

**COVERAGE**  
**MERCANTILE LAW**  
**2014 BAR EXAMINATIONS**

**I. Letters of Credit**

- A. Definition and Nature of Letter of Credit
- B. Parties to a Letter of Credit
  - 1. Rights and Obligations of Parties
- C. Basic Principles of Letter of Credit
  - 1. Doctrine of Independence
  - 2. Fraud Exception Principle
  - 3. Doctrine of Strict Compliance

**II. Trust Receipts Law**

- A. Definition/Concept of a Trust Receipt Transaction
  - 1. Loan/Security Feature
  - 2. Ownership of the Goods, Documents and Instruments under a Trust Receipt
- B. Rights of the Entruster
  - 1. Validity of the Security Interest as Against the Creditors of the Entrustee/Innocent Purchasers for Value
- C. Obligation and Liability of the Entrustee
  - 1. Payment/Delivery of Proceeds of Sale or Disposition of Goods, Documents or Instruments
  - 2. Return of Goods, Documents or Instruments in Case of Sale
  - 3. Liability for Loss of Goods, Documents or Instruments
  - 4. Penal Sanction if Offender is a Corporation
- D. Remedies Available
- C. Warehouseman's Lien

**III. Negotiable Instruments Law**

- A. Forms and Interpretation
  - 1. Requisites of Negotiability
  - 2. Kinds of Negotiable Instruments

B. Completion and Delivery

1. Insertion of Date
2. Completion of Blanks
3. Incomplete and Undelivered Instruments
4. Complete but Undelivered Instruments

C. Signature

1. Signing in Trade Name
2. Signature of Agent
3. Indorsement by Minor or Corporation
4. Forgery

D. Consideration

E. Accommodation Party

F. Negotiation

1. Distinguished from Assignment
2. Modes of Negotiation
3. Kinds of Indorsements

G. Rights of the Holder

1. Holder in Due Course
2. Defenses Against the Holder

H. Liabilities of Parties

1. Maker
2. Drawer
3. Acceptor
4. Indorser
5. Warranties

I. Presentment for Payment

1. Necessity of Presentment for Payment
2. Parties to Whom Presentment for Payment Should Be Made
3. Dispensation with Presentment for Payment
4. Dishonor by Non-Payment

J. Notice of Dishonor

1. Parties to Be Notified
2. Parties Who May Give Notice and Dishonor

3. Effect of Notice
4. Form of Notice
5. Waiver
6. Dispensation with Notice
7. Effect of Failure to Give Notice
- K. Discharge of Negotiable Instrument
  1. Discharge of Negotiable Instrument
  2. Discharge of Parties Secondarily Liable
  3. Right of Party Who Discharged Instrument
  4. Renunciation by Holder
- L. Material Alteration
  1. Concept
  2. Effect of Material Alteration
- M. Acceptance
  1. Definition
  2. Manner
  3. Time for Acceptance
  4. Rules Governing Acceptance
- N. Presentment for Acceptance
  1. Time/Place/Manner of Presentment
  2. Effect of Failure to Make Presentment
  3. Dishonor by Non-Acceptance
- O. Promissory Notes
- P. Checks
  1. Definition
  2. Kinds
  3. Presentment for Payment
    - a. Time
    - b. Effect of Delay

#### **IV. Insurance Code**

- A. Concept of Insurance
- B. Elements of an Insurance Contract

C. Characteristics/Nature of Insurance Contracts

D. Classes

1. Marine
2. Fire
3. Casualty
4. Suretyship
5. Life
6. Compulsory Motor Vehicle Liability Insurance

E. Insurable Interest

1. In Life/Health
2. In Property
3. Double Insurance and Over Insurance
4. Multiple or Several Interests on Same Property

F. Perfection of the Contract of Insurance

1. Offer and Acceptance/Consensual
  - a. Delay in Acceptance
  - b. Delivery of Policy
2. Premium Payment
3. Non-Default Options in Life Insurance
4. Reinstatement of a Lapsed Policy of Life Insurance
5. Refund of Premiums

G. Rescission of Insurance Contracts

1. Concealment
2. Misrepresentation/Omissions
3. Breach of Warranties

H. Claims Settlement and Subrogation

1. Notice and Proof of Loss
2. Guidelines on Claims Settlement
  - a. Unfair Claims Settlement; Sanctions
  - b. Prescription of Action
  - c. Subrogation

