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STATEMENT OF COVERAGE

This *Bar Review Guide* is presented in the form of an outline of basic principles which bar reviewees may use as a quick guide on the significant areas of labor law in the 2010 Bar Examination. This is presented in five (5) parts: PART ONE covers New Laws; PART TWO covers Books 1 to 4 of the Labor Code and some important social legislation; PART THREE covers Book 5; PART FOUR covers Books 6 and 7 of the Labor Code; and PART FIVE features the coverage of the 2010 Bar Examination in Labor Law and a survey of all questions given in the Bar Examination in Labor Law for the last twenty (20) years – from 1990 to 2009.

LABOR LAWS OF THE PHILIPPINES

PART FIVE

**COVERAGE OF THE
2010 BAR EXAMINATION IN LABOR LAW
AND
SURVEY OF ALL QUESTIONS
ASKED IN THE BAR EXAMINATION IN LABOR LAW
FOR THE LAST TWENTY (20) YEARS
(FROM 1990 TO 2009)**

**COVERAGE OF THE
2010 BAR EXAMINATION IN LABOR LAW¹**

To guide the bar reviewees, hereunder is the official coverage of the 2010 Bar Examination in Labor Law as prescribed by the 2010 Bar Examination Committee of the Supreme Court:

**LABOR STANDARDS/TERMINATION LAW AND
SOCIAL LEGISLATION
September 5, 2010
(First Sunday, Afternoon)**

This examination covers decisions of the Supreme Court, promulgated up to 30 June 2009, and amendments promulgated up to 31 December 2008 to Republic Acts, Presidential Decrees and Executive Orders, covering the following subjects:

**I.
Labor Laws
(Labor Standards Law and Labor Relation Law)**

¹ The official coverage of the 2010 Bar Examinations for Labor Law and for all other subjects is presented at this web address: <http://sc.judiciary.gov.ph/bar/announcement/COVERAGE%202010%20Bar.pdf>

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(a) Labor Code of the Philippines (P.D. No. 442, as amended).

Books I, II, III, V, VI and VII

EXCLUDE: Book IV

(b) Thirteenth (13th) Month Pay Law (P.D. No. 851, as amended)

(c) The Omnibus Rules Implementing the Labor Code of the Philippines.
(Limited to cases decided by the Supreme Court)

(d) Guidelines for the Exercise of the Right to Organize of Government
Employees, etc. (Executive Order No. 180, June 1, 1987).

II.

Social Legislation

(a) Social Security Act of 1997 (R.A. No. 8282)

(b) Government Service Insurance Act of 1997 (R.A. No. 8291)

(c) Anti-Sexual Harassment Act of 1995 (R.A. No. 7877)

EXCLUDE:

(a) Employees Compensation and State Insurance Fund.

(b) Comprehensive Agrarian Reform Law

SURVEY OF ALL QUESTIONS ASKED IN THE BAR EXAMINATION IN LABOR LAW IN THE LAST TWENTY (20) YEARS (FROM 1990 TO 2009)

Introductory Statement

A survey of the bar examinations in labor law given in the last twenty (20) years, from 1990 to 2009, indicates the following specific labor law principles that were made subject of questions:

LABOR LAW PRINCIPLES

YEAR GIVEN

A. General Principles:

- Protection-to-Labor Clause in the Constitution
(Article XIII, Section 3)

1998

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- Labor as Property Right 2006
- Workers' Right to Participate in Decision and Policy Making Policies under Article XIII, Section 3 of the Constitution 2008
- Policies in Article XIII, Section 3 of the Constitution Not Covered by Article 3 (Declaration of Basic Policy) of the Labor Code 2009
- Constitutionality of a Law Abolishing Security of Tenure and Allowing Contractualization in All Business Operations 2009
- Principle of Co-Determination/Constitutional Basis 2007
- Social Justice as Guiding Principle in Labor 2003
- Manners by which Labor Laws Show Compassion Towards the Working Man 1993
- Purpose of Labor Legislations 2006
- Three (3) General Classifications of Labor Statutes 1995
- Inapplicability of the Principle of *Solutio Indebiti* to Labor Cases 1994
- Distinction Between Labor Standards and Labor Relations 1997/2003
- Distinction Between Labor Legislation and Social Legislation 1994

B. Employer-Employee Relationship:

- Employer-Employee Relationship 1991
- Corporations Composing a Group of Companies Have Separate and Distinct Juridical Personalities From Each Other 1999
- Elements/Tests of Employer-Employee Relationship 1996/2008
- Rights of Employer and Employee 1996
- Employer-Employee Relationship is Both a Question of Fact and Law and Not Determined by Stipulation by the Parties 2000
- Binding Effect of a Stipulation in a Service Contract Between a Principal and a Contractor on the Non-Existence of Employment Relationship Between the Employees of the Latter Who are Assigned to the Former 2008
- Absence of Employer-Employee Relationship Between the Employer and OFW Who Was Not Deployed Abroad 2009
- GROs in Night Clubs are Employees Thereof 1999
- When Security Guards are Considered Employees of the Company (Principal) Which Hired Them and Not of the Security Agency 1999
- Working Student Have No Employer-Employee Relations With the School 1997

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C. Kinds of Employees:

- Distinction Between Managerial, Supervisory and Rank-and-File Employees 1996/2003
- Distinction Between Managerial Employees and Supervisory Employees 2002
- Distinction Between the Rights of Managerial Employees and Members of Managerial Staff 1994

D. Management Prerogatives:

- Management Rights and Prerogatives 1994/2000
- Precedence Between Management Prerogatives and Employee's Security of Tenure 1993
- Benefits Unilaterally Granted 2005
- Contracting Out of Services 1994

E. Validity of Non-Competition Clause:

- Validity of a Stipulation in an Employment Contract Prohibiting Employment in a Competing Company Within One Year From Separation 2009

THE LABOR CODE AS BASIS OF QUESTIONS IN THE BAR EXAMINATIONS

The roots of bar examination questions are readily traceable. Each question² finds its basis either in the provisions of the Labor Code or special laws related to labor or pieces of jurisprudence. The survey of the questions given in the Bar Examinations for the last twenty (20) years (1990 to 2009) unearthed this incontrovertible fact.

