THE LABOR CODE OF THE PHILIPPINES ANNOTATED

Volume II

LABOR RELATIONS AND
TERMINATION OF EMPLOYMENT
[Articles 211 to 302, Labor Code]

By

JOSELITO GUIANAN CHAN
Practising Lawyer, Professor of Law and Bar Reviewer

Third Edition, 2005
Revised and Enlarged
(Also available in Compact Disc)
FOREWORD

Since the labor laws of the country were codified in the Seventies during my incumbency as Labor Secretary, the Labor Code has undergone a series of revisions both by acts of the legislature and by executive fiat. Taken with the numerous labor and social legislations bearing upon the field of labor and employment as well as the myriad rules implementing the Labor Code and related laws, the subject could be utterly confusing and rather complicated.

Through the years, it has been noted that only very few annotations and commentaries have been written on the Labor Code. This is unfortunate considering its significance and impact on the lives of millions comprising the backbone of our nation. This book by Atty. Joselito Guianan Chan is certainly a welcome addition to the sparse bibliography on the Labor Code.

Like a master craftsman, Atty. Chan has carefully shifted through the maze of existing and old laws, rules and regulations and other executive issuances and jurisprudential precepts, to “separate the grain from the chaff,” so to speak, to bring us to the crux of things. He has intricately woven all these materials into a smooth-flowing and compelling discussion of the current status of the law and its intricacies, correlated with all relevant topics.

In treating the more difficult or doubtful questions of the law, he provides us with incisive analysis and in-depth discussion of the legal issues at hand, with appropriate reference to the leading and latest judicial precedents, supplemented with a glimpse of the legislative history of the provisions under consideration, whenever necessary.

The long years of legal practice and experience of Atty. Chan, both in the courtroom as an advocate of the law, and in the classroom as professor of law, not to mention his able stewardship of his law firm and skillful advocacy of his clients’ causes, have no doubt contributed in the formation and crystallization of this authoritative and comprehensive work.

Indeed, no law library would be complete without a copy of this masterpiece. Students and practitioners will surely find this book invaluable.

Senate of the Philippines, Manila, 14 August 1996.

(Sgd.) BLAS F. OPLE

2nd Floor, Marbella Manila Bldg., 2071, Roxas Blvd., Manila
Tel. 536-0259
This third edition comes on the 9th year since the first was published in 1996. More than 5,000 copies have been printed and distributed of this hardbound version. Its digitized CD adaptation has likewise elicited similar enthusiasm from students, practitioners and clients when it was released also in 1996 – at a time when the internet age was just at its gestation stage. This book, in fact, was the first to be in digitized form in the Philippines at that time.

Since its last revision in 2000, a number of significant statutes affecting labor law have been enacted. Important decisions changing certain well-ensconced doctrines have likewise been enunciated by the Supreme Court, most noteworthy of which is the Agabon rule which was promulgated in November, 2004.

Additionally, several major issuances have been made by the President and the other agencies of government tasked to implement and enforce labor laws. For instance, the President has issued Executive Order No. 204 on May 05, 2005 delegating to the Secretary of Labor and Employment the power to exercise administrative supervision over the NLRC. The Secretary of Labor and Employment, for her part, has also promulgated several edicts, most notable of which is Department Order No. 40-03 in 2003 amending the implementing rules of Book V of the Labor Code. For its part, the NLRC has changed its rules in 2002 and the NCMB has revised its procedural guidelines in the conduct of voluntary arbitration proceedings in late 2004.

All these exciting developments in the law and jurisprudence are reflected in this book and in the other volume by the same author entitled The Labor Code of the Philippines Annotated, Volume I [Labor Standards and Social Legislation], 2006 edition. This and the other volume are being released in two formats – one, in hardbound, and the other, in digitized form - to accommodate those who are more conversant with the latter format.

