

SYLLABUS FOR THE 2012 BAR EXAMINATIONS

LABOR AND SOCIAL LEGISLATION

I. Fundamental Principles and Policies

- A. Constitutional provisions
 - 1. Article II, Secs. 9, 10, 11, 13, 14, 18, 20.
 - 2. Article III, Secs. 1, 4, 8.
 - 3. Art. XIII, Secs. 1, 2, 3, 14.
- B. Civil Code
 - 1. Article 1700
- C. Labor Code
 - 1. Article 3
 - 2. Article 211
 - 3. Article 212
 - 4. Article 255

II. Recruitment and Placement

- A. Recruitment of local and migrant workers
 - 1. Recruitment and placement; defined
 - 2. Illegal recruitment, Art. 38 (local), Sec. 6, Migrant Workers Act, R.A. 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
 - (i) Local employment agency
 - (ii) Foreign employer
 - (a) Theory of imputed knowledge
 - h) Pre-termination of contract of migrant worker
 - 3. Direct hiring
- B. Regulation and enforcement
 - 1. Remittance of foreign exchange earnings
 - 2. Prohibited activities
 - 3. Regulatory and visitorial powers of the labor secretary
 - 4. Penalties for illegal recruitment

III. Labor Standards

A. Hours of work

1. Coverage/exclusions
2. Normal hours of work
 - a) Exceptions
 - (i) Health personnel
 - (ii) Compressed work week
 - b) Work interruption due to brownouts
 - c) Meal break
 - d) Idle time, waiting time, commuting time, travel time, whether part of hours of work or not
 - e) Overtime work
 - (i) Undertime not offset by overtime
 - (ii) Waiver of overtime pay
3. Night work
4. CBA provision vis-à-vis overtime work

B. Wages

1. "No work, no pay" principle
2. Coverage/exclusions
3. Facilities vs. Supplements
4. Wages vs. Salaries
5. Wage distortion
6. CBA vis-à-vis wage orders – CBA creditability
7. Non-diminution of benefits
8. Worker's preference in case of bankruptcy
9. Labor Code provisions for wage protection
10. Allowable deductions without employee's consent
11. Attorney's fees and union service fee in labor cases
12. Criteria/factors for wage setting

C. Rest day

1. Right to weekly rest day
2. Preference of the employee
3. When work on rest day authorized

D. Holidays

1. Right to holiday pay
 - a) In case of absences
 - b) In case of temporary cessation of work
 - c) Of teachers, piece workers, seafarers, seasonal workers, etc.
2. Exclusions from coverage

E. Leaves

1. Service incentive leave pay

- a) Right to service incentive leave
- b) Exclusions from coverage
- c) Commutable nature of benefit
- 2. Maternity leave
 - a) Coverage
 - b) Conditions to entitlement
 - c) Availment
- 3. Paternity leave
 - a) Coverage
 - b) Conditions to entitlement
 - c) Availment
- 4. Parental leave
 - a) Coverage
 - b) Conditions to entitlement
 - c) Availment
- 5. Leaves for victims of violence against women
 - a) Coverage
 - b) Conditions to entitlement
 - c) Availment

F. Service charges

- 1. Coverage
- 2. Exclusion
- 3. Distribution
- 4. Integration

G. Thirteenth (13th) month pay and other bonuses

- 1. Coverage
- 2. Exclusion/exemptions from coverage
- 3. Nature of 13th month pay
- 4. Commissions vis-à-vis 13th month pay
- 5. CBA vis-à-vis 13th month pay

H. Women workers

- 1. Discrimination (Art. 135, Labor Code)
- 2. Stipulation against marriage (Art. 136, Labor Code)
- 3. Prohibited acts (Art. 137, Labor Code)
- 4. Classification of certain women workers (Art. 138, Labor Code)
- 5. Anti-Sexual Harassment Act (R.A. 7877)