Hereunder is a topical presentation of all the questions in the Bar Examination in Labor Law from 1990 to 2009 which find their mooring in the Labor Code. The presentation follows the codal provisions of the Labor Code, that is, from Books I to VII.

SUBJECT MATTERS IN BOOK I OF THE LABOR CODE GIVEN IN THE BAR EXAMINATION

A. Declaration of Basic Policy (Article 3):

- Policies in Article XIII, Section 3 of the Constitution

² Except in the 2006 Bar Examination where the following question which has no bearing on Labor Law was asked (No. IX thereof): "-IX-

"Armstrong Corporation, a foreign corporation, intends to engage in the exploration of Philippine natural resources. Mr. Antonio Reyes offered the forest land he owns to the president of the corporation. May Armstrong Corporation enter into a financial and technical assistance agreement (FTAA) with Mr. Reyes to explore, develop, and utilize the land? Explain. 5%"

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Not Covered by Article 3 (Declaration of Basic Policy) of the Labor Code 2009

B. Construction in Favor of Labor (Article 4):

- Interpretation of Labor Laws 1998
- Liberal Interpretation of Labor Laws 2006
- Resolving Doubt in the Appreciation of Evidence 2009

C. Emancipation of Tenants (Articles 7 to 11):

- Foundation of Agrarian Reform; Who are beneficiaries? 1991
- Distinction Between Just Compensation Under the Agrarian Reform Law and Bill of Rights 1991
- Retention Limit 1991

D. Mandatory Remittance of Foreign Exchange Earnings (Article 22):

- Mandatory Foreign Exchange Remittance by OFWs 2006

E. Travel Agencies Prohibited to Recruit (Article 26):

- Prohibition on Travel Agencies From Engaging in Recruitment and Placement Activities 2006

F. Citizenship Requirement (Article 27):

- Requirement of 75% Filipino Ownership of Recruitment Agencies 2002

G. Non-Transferability of License or Authority (Article 29):

- Non-Transferability of License of a Recruitment and Placement Agency 1998

H. Suspension and/or Cancellation of License or Authority (Article 35):

- Cancellation of License; Travel Ban 2004

I. Illegal Recruitment (Article 38):

- Illegal Recruitment 1991
- Types of Illegal Recruitment Under the Labor Code 2007
- Qualifying Circumstances Converting Illegal Recruitment to Economic Sabotage 2002/2005
- Large-Scale Illegal Recruitment 2005
- Power of the DOLE Secretary to Issue Search

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and Arrest Warrants 2007

J. Employment Permit of Non-Resident Aliens (Article 40):

- Employment of Aliens; Requisites 1995
- Issuance of Alien Employment Permit (AEP) to a Non-Resident Alien Desiring to Work in the Philippines 2007

**SUBJECT MATTERS IN BOOK II OF THE LABOR CODE
GIVEN IN THE BAR EXAMINATION**

A. Employment of Handicapped Workers (Articles 78 to 81):

- Employment of Handicapped Employee; When Handicap Does Not Affect Working Ability 1998
- Employment of Handicapped Employee; Low IQ is Not a Handicap 2000
- Employment for a Fixed Period of Handicapped Workers 2006

**SUBJECT MATTERS IN BOOK III OF THE LABOR CODE
GIVEN IN THE BAR EXAMINATION**

A. Excepted Employees From Coverage of Labor Standards (Article 82):

- Workers Paid by Results are not Entitled to Overtime Pay, Holiday Pay and 13th Month Pay 2004

B. Hours Worked (Article 84):

- Conditions Allowing Compressed Work-Week as Exception to 8-Hour a Day Requirement 2005
- Working "While on Call"; Waiting Time 1997/2004

C. Night Shift Differential (Article 86):

- Entitlement to Night-Shift Differential Pay 2002
- Agreement to Reduce Minimum Percentage Provided by Law for Night Shift Differential Pay, Overtime Pay and Premium Pay 2006

D. Overtime Work (Article 87):

- Entitlement to Overtime Pay 1991/1992
- Right of Seaman to Overtime Pay 1993

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- Entitlement of Workers in a Charitable Institution to Overtime Pay 2002
- Validity of Waiver of Overtime Pay 2009

E. Undertime Not Offset By Overtime (Article 88):

- Undertime not Offset by Overtime; Waiver of Overtime Pay 1992
- Entitlement to Overtime Pay for Saturday Work; Not a Case of Undertime not Offset by Overtime Since Saturday is a Working Day Under the Law 2003

F. Emergency Overtime Work (Article 89):

- Refusal of Employee to Render Overtime Work 2008

G. Right to Weekly Rest Period (Article 91):

- Entitlement of Workers in a Charitable, Non-Profit Institution to Weekly Rest Period 1998

H. Compensation for Rest Day, Sunday or Holiday Work (Article 93):

- Computation of Premium Pay for Work on a Rest Day Which is Also a Regular Holiday; Computation of Overtime Pay on That Day 2002
- Validity of Waiver of Compensation for Sundays and Holidays 1996

I. Right to Holiday Pay (Article 94):

- Entitlement to Holiday Pay 1991
- Entitlement to Holiday Pay of Workers Paid by Results 2002
- Computation of Premium Pay for Regular Holiday 2002
- Computation of Holiday Pay When Two Regular Holidays Fall on the Same Day 2005

J. Right to Service Incentive Leave (Article 95):

- Effect of Grant of Sick Leave and Other Generous Benefits More Than What the Law Provides 1997

