

SYLLABUS FOR 2011 BAR EXAMINATIONS
MERCANTILE LAW

A. Letters of Credit

1. Definition/Concept
2. Governing laws
3. Nature of letter of credit
4. Parties to a letter of credit
 - a. Rights and obligations of parties
5. Basic Principles of letter of credit
 - a. Doctrine of independence
 - b. Fraud exception principle
 - c. Doctrine of strict compliance

B. Warehouse Receipts Law

1. Nature and Functions of a Warehouse Receipt
 - a. To whom delivered
 - b. Kinds
 - c. Distinction between a Negotiable Instrument and a Negotiable Warehouse Receipt
 - d. Rights of a holder of a negotiable warehouse receipt as against a transferee of a non-negotiable warehouse receipt
2. Duties of a Warehouseman
3. Warehouseman's Lien

C. Trust Receipts Law

1. Definition/Concept of a Trust Receipt Transaction
 - a. Loan/security feature
 - b. Ownership of the goods, documents and instruments under a trust receipt
2. Rights of the Entruster
 - a. Validity of the security interest as against the creditors of the entrustee/innocent purchasers for value
3. Obligations and Liability of the Entrustee
 - a. Payment/Delivery of proceeds of sale or disposition of goods, documents or instruments

- b. Return of goods, documents or instruments in case of sale
- c. Liability for loss of goods, documents or instruments
- d. Penal sanction if offender is a corporation

4. Remedies available

D. Negotiable Instruments Law

1. Forms and Interpretation

- a. Requisites of Negotiability
- b. Kinds of negotiable instrument

2. Completion and delivery

- a. Insertion of date
- b. Completion of blanks
- c. Incomplete and undelivered instruments
- d. Complete but undelivered instruments

3. Rules of interpretation

4. Signature

- a. Signing in trade name
- b. Signature of agent
- c. Indorsement by minor or corporation
- d. Forgery

5. Consideration

6. Accommodation party

7. Negotiation

- a. Distinguished from assignment
- b. Modes of negotiation

8. Rights of the Holder

- a. Holder in Due Course
- b. Defenses against the Holder

9. Liabilities of Parties

- a. Maker
- b. Drawer
- c. Acceptor
- d. Indorser
- e. Warranties

10. Presentment for Payment

- a. Necessity of presentment for payment
- b. Parties to whom presentment for payment should be made

- c. Dispensation with presentment for payment
 - d. Dishonor by non-payment
11. Notice of Dishonor
- a. Parties to be notified
 - b. Parties who may give notice of dishonor
 - c. Effect of notice
 - d. Form of notice
 - e. Waiver
 - f. Dispensation with notice
 - g. Effect of failure to give notice
12. Discharge of Negotiable Instrument
- a. Discharge of negotiable instrument
 - b. Discharge of parties secondarily liable
 - c. Right of party who discharged instrument
 - d. Renunciation by holder
13. Material alteration
- a. Concept
 - b. Effect of material alteration
14. Acceptance
- a. Definition
 - b. Manner
 - c. Time for acceptance
 - d. Rules governing acceptance
15. Presentment for Acceptance
- a. Time/place/manner of presentment
 - b. Effect of failure to make presentment
 - c. Dishonor by non-acceptance
16. Promissory Notes
17. Checks
- a. Definition
 - b. Kinds
 - c. Presentment for payment
 - (1) time
 - (2) effect of delay

E. Insurance Code

- 1. Concept of Insurance
- 2. Elements of an Insurance Contract

3. Characteristics/Nature of Insurance Contracts
4. Classes
 - a. Marine
 - b. Fire
 - c. Casualty
 - d. Suretyship
 - e. Life
 - f. Compulsory Motor Vehicle Liability Insurance
5. Insurable Interest
 - a. In Life/Health
 - b. In Property
 - c. Double Insurance and Over Insurance
 - d. Multiple or Several Interests on Same Property
6. Perfection of the Contract of Insurance
 - a. Offer and Acceptance/Consensuality
 - (1) Delay in acceptance
 - (2) Delivery of Policy
 - b. Premium Payment
 - c. Non-Default Options in Life Insurance
 - d. Reinstatement of a Lapsed Policy of Life Insurance
 - e. Refund of Premiums
7. Rescission of Insurance Contracts
 - a. Concealment
 - b. Misrepresentation/Omissions
 - c. Breach of Warranties
8. Claims Settlement and Subrogation
 - a. Notice and Proof of Loss
 - b. Guidelines on Claims Settlement
 - (1) Unfair Claims Settlement; Sanctions
 - (2) Prescription of Action
 - (3) Subrogation

