

**COVERAGE**  
**LABOR LAW AND SOCIAL LEGISLATION**  
**2013 BAR EXAMINATIONS**

**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, 7, 8, 10, 16, 18(2).
  - 3. Article XIII, Secs. 1, 2, 3, 13, 14.
- B. Civil Code
  - 1. Article 19
  - 2. Article 1700
  - 3. Article 1702
- C. Labor Code
  - 1. Article 3
  - 2. Article 4
  - 3. Article 166
  - 4. Article 211
  - 5. Article 212
  - 6. Article 255
  - 7. Article 277

**II. Recruitment and Placement**

- A. Recruitment of local and migrant workers
  - 1. Illegal recruitment (Sec. 5, R.A. No. 10022)
    - 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 recruitment agency
      - (ii) Foreign employer
        - (a) Theory of imputed knowledge
      - (iii) Solidary liability
    - h) Pre-termination of contract of migrant worker
  - 2. Direct hiring
- B. Regulation and enforcement
  - 1. Suspension or cancellation of license or authority (Art. 35, Labor Code)
  - 2. Regulatory and visitorial powers of the DOLE secretary
  - 3. Remittance of foreign exchange earnings
  - 4. Prohibited activities

### III. Labor Standards

#### A. Hours of work

1. Coverage/Exclusions (Art. 82, Labor Code)
2. Normal hours of work
  - a) Compressed work week
3. Meal break
4. Waiting time
5. Overtime work, overtime pay
6. Night work (R.A. No. 10151), Night shift differential
7. Part-time work
8. Contract for piece work (see Civil Code)

#### B. Wages

1. Wage vs. salary
2. Minimum wage defined, Minimum wage setting
3. Minimum wage of workers paid by results
  - a) Workers paid by results
  - b) Apprentices
  - c) Learners
  - d) Persons with disability
4. Commissions
5. Deductions from wages
6. Non-diminution of benefits
7. Facilities vs. supplements
8. Wage Distortion / Rectification
9. Divisor to determine daily rate

#### C. Rest Periods

1. Weekly rest day
2. Emergency rest day work

#### C. Holiday pay / Premium pay

1. Coverage, exclusions
2. Teachers, piece workers, *takay*, seasonal workers, seafarers

#### E. Leaves

1. Service Incentive Leave
2. Maternity Leave
3. Paternity Leave
4. Parental Leave (R.A. No. 8972)
5. Leave for Victims of Violence against Women and Children (R.A. No. 9262)
6. Special leave benefit for women

#### D. Service Charge

#### E. Thirteenth Month Pay

F. Separation Pay

G. Retirement Pay

1. Eligibility
2. Amount
3. Retirement benefits of workers paid by results
4. Retirement benefits of part-time workers
5. Taxability

H. Women Workers

1. Provisions against discrimination
2. Stipulation against marriage
3. Prohibited acts
4. Anti-Sexual Harassment Act (R.A. No. 7877)

I. Employment of Minors (Labor Code and R.A. No. 7678, R.A. No. 9231)

J. Househelpers (Labor Code as amended by R.A. No. 7655, an Act Increasing the Minimum Wage of Househelpers; see also – Household Service under the Civil Code)

K. Employment of Homeworkers

L. Apprentices and Learners

M. Persons with disability (R.A. No. 7277, as amended by R.A. No. 9442)

1. Definition
2. Rights of persons with disability
3. Prohibition on discrimination against persons with disability
4. Incentives for employers

#### **IV. Termination of Employment**

A. Employer-employee relationship

1. Four-fold test
2. Kinds of employment
  - a. Probationary
  - b. Regular
  - c. Project employment
  - d. Seasonal
  - e. Casual
  - f. Fixed-term
3. Job contracting
  - a. Article 106 to Article 109 of the Labor Code
  - b. Department Order No. 18-A
  - c. Department Circular No. 01-12

- d. Effects of Labor-Only Contracting
  - e. Trilateral relationship in job contracting
- B. Dismissal from employment
  - 1. Just Causes
  - 2. Authorized Causes
  - 3. Due Process
    - a) Twin-notice requirement
    - b) Hearing; meaning of opportunity to be heard
- C. Reliefs for Illegal Dismissal
  - 1. Reinstatement
    - a. Pending appeal (Art. 223, Labor Code)
    - b. Separation pay in lieu of reinstatement
  - 2. Backwages
    - a. Computation
    - b. Limited backwages
- D. Preventive Suspension
- E. Constructive Dismissal