K. Service Charges (Article 96):

- Right of Waitresses to Receive 85% of Service Charges Collected by an Establishment 2009

L. Direct Payment of Wages (Article 105):

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- Payment of Money Claims to Heirs of Deceased Employees Without Necessity of Intestate Proceedings; Right of Employer to Deduct From Monetary Benefits Amounts for Debts to the Union 1998

M. Contracting or Subcontracting (Articles 106 to 109):

- Independent Contractor 2001/2002
- Determination of Whether a Person is Engaged in Independent Contracting or Labor-Only Contracting 2000
- Definition of Labor-Only Contracting 1994
- Distinction Between Labor-Only Contracting and Job Contracting 1997
- Distinction Between Labor-Only Contracting, Permissible Job Contracting and Recruitment 2008
- Labor-Only Contracting; Liabilities of Principal 2002
- Validity of Service Agreement Where the Job Contractor Has Only One Client, the Principal Where One of Its Owners Holds Majority in the Corporation Engaged in Job Contracting With Said Principal 2009
- Solidary Liability of Principal with Contractor 1992/2004/2009
- Distinction Between Liabilities of Principal in Legitimate Job Contracting and in Labor-Only Contracting 1994
- Non-Liability of Principal for the Dismissal for Cause of a Security Guard Which Was Effected by His Direct Employer - the Independent Contractor 2005
- Principal Not Liable for Claim of Security Guard for Overtime and Other Benefits; Its liability Only Pertains to Unpaid Wages 2005
- Employment of Radio-TV Show Host; When Considered an Independent Contractor 2005

N. Worker Preference in Case of Bankruptcy (Article 110):

- Right of Preference of Workers Is Not a Lien on the Property of the Insolvent Debtor in Favor of Workers 1995
- Right of Preference of Credit is Not Superior to the Right of a Mortgagee of Employer's Property 1999/2003
- Worker's Preference In Properties which were Foreclosed Pursuant to a Mortgage Credit 1992
- Distinction Between Mortgage Created Under the Civil Code and the Right of First Preference Under the Labor Code as Regards the Unpaid Wages of Workers 1995

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O. Attorney's Fees (Article 111):

- Right to 10% Attorney's Fees in Cases of Unlawful Withholding of Wages 1993

P. Wages (Articles 112 to 127):

- Distinction Between Wage and Salary; Issue of Whether Wage or Salary is Subject to Attachment 1994
- Right of Employee to Receive Compensation for Additional Work Assignment 1993
- Definition of Wage Distortion 1997/2009
- Wage Distortion; Definition and How Settled 2006
- Wage Distortion, How Resolved if There is a CBA and if There is None 2002
- Wage Distortion; Not a Ground for Strike/Lockout 1997/2006/2009
- Procedural Remedies to Correct Wage Distortion 2009
- Right of Teachers to Receive Emergency Cost of Living Allowance (ECOLA) During Semestral Breaks 1997

Q. Visitorial and Enforcement Power (Article 128):

- Validity of Compliance Order issued by the Regional Director 2008
- Exercise of Visitorial and Enforcement Power by the Regional Director Over Individual Claim Exceeding P5,000.00 2009

R. Employment of Women (Articles 130 to 138):

- When Employer is Guilty of Discrimination Against Women Employees and Not of Sexual Harassment 2003
- Employment of Women; Discrimination by Reason of Age 1998
- Employment of Women; Discrimination by Reason of Marriage 1995/1997
- Entitlement of Waitresses to 85% Share in Service Charges 2008
- GROs in Night Clubs are Employees Thereof 1999
- Entitlement of GROs to Night Shift Differential Pay, Backwages, Overtime Pay and Holiday Pay 1997

S. Employment of Minors (Articles 139 to 140):

- Employment of Minors 2006
- Statutory Restrictions on the Employment of Minors 2007
- Employment of Children Below 15 Years Old 2004/2009
- Employment of Minors and Assignment to Hazardous Work 2002

T. Employment of Househelpers (Articles 141 to 152):

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- Distinction Between Househelper and Homeworker 2009
- Employment of Househelpers (Caretaker, Cook and Laundry Woman) and Assignment to Company Rest House and Recreational Facility 2000
- Meaning of Duty to Minister to the Employer's Personal Comfort and Convenience in Article 141 (Househelper Was Requested for a Massage) 2009
- Assignment of Househelper to Non-Household Work 2007
- Assignment of Househelper to Company Staffhouse 2007
- Employment of Driver as Househelper and Assignment to Non-Household Work in a Commercial Establishment 1998

U. Employment of Homeworkers (Articles 153 to 155):

- Employment of Homeworkers; When Not Considered as Such 2000

**SUBJECT MATTERS IN BOOK IV OF THE LABOR CODE
GIVEN IN THE BAR EXAMINATION**

- Employees Compensation Act; Work-Connected Disability 1996
- Liability of State Insurance Fund Being Administered by the SSS for Work-Connected Death 1994
- Liability of the State Insurance Fund and Non-Intervention by Employer in the Claims Process 1995

**SUBJECT MATTERS IN BOOK V OF THE LABOR CODE
GIVEN IN THE BAR EXAMINATION**

A. Jurisdiction:

1. Labor Arbiter (Article 217):

- Original and Exclusive Jurisdiction of Labor Arbiter 1990/1991/1995
- Jurisdiction Over Unfair Labor Practices Cases 1997
- Jurisdiction Over Civil Aspect of ULP 2007
- Labor Arbiter has no Jurisdiction Over Tort or Quasi-Delict Cases 2004
- Jurisdiction Over Immune International Agency 1994
- Jurisdiction Over OFW Cases 2009
- Jurisdiction Over OFW Cases When OFW Was Not Deployed Overseas 2009
- Dismissal of Corporate Officer, an Intra-Corporate Dispute 1996/1997
- Disposition of Cases Involving Interpretation and Implementation of CBA 1995
- Lack of Jurisdiction of Labor Arbiter Over Cases