I. Minor workers (R.A. 7678, R.A. 9231)

- 1. Regulation of working hours of a child
- 2. Employment of the child in public entertainment
- 3. Prohibition of employing minors in certain undertakings and in certain advertisements

J. Employment of househelpers

1. Definition
2. Benefits accorded househelpers
3. Termination
4. Reliefs for unjust termination

K. Employment of homeworkers

1. Definition
2. Rights and benefits accorded homeworkers
3. Conditions for deduction from homewoker's earnings

L. Apprentices and learners

1. Distinctions between learnership and apprenticeship

M. Handicapped workers (R.A. 7277)

1. Definition of "handicapped workers"
2. Rights of disabled workers
3. Prohibitions on discrimination against disable persons
4. Incentives for employers

IV. Termination of Employment

A. Employer-employee relationship

1. Four-fold test
2. Probationary employment
3. Kinds of employment
 - a) Regular employment
 - (i) Reasonable connection rule
 - b) Project employment
 - (i) Indicators of project employment
 - c) Seasonal employment
 - d) Casual employment
 - e) Fixed term employment
 - (i) Requisites for validity
4. Job contracting and labor-only contracting
 - a) When is there "job contracting"?
 - b) When is there "labor-only contracting"?
 - c) Conditions that must concur in legitimate job contracting
 - d) Effects of finding that there is labor-only contracting

B. Termination of employment

1. Substantive due process
 - a) Just causes
 - (i) Serious misconduct or willful disobedience
 - (a) Requisites
 - (ii) Gross and habitual neglect of duties
 - (a) Requisites

- (iii) Fraud or willful breach of trust (loss of trust and confidence)
 - (a) Requisites
 - (iv) Abandonment of employment; elements that must concur
 - (v) Termination of employment pursuant to a union security clause
 - (vi) Totality of infractions doctrine
- b) Authorized causes
 - (i) Redundancy, retrenchment and closure
 - (a) Procedural steps required
 - (b) Requirements for valid retrenchment/redundancy
 - (c) Criteria in selecting employees for dismissal
 - (d) Standards to be followed
 - (ii) Disease or illness
 - (a) Requisites
- 2. Procedural due process
 - a) Procedure to be observed in termination cases
 - b) Guiding principles in connection with the hearing requirements in dismissal cases
 - c) Agabon doctrine
- 3. Reliefs for illegal dismissal
 - a) Reinstatement aspect
 - (i) Immediately executory
 - (a) Actual reinstatement
 - (ii) Payroll reinstatement
 - b) Separation pay in lieu of reinstatement
 - (i) Strained relation rule
 - c) Back wages
 - (i) Components of the amount of back wages
 - d) Constructive dismissal
 - e) Preventive suspension
 - f) Quitclaims
 - g) Termination of employment by employee

C. Retirement Pay Law

- 1. Coverage
- 2. Exclusions from coverage
- 3. Components of retirement pay
- 4. Retirement pay under R.A. 7641 vis-à-vis retirement benefits under SSS and GSIS laws

V. Management Prerogative

A. Discipline

B. Transfer of employees

- C. Productivity standard
- D. Grant of bonus
- E. Change of working hours
- F. Marital discrimination
- G. Post-employment ban
- H. Limitations in its exercise

VI. Social Legislation

- A. SSS Law (R.A. 8282)
 - 1. Coverage
 - a) Exclusions from coverage
 - b) Benefits
 - c) Beneficiaries

- B. GSIS Law (R.A. 8291)
 - 1. Coverage
 - 2. Exclusions from coverage
 - 3. Benefits
 - 4. Beneficiaries

- C. Limited Portability Law (R.A. 7699)

- D. Employee's compensation – coverage and when compensable

VII. Labor Relations Law

- A. Right to self-organization
 - 1. Who may unionize for purposes of collective bargaining
 - a) Who cannot form, join or assist labor organizations
 - b) Executive Order No. 180
 - 2. Bargaining unit
 - a) Test to determine the constituency of an appropriate bargaining unit
 - b) Voluntary recognition
 - (i) Requirements
 - c) Certification election
 - (i) In an unorganized establishment
 - (ii) In an organized establishment