## **V. Transportation Laws**

### **A. Common Carriers**

1. Diligence Required of Common Carriers
2. Liabilities of Common Carriers

### **B. Vigilance over Goods**

1. Exempting Causes
  - a. Requirement of Absence of Negligence
  - b. Absence of Delay
  - c. Due Diligence to Prevent or Lessen the Loss
2. Contributory Negligence
3. Duration of Liability
  - a. Delivery of Goods to Common Carrier
  - b. Actual or Constructive Delivery
  - c. Temporary Unloading or Storage
4. Stipulation for Limitation of Liability
  - a. Void Stipulations
  - b. Limitation of Liability to Fixed Amount
  - c. Limitation of Liability in Absence of Declaration of Greater Value
5. Liability for Baggage of Passengers
  - a. Checked-In Baggage
  - b. Baggage in Possession of Passengers

### **C. Safety of Passengers**

1. Void Stipulations
2. Duration of Liability
  - a. Waiting for Carrier or Boarding of Carrier
  - b. Arrival at Destination
3. Liability for Acts of Others
  - a. Employees
  - b. Other Passengers and Strangers
4. Extent of Liability for Damages

### **D. Bill of Lading**

1. Three-Fold Character
2. Delivery of Goods

- a. Period of Delivery
- b. Delivery Without Surrender of Bill of Lading
- c. Refusal of Consignee to Take Delivery
- 3. Period for Filing Claims
- 4. Period for Filing Actions
- E. Maritime Commerce
  - 1. Charter Parties
    - a. Bareboat/Demise Charter
    - b. Time Charter
    - c. Voyage/Trip Charter
  - 2. Liability of Ship Owners and Shipping Agents
    - a. Liability for Acts of Captain
    - b. Exceptions to Limited Liability
  - 3. Accidents and Damages in Maritime Commerce
    - a. General Average
    - b. Collisions
  - 4. Carriage of Goods by Sea Act
    - a. Application
    - b. Notice of Loss or Damage
    - c. Period of Prescription
    - d. Limitation of Liability
- F. The Warsaw Convention
  - 1. Applicability
  - 2. Limitation of Liability
    - a. Liability to Passengers
    - b. Liability for Checked Baggage
    - c. Liability for Handcarried Baggage
  - 3. Willful Misconduct

## **VI. The Corporation Code**

- A. Corporation
  - 1. Definition
  - 2. Attributes of the Corporation

- B. Classes of Corporations
- C. Nationality of Corporations
  - 1. Place of Incorporation Test
  - 2. Control Test
  - 3. Grandfather Rule
- D. Corporate Juridical Personality
  - 1. Doctrine of Separate Juridical Personality
    - a. Liability for Torts and Crimes
    - b. Recovery of Moral Damages
  - 2. Doctrine of Piercing the Corporate Veil
    - a. Grounds for Application of Doctrine
    - b. Test in Determining Applicability
- E. Incorporation and Organization
  - 1. Promoter
    - a. Liability of Promoter
    - b. Liability of Corporation for Promoter's Contracts
  - 2. Number and Qualifications of Incorporators
  - 3. Corporate Name — Limitations on Use of Corporate Name
  - 4. Corporate Term
  - 5. Minimum Capital Stock and Subscription Requirements
  - 6. Articles of Incorporation
    - a. Nature and Function of Articles
    - b. Contents
    - c. Amendment
    - d. Non-Amenable Items
  - 7. Registration and Issuance of Certificate of Incorporation
  - 8. Adoption of By-Laws
    - a. Nature and Functions of By-Laws
    - b. Requisites of Valid By-Laws
    - c. Binding Effects
    - d. Amendment or Revision
- F. 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
  3. How Exercised
    - a. By the Shareholders
    - b. By the Board of Directors
    - c. By the Officers
  4. Trust Fund Doctrine
- G. Board of Directors and Trustees
1. Doctrine of Centralized Management
  2. Business Judgment Rule
  3. Tenure, Qualifications and Disqualifications of Directors or Trustees
  4. Elections
    - a. Cumulative Voting/Straight Voting
    - b. Quorum
  5. Removal
  6. Filling of Vacancies
  7. Compensation
  8. Fiduciaries Duties and Liability Rules
  9. Responsibility for Crimes
  10. Inside Information
  11. Contracts
    - a. By Self-Dealing Directors with the Corporation
    - b. Between Corporations with Interlocking Directors