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- Cognizable by Med-Arbiter 1996
- P.D. No. 1508 (Barangay Justice System) Requiring the Submission of Disputes Before the Barangay Lupong Tagapamayapa Cannot be Invoked to Deprive Labor Arbiter of Jurisdiction 2007

- 2. National Labor Relations Commission (NLRC) (Articles 217, 218, 263[g]):**
 - Jurisdiction of the NLRC 1995
 - NLRC can Decide Certified Cases Based on Position Papers 2001
 - NLRC has No Jurisdiction Over Cases Cognizable by the Bureau of Labor Relations (BLR) 2001
 - Matters that may be Taken by NLRC En Banc 1993
 - Power of the NLRC to Issue Injunction in Non-Employment Related Case 1993
 - Injunction in Labor Cases 2000

- 3. DOLE Regional Director (Articles 128 and 129):**
 - Jurisdiction of Regional Director to Hear Claims Exceeding P5,000.00 Under Article 128 1991
 - Jurisdiction of Regional Director Under Article 128 1993
 - Conflict of Jurisdiction Between DOLE Regional Director and Labor Arbiter Over Money Claims; Rule When Accompanied with Claim for Reinstatement - 1996
 - Jurisdiction of Regional Director Over Small Money Claims; Submission to Barangay Conciliation Under P.D. No. 1508 Not Necessary 1994

- 4. DOLE Secretary:**
 - Authority of the DOLE Secretary to Approve Management Policy (Under Article 132, Labor Code) 1998
 - Authority of the DOLE Secretary to Suspend Effects of Termination Under Article 277[b] of the Labor Code 1998

- 5. Voluntary Arbitrator (Articles 261 and 262):**
 - Jurisdiction of the Voluntary Arbitrator 1997
 - Issues or Disputes That May Be Submitted for Voluntary Arbitration 2008
 - Jurisdiction of Voluntary Arbitrator Over All Disputes Mutually Submitted by the Parties (Article 262, Labor Code) 2003
 - Issues Cognizable by the Labor Arbiter May be Submitted to Voluntary Arbitration 2008

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7. Philippine Overseas Employment Administration (POEA):

- Grounds for Disciplinary Action by POEA of an Overseas Worker 2007

8. Regular Court:

- Jurisdiction Over Criminal Aspect of ULP 2007
- Regular Court's Jurisdiction Over Damages in the Absence of Employer-Employee Relationship 1995/1999
- Regular Court Has No Jurisdiction Over a Labor Dispute 1992/2001

B. Appeals:

1. Appeals from Labor Arbiter to NLRC (Article 223):

- Appeal from Labor Arbiter's Decision; Reglementary Period 1990
- Appeal from Labor Arbiter/s Decision Filed Beyond 10-day Reglementary Period 2001
- Immediate Executory Nature of Reinstatement Pending Appeal; Necessity for Writ of Execution; Relief of Employer to Forestall Reinstatement Pending Appeal 2009
- Definition of Payroll Reinstatement and Its Application 2005
- Liability for Contempt of Company and Its Officers For Their Refusal to Reinstatement Pending Appeal; NLRC's Authority to Order Payroll Reinstatement in the Face of Employer's Refusal to Reinstatement 1999
- Ways of Staying the Execution of a Decision, Order or Award of a Labor Arbiter 2007
- Requirement of Posting of Bond 1993/2001

2. Elevation of Case from NLRC to Court of Appeals (CA) (Rule 65, Revised Rules of Court):

- Losing Party in an Appealed Case to NLRC Should File Motion for Reconsideration and if Denied, Elevate the Case to the CA by way of Rule 65 Petition 1999
- Elevation to CA from NLRC Decision Through Rule 65 Certiorari Petition 1990

3. Appeals from Voluntary Arbitrator's Decision (Rule 43, Revised Rules of Court):

- Appeals of Decisions of Voluntary Arbitrators 1993
- Right of Voluntary Arbitrators to Modify Their Awards 1993

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C. Execution of Decisions, Orders or Awards (Article 224):

- Execution of a Judgment Which, on Appeal,
Has Become Final and Executory 2007
- Instances When Order of Execution May Be Appealed 2007

D. Appearance and Fees (Article 222):

- Appearance of Non-Lawyers Before the NLRC and
Labor Arbiter 2007
- Entitlement to Attorney's Fees of Non-Lawyers
Appearing in Labor Proceedings 2007
- Entitlement to Attorney's Fees of Union Lawyer
Who Assisted in CBA Negotiation 1993
- Validity of Collection From Individual Members of
Amount for Attorney's Fees of Lawyer Who
Assisted in CBA Negotiation; Validity of
Payment for Services of Union Officers in
the CBA Negotiations 1997

E. Compromise Agreement (Article 227):

- Requirement for Validity of Compromise Agreement 1993
- Jurisdictional Cognizance of Compromise Agreements/
Settlements by NLRC and Regular Courts 2007
- Novation of a Final and Executory Decision of
a Labor Arbiter by a Compromise Agreement 2007
- Validity of a Release and Quitclaim of a Final and
Executory Judgment for Lesser Amount 1999
- Annulment of Quitclaim Which Was Signed
Due to Dire Necessity 1999
- Voluntariness of a Quitclaim Executed by a Middle Manager 1994

F. Privileged Communication (Article 233):

- Sacrosanct Character of Statements Made in Conciliation
Proceedings in the DOLE; Philosophy Behind
the Rule (on Privileged Communication) 2007

