

SYLLABUS FOR 2011 BAR EXAMINATIONS

LABOR LAW

A. FUNDAMENTAL PRINCIPLES AND POLICIES

1. Constitutional Provisions
 - a. Art II, Secs. 9, 10, 11, 13, 14, 18, 20.
 - b. Art III, Secs. 1, 4, 8.
 - c. Art. XIII, Secs. 1, 2, 3, 14.
2. New Civil Code
 - a. Article 1700
3. Labor Code
 - a. Article 3
 - b. Article 211
 - c. Article 212
 - d. Article 255

B. RECRUITMENT AND PLACEMENT

1. Recruitment of Local and Migrant Workers
 - a. Recruitment and placement; defined
 - b. Illegal Recruitment, Art. 38 (Local), Sec. 6, Migrant Workers Act, RA 8042
 - (a) License vs. Authority
 - (b) Essential elements of illegal recruitment
 - (c) Simple illegal recruitment
 - (d) Illegal recruitment in large scale
 - (e) Illegal recruitment as economic sabotage
 - (f) Illegal Recruitment vs. Estafa
 - (g) Liabilities
 - (a) local employment agency
 - (b) foreign employer
 - i. Theory of imputed knowledge
 - (h) Pretermination of contract of migrant worker
 - c. Direct hiring
2. Regulation and Enforcement
 - a. Remittance of foreign exchange earnings
 - b. Prohibited activities
 - c. Regulatory and visitorial powers of the Labor Secretary

- d. Penalties for illegal recruitment

C. LABOR STANDARDS

1. Hours of Work

- a. Coverage/Exclusions
- b. Normal Hours of Work
 - (a) Exceptions
 - (a) Health Personnel
 - (b) Compressed Work Week
 - d. Work interruption due to brownouts
 - e. Meal Break
 - f. Idle time, waiting time, commuting time, travel time, whether part of hours of work or not
 - g. Overtime work
 - (a) Undertime not offset by overtime
 - (b) Waiver of overtime pay

- h. Night Work

- i. CBA provision vis-à-vis overtime work

2. Wages

- a. “No work no pay” principle
- b. Coverage/Exclusions
- c. Facilities vs supplements
- d. Wages vs. salaries
- e. Wage distortion
- f. CBA vis-à-vis Wage Orders – CBA creditability
- g. Non-diminution of benefits
- h. Worker’s preference in case of bankruptcy
- i. Labor Code provisions for wage protection
- j. Allowable deductions without employee’s consent
- k. Attorney’s fees and union service fee in labor cases
- l. Criteria/Factors for Wage Setting

3. Rest Day

- a. Right to weekly rest day
- b. Preference of the employee
- c. When work on rest day authorized

4. Holidays

- a. Right to holiday pay
 - (1) In case of absences
 - (2) In case of temporary cessation of work

(3) Of teachers, piece workers, seafarers,
seasonal workers, etc.

b. Exclusions from coverage

5. Leaves

a. Service Incentive Leave Pay

- (1) Right to service incentive leave
- (2) Exclusions from coverage
- (3) Commutable nature of benefit

b. Maternity Leave

- (1) Coverage
- (2) Conditions to entitlement
- (3) Availment

c. Paternity Leave

- (1) Coverage
- (2) Conditions to entitlement
- (3) Availment

d. Parental Leave

- (1) Coverage
- (2) Conditions to entitlement
- (3) Availment






e. Leaves for victims of violence against women

- (1) Coverage
- (2) Conditions to entitlement
- (3) Availment

6. Service Charges

- a. Coverage
- b. Exclusion
- c. Distribution
- d. Integration

7. Thirteenth (13th) Month Pay and other bonuses

-  Coverage
-  Exclusion/Exemptions from coverage
-  Nature of 13th month pay
-  Commissions vis-à-vis 13th month pay
-  CBA vis-à-vis 13th month pay