- c. Management Contracts
- 12. Executive Committee
- 13. Meetings
  - a. Regular or Special
    - i. When and Where
    - ii. Notice
  - b. Who Presides
  - c. Quorum
  - d. Rule on Abstention
- H. Stockholders and Members
  - 1. Rights of a Stockholder and Members
    - a. Doctrine of Equality of Shares
  - 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. Pre-Emptive Right
    - e. Right to Vote
    - f. Right to Dividends
    - g. Right of First Refusal
  - 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 the Meetings

I. Capital Structure

- 1. Subscription Agreements
- 2. Consideration for Stocks
- 3. Shares of Stock
  - a. Nature of Stock
  - b. Subscription Agreements
  - c. Consideration for Shares of Stock
  - d. Watered Stock
    - i. Definition
    - ii. Liability of Directors for Watered Stocks
    - iii. Trust Fund Doctrine for Liability for Watered Stocks
  - e. *Situs* of the Shares of Stock
  - f. Classes of Shares of Stock
- 4. Payment of Balance of Subscription
  - a. Call by Board of Directors
  - b. Notice Requirement
  - c. Sale of Delinquent Shares
    - i. Effect of Delinquency
    - ii. Call by Resolution of the Board of Directors
    - iii. Notice of Sale
    - iv. Auction Sale and the Highest Bidder
- 5. 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. Lost or Destroyed Certificates
- 6. Stock and Transfer Book
  - a. Contents
  - b. Who May Make Valid Entries
- 7. Disposition and Encumbrance 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 with Shares
- J. 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 Three-Year Period
    - c. By Management Committee or Rehabilitation Receiver
    - d. Liquidation after Three Years

K. 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. Pre-Emptive 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 - Exclude

4. Foreign Corporations

- a. Bases of Authority over Foreign Corporations
  - i. Consent
  - ii. Doctrine of "Doing Business" (related to definition under the Foreign Investments Act, R.A. No. 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

L. Mergers and Consolidations

- 1. Definition and Concept
- 2. Constituent vs. Consolidated Corporation
- 3. Plan of Merger or Consolidation
- 4. Articles of Merger or Consolidation
- 5. Procedure

6. Effectivity
7. Limitations
8. Effects

## **VII. Securities Regulation Code (R.A. No. 8799)**

- A. State Policy, Purpose
- B. Securities Required to Be Registered
  1. Exempt Securities
  2. Exempt Transactions
- C. Procedure for Registration of Securities
- D. Prohibitions on Fraud, Manipulation and Insider Trading
  1. Manipulation of Security Prices
  2. Short Sales
  3. Fraudulent Transactions
  4. Insider Trading
- E. Protection of Investors
  1. Tender Offer Rule
  2. Rules on Proxy Solicitation
  3. Disclosure Rule
- F. Civil Liability

## **VIII. Banking Laws**

- A. The New Central Bank Act (R.A. No. 7653)
  1. State Policies
  2. Creation of the *Bangko Sentral ng Pilipinas* (BSP)
  3. Responsibility and Primary Objective
  4. Monetary Board—Powers and Functions
  5. How the BSP Handles Banks in Distress
    - a. Conservatorship
    - b. Closure
    - c. Receivership
    - d. Liquidation
  6. How the BSP Handles Exchange Crisis

- a. Legal Tender Power
  - b. Rate of Exchange
- B. Law on Secrecy of Bank Deposits (R.A. No. 1405, as amended)
  - 1. Purpose
  - 2. Prohibited Acts
  - 3. Deposits Covered
  - 4. Exceptions
  - 5. Garnishment of Deposits, including Foreign Deposits
- C. General Banking Law of 2000 (R.A. No. 8791)
  - 1. Definition and Classification of Banks
  - 2. Distinction of Banks from Quasi-Banks and Trust Entities
  - 3. Bank Powers and Liabilities
    - a. Corporate Powers
    - b. Banking and Incidental Powers
  - 4. Diligence Required of Banks — Relevant Jurisprudence
  - 5. Nature of Bank Funds and Bank Deposits
  - 6. Stipulation on Interests
  - 7. Grant of Loans and Security Requirements
    - a. Ratio of Net Worth to Total Risk Assets
    - b. Single Borrower's Limit
    - c. Restrictions on Bank Exposure to DOSRI (Directors, Officers, Stockholders and their Related Interests)