G. Labor Organization (Article 234 to 242):

- Distinction Between the Right to Self-Organization
of Government Employees and Private Sector
Employees
- Importance of Labor Organization 1996
- Right of Workers Not to Join a Union 2000
- Right of Employees in Non-Stock, Non-Profit
Organization to Join a Union 2000

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- Right of Alien Employees to Join a Union 2000
- Union Cannot Deny Membership to Any and All Applicants 1998
- Multiple Choice: At What Point Does a Labor Organization Acquire Legal Personality 2003
- Right of Employees of Cooperatives to Form a Union 2002
- Right to Self-Organization of Employees in an Establishment With Only Nine (9) Employees Who are Paid on a Piece-Rate Basis 2002

H. Special Assessments by Union (Article 241):

- Validity of Special Assessments Collected by the Union; Requisites 2001/2002

I. Ineligibility of Managerial Employees to Join Any Labor Organization; Right of Supervisory Employees (Article 245):

- Definition of Appropriate Bargaining Unit 1998
- Necessity of Existence of Employer-Employee Relationship Between Employer and Members of the Bargaining Unit 1998
- Inclusion of Rank-and-File Employees in the Supervisory Union 1999
- Inclusion of Managerial Employees in the Supervisory Union 1995
- Illegality of Dismissal of Managerial Employees Due to Union Activities 2004
- Right of Confidential Employees to Join Union 2002/2009

J. Unfair Labor Practices [ULP] (Articles 247, 248, 249, 261 and 263[c]):

- Definition and Examples of ULP of Employer and Labor Organization 1996
- Company Union 1990
- Abolition of Positions and Contracting Out the Same Positions to Outside Entity 1992
- Contracting-Out of Workers 1990
- Contracting-Out of Clerical and Janitorial Services; When Valid 2001
- Refusal by Employer to Bargain with Federation Due to Disaffiliation by Local Union 1992
- Refusal of Employer to Bargain with Federation Due to the Dissolution of the Local Union 2008
- Refusal to Negotiate With an Unrecognized and Uncertified Union is Not ULP 1997
- Issue of Whether a Runaway Shop is ULP 2009
- Commission of ULP by Employer Subject to

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M. Collective Bargaining Agreement [CBA] (Articles 250 to 259):

- Jurisdictional Pre-Conditions Prior to Collective Bargaining 1996
- Interpretation of CBA Provision 2004
- Mandatory Subjects of Collective Bargaining 1996
- Bargaining Representative of Union
 May Not Be a Member Thereof 2000
- Right of Non-Members of the Bargaining Agent to Receive
 Benefits from CBA 2005
- Definition of Automatic Renewal Clause 1999/2008
- Application of Automatic Renewal Clause in a Case 2001
- Application of the Substitutionary Doctrine 2000/2009
- Effect of Withdrawal of Fringe Benefits Earlier Granted
 Due to the Eventual Deadlock in CBA Negotiation 2009
- Effect of Pendency of Representation Issue Within the
 Federation on the Right of a Local Chapter to
 Negotiate a CBA; Management Cannot Refuse
 to Negotiate a CBA with Local Chapter; Power of
 DOLE Secretary to Resolve CBA Issues in
 Assumed Cases 1999
- Remedies of Union in Case of Deadlock in CBA Negotiation 2009
- Retroactivity of Arbitral Award 2001
- Power of the DOLE Secretary to Fix Retroactivity
 of Arbitral Awards 1994
- Effect of Sale of Establishment in Good Faith on CBA;
 New Owner Has No Obligation to Absorb
 Employees Already Paid Separation Pay 1994
- New Owner, in Case of Sale of Business in Good Faith,
 is Not Bound by CBA, it Being a Contract
 in Personam 2000
- Requirement of Registration of CBA With the
 Bureau of Labor Relations; Reason Thereof 2000

N. Certification Election (Articles 255, 256 and 257):

- Certification Election 1990
- Purpose of Certification Election 1993
- Validity of Certification Election 1992
- Rationale Why There Are Instances When
 Certification Election is Mandatory 2003
- Proper Reckoning of Votes in Certification Election 1992/2009
- "No-Union" Vote Can Win in Certification Election 2006
- When Run-Off Election Occurs 2006/2009
- Distinction Between Certification Election,
 Consent Election; Run-Off Election 2000
- Distinction Between Consent Election and
 Certification Election 2004
- Determination of Exclusive Bargaining Agent;

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- Distinction Between Voluntary Recognition, Certification Election and Consent Election 2006
- Bureau of Labor Relations Cannot Certify a Union Based Solely on Membership Cards Without Conducting a Certification Election 1998
- Distinction Between Contract Bar Rule and Deadlock Bar Rule 1999
- Application of the Deadlock Bar Rule 2009
- Certification Election; Separation of Unions Doctrine (Right of the Supervisory Union to be Affiliated with the Same Federation with which the Rank-and-File Union is also Affiliated) 1992
- Proper Reckoning of the Freedom Period 2009
- Instances When Petition for Certification Election May Be Filed Outside of the Freedom Period 1999
- Right of Probationary Employees to Participate in Certification Election 1999
- Right of Contractual Employees to Participate in Certification Election 1991
- Right of Dismissed Employee to Participate in Certification Election 1990
- Effect of a Petition for Certification Election Filed By a Union Whose Registration Has Yet to be Approved by the DOLE 2001

O. Collective Bargaining Unit (Articles 255, 256 and 257):

- Globe Doctrine 2007
- Community of Interest Rule 2007

P. When an Employer May File the Petition for Certification Election (Article 258):

- Right of Employer to Refuse to Negotiate a CBA When Requested by Uncertified Unions 1991
- Right of Employer to File a Petition for Certification Election 1991
- Right of Employer to File Petition for Certification Election When Demand For Recognition is Made by Two Uncertified Competing Unions 2005