This latest edition is dedicated to the memory of the late Blas F. Ople, the Father of the Labor Code, who graciously wrote the Foreword to this book in 1996. I cannot repay the precious time he gave up to go over the manuscript of its first edition. Indeed, I am bound in lasting gratitude.
To
labor
and
capital
in whose hands rest
the future of harmonious labor relations
and
industrial peace,
this humble work is dedicated.
# TABLE OF CONTENTS

## TABLE OF CONTENTS

### BOOK FIVE

### LABOR RELATIONS

<table>
<thead>
<tr>
<th>Title I</th>
<th>POLICY AND DEFINITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter</td>
<td>POLICY 1</td>
</tr>
<tr>
<td>Title</td>
<td>1</td>
</tr>
<tr>
<td>Article</td>
<td>Declaration of Policy 1</td>
</tr>
<tr>
<td>211.</td>
<td>Declaration of Policy 1</td>
</tr>
<tr>
<td>1.</td>
<td>LABOR RELATIONS 1</td>
</tr>
<tr>
<td>2.</td>
<td>LABOR RELATIONS AND LABOR STANDARDS, DISTINGUISHED, 2</td>
</tr>
<tr>
<td>3.</td>
<td>GENERAL PRINCIPLE IN THE INTERPRETATION AND APPLICATION OF LABOR LAWS, 2</td>
</tr>
<tr>
<td>4.</td>
<td>STATE POLICY, 2</td>
</tr>
<tr>
<td>5.</td>
<td>CONSTITUTIONAL FOUNDATION, 3</td>
</tr>
</tbody>
</table>

| Chapter II | DEFINITIONS 5 |
| Title | DEFINITIONS 5 |
| Article  | Definitions 5 |
| 212. | Definitions 5 |
| 1. | DEFINITIONS 6 |
| 2. | CHANGE IN NOMENCLATURE 6 |
| 3. | LEGAL SIGNIFICANCE OF EMPLOYMENT RELATIONSHIP IN LABOR RELATIONS CASES 6 |
| a. | Legal significance, 6 |
| b. | Statutory definitions of “employer” and “employee”, 7 |
| c. | Statutory definition according to Article 212 [e] and [f], 7 |
| d. | Statutory definition according to Article 97, 7 |
| e. | Statutory definition according to Article 167, 7 |
| f. | Definition in broad sense, 8 |
| g. | Labor organization or its officers or agents as employer, 8 |
| h. | Unregistered association may be an employer, 8 |
| i. | Kinds of employees, 8 |
| j. | Employees who ceased to work but are still deemed employees, 9 |
| k. | “Substantially equivalent and regular employment”, defined, 9 |
| 4. | LABOR OR INDUSTRIAL DISPUTE 9 |
| a. | Labor or industrial dispute, meaning and nature, 9 |
| b. | Direct employer-employee relationship not essential requisite, 9 |
| c. | Test of existence of a “labor dispute”, 10 |