F. Transportation Law

1. Common Carriers
 - a. Diligence Required of Common Carriers
 - b. Liabilities of Common Carriers
2. Vigilance over goods
 - a. Exempting Causes

- (1) Requirement of Absence of Negligence
 - (2) Absence of Delay
 - (3) Due diligence to prevent or lessen the loss
 - b. Contributory negligence
 - c. Duration of liability
 - (1) Delivery of goods to common carrier
 - (2) Actual or constructive delivery
 - (3) Temporary unloading or storage
 - d. Stipulation for limitation of liability
 - (1) Void stipulations
 - (2) Limitation of liability to fixed amount
 - (3) Limitation of liability in absence of declaration of greater value
 - e. Liability for baggage of passengers
 - (1) Checked-in baggage
 - (2) Baggage in possession of passengers
3. Safety of Passengers
- a. Void stipulations
 - b. Duration of liability
 - (1) Waiting for carrier or Boarding of carrier
 - (2) Arrival at destination
 - c. Liability for acts of others
 - (1) Employees
 - (2) Other passengers and strangers
 - d. Extent of liability for damages
4. Bill of Lading
- a. Three-fold character
 - b. Delivery of goods
 - (1) Period for delivery
 - (2) Delivery without surrender of bill of lading
 - (3) Refusal of consignee to take delivery
 - d. Period for filing claims
 - e. Period for filing actions
5. Maritime Commerce
- a. Charter Parties
 - (1) Bareboat/Demise Charter

- (2) Time Charter
 - (3) Voyage/Trip Charter
 - b. Liability of Shipowners and Shipping Agents
 - (1) Liability for acts of captain
 - (2) Exceptions to limited liability
 - c. Accidents and Damages in Maritime Commerce
 - (1) General Average
 - (2) Collisions
 - d. Carriage of Goods by Sea Act
 - (1) Application
 - (2) Notice of Loss or Damage
 - (3) Period of Prescription
 - (4) Limitation of liability
6. Public Service Act
- a. Definition of Public Utility
 - b. Necessity for certificate of public convenience
 - (1) Requisites
 - (a) Citizenship
 - (b) Promotion of public interests
 - (c) Financial capability
 - (2) Prior operator rule
 - (a) Meaning
 - (b) Exceptions
 - (c) Ruinous competition
 - c. Fixing of rate
 - (1) Rate of return
 - (2) Exclusion of income tax as expense
 - d. Unlawful arrangements
 - (1) Boundary system
 - (2) *Kabit* system
 - e. Approval of sale, encumbrance or lease of property
7. The Warsaw Convention
- a. Applicability
 - b. Limitation of liability
 - (1) Liability to passengers
 - (2) Liability for checked baggage

(3) Liability for hand-carried baggage

c. Willful Misconduct

G. Corporation Law

1. The Corporation Code

a. Corporation, defined

b. Classification of corporations

c. Nationality of corporations

(1) Control test

(2) Grandfather rule

d. Corporate juridical personality

(1) Doctrine of separate juridical personality

(a) Liability for tort and crimes

(b) Recovery of damages

(2) Doctrine of piercing the corporate veil

(a) Grounds for application of doctrine

(b) Test in determining applicability

e. Capital structure

(1) Number and qualifications of incorporators

(2) Minimum capital stock and subscription requirements

(3) Corporate term

(4) Classification of shares

f. Incorporation and organization

(1) Promoter

(a) Liability of promoter

(b) Liability of corporation for promoter's contracts

(2) Subscription contract

(3) Pre-incorporation subscription agreements

(4) Consideration for stocks

(5) Articles of Incorporation

(a) Contents

(b) Non-amendable items

(6) Corporate name

-- limitations on use of corporate name

(7) Registration and issuance of Certificate of Incorporation

- (8) Election of directors or trustees
- (9) Adoption of By-Laws
 - (a) Requisites of valid by-laws
 - (b) Binding effects
 - (c) Amendments

- g. Corporate powers
 - (1) General powers, theory of general capacity
 - (2) Specific powers, theory of specific capacity
 - (a) Power to extend or shorten corporate term
 - (b) Power to increase or decrease capital stock or incur, create, increase bonded indebtedness
 - (c) Power to deny pre-emptive rights
 - (d) Power to sell or dispose of corporate assets
 - (e) Power to acquire own shares
 - (f) Power to invest corporate funds in another corporation or business
 - (g) Power to declare dividends
 - (h) Power to enter into management contract
 - (i) *Ultra vires* acts
 - i. Applicability of *ultra vires* doctrine
 - ii. Consequences of *ultra vires* acts
 - (j) Doctrine of individuality of subscription
 - (k) Doctrine of equality of shares
 - (l) Trust fund doctrine