Q. Employer as Bystander (Article 258-A):

- Bystander Rule; Employer Has No Personality to Oppose Certification Election 1996
- Right of Employer to Oppose Inclusion of Confidential Employees: (a) in the Bargaining Unit of Rank-and-File Employees; and (b) Bargaining Unit of Supervisors 1994

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R. Strikes and Lockouts (Articles 263 and 264):

- Rationale for State Regulation of Strike Activity and the Interests Involved That the State Must Balance and Reconcile; Cite two (2) Examples on How the Law Regulates the Use of Strike as a Form of Concerted Activity 2000
- Legal Requirements of a Valid Strike 2007
- Distinction Between Sympathy and General Strike 2004
- Distinction Between a Strike and a Protest Rally Staged After Assumption of Jurisdiction by the DOLE Secretary Allegedly Pursued in the Exercise of the Right to Peaceably Assemble and Freedom of Expression 2008
- Strike Based on Unfair Labor Practice 1991
- Objectives of Certifying a National Interest Case to NLR for Compulsory Arbitration 1995
- Hiring of Replacements; Effect of Refusal by Employer to Admit Back Replaced Strikers 2006
- Employer Cannot Validly Refuse to Admit Voluntarily Returning Strikers Even if Their Replacements Were Hired 1997
- Right of Strikers in an Illegal Strike to be Reinstated 1995
- Right of Strikers in an Illegal Strike to Receive Their Wages for the Duration of the Strike 1995
- Staging of a Walk-Out, an Illegal Strike; Union Officer who Led the Walk-Out, Deemed Terminated 2000
- Right of Employer to Dismiss Strikers Who Committed Illegal Acts During the Strike, After Admitting Them Back to Work 2006
- In an Illegal Strike, Union Officers are Deemed Terminated but not Ordinary Members of the Union 2003
- Petition to Declare Picket and Strike Illegal 1992
- Consequences of an Illegal Strike 2008
- Distinction of Liability of Union Officers and Ordinary Members in the Event of Declaration of Illegality of Strike 2007
- Violation of the Anti-Scab Law 1992
- Legality of Strike Based on Violation of CBA 1992
- Union-Busting (Dismissal of Union President); Necessity to Observe “Cooling-Off Period” and Strike-Vote Requirement 2009
- Employer’s Act of Refusing to Admit Back Voluntarily Returning Strikers Constitutes an Illegal Lockout 1995
- A Strike Staged After NCMB Dismissed the Notice of Strike and During the Subsequent Conduct of Conciliation is Illegal; Right of Employer to Unilaterally Declare Strikers Who Participated in the Illegal Strike as Having

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- Lost Their Employment Status; Right of Dismissed Strikers to File Illegal Dismissal Case 1994
- Right to Picket Non-Company Owned Outlets 1991
- Strikers in a Lawful Strike Should be Admitted Back to Work Except Those Who Committed Illegal Acts in the Course of the Strike Who are Deemed to Have Lost Their Employment Status 2006
- Legality of Picketing Participated In By Non-Employees of the Strike-Bound Employer; Curtailing Picketing When Illegal Acts are Committed in the Course Thereof 2000
- Legality of Picketing When Illegal Acts are Committed in the Course Thereof; Validity of Dismissal of Participants Therein 2004
- Statutory Procedural Requisites of a Valid Strike; Strict Compliance Required 2004
- Illegality of Wildcat Strike; Employer Not Guilty of Unfair Labor Practice When It Refused to Collectively Bargain With an Unrecognized/Uncertified Union 1997
- Work Slowdown, Not a Valid Form of Strike Activity 1998
- Obligation of Employer to Pay Salaries of Supervisors Who Were Prevented From Working Due to the Strike Staged by the Rank-and-File Union 2008
- Government Employees Have No Right to Strike 2004/2009

S. Power of DOLE Secretary to Assume Jurisdiction Over National Interest Cases or Certify Them to the NLRC for Compulsory Arbitration and to Issue Return-to-Work Order (Article 263[g]):

- Validity of Exercise by DOLE Secretary of Assumption Power 1992/2008
- Validity of Certification of National Interest Case to the NLRC 1991
- Remedies from DOLE Secretary's Decision in Assumed Cases 1992
- Legal Implications of an Assumption Order 2003
- Effect of Assumption of Jurisdiction on Strikers 1997
- Employer Cannot Defer Implementation of the Return to Work Order by Filing a Motion for Reconsideration Thereof 1998
- Power of NLRC to Resolve CBA Deadlocked Issues in Certified Cases 1992
- Existence of Labor Dispute Cognizable by the DOLE Secretary 1991
- Multiple Choice on Which Among the Entities Constitutes an Industry Vital to the National Interest 2004
- Power of DOLE Secretary to Intervene, Assume Jurisdiction and Issue a Temporary Restraining

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- Order (TRO) Over a Company Producing Chlorine for Water Treatment 2004
- Validity of DOLE Secretary's Assumption of Jurisdiction Over a Labor Dispute Involving a School; Effect of a Motion for Reconsideration of Said Order; Legality of the Strike Staged After Said Assumption 1996
- Temporary Reinstatement and Payroll Reinstatement Pursuant to a Return-to-Work Order 1991
- Consequence of Defiance of Return-to-Work Order; Right of Employer to Dismiss Defiant Strikers 1994/1997
- Employees Who Did Not Report for Work on Regular Holidays (Maundy Thursday, Good Friday and Black Saturday) When So Required Under Their Employment Contracts and During the Pendency of an Assumed Case are Deemed to Have Conducted an Illegal Strike Since It Resulted in the Stoppage of Work, the Employer Being on a 24-Hour Operation 2002

T. Visitorial Power of the DOLE Secretary (Article 274):

- Authority of DOLE Secretary to Examine the Financial Records of the Union; Authority to Order an Examination and Audit of Financial Records; Requisites 1999/2001