## **V. Management Prerogative**

- A. Discipline
- B. Transfer of employees
- C. Productivity standard
- D. Grant of bonus
- E. Change of working hours
- F. Rules on Marriage between employees of competitor-employers
- G. Post-employment ban

## **VI. Social and Welfare Legislation (P.D. 626)**

- A. SSS Law (R.A. No. 8282)
  - 1. Coverage
  - 2. Exclusions from coverage
  - 3. Benefits

4. Beneficiaries
- B. GSIS Law (R.A. No. 8291)
1. Coverage
  2. Exclusions from coverage
  3. Benefits
  4. Beneficiaries
- C. Limited Portability Law (R.A. No. 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
  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
    - 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) When there is absence of a CBA
    - b) When there is a CBA
  2. Collective Bargaining Agreement (CBA)
    - a) Mandatory provisions of CBA

- (i) Grievance procedure
    - (ii) Voluntary arbitration
    - (iii) No strike-no lockout clause
    - (iv) Labor management council
  - b) Duration
    - (i) For economic provisions
    - (ii) For non-economic provisions
    - (iii) Freedom period
- 3. Union Security
  - a) Union security clauses; closed shop, union shop, maintenance of membership shop, etc.
  - b) Check-off; union dues, agency fees
- 4. 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
- 5. Unfair Labor Practice (ULP)
  - a) Nature of ULP
  - b) ULP of employers
  - c) 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 DOLE Secretary 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 union officers
    - b) Liability of ordinary workers
    - c) Liability of employer
    - d) 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
  - a) versus Regional Director
2. Reinstatement pending appeal
3. Requirements to perfect appeal to NLRC

### B. National Labor Relations Commission (NLRC)

1. Jurisdiction
2. Effect of NLRC reversal of Labor Arbiter's order of reinstatement
3. Remedies
4. Certified cases

### C. Bureau of Labor Relations – Med-Arbiters

1. Jurisdiction (original and appellate)

### D. National Conciliation and Mediation Board

1. Nature of proceedings
2. Conciliation vs. Mediation
3. Preventive mediation

### E. DOLE Regional Directors

1. Jurisdiction

### F. DOLE Secretary

1. Visitorial and enforcement powers
2. Power to suspend effects of termination
3. Assumption of jurisdiction
4. Appellate jurisdiction
5. Voluntary arbitration powers

### G. Grievance Machinery and Voluntary Arbitration

1. Subject matter of grievance
2. Voluntary Arbitrator
  - a) Jurisdiction
  - b) Procedure
  - c) Remedies

### H. Court of Appeals

1. Rule 65, Rules of Court

### I. Supreme Court

1. Rule 45, Rules of Court

### J. Prescription of actions

**IMPORTANT NOTES:**

1. This listing of covered topics is not intended and should not be used by the law schools as a course outline. This was drawn up for the limited purpose of ensuring that Bar candidates are guided on the coverage of the 2013 Bar Examinations. Listings whose subject matters run across several Bar Subjects shall be deemed to include only the subject matters specific to the given Bar Subject. For example, "Impeachment" is generally a topic under Political Law but is listed also under Legal and Judicial Ethics for the ethical components of this Bar Subject. Note that there may be specific identification of the covering Bar Subject where a topic may be common to several Bar Subjects. For example, "Independent Civil Actions" mentioned in the Civil Code shall be included as a topic in Remedial Law rather than in Civil Law. Note also that many special laws, rules and specific topics, otherwise covered by the different examinable Bar Subjects, have been omitted or are expressly excluded from the coverage of the 2013 Bar Examinations.
2. The appreciation of the fact situations in, and the answers to, some questions in *every* Bar Subject may require the consideration of underlying ethical rules and values.
3. All Supreme Court decisions - pertinent to a given Bar subject and its listed topics, and promulgated up to **January 31, 2013** - are examinable materials within the coverage of the 2013 Bar Examinations.