 - (3) How exercised
 - (a) By the shareholders
 - (b) By the Board of Directors
 - (c) By the Officers

- h. Stockholders and members
 - (1) Fundamental rights of a stockholder
 - (2) Participation in management
 - (a) Proxy
 - (b) Voting trust
 - (c) Cases when stockholders' action is required
 - i. By a majority vote
 - ii. By a two-thirds vote
 - iii. By cumulative voting

 - (3) Proprietary rights
 - (a) Right to dividends
 - (b) Right of appraisal
 - (c) Right to inspect

- (d) Preemptive right
 - (e) Right to vote
 - (f) Right to dividends
- (4) Remedial rights
- (a) Individual suit
 - (b) Representative suit
 - (c) Derivative suit
- (5) Obligation of a stockholder
- (6) Meetings
- (a) Regular or special
 - i. When and where
 - ii. Notice
 - (b) Who calls the meetings
 - (c) Quorum
 - (d) Minutes of meetings
- i. Board of directors and trustees
- (1) Repository of corporate powers
 - (2) Tenure, qualifications and disqualifications of directors
 - (3) Elections
 - (a) Cumulative voting
 - (b) Quorum
 - (4) Removal
 - (5) Filling of vacancies
 - (6) Compensation
 - (7) Disloyalty
 - (8) Business judgment rule
 - (9) Solidary liabilities for damages
 - (10) Liability for watered stocks
 - (11) Personal liabilities
 - (12) Responsibility for crimes
 - (13) Special fact doctrine
 - (14) Inside information
 - (15) Contracts
 - (a) By self-dealing directors with the corporation
 - (b) Between corporations with interlocking directors
- (16) Executive committee
- (a) Creation
 - (b) Limitations on its powers

- (17) Meetings
 - (a) Regular or special
 - i. When and where
 - ii. Notice
 - (b) Who presides
 - (c) Quorum
 - (d) Rule on abstention
- j. Capital affairs
 - (1) Certificate of stock
 - (a) Nature of the certificate
 - (b) Uncertificated shares
 - (c) Negotiability
 - i. Requirements for valid transfer of stocks
 - (d) Issuance
 - i. Full payment
 - ii. Payment pro-rata
 - (e) Stock and transfer book
 - i. Contents
 - ii. Who may make valid entries
 - (f) Lost or destroyed certificates
 - (g) Situs of the shares of stock
 - (2) Watered stocks
 - (a) Definition
 - (b) Liability of directors for watered stocks
 - (c) Trust fund doctrine for liability for watered stocks
 - (3) Payment of balance of subscription
 - (a) Call by board of directors
 - (b) Notice requirement
 - (4) Sale of delinquent shares
 - (a) Effect of delinquency
 - (b) Call by resolution of the board of directors
 - (c) Notice of sale
 - (d) Auction sale
 - (5) Alienation of shares
 - (a) Allowable restrictions on the sale of shares
 - (b) Sale of partially paid shares
 - (c) Sale of a portion of shares not fully paid

- (d) Sale of all of shares not fully paid
 - (e) Sale of fully paid shares
 - (f) Requisites of a valid transfer
 - (g) Involuntary dealings
- k. Dissolution and liquidation
- (1) Modes of dissolution
 - (a) Voluntary
 - i. Where no creditors are affected
 - ii. Where creditors are affected
 - iii. By shortening of corporate term
 - (b) Involuntary
 - i. By expiration of corporate term
 - ii. Failure to organize and commence business within 2 years from incorporation
 - iii. Legislative dissolution
 - iv. Dissolution by the SEC on grounds under existing laws
 - (2) Methods of liquidation
 - (a) By the corporation itself
 - (b) Conveyance to a trustee within a 3-year period
 - (c) By management committee or rehabilitation receiver
 - (d) Liquidation after three years
- l. Other corporations
- (1) Close corporations
 - (a) Characteristics of a close corporation
 - (b) Validity of restrictions on transfer of shares
 - (c) Issuance or transfer of stock in breach of qualifying conditions
 - (d) When board meeting is unnecessary or improperly held
 - (e) Preemptive right
 - (f) Amendment of articles of incorporation
 - (g) Deadlocks
 - (2) Non-stock corporations
 - (a) Definition
 - (b) Purposes
 - (c) Treatment of profits
 - (d) Distribution of assets upon dissolution