## **IX. Intellectual Property Code (Exclude Implementing Rules & Regulations)**

- A. Intellectual Property Rights in General
  - 1. Intellectual Property Rights
  - 2. Differences between Copyrights, Trademarks and Patent
  - 3. Technology Transfer Arrangements
- B. Patents
  - 1. Patentable Inventions
  - 2. Non-Patentable Inventions
  - 3. Ownership of a Patent
    - a. Right to a Patent

- b. First-to-File Rule
    - c. Inventions Created Pursuant to a Commission
    - d. Right of Priority
  - 4. Grounds for Cancellation of a Patent
  - 5. Remedy of the True and Actual Inventor
  - 6. Rights Conferred by a Patent
  - 7. Limitations of Patent Rights
    - a. Prior User
    - b. Use by the Government
  - 8. Patent Infringement
    - a. Tests in Patent Infringement
      - i. Literal Infringement
      - ii. Doctrine of Equivalents
    - b. Defenses in Action for Infringement
  - 9. Licensing
    - a. Voluntary
    - b. Compulsory
  - 10. Assignment and Transmission of Rights
- C. Trademarks
  - 1. Definition of Marks, Collective Marks, Trade Names
  - 2. Acquisition of Ownership of Mark
  - 3. Acquisition of Ownership of Trade Name
  - 4. Non-Registrable Marks
  - 5. Prior Use of Mark as a Requirement
  - 6. Tests to Determine Confusing Similarity between Marks
    - a. Dominancy Test
    - b. Holistic Test
  - 7. Well-Known Marks
  - 8. Rights Conferred by Registration
  - 9. Use by Third Parties of Names, etc. Similar to Registered Mark
  - 10. Infringement and Remedies
    - a. Trademark Infringement
    - b. Damages

- c. Requirement of Notice
  - 11. Unfair Competition
  - 12. Trade Names or Business Names
  - 13. Collective Marks
- D. Copyrights
  - 1. Basic Principles, Sections 172.2, 175 and 181
  - 2. Copyrightable Works
    - a. Original Works
    - b. Derivative Works
  - 3. Non-Copyrightable Works
  - 4. Rights of Copyright Owner
  - 5. Rules on Ownership of Copyright
  - 6. Limitations on Copyright
    - a. Doctrine of Fair Use
    - b. Copyright Infringement
- E. Rules of Procedure for Intellectual Property Rights Cases (A.M. No. 10-3-10-SC)

## **X. Special Laws**

- A. The Chattel Mortgage Law and Real Estate Mortgage Law (**Excluded and made a part of Civil Law coverage**)
- B. Anti-Money Laundering Act (R.A. No. 9160, as amended by R.A. No. 9194)
  - 1. Policy of the Law
  - 2. Covered Institutions
  - 3. Obligations of Covered Institutions
  - 4. Covered Transactions
  - 5. Suspicious Transactions
  - 6. When Is Money Laundering Committed
  - 7. Unlawful Activities or Predicate Crimes
  - 8. Anti-Money Laundering Council
  - 9. Functions
  - 10. Freezing of Monetary Instrument or Property
  - 11. Authority to Inquire Into Bank Deposits



C. Foreign Investments Act (R.A. No. 7042)

1. Policy of the Law
2. Definition of Terms
  - a. Foreign Investment
  - b. "Doing Business" in the Philippines
  - c. Export Enterprise
  - d. Domestic Market Enterprise
3. Registration of Investments on Non-Philippine Nationals
4. Foreign Investments in Export Enterprise
5. Foreign Investments in Domestic Market Enterprise
6. Foreign Investment Negative List

**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 2014 Bar Examinations.
2. All Supreme Court decisions - pertinent to a given Bar subject and its listed topics, and promulgated up to **March 31, 2014** - are examinable materials within the coverage of the 2014 Bar Examinations.