<p>| Title II | NATIONAL LABOR RELATIONS COMMISSION 11 |
| Chapter I | NATIONAL LABOR RELATIONS COMMISSION 11 |
| Article  | National Labor Relations Commission 11 |
| 213. | National Labor Relations Commission 11 |
| 1. | NATURE 12 |
| 2. | EXECUTIVE ORDER NO. 185 [MARCH 10, 2003] GRANTED ADMINISTRATIVE SUPERVISION TO DOLE SECRETARY OVER THE NLRC, 12 |
| 3. | EXECUTIVE ORDER NO. 204 [MAY 05, 2005] DELEGATING TO THE SECRETARY OF LABOR AND EMPLOYMENT THE POWER TO EXERCISE ADMINISTRATIVE SUPERVISION OVER NLRC, 12 |
| 4. | ORGANIZATION, 14 |
| a. | Composition of the NLRC, 14 |
| b. | Tripartite composition, 14 |
| c. | Commission en banc, 14 |
| d. | NLRC’s five (5) divisions, 14 |
| e. | NLRC acts collegially, 15 |
| f. | The NLRC Chairman, 15 |
| g. | Review of a case on appeal by same person whose decision is under review, 16 |</p>
<table>
<thead>
<tr>
<th>Article 214. Headquarters, Branches and Provincial Extension Units</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. HEADQUARTERS, BRANCHES AND PROVINCIAL EXTENSION UNITS</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 215. Appointment and Qualifications</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. QUALIFICATIONS OF NLRC COMMISSIONERS</td>
<td>19</td>
</tr>
<tr>
<td>2. QUALIFICATIONS OF LABOR ARBITERS</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 216. Salaries, benefits and other emoluments</th>
<th>21</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. SALARIES, BENEFITS AND OTHER EMOLUMENTS</td>
<td>21</td>
</tr>
<tr>
<td>a. Chairman and Commissioners of NLRC</td>
<td>21</td>
</tr>
<tr>
<td>b. Executive Labor Arbiters</td>
<td>21</td>
</tr>
<tr>
<td>c. Labor Arbiters</td>
<td>21</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter II</th>
<th>22</th>
</tr>
</thead>
<tbody>
<tr>
<td>POWERS AND DUTIES</td>
<td>22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 217. Jurisdiction of the Labor Arbiters and the Commission</th>
<th>22</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. PRELIMINARY CONSIDERATIONS</td>
<td>22</td>
</tr>
<tr>
<td>a. Existence of employer-employee relationship;</td>
<td>22</td>
</tr>
<tr>
<td>a pre-requisite for exercise of jurisdiction,</td>
<td>22</td>
</tr>
<tr>
<td>b. All workers, agricultural or non-agricultural, and OFWs are covered,</td>
<td>23</td>
</tr>
<tr>
<td>c. Transfer of jurisdiction over agricultural workers from CAR to Labor Arbiters,</td>
<td>23</td>
</tr>
<tr>
<td>d. Nature of jurisdiction is original and exclusive,</td>
<td>23</td>
</tr>
<tr>
<td>2. LABOR JURISDICTION, HISTORICAL DEVELOPMENTS</td>
<td>23</td>
</tr>
<tr>
<td>a. Court of Industrial Relations,</td>
<td>23</td>
</tr>
<tr>
<td>b. Ad hoc NLRC under P. D. No. 21,</td>
<td>24</td>
</tr>
<tr>
<td>c. The NLRC and Labor Arbiters under the Labor Code; original provision,</td>
<td>24</td>
</tr>
<tr>
<td>d. Amendment of Article 217 introduced by P. D. No. 1367,</td>
<td>25</td>
</tr>
<tr>
<td>e. Amendment of Article 217 introduced by P. D. No. 1691,</td>
<td>26</td>
</tr>
<tr>
<td>f. Amendment of Article 217 introduced by B. P. Blg. 130,</td>
<td>26</td>
</tr>
<tr>
<td>g. Amendment of Article 217 introduced by B. P. Blg. 227,</td>
<td>26</td>
</tr>
<tr>
<td>h. Amendment of Article 217 by R. A. No. 6715,</td>
<td>27</td>
</tr>
<tr>
<td>i. R. A. No. 6715 has retroactive effect,</td>
<td>28</td>
</tr>
<tr>
