



Republic of the Philippines
Supreme Court
Manila

2022 BAR EXAMINATIONS

LABOR LAW AND SOCIAL LEGISLATION

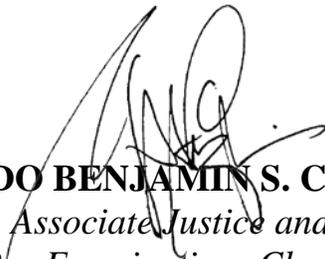
November 9, 2022

2:00 p.m. to 5:00 p.m.

INSTRUCTIONS

1. **This is a 3-hour examination consisting of 12 items, each worth 5 points.** If the item contains sub-questions, please mark your answer separately with “(a)” followed by the corresponding answer, then “(b)” followed by the answer.
2. **Read each question carefully.** Do not assume facts that are not provided in the question.
3. **Answer the questions clearly and concisely.** Your answer should demonstrate your ability to analyze the facts, identify issues, apply the law and jurisprudence, and arrive at a sound and logical conclusion. A mere “Yes” or “No” answer, or a mere legal conclusion without an explanation will not be given full credit.
4. **Allocate your time efficiently.** The items are in random sequence. You may skip items and move to items that you may find easier to answer. Use the 'Flag' feature so that you can return to the unanswered items.
5. **Do not write your name, distinguishing marks, or extraneous words or phrases in any of your answers.** This may be considered cheating and may disqualify you from the entire Bar Examinations.
6. **Do not type your final answer in the notes box, which is an optional tool.** Any text written in the notes box will not be included in your final answer.
7. **Technical issues during the exam are rare, but if you experience one, do not panic. Do not attempt to submit your exam answers.** Call the attention of your proctor for assistance.
8. If you need to step out of the room, **use the Hide Screen feature** to prevent anyone else from seeing your answers.

9. **You have until 5:00 p.m. to finish the exam.** Make sure you have completed and reviewed your answers before then. When submitting, the system will ask you one more time to confirm if you are ready to submit your answer file, to give you another opportunity to review your answers.
10. **Once done, show your proctor the green screen confirming your submission.** If the green screen does not appear, check with your proctor before leaving the room.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice and
2022 Bar Examinations Chairperson

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 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 driver-partners 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)

2. [This item has two questions.] 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)

3. Cristina, a new-hire of Sterling Corporation (Sterling), was made to join Sterling Corporation Employees Union (SCEU) in compliance with the union shop provision in the collective bargaining agreement (CBA) between SCEU and Sterling. At the request of SCEU, Sterling started deducting union dues from Cristina’s salary and remitting the same to SCEU pursuant to the CBA provisions. Cristina protested, claiming that she has not authorized the deduction in writing.

Is Cristina’s claim valid? Explain briefly. (5 points)

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)

5. Marino, a seafarer, was engaged as an oiler on board Searena Corporation's oil tanker vessel. After ten consecutive contracts, with each contract having a duration of eight months and the last one ending in December 2021, Marino decided it was time to enjoy his hard-earned money, and disembarked from the vessel upon the expiration of his employment contract. In April 2022, he felt excruciating pain in his groin. He went to a doctor and was diagnosed with acute hernia. The doctor also determined that the hernia was caused by repeated heavy lifting because of his work as an oiler.

As a result, Marino filed a case against Searena Corporation before the Labor Arbiter, claiming total and permanent disability under the POEA Standard Employment Contract.

Searena Corporation raised in its position paper that Marino is barred from filing the case as he did not raise any complaints during the term of his employment, and within three days from his arrival in the country after his last employment.

If you were the Labor Arbiter, rule on Searena Corporation's defense. Explain briefly. (5 points)

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)

7. Two legitimate labor organizations (Union Jack and Union Jill) are competing to become the first sole and exclusive bargaining agent (SEBA) in Maharlika Company. The unions agree to a consent election without involving the Bureau of Labor Relations (BLR). Union Jack garners an overwhelming majority of the valid votes cast during the consent election. Negotiation for a collective bargaining

agreement (CBA) commences, and while this is ongoing, a third union, Union Jumble, files with the BLR a petition for certification election seeking certification as the SEBA in Maharlika Company. Union Jack opposes the petition, arguing that no petition for certification election can be filed within one year from the consent election, and during the CBA negotiation.

Is Union Jack correct? Explain briefly. (5 points)

8. Julian was hired by Index Agency, a licensed manpower and recruitment corporation, which had a Service Agreement with Kainan Resto, a fast food restaurant, for the provision of ancillary and support services. Index Agency assigned Julian to work at Kainan Resto as a cashier and counter clerk, whose duties involved taking customer orders, receiving payments, preparing food orders, and serving food to customers.

Julian was accused of short-changing a customer during one transaction. He was immediately dismissed from service by the manager of Kainan Resto. Julian filed a complaint for illegal dismissal against Index Agency and Kainan Resto. In its defense, Kainan Resto argued that Julian was not its employee but that of Index Agency, given that Index Agency is a licensed manpower and recruitment corporation.

Is Kainan Resto correct? Explain briefly. (5 points)

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)

10. [This item has two questions.] 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)

11. Trixie is a scientist/researcher in the academe, specializing in vaccine research, particularly messenger ribonucleic acid (mRNA) technology. At the start of the pandemic in 2020, Trixie was hired by AZ Corp. to help formulate and produce a vaccine against COVID-19. The employment contract provides:

“You shall not work for whatsoever capacity, either as an employee, agent, or consultant with any person, anywhere in the Philippines, whose business is in direct and indirect competition with the company during the period of this contract, and for a period of ten (10) years from date of resignation or separation from the company. Violation of this stipulation shall make you liable for liquidated damages in the amount of Php 5,000,000.00.”

Trixie was able to successfully produce the vaccine and for which AZ Corp. paid her Php 50,000,000.00. Thereafter, Trixie resigned from AZ Corp. and returned to her work in the academe. AZ Corp. filed a complaint for damages in the amount of Php 5,000,000.00 against Trixie for violation of the above stipulation in her contract.

If you were the judge, rule on the validity of the stipulation. Explain briefly. (5 points)

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