8. Women Workers

- a. Discrimination (Art. 135, LC)
 - b. Stipulation against marriage (Art. 136, LC)
 - c. Prohibited Acts (Art. 137, LC)
 - d. Classification of certain women workers (Art. 138, LC)
 - e. Anti-Sexual Harassment Act (RA 7877)
9. Minor Workers (RA 7678, RA 9231)
- a. Regulation of working hours of a child
 - b. Employment of the child in public entertainment
 - c. Prohibition of employing minors in certain undertakings and in certain advertisements
10. Employment of Househelpers
- a. Definition
 - b. Benefits accorded househelpers
 - c. Termination
 - d. Reliefs for unjust termination
11. Employment of Homeworkers
- a. Definition
 - b. Rights and benefits accorded homeworkers
 - c. Conditions for deduction from homewoker's earnings
12. Apprentices and Learners
- a. Distinctions between Learnership and Apprenticeship
13. Handicapped Workers (RA 7277)
- a. Definition of "handicapped workers"
 - b. Rights of disabled workers
 - c. Prohibitions on discrimination against disable persons
 - d. Incentives for employers

D. TERMINATION OF EMPLOYMENT

1. Employer-Employee Relationship
- a. Four-fold Test
 - b. Probationary Employment
 - c. Kinds of Employment
 - (1) Regular employment
 - (a) Reasonable connection rule
 - (2) Project employment
 - (a) Indicators of project employment
 - (3) Seasonal employment
 - (4) Casual employment
 - (5) Fixed term employment

- (a) Requisites for validity
- d. Job contracting and Labor-only contracting
 - (1) When is there “job contracting”?
 - (2) When is there “labor-only contracting”?
 - (3) Conditions that must concur in legitimate job contracting
 - (4) Effects of finding that there is labor-only contracting
- 2. Termination of Employment
 - a. Substantive Due Process
 - (a) Just Causes
 - (a) Serious misconduct or willful disobedience
 - i. Requisites
 - (b) Gross and habitual neglect of duties
 - i. Requisites
 - (c) Fraud or willful breach of trust (loss of trust and confidence)
 - i. Requisites
 - (d) Abandonment of employment; Elements that must concur
 - (e) Termination of employment pursuant to a Union Security Clause
 - (f) Totality of infractions doctrine
 - (b) Authorized Causes
 - (a) Redundancy, Retrenchment and Closure
 - i. Procedural steps required
 - ii. Requirements for valid retrenchment/redundancy
 - iii. Criteria in selecting employees for dismissal
 - iv. Standards to be followed
 - (b) Disease or illness
 - i. Requisites
 - b. Procedural Due Process
 - (1) Procedure to be observed in termination cases
 - (2) Guiding Principles in connection with the hearing requirements in dismissal cases
 - (c) *Agabon* doctrine
 - c. Reliefs for illegal dismissal
 - (1) Reinstatement aspect
 - (a) Immediately executory

- i. Actual reinstatement
 - ii. Payroll reinstatement
 - (2) Separation pay in lieu of Reinstatement
 - (a) Strained Relation rule
 - (3) Backwages
 - (a) Components of the amount of backwages
 - (4) Constructive dismissal
 - (5) Preventive Suspension
 - (6) Quitclaims
 - (7) Termination of employment by employee
- 3. Retirement Pay Law
 - a. Coverage
 - b. Exclusions from coverage
 - c. Components of retirement pay
 - d. Retirement pay under RA 7641 vis-à-vis retirement benefits under SSS and GSIS laws

E. MANAGEMENT PREROGATIVE

- 1. Discipline
- 2. Transfer of employees
- 3. Productivity standard
- 4. Grant of Bonus
- 5. Change of working hours
- 6. Marital discrimination
- 7. Post-employment ban
- 8. Limitations in its exercise

F. SOCIAL LEGISLATION

- 1. SSS Law (RA 8282)
 - a. Coverage
 - b. Exclusions from coverage
 - c. Benefits
 - d. Beneficiaries
- 2. GSIS (RA 8291)
 - a. Coverage
 - b. Exclusions from coverage
 - c. Benefits
 - d. Beneficiaries
- 3. Limited Portability Law (RA 7699)