<td>j. Cases where R. A. No. 6715 was not given retroactive effect,</td>
<td>28</td>
</tr>
<tr>
<td>3. JURISDICTION OF LABOR ARBITERS</td>
<td>29</td>
</tr>
</tbody>
</table>
4. JURISDICTION OF THE COMMISSION (NLRC), 29
   a. Original and exclusive appellate jurisdiction, 29
   b. Distinction between jurisdiction of Labor Arbiters and NLRC, 29
5. BASIC PRINCIPLES ON JURISDICTION, 29
   a. Governing law on jurisdiction, 29
   b. When to raise issue of jurisdiction, 29
   c. Splitting of cause of action; multiplicity of actions, 31
   d. Conflict of jurisdiction between labor court and regular court; reasonable causal connection rule, 31
   e. Labor disputes not subject to barangay conciliation, 32
6. INJUNCTION POWER OF LABOR ARBITERS, 32
   a. No express grant of injunction power under the Labor Code, 32
   b. Injunction power granted under the Rules to Implement the Labor Code, 32
   c. Injunction power granted under the 1990 Rules of Procedure of the NLRC, 32
   d. Grant of injunction power deleted under the 2002 NLRC Rules, 32
7. CONTEMPT POWER OF LABOR ARBITERS, 33
   a. Contempt, defined, 33
   b. Direct contempt, person guilty of misbehavior, 33
   c. Indirect contempt, 34
   d. Indirect contempt; how initiated, 34
   e. Indirect contempt; quasi-judicial bodies have no jurisdiction thereover; they should initiate it through the regular courts, 34
8. JURISDICTION OVER UNFAIR LABOR PRACTICE CASES, 35
   a. Jurisdictional basis, 35
   b. Unfair labor practices acts, 35
   c. Utmost priority in resolution of unfair labor practices cases, 35
   d. Limitation on jurisdiction of Labor Arbiters in ULP cases, 35
   e. Another limitation - exercise by the President or DOLE Secretary of powers under Articles 263 and 264 of the Labor Code, 35
   f. Cases involving the issue of jurisdiction over ULP, 36
   g. Gross violation of CBA is ULP and Labor Arbiter has jurisdiction thereover, 37
9. JURISDICTION OVER TERMINATION DISPUTES, 37
   a. Basic requisite for exercise of jurisdiction over termination disputes, 37
   b. Policy Instructions No. 56; distinction between jurisdiction of Labor Arbiters and Voluntary Arbitrators, 38
   c. Termination cases not falling within jurisdiction of Labor Arbiters under Policy Instructions No. 56, 38
   d. Termination cases over which Labor Arbiters have jurisdiction, 38
   e. Vivero vs. CA case, 38
   f. Termination case is not a grievable issue, 39
   g. Additional bases in favor of jurisdiction of Labor Arbiter, 39
   h. Maneja vs. NLRC, 41
   i. Atlas Farms, Inc. vs. NLRC, 42
   j. Provisions harmonized, 42
10. INTRA-CORPORATE DISPUTES; TERMINATION OF CORPORATE OFFICERS, 43
    a. Labor Arbiter has no jurisdiction over intra-corporate disputes, 43
    b. Who are considered “corporate officers”? , 43
    c. Corporate officers named in the By-laws, 43
    d. Corporate officers not named in the By-laws, 43
    e. “Office,” “officer,” “employee,” distinguished, 44
    f. Nature of services, immaterial; what is material is nature of relationship, 44
    g. Transfer of jurisdiction from SEC to regular courts under R. A. No. 8799, 44
    h. Termination of a stockholder, an intra-corporate dispute, 45
    i. Claims for benefits and damages in intra-corporate cases, 45
    j. Estoppel; applicability thereof, 45
    k. One who rose from the ranks is a regular employee
TABLE OF CONTENTS