- (iii) Rules prohibiting the filing of petition for certification election
 - (iv) Requirements for validity of certification election
 - (v) Protests and other questions arising from conduct of certification election
 - d) Run-off election
 - (i) Requirements
 - e) Re-run election
 - f) Consent election
 - g) Affiliation and disaffiliation of the local union from the mother union
 - (i) Substitutionary doctrine
 - h) Union dues and special assessments
 - (i) Requirements for validity
 - i) Agency fees
 - (i) Requisites for assessment
- B. Right to collective bargaining
 - 1. Duty to bargain collectively
 - a) Kiok Loy ruling
 - 2. Mandatory provisions of CBA
 - a) Grievance procedure
 - b) Voluntary arbitration
 - c) No strike-no lockout clause
 - d) Labor management council
 - 3. Unfair Labor Practice in collective bargaining
 - a) Bargaining in bad faith
 - b) Refusal to bargain
 - c) Individual bargaining
 - d) Blue sky bargaining
 - e) Surface bargaining
 - 4. Unfair Labor Practice (ULP)
 - a) ULP of employers
 - b) ULP of labor organizations
- C. Right to peaceful concerted activities
 - 1. Forms of concerted activities
 - 2. Who may declare a strike or lockout?
 - 3. Requisites for a valid strike
 - 4. Requisites for a valid lockout
 - 5. Requisites for lawful picketing
 - 6. Assumption of jurisdiction by the Secretary of Labor or certification of the labor dispute to the NLRC for compulsory arbitration
 - 7. Nature of assumption order or certification order
 - 8. Effect of defiance of assumption or certification orders
 - 9. Illegal strike
 - a) Liability of officers of the unions

- b) Liability of ordinary workers
- c) Waiver of illegality of strike
- 10. Injunctions
 - a) Requisites for labor injunctions
 - b) "Innocent bystander rule"

VIII. Procedure and Jurisdiction

- A. Labor arbiter
 - 1. Jurisdiction
 - 2. Effect of self-executing order of reinstatement on back wages
 - 3. Requirements to perfect appeal to NLRC
- B. National labor relations commission (NLRC)
 - 1. Jurisdictions
 - 2. Effect of NLRC reversal of labor arbiter's order of reinstatement
 - 3. Requirements to perfect appeal to court of appeals
- C. Bureau of Labor Relations – med arbiters
 - 1. Jurisdiction (original and appellate)
- D. National Conciliation and Mediation Board
 - 1. Conciliation vs. Mediation
 - 2. Preventive mediation
- E. DOLE regional directors
 - 1. Small money claims
- F. DOLE secretary
 - 1. Visitorial and enforcement powers
 - 2. Power to suspend effects of termination
- G. Voluntary arbitrators
 - 1. Submission agreement
 - 2. Rule 43, Rules of Court
- H. Court of Appeals
 - 1. Rule 65, Rules of Court
- I. Supreme Court
 - 1. Rule 45, Rules of Court
- J. Prescription of actions
 - 1. Money claims
 - 2. Illegal dismissal
 - 3. Unfair labor practice

4. Offenses penalized by the Labor Code and Implementing Rules and Regulations issued pursuant thereto

INCLUDE: Pertinent Supreme Court decisions promulgated up to January 31, 2012.

IMPORTANT NOTE: This bar coverage description is not intended and should not be used by law schools as a syllabus or course outline in the covered subjects. It has been drawn up for the limited purpose of ensuring that candidates reviewing for the bar examinations are guided on what basic and minimum amounts of laws, doctrines, and principles they need to know and be able to use correctly before they can be licensed to practice law. More is required for excellent and distinguished work as members of the Bar.

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