- (3) Religious corporations
 - (a) Corporation sole
 - i. Nationality
 - ii. Religious societies

- (4) Foreign corporations
 - (a) Bases of authority over foreign corporations
 - i. Consent
 - ii. Doctrine of “doing business” (relate to definition under the Foreign Investments Act, RA 7042)

 - (b) Necessity of a license to do business
 - i. Requisites for issuance of a license
 - ii. Resident agent

 - (c) Personality to sue
 - (d) Suability of foreign corporations
 - (e) Instances when unlicensed foreign corporations may be allowed to sue
 - Isolated transactions
 - (f) Grounds for revocation of license

- m. Merger and consolidation
 - (1) Definition and concept
 - (2) Constituent v. consolidated corporation
 - (3) Plan of merger or consolidation
 - (4) Articles of merger or consolidation
 - (5) Procedure
 - (6) Effectivity
 - (7) Limitations
 - (8) Effects

H. Securities Regulation Code (RA 8799)

- 1. State policy (purpose)
- 2. Powers and functions of the SEC
 - a. Regulatory
 - b. Adjudicative

- 3. Securities required to be registered
 - a. Exempt securities
 - b. Exempt transactions

- 4. Procedure for registration of securities

5. Prohibitions on fraud, manipulation and insider trading
 - a. Manipulation of security prices
 - b. Short sales
 - c. Fraudulent transactions
 - d. Insider trading
6. Protection of investors
 - a. Tender offer rule
 - b. Rules on proxy solicitation
 - c. Disclosure rule
7. Civil liability

I. **Banking Laws**

1. The New Central Bank Act (RA 7653)
 - a. State policies
 - b. Creation of the Bangko Sentral ng Pilipinas (BSP)
 - c. Responsibility and primary objective
 - d. Monetary Board
 - Powers and functions
 - e. How the BSP handles banks in distress
 - (1) Conservatorship
 - (2) Closure
 - (3) Receivership
 - (4) Liquidation
 - f. How the BSP handles exchange crisis
 - (1) Legal tender power
 - (2) Rate of exchange
2. Law on Secrecy of Bank Deposits (RA 1405, as amended)
 - a. Purpose
 - b. Prohibited acts
 - c. Deposits covered
 - d. Exceptions
 - e. Garnishment of deposits, including foreign deposits
 - f. Penalties for violation
3. General Banking Act (RA 8791)
 - a. Definition and classification of banks
 - b. Distinction of banks from quasi-banks and trust entities
 - c. Bank powers and liabilities
 - (1) Corporate powers
 - (2) Banking and incidental powers

- d. Diligence required of banks
 - relevant jurisprudence
 - e. Nature of bank funds and bank deposits
 - f. Stipulation on interests
 - g. Grant of loans and security requirements
 - (1) Ratio of net worth to total risk assets
 - (2) Single borrower's limit
 - (3) Restrictions on bank exposure to DOSRI (directors, officers, stockholders and their related interests)
 - h. Penalties for violations
 - (1) Fine, imprisonment
 - (2) Suspension or removal of director or officer
 - (3) Dissolution of bank
4. Philippine Deposit Insurance Corporation Act
- a. Basic policy
 - b. Concept of insured deposits
 - c. Liability to depositors
 - (1) Deposit liabilities required to be insured with PDIC
 - (2) Commencement of liability
 - (3) Deposit accounts not entitled to payment
 - (4) Extent of liability
 - (5) Determination of insured deposits
 - (6) Calculation of liability
 - (a) Per depositor, per capacity rule
 - (b) Joint accounts
 - (c) Mode of payment
 - (d) Effect of payment of insured deposit
 - (e) Payments of insured deposits as preferred credit under Art. 2244, Civil Code
 - (f) Failure to settle claim of insured depositor
 - (g) Failure of depositor to claim insured deposits
 - i. Examination of banks and deposit accounts
 - ii. Prohibition against splitting of deposits
 - iii. Prohibition against issuances of TROs, etc.