and not a mere corporate officer, 46

11. CASES FILED BY EMPLOYEES OF GOVERNMENT-OWNED
    OR CONTROLLED CORPORATIONS, 46
    a. General principles, 46
    b. Specific cases, 47

12. JURISDICTION OVER DISPUTES INVOLVING AN ALIEN PARTY, 47
    a. Basic principle, 47
    b. Choice of law by parties, 48

13. LABOR CASES INVOLVING ENTITIES IMMUNED FROM SUIT, 48
    a. Immunity from suit, 48
    b. Exception to the rule, 49
    c. Estoppel does not confer jurisdiction over immuned entity, 50

14. DOCTRINE OF FORUM NON CONVENIENS; WHEN LABOR ARBITERS
    AND NLRC HAVE NO JURISDICTION, 50

15. JURISDICTION OVER LABOR CASES INVOLVING
    ECCLESIASTICAL AFFAIRS, 51
    a. Labor Arbiter and NLRC have jurisdiction, 51
    b. Ecclesiastical affair, meaning, 52
    c. Legal basis, 52

16. JURISDICTION OVER MONEY CLAIMS, 52
    b. Money claims cognizable by the Regional Directors; requisites, 52
    c. Conflict of jurisdiction between Labor Arbiter
        and Voluntary Arbitrator over money claims cases, 53
    d. Money claims involving migrant workers under R. A. 8042, 53
    e. Money claims must arise out of employer-employee relationship, 53
    f. Award of statutory benefits even if not prayed for, 54
    g. Money claims vis-à-vis unpaid stock subscription of employees, 54
    h. Notarial fee of company lawyer, cognizable by the Labor Arbiter, 55

17. REHABILITATION RECEIVERSHIP, EFFECT ON LABOR PROCEEDINGS, 55
    a. Jurisdiction over rehabilitation cases is with RTC, 55
    b. Receivership or liquidation of business, effect on jurisdiction, 55
    c. Jurisdiction is deemed suspended when company undergoes rehabilitation, 55
    d. Even execution of final decisions may be stayed, 56
    e. Duration of automatic stay under P. D. 902-A, 56
    f. Remedy is to lodge labor claims before the Receiver; exception, 57
    g. Suspension of payment and insolvency, distinguished, 57
    h. Preference in favor of workers in case of bankruptcy
        or liquidation under Article 110 of the Labor Code, 57

