See Unicorn Safety Glass, Inc. vs. Basarte, G. R. No. 154689, Nov. 25, 2004; Samarca vs. Arc-Men Industries, Inc., G.R. No. 146118, Oct. 8, 2003).*

As to the claim that they failed to qualify for their positions, it should be noted that they could not have failed to qualify since at the time they were dismissed, they were still in a "*trial period*" or probationary period. It was because of their peremptory dismissal that they were not able to complete their probationary employment with no fault on their part.

Consequently, because of the antagonism which caused severe strain in the relationship between the illegally dismissed employees and their employer, I shall not order their reinstatement but in lieu thereof, I will award separation pay equivalent to at least one month pay, or one

month pay for every year of service, whichever is higher, in addition to their full backwages, allowances and other benefits.

(**Note:** The case squarely analogous to the facts of this case is *Cebu Marine Beach Resort vs. NLRC,* [G. R. No. 143252, October 23, 2003]. Here, the respondents-probationary employees, while undergoing special training in Japanese customs, traditions, discipline as well as hotel and resort services of the newly opened resort, were suddenly scolded by the Japanese conducting the training and hurled brooms, floor maps, iron trays, fire hoses and other things at them. In protest, respondents staged a walk-out and gathered in front of the resort. Immediately, the Japanese reacted by shouting at them ***to go home and never to report back to work***. Heeding his directive, respondents left the premises. Eventually, they filed a complaint for illegal dismissal and other monetary claims against petitioners. The ruling of the Supreme Court is the suggested answer above).

**-XIII-**

**1. Can a "no-union" win in a certification election? 2.5%**

*Suggested Answer:*

Yes. *"No Union"* is always a choice in a certification election. This proceeds from the premise that the right to join a union carries with it the concomitant right not to join a union. Hence, in a certification election, the voter is required to put a cross (**x**) or check (✓) mark in the square opposite the name of the union of his choice or *"No Union"* if he does not want to be represented by any union. Where majority of the valid votes cast results in *"No Union"* obtaining the majority, the Med-Arbiter shall declare such fact in the order. *(Section 20, Rule IX, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]).*

**2. When does a "run-off" election occur? 2.5%**

*Suggested Answer:*

*"Run-off election"* refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certification or consent election results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. *(Section 1 [ss], Rule I, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, Series of 2003, [Feb. 17, 2003]).*

(**Note:** *"No Union"* shall not be a choice in the run-off election. See *Section 1, Rule X, Book V, Ibid.).*

**-XIV-**

**Determine whether the following minors should be prohibited from being hired and from performing their respective duties indicated hereunder: 5%**

**1. A 17-year old boy working as a miner at the Walwaldi Mining Corporation.**

*Suggested Answer:*

Yes, he is prohibited from working as a miner. Under the law, work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it is performed underground, underwater or at dangerous heights, is considered a "*worst form of child labor*". *(R. A. No. 7610, as amended by R. A. No. 9231).*

**2. An 11-year old boy who is an accomplished singer and performer in different parts of the country.**

*Suggested Answer:*

No, he is not prohibited to work as an accomplished singer and performer since such employment or participation in public entertainment or information (through cinema, theater, radio, television or other forms of media) appears to be essential. It is, however, required that the employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment. It is further required that the following in all instances be strictly complied with:

(a) The employer shall ensure the protection, health, safety, morals and normal development of the child;

(b) The employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and

(c) The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

Moreover, the employer is required to first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements. *(Section 12, R. A. No. 7610).*

**3. A 15-year old girl working as a library assistant in a girls' high school.**

*Suggested Answer:*

Yes, she is not allowed to work as such. The law allows a minor such as this 15-year old girl to work only under the direct and sole responsibility of her parents or legal guardian and where only members of her family are employed. *(Section 12, R. A. No. 7610).*

**4. A 16-year old girl working as a model promoting alcoholic beverages.**

*Suggested Answer:*

Yes, she is prohibited under the law to work as a model promoting alcoholic beverages. This prohibition holds true whether the girl is directly or indirectly promoting alcoholic beverages. *(Section 14, Article VIII, Republic Act No. 7610, as amended by Section 5, R. A. No. 9231).*

**5. A 17-year old boy working as a dealer in a casino.**

*Suggested Answer:*

Yes, the boy is prohibited from working as a dealer in a casino because this type of work, by its nature and the circumstances in which it is carried out, is likely to be harmful to his morals. It is considered under the law as a "*worst form of labor*" because it debases, degrades or demeans the intrinsic worth and dignity of the boy as a human being. Moreover, his work is highly stressful psychologically. *(Section 12-D, R. A. No. 7610, as added by Section 3, R. A. No. 9231).*

**-XV-**

**As a condition for her employment, Josephine signed an agreement with her employer that she will not get married, otherwise, she will be considered resigned or separated from the service.**

**Josephine got married. She asked Owen, the personnel manager, if the company can reconsider the agreement. He told Josephine he can do something about it, insinuating some sexual favors. She complained to higher authorities but to no avail. She hires you as her counsel. What action or actions will you take? Explain. 5%**

*Suggested Answer:*

If I were Josephine's counsel, I will recommend the taking of the following actions:

1. Make representations with the employer regarding the unlawful stipulation against marriage in the employment contract. Under the law, it is unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage. *(Article 136, Labor Code).*

If despite my representations with the employer, my client is dismissed based on said stipulation, I shall file a complaint for illegal dismissal with the Labor Arbiter and pray for such reliefs as reinstatement, full backwages, moral and exemplary damages and attorney's fees.

2. File with the Committee on Decorum and Investigation of Sexual Harassment Cases of the employer, a complaint for sexual harassment against the Personnel Manager for insinuating sexual

favors from my client. Under the law, the employer is duty-bound to prevent or deter the commission of acts of sexual harassment by creating such Committee and by providing procedures for the resolution or prosecution of acts of sexual harassment.

In case the employer failed to act on my client's complaint, I shall initiate a criminal complaint for sexual harassment under the Anti-Sexual Harassment Act (Republic Act No. 7877) against the Personnel Manager and an independent civil action for damages against both the Personnel Manager and the employer who, under the law, is solidarily liable with the former if the latter is informed of such acts by the offended party and no immediate action is taken thereon.

That the Personnel Manager is liable for sexual harassment is beyond cavil. In a work-related or employment environment, sexual harassment is committed when:

1. the sexual favor is made a condition in the hiring or in the employment, re-employment or continued employment of said individual or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

2. the above acts would impair the employee's rights or privileges under existing labor laws; or

3. the above acts would result in an intimidating, hostile, or offensive environment for the employee. *(Section 3[a], Republic Act No. 7877).*

In this case, the sexual favor being insinuated by the Personnel Manager was made a pre-condition to reconsidering the unlawful policy against marriage, it has impaired my client's rights and privileges under the law and has resulted in an intimidating, hostile and offensive environment for my client. Clearly, he is guilty of sexual harassment.

**NOTHING FOLLOWS.**