J. Intellectual Property Law (excluding Implementing Rules and Regulations)

- 1. Intellectual Property Rights in general
 - a. Intellectual property rights
 - b. Differences between copyrights, trademarks and patent
 - c. Technology transfer arrangements

2. Patents
 - a. Patentable inventions
 - b. Non-patentable inventions
 - c. Ownership of a patent
 - (1) Right to a patent
 - (2) First-to-file rule
 - (3) Inventions created pursuant to a Commission
 - (4) Right of priority
 - d. Grounds for cancellation of a patent
 - e. Remedy of the true and actual inventor
 - f. Rights conferred by a patent
 - g. Limitations of patent rights
 - (1) Prior user
 - (2) Use by the government
 - h. Patent infringement
 - (1) Tests in patent infringement
 - (a) Literal infringement
 - (b) Doctrine of equivalents
 - (2) Civil and criminal action
 - (3) Prescriptive period
 - (4) Defenses in action for infringement
 - i. Licensing
 - (1) Voluntary
 - (2) Compulsory
 - j. Assignment and transmission of rights
3. Trademarks
 - a. Definitions of marks, collective marks, trade names
 - b. Acquisition of ownership of mark
 - c. Acquisition of ownership of trade name
 - d. Non-registrable marks
 - e. Prior use of mark as a requirement
 - f. Tests to determine confusing similarity between marks
 - (1) Dominancy test
 - (2) Holistic test
 - g. Well-known marks
 - h. Rights conferred by registration
 - i. Use by third parties of names, etc. similar to registered mark

- j. Infringement and remedies
 - (1) Trademark infringement
 - (2) Damages
 - (3) Requirement of Notice
 - k. Unfair competition
 - l. Trade names or business names
 - m. Collective marks
 - n. Criminal penalties for infringement, unfair competition, false designation of origin, and false description or misrepresentation
4. Copyrights
- a. Basic principles, Secs. 172.2, 175, and 181
 - b. Copyrightable works
 - (1) Original works
 - (2) Derivative works
 - c. Non-copyrightable works
 - d. Rights of copyright owner
 - e. Rules on ownership of copyright
 - f. Limitations on copyright
 - (1) Doctrine of fair use
 - (2) Copyright infringement
 - (a) Remedies
 - (b) Criminal penalties

K. Special Laws

1. The Chattel Mortgage Law (Act 1508 in rel. to Arts. 1484, 1485, 2140 and 2141 of the Civil Code)
 - a. Essential requisites
 - b. Formal requisites
 - c. Registration, when and where
 - d. After-acquired property
 - e. After-incurred obligation
 - f. Right of junior mortgagee
 - g. Foreclosure procedure
 - h. Redemption
 - i. Claim for deficiency
 - (1) General rule
 - (2) Exception
 - (3) Article 1484
2. Real Estate Mortgage Law (Act 3135, as amended by RA 4118)

- a. Coverage
 - b. Remedies available to mortgagee upon default of the mortgagor
 - c. Need for special power of attorney
 - d. Authority to foreclose extrajudicially
 - e. Procedure
 - (1) Where to file
 - (2) Where to sell
 - (3) Posting requirement
 - (4) Publication requirement
 - (a) Sufficiency of newspaper publication
 - (b) Need for republication in case of postponement
 - (c) Personal notice to the mortgagor when and when not needed
 - f. Possession by purchaser of foreclosed property
 - g. Remedy of debtor if foreclosure is not proper
 - h. Redemption
 - (1) Who may redeem
 - (2) Amount of Redemption price
 - (3) Period for redemption
 - (4) Effect of pendency of action for annulment of sale
 - i. Writ of possession
 - (1) Ministerial duty of the court
 - (2) Enforcement against third parties
 - (3) Pendency of action for annulment of sale
 - j. Annulment of sale
3. Truth in Lending Act (RA 3765)
- a. Purpose
 - b. Obligation of creditors to person to whom credit is extended
 - c. Covered and excluded transactions
 - d. Consequences of non-compliance with obligation
4. Anti-Money Laundering Law (RA 9160, as amended by RA 9194)
- a. Policy of the law
 - b. Covered institutions
 - c. Obligations of covered institutions
 - d. Covered transactions
 - e. Suspicious transactions
 - f. When is money laundering committed
 - g. Unlawful activities or predicate crimes

- h. Anti-Money Laundering Council (AMLC)
 - i. Functions
 - j. Freezing of monetary instrument or property
 - k. Authority to inquire into bank deposits
5. Foreign Investments Act (RA 7042)
- a. Policy of the law
 - b. Definition of terms
 - (1) Foreign investment
 - (2) “Doing business” in the Philippines
 - (3) Export enterprise
 - (4) Domestic market enterprise
 - c. Registration of investments of non-Philippine nationals
 - d. Foreign investments in export enterprises
 - e. Foreign investments in domestic market enterprises
 - f. Foreign Investment Negative List

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.