**SUBJECT MATTERS IN BOOK VI OF THE LABOR CODE
GIVEN IN THE BAR EXAMINATION**

A. Procedural Due Process (Article 277[b]):

1. Procedural Due Process:

- Standards/Requisites of Due Process 1990/1994/2006
- Twin Requirements of Due Process 2009
- Requirements of Due Process Prior to Dismissal; 1998/1999
- Procedural Due Process, a Requisite Prior to Dismissal of Employee; Termination is Legal if There is Just Cause But Without Due Process; Entitlement of Dismissed Employee to Indemnity for Lack of Due Process 1999
- Entitlement to Due Process of a Managerial Employee Prior to His Dismissal 1994
- Due Process Required in Termination of Project Employment 2009
- Dismissal Based Solely on the Inculpatory Statement of a Co-Respondent Employee 1999

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2. Suspension of the Effects of Termination:

- Suspension of the Effects of Termination During Pendency of Illegal Dismissal Case 1994

3. Effect of Criminal Case on the Illegal Dismissal Case:

- Effect of Filing of Criminal Complaint on Dismissal of Employee 1993
- Effect of Acquittal Due to Reasonable Doubt on Dismissal 1993

4. Quantum of Evidence:

- Quantum of Evidence Required in Administrative Cases 1993

5. Injunction on Administrative Disciplinary Cases:

- Administrative Disciplinary Cases Cannot Be Enjoined 1995

B. Security of Tenure (Article 279):

1. Just Causes and Authorized Causes:

- Distinction Between Just Causes and Authorized Causes; Cite Examples 2000/2004

2. Reliefs Available to Illegally Dismissed Employee:

- Reliefs to Illegally Dismissed Employee 1991
- Reliefs to Which an Employee Dismissed for Just Cause But Without Due Process is Entitled 1997/2009

2.1. Reinstatement:

- Dismissal Without Due Process; Entitlement to Reinstatement 1994
- Reinstatement With Full Backwages 1990
- Entitlement to Reinstatement and Damages 1993
- Validity of Award of Reinstatement If Not Prayed for in the Complaint 1994
- Five (5) Instances When an Employee May Not Be Reinstated 1995
- Instances When Non-Compliance by the Employer With Reinstatement Order is Allowed 2007
- Entitlement to Reinstatement and Backwages by Reason of Dismissal Due to Non-Existent

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4. Doctrine of Strained Relations:

- Doctrine of Strained Relations in Dismissal Cases 1993

5. Solidary Liability of Officers for Illegal Dismissal:

- Solidary Liability of General Manager for Payment of Backwages in an Illegal Dismissal Case 2002
- Liability of Principal Officers of a Corporation for Unpaid Wages and Other Benefits 1997

C. Regular and Casual Employment (Article 280):

1. Regular, Project, Seasonal and Casual Employment:

- Distinction Between Project Employee and Regular Employee 1996
- Distinction Between a Project Employee and a Casual or Contractual Employee 2005
- Distinction Between a Casual and Regular Employee 2007
- Entitlement of Project Employees to Wage Increases Provided for Regular Employees Under the CBA 2005
- Repeated Re-Hiring of a Project Employee May Make Him a Regular Employee 1993/1994/2002
- Effect of Repeated Re-Hiring of Project Employee for Ten (10) Years 1998
- Termination of Project Employment Coinciding With Completion of Project 2009
- Employment Status of an “Extra Waiter” Who Was Called Upon for More Than 10 Years to Work During Big Affairs of the Hotel That are Beyond the Capacity of Its Regular Employees 2008

2. Fixed-Term Employment:

- Termination of Fixed-Term Employment 1992/2008
- Repeated Re-Hiring of Fixed-Term Employee Makes Her a Regular Employee; Her Subsequent Non-Hiring Amounts to Constructive Dismissal 2005
- Employment of Seafarers is for a Fixed Term 2002
- OFWs Can Never Attain Regularity of Employment 2009

D. Probationary Employment (Article 281):

- Dismissal of Probationary Employees; Right to Security of Tenure 2006
- Termination of a Probationary Employee When Standards Were Not Made Known to Him in Writing 1998

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- Limitations Imposed by Law and Jurisprudence on Termination of a Probationary Employee 2001
- Effect of Probationary Period Exceeding Six (6) Months (First Six Months is for Training as Lineman, Followed by Ten Months of Probationary Employment) 1995
- Extension of Probationary Employment 1993

E. Termination by Employer (Article 282):

- Dismissal Grounded on Serious Misconduct 1995/1996
- Dismissal Grounded on Willful Disobedience of a Lawful Order of the Employer 1993
- Dismissal Based on Obesity 2008
- Dismissal Grounded on Loss of Confidence 1991
- Validity of Dismissal of a Rank-and-File Employee for Loss of Confidence 1999/2001/2009
- Dismissal Due to Refusal of Employee to Render Overtime Work 2008
- Dismissal of 31-Year Old Lady Teacher Who Married Her 16-Year Old Student, Not Immoral Conduct 1996
- Dismissal of a Managing Partner for Sexual Harassment 2009
- Illegal Dismissal of an Expatriate 1992
- Transfer of Employee; Issue of Constructive Dismissal 1996
- When Refusal to Transfer Constitutes Insubordination 1999

F. Closure of Establishment and Reduction of Personnel (Article 283):

- Authorized Causes For Dismissal of an Employee 2002
- Redundancy Can Be Effected by Employer Without Need of Prior Consultation with the Union 1999
- Redundancy Due to Company's Failure to Properly Forecast Its Manpower Requirements 2000
- Redundancy Due to Improved Efficiency By Reason of Introduction of a Machine 2000
- Downsizing Program Resulting in Termination of Employees; Necessity to Prove Losses 2001
- Conditions and Requirements for a Valid Retrenchment 2001
- Termination Due to Retrenchment 1990
- Separation Pay Due to Retrenchment; How Computed 1992
- Employer Need Not Wait Until It Suffers Losses Before It Can Retrench 1998
- Proof of Losses Necessary in Case of Retrenchment 2003
- Application of Seniority Rule or "Last In, First Out" in Retrenchment or Redundancy 2001
- Steps to Take Prior to Closure of Business; Entitlement of Employees to Separation Pay 2006