18. CASES OF OVERSEAS FILIPINO WORKERS (OFWs), 57
    a. Conferment of jurisdiction over money claims of migrant workers
        under R. A. No. 8042, 57
    b. Lex loci contractus rule, 58

19. JURISDICTION OVER WAGE DISTORTION CASES, 58
    a. In organized establishments, 58
    b. In unorganized establishments, 58
    c. Wage distortion involving Section 4 of R. A. No. 6727, 58
    d. Wage distortion disputes subject of notice of strike or lockout, 59

20. JURISDICTION OVER CLAIMS FOR DAMAGES, 59
    a. Labor Arbiters have jurisdiction over claims for damages, 59
    b. Claims for damages of overseas workers, 59

21. JURISDICTION OVER LEGALITY OF STRIKES AND LOCKOUTS, 60
    a. In simple cases, 60
    b. In assumed or certified cases, 60
    c. Voluntary arbitration, 60
d. Prohibited Activities, 60
e. Limitations on the exercise of jurisdiction by Labor Arbiters in strike or lockout cases, 60
f. Jurisdiction of Labor Arbiters and Secretary of Labor, distinguished, 61
g. Cases involving jurisdiction over strike cases, 63

22. JURISDICTION OVER ENFORCEMENT OF LABOR STANDARDS LAWS, 63
   a. Article 128 [b], Labor Code, 63
   b. Effect of amendatory law, 63

23. JURISDICTION OVER CLAIMS OF DOMESTIC OR HOUSEHELPERS, 64

24. ISSUES COGNIZABLE BY GRIEVANCE MACHINERY OR VOLUNTARY ARBITRATION, 64
   a. Original and exclusive jurisdiction of Grievance Machinery or Voluntary Arbitrators, 64
   b. Failure to observe grievance procedure; effect, 65

25. JURISDICTION OVER COOPERATIVES, 65
   a. Members of cooperatives are not employees, 65
   b. Labor Arbiters have jurisdiction over illegal dismissal cases of employees of cooperatives, 65

26. JURISDICTION OVER LOCAL WATER DISTRICTS, 66

27. CRIMINAL AND CIVIL LIABILITIES ARISING FROM VIOLATION OF ARTICLE 241, JURISDICTION IS VESTED WITH REGULAR COURTS, 66

28. JURISDICTION OVER TORTS, 66

29. SUMMARY OF OTHER ISSUES BEYOND JURISDICTION OF THE LABOR ARBITERS OR NLRC, 67

Article 218. Powers of the Commission

1. POWERS OF THE NLRC, 70
   a. Power to promulgate its own rules, 70
   b. Rules of Procedure of the NLRC, 70
   c. Title of the rules, 70
   d. Liberal construction, 70
   e. Suppletory application of the Rules of Court, 70
   f. Rules have the force and effect of law, 70
   g. Rules must not be in conflict with law, 71
   h. Constitutional basis for the rule-making power, 71

3. POWER TO ISSUE COMPULSORY PROCESSES AND ADMINISTER OATH, 71
   a. Power to issue summons and subpoenas and to administer oath, 71
   b. Who may exercise power to administer oath, 71
   c. Subpoenas ad testificandum and duces tecum, distinguished, 71

4. POWER TO INVESTIGATE OR HEAR CASES; EXCEPTION, 71
   a. Power to conduct proceedings, 71
   b. Exception, 71

5. CONTEMPT POWER, 72
   a. Direct contempt, 72
   b. Indirect contempt, 72
   c. Quasi-judicial bodies have no jurisdiction over indirect contempt; only regular courts have, 72

6. INJUNCTION POWER, 72
   a. Nature of power, 72
   b. Failure to follow procedure for issuance of injunction, effect, 73
   c. Cases over which NLRC may issue injunction, 73
   d. Injunction in ordinary labor disputes, 74
   e. Injunction in picketing, strikes or lockouts, 74
   f. Hearing required before a temporary or permanent injunction may be issued, 74
   g. Hearing; notice thereof, 75
   h. Reception of evidence; delegation, 75
TABLE OF CONTENTS

i. Ocular inspection consequent to the petition for injunction, 75
j. Temporary restraining order [TRO]; ex-parte TRO; requisites, 75
k. Effectivity of temporary restraining order, 75
l. Cash bond, 75
m. Effects of defiance, 76
n. Existence of labor dispute, necessary, 76
o. Irreparable injury, meaning, 76
p. Administrative investigation of erring employee cannot be restrained, 76
q. Dismissal of employees cannot be enjoined, 76
r. Ordinary remedy in law and in equity, 76
7. APPELLATE POWER, 76
   a. Exclusive appellate jurisdiction, 76
   b. No appellate jurisdiction over decisions of Voluntary Arbitrators, 77