4. Employee's Compensation – Coverage and when compensable

G. LABOR RELATIONS LAW

1. Right to Self-organization
 - a. Who may unionize for purposes of collective bargaining
 - (1) Who cannot form, join or assist labor organizations
 - (2) Executive Order No. 180
 - b. Bargaining unit
 - (1) Test to determine the constituency of an appropriate bargaining unit
 - (2) Voluntary Recognition
 - (a) Requirements
 - (3) Certification election
 - (a) In an unorganized establishment
 - (b) In an organized establishment
 - (c) Rules prohibiting the filing of petition for certification election
 - (d) Requirements for validity of certification election
 - (e) Protests and other questions arising from conduct of certification election
 - (4) Run-off election
 - (a) Requirements
 - (5) Re-run election
 - (6) Consent election
 - (7) Affiliation and disaffiliation of the local union from the mother union
 - (a) Substitutionary doctrine
 - (8) Union dues and special assessments
 - (a) Requirements for validity
 - (9) Agency fees
 - (a) Requisites for assessment
2. Right to Collective Bargaining
 - a. Duty to bargain collectively
 - (1) *Kiok Loy* ruling
 - b. Mandatory provisions of CBA
 - (1) Grievance Procedure
 - (2) Voluntary Arbitration
 - (3) No Strike-No Lockout Clause
 - (4) Labor Management Council

- c. ULP in Collective Bargaining
 - (1) Bargaining in bad faith
 - (2) Refusal to bargain
 - (3) Individual bargaining
 - (4) Blue sky bargaining
 - (5) Surface bargaining
- d. Unfair Labor Practice
 - (1) ULP of Employers
 - (2) ULP of Labor Organizations
- 3. Right to Peaceful Concerted Activities
 - a. Forms of Concerted Activities
 - b. Who may declare a strike or lockout?
 - c. Requisites for a valid strike
 - d. Requisites for a valid lockout
 - e. Requisites for lawful picketing
 - f. Assumption of jurisdiction by the Secretary of Labor or Certification of the Labor dispute to the NLRC for compulsory arbitration
 - g. Nature of Assumption Order or Certification Order
 - h. Effect of defiance of Assumption or Certification Orders
 - i. Illegal Strike
 - (1) Liability of officers of the unions
 - (2) Liability of ordinary workers
 - (3) Waiver of illegality of strike
 - j. Injunctions
 - (1) Requisites for Labor Injunctions
 - (2) "Innocent Bystander Rule"

H. PROCEDURE AND JURISDICTION

- 1. Labor Arbiter
 - a. Jurisdiction
 - b. Effect of self-executing order of reinstatement on backwages
 - c. Requirements to perfect appeal to NLRC
- 2. National Labor Relations Commission (NLRC)
 - a. Jurisdictions
 - b. Effect of NLRC reversal of Labor Arbiter's order of reinstatement
 - c. Requirements to perfect appeal to Court of Appeals

3. Bureau of Labor Relations (BLR) – Med Arbiters
 - a. Jurisdiction (Original and Appellate)
4. National Conciliation and Mediation Board (NCMB)
 - a. Conciliation vs. Mediation
 - b. Preventive Mediation
5. DOLE Regional Directors
 - a. Small money claims
6. DOLE Secretary
 - a. Visitorial and Enforcement Powers
 - b. Power to suspend effects of termination
7. Voluntary Arbitrators
 - a. Submission Agreement
 - b. Rule 43, Rules of Court
8. Court of Appeals
 - a. Rule 65, Rules of Court
9. Supreme Court
 - a. Rule 45, Rules of Court
10. Prescription of Actions
 - a. Money claims
 - b. Illegal dismissal
 - c. Unfair labor practice
 - d. Offenses penalized by the Labor Code and IRR issued pursuant thereto