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- No Liability for Closure or Cessation of Business Operations Due to Implementation of the Comprehensive Agrarian Reform Law 2001
- Closure or Cessation of Business Due to Old Age of Owners 2006

G. Disease as Ground for Termination (Article 284):

- Termination Due to Sickness 2004

H. Termination by Employee (Article 285):

- Voluntariness of Resignation When Employees Were Given the Option to Resign and be Paid Generous Separation Pay Package 1999

I. When Employment Not Deemed Terminated (Article 286):

- Validity of Placing Security Guards on Floating Status 1999
- Floating Status of Security Guard; When It Constitutes Constructive Dismissal 2004
- Validity of Reinstatement After Floating Status Expired When There is No Client to Which Security Guard May Be Assigned 2009

J. Retirement (Article 287):

- When Retirement Becomes Due 2007
- When Retirement Is Due for Underground Miners 2007
- Optional Retirement Based on Retirement Pay Law (R.A. No. 7641, Now Article 287 of the Labor Code) Instead of the CBA 2005
- Entitlement to Both Separation Pay Under the Law and Retirement Benefits Under the CBA 1994
- Components of Retirement Pay Under Article 287 of the Labor Code; Exceptions Provided Under the Law 2001

PRESCRIPTIVE PERIOD

- Prescriptive Period of Illegal Dismissal Cases (4 Years Under Article 1146 of the Civil Code) 1994/1997/2002
- The Filing of a Criminal Case Does Not Suspend or Interrupt the Running of the Prescriptive Period for an Action for Illegal Dismissal 2002

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SOCIAL LEGISLATIONS TREATED IN
THE BAR EXAMINATION IN LABOR LAW

SSS LAW

Republic Act No. 8282 [May 01, 1997],
Otherwise Known as the “Social Security Act of 1997.”

- Coverage of the SSS Law, GSIS Law and Employees’ Compensation Act 1997
- Obligation of Employer to Report to SSS 1993
- Obligation of the Job Contractor to Report to the SSS Its Workers Supplied to a Principal 2008
- Existence of Employer-Employer Relationship 1993/2003
- Absence of Employment Relationship, Worker Not Covered by SSS 1999
- Compulsory Coverage of Workers On the Day of Employment; Exception of Casual Employees 1995
- Compulsory Coverage of Members of a Cooperative 2009
- Effect of Employee’s Request That His SSS Coverage be Stopped 2008
- Employment of Purely Casual and Not for the Purpose of the Occupation or Business of the Employer are Excepted from Compulsory Coverage 2002
- Retirement Benefits 1990
- Death Benefits 1990
- Claim for Employee’s Compensation Benefit Resulting from the Death of the Employee Who was Sideswiped by a Speeding Taxicab While Waiting for a Ride to the Office 2008
- Company Welfare Fund Providing for More Benefits Than That Provided by SSS, Does Not Exempt the Company and Its Employees from Compulsory Coverage of the SSS; It may, However, be Integrated with the SSS 2000
- Proper Party to Claim SSS Death Benefits 1992
- Litigation Not Necessary to Claim Benefits from the SSS and GSIS 1995
- Benefits of Portability Under R.A. No. 7699 to SSS and GSIS Members 2005
- Prescriptive Period of Action for Benefit Claims 2001

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GSIS LAW

Republic Act No. 8291 [May 30, 1997],

Otherwise Known as the

“Government Service Insurance System Act of 1997.”

- Compulsory Coverage of the GSIS Act 2009
- Entitlement to Benefits Under the GSIS Law 2004
- GSIS Survivorship Benefits (Death Benefits) 1991/1999
- Compensability of Death Due to Electrocution 1999
- Entitlement to Death Benefits of a Policeman
Who was on Leave When He was Killed;
Entitlement of a Surviving Spouse Not Living
With the Employee 2005

MATERNITY LEAVE BENEFIT

Article 133 of the Labor Code and R.A. No. 8282 [May 01, 1997],

Otherwise Known as the *“Social Security Act of 1997”*

- Entitlement of an Unmarried Woman to Maternity Benefits 2000/2007

PATERNITY LEAVE BENEFIT

R.A. No. 8187

Otherwise Known as the *“Paternity Leave Act of 1996”*

- Number of Times Paternity Leave May be Availed of;
Period Within Which to Avail of Paternity Leave 2002
- Availment of Paternity Leave for Second Legitimate Wife;
Wife May Also Avail of Maternity Leave Benefit 2005

13TH MONTH PAY

Presidential Decree No. 851, As Amended
[December 16, 1975]

- 13th-Month Pay; Effect of Inclusion in Its Computation
of Overtime Pay, Night Shift Differential Pay and
the Like 1994
- 13th-Month Pay; Entitlement Thereto of Casual Employee
Paid a Daily Wage 1998

BONUS

- Definition of Bonus; Demandability Thereof 1995
- Bonus; Right of Employer to Reduce Amount of Bonus
Due to Slump in Business 2002
- Bonus; Right of Employer-Bank to Withdraw Bonus

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Due to Its Being Placed Under Conservatorship

2003

ANTI-SEXUAL HARASSMENT ACT OF 1995

Republic Act No. 7877

- Sexual Harassment Committed Against a Woman 2009/2006/2005
2000/2000
- Sexual Harassment Committed Against a Man 2004

-END OF PART FIVE-

JOSELITO GUIANAN CHAN

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