Article 219. Ocular inspection

1. OCULAR INSPECTION, 77
2. NATURE, 77

Article 220. Compulsory arbitration

Article 221. Technical rules not binding and prior resort to amicable settlement

1. CONSTITUTIONAL BASIS, 78
   a. Provisions in the Bill of Rights, 78
   b. Significance of the constitutional provisions, 78
2. RATIONALE BEHIND ARTICLE 221, 79
   a. Reason for the rule, 79
   b. Cardinal primary rights must be respected, 80
   c. Rule on forum-shopping, applicability to labor cases, 81
   d. Splitting of cause of action; multiplicity of actions, 81
   e. Non-joinder of parties, 81
3. PROCEEDINGS BEFORE LABOR ARBITERS, 81
   a. Nature of proceedings before a Labor Arbiter, 81
   b. Venue of action; basic guiding principle, 82
   c. Workplace determines venue; definition, 82
   d. Rule in case of conflict in venue, 82
   e. Waiver of improper venue, 82
   f. Change or transfer of venue, 82
   g. Venue in cases filed by Overseas Filipino Workers (OFWs), 82
   h. Complaint in labor cases; when deemed filed, 83
   i. Complaint in case of several causes of action, 83
   j. Complaint form, preferred, 83
   k. Caption and title, 83
   l. Parties-in-interest should be impleaded, 83
   m. Rule in case of numerous parties; all must be impleaded, 84
   n. Non-intervention of outsiders in labor disputes, 84
   o. Role of Executive Labor Arbiter in the raffle and assignment of cases, 84
   p. Assignment of cases to Labor Arbiters by means of raffle, 84
   q. Situations where raffle may be disregarded, 84
   r. Transmittal of pleadings to Labor Arbiter before whom case is pending, 84
   s. Role of Labor Arbiter in proceedings, 84
   t. Issuance of summons by Labor Arbiter, 85
   u. Service of summons to corporation; public or private, 86
   v. Prohibited pleadings and motions; incidental motions will not be given due course, 86
   w. Motion to dismiss, 87
   x. Motion for inhibition, 87
   y. Motion for intervention, when proper, 87
z. Filing and service of pleadings, 88
aa. Filing of pleading by ordinary mail or private messengerial service, 89
bb. Filing of pleading by registered mail, 89
cc. Filing and service of pleadings to be done personally;
if not, an explanation is required, 89
dd. Modes of service of notices, summonses or orders, 89
ee. Decisions and final awards must be served to both counsels and parties, 90
ff. Date of service to counsel is the reckoning date of the running
of the reglementary period, 90
gg. Service to OSG in case party is government or any of its agencies, 91
hh. Bailiff’s return, evidentiary value, 91
ii. Proof of completeness of personal service, 91
jj. Proof of completeness of service by registered mail, 91
kk. Rule in case no service was effected, 92
ll. Completeness of service under the Revised Rules of Court, 92
mm. Mandatory conciliation/mediation conference, 92
nn. Continuing conciliation and mediation throughout the proceedings, 92
oo. Approval of compromise agreement by Labor Arbiter required, 92
pp. Compromise agreement is final and executory, 92
qq. Submission of position paper follows if parties failed
to agree on an amicable settlement, 92
rr. Period for mandatory mediation/conciliation conference, 93
ss. Motion for postponement of mediation/conciliation conference,
not allowed; exception, 93
tt. Non-appearance of respondent at conciliation/mediation conference, 93
uu. Consolidation of cases/complaints, 93
vv. Objection to consolidation; how resolved, 93
ww. Submission of position papers/memoranda; contents thereof, 93
xx. Prohibition on submission of evidence after submission of position papers, 93
yy. When amendment of pleading allowed, 94
zz. Due process is satisfied with submission of position papers, 94
aaa. Delay in submission of position paper; effect, 95
bbb. Lack of verification of position paper, not fatal, 96
cccc. Failure of all complainants to sign verification, effect, 96
dddd. Claims not alleged in the complaint but included
in the position paper, may still be awarded, 97
eeee. Amended complaint, when not allowed, 97
ffff. Significance of notarial documents, 97
gggg. Material averments in complaint, if uncontroverted, are deemed admitted, 97
hhhh. Judicial admission, 97
iiii. Retraction; legal significance thereof, 98
jjjj. Significance of annexes to documents, 98
kkkk. Determination of necessity of hearing, discretionary
on the part of Labor Arbiter, 99
llll. No denial of due process if there is opportunity to be heard
in the proceedings a quo, 100
mmmm. Due process on appeal with NLRC or CA, cures defect in the proceedings
before Labor Arbiter, 100
nnnn. Cases where Supreme Court ruled against reliability of
position paper and ordered conduct of hearing instead, 101
oooo. Presentation of evidence, 101
pppp. Extent of cross-examination, 101
qqqq. If no hearing is conducted, no demeanor of witnesses to speak of, 101
rrrr. Non-appearance by complainant or petitioner at formal hearings, 101
ssss. Non-appearance by respondent at formal hearings, 101
tttt. Continuous hearing; postponement thereof, 102
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>uuu.</td>
<td>Different rule on period to terminate proceedings in case of OFWs</td>
<td>102</td>
</tr>
<tr>
<td>vvv.</td>
<td>Minutes of proceedings</td>
<td>102</td>
</tr>
<tr>
<td>www.</td>
<td>Appreciation of evidence</td>
<td>102</td>
</tr>
<tr>
<td>xxx.</td>
<td>Parol evidence rule, applicability to labor cases</td>
<td>104</td>
</tr>
<tr>
<td>yyy.</td>
<td>Conspiracy in labor cases, how proved</td>
<td>104</td>
</tr>
<tr>
<td>zzz.</td>
<td>Moot and academic issue, defined</td>
<td>104</td>
</tr>
<tr>
<td>aaaa.</td>
<td>Order submitting the case for resolution</td>
<td>104</td>
</tr>
<tr>
<td>bbbb.</td>
<td>Period to decide cases under the NLRC Rules</td>
<td>105</td>
</tr>
<tr>
<td>cccc.</td>
<td>Period is mandatory; when a case is deemed submitted for decision</td>
<td>105</td>
</tr>
<tr>
<td>dddd.</td>
<td>Contents of decisions</td>
<td>105</td>
</tr>
<tr>
<td>eeee.</td>
<td>Dispositive or decretal part of decision, significance thereof</td>
<td>106</td>
</tr>
<tr>
<td>ffff.</td>
<td>Disparity between body and dispositive portion of decision, effect</td>
<td>106</td>
</tr>
<tr>
<td>gggg.</td>
<td>Award of claims more than what was prayed for</td>
<td>106</td>
</tr>
<tr>
<td>hhhh.</td>
<td>Labor Arbiter disposes all issues in the case; exception</td>
<td>106</td>
</tr>
<tr>
<td>iii.</td>
<td>Revival/Reopening or re-filing of cases dismissed without prejudice</td>
<td>107</td>
</tr>
<tr>
<td>jjjj.</td>
<td>Power of the Labor Arbiter to amend his decision</td>
<td>107</td>
</tr>
<tr>
<td>kkkk.</td>
<td>Motion for reconsideration/Petition for relief from judgment</td>
<td>107</td>
</tr>
<tr>
<td>llll.</td>
<td>Finality of decisions, resolutions or orders of the Commission</td>
<td>112</td>
</tr>
<tr>
<td>4. 4</td>
<td>PROCEEDINGS BEFORE THE COMMISSION (NLRC), 108</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Technical rules not binding</td>
<td>108</td>
</tr>
<tr>
<td>b.</td>
<td>Filing of pleadings</td>
<td>108</td>
</tr>
<tr>
<td>c.</td>
<td>Raffle and assignment of cases</td>
<td>108</td>
</tr>
<tr>
<td>d.</td>
<td>Service of processes, notices, orders or decisions</td>
<td>108</td>
</tr>
<tr>
<td>e.</td>
<td>Duty to conciliate and mediate</td>
<td>108</td>
</tr>
<tr>
<td>f.</td>
<td>Requisite for validity of settlement of appealed cases</td>
<td>108</td>
</tr>
<tr>
<td>g.</td>
<td>Session en banc</td>
<td>108</td>
</tr>
<tr>
<td>h.</td>
<td>Quorum and vote</td>
<td>109</td>
</tr>
<tr>
<td>i.</td>
<td>Role of Labor Arbiter assigned to the Commission</td>
<td>109</td>
</tr>
<tr>
<td>j.</td>
<td>Consolidation of cases</td>
<td>109</td>
</tr>
<tr>
<td>k.</td>
<td>Dissenting opinion</td>
<td>109</td>
</tr>
<tr>
<td>l.</td>
<td>Inhibition</td>
<td>109</td>
</tr>
<tr>
<td>m.</td>
<td>Abstention</td>
<td>109</td>
</tr>
<tr>
<td>n.</td>
<td>Period to decide/resolve cases; certification why cases were not</td>
<td>110</td>
</tr>
<tr>
<td>o.</td>
<td>Form of decision or resolution or order</td>
<td>110</td>
</tr>
<tr>
<td>p.</td>
<td>Consultation</td>
<td>110</td>
</tr>
<tr>
<td>q.</td>
<td>Motions for reconsideration</td>
<td>110</td>
</tr>
<tr>
<td>r.</td>
<td>Second motion for reconsideration, not allowed</td>
<td>110</td>
</tr>
<tr>
<td>s.</td>
<td>Effect of filing of motion for reconsideration where movant was</td>
<td></td>
</tr>
<tr>
<td></td>
<td>earlier not furnished a copy of the memorandum of appeal</td>
<td></td>
</tr>
<tr>
<td>t.</td>
<td>Remand of cases</td>
<td>111</td>
</tr>
<tr>
<td>u.</td>
<td>Finality of decisions, resolutions or orders of the Commission</td>
<td>112</td>
</tr>
<tr>
<td>5. 5</td>
<td>COMPROMISE AGREEMENT UNDER ARTICLE 221, 112</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Compromise agreement; defined</td>
<td>112</td>
</tr>
<tr>
<td>b.</td>
<td>Concept</td>
<td>112</td>
</tr>
<tr>
<td>c.</td>
<td>Two kinds of compromise agreement</td>
<td>112</td>
</tr>
<tr>
<td>d.</td>
<td>Coverage of compromise</td>
<td>113</td>
</tr>
<tr>
<td>e.</td>
<td>Offer of compromise, effect</td>
<td>113</td>
</tr>
<tr>
<td>f.</td>
<td>Compromise agreement executed with assistance of Bureau</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and DOLE regional offices</td>
<td>113</td>
</tr>
<tr>
<td>g.</td>
<td>Compromise agreement executed before the Labor Arbiter</td>
<td>114</td>
</tr>
<tr>
<td>h.</td>
<td>Compromise agreement executed before the NCMB</td>
<td>114</td>
</tr>
<tr>
<td>i.</td>
<td>Compromise agreement, final and binding on the parties</td>
<td>114</td>
</tr>
<tr>
<td>j.</td>
<td>Valid compromise agreement is res judicata</td>
<td>114</td>
</tr>
<tr>
<td>k.</td>
<td>Final judgment may be made subject of compromise agreement</td>
<td>115</td>
</tr>
<tr>
<td>l.</td>
<td>Compromise agreement entered into after final judgment;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>compliance with the rule on contracts required</td>
<td>115</td>
</tr>
</tbody>
</table>
**TABLE OF CONTENTS**

m. Compromise agreement entered into when parties are not aware of final judgment, 115  
n. Advantages of compromise agreement after finality of judgment, 116  
o. Principle of novation justifies compromise agreement after final judgment, 116  
p. Compromise agreement or waivers should be approved by Court or Labor Arbiter, 116  
q. Absence of Labor Arbiter, when not material to validity of quitclaim, 117  
r. Presence or absence of counsel, immaterial to validity of quitclaim, 117  
s. Voidable compromise agreement, 118  
t. Annulment of compromise, 118  
u. Refusal by one party to comply with compromise, 118  
v. Unfair labor practice may not be compromised, 118  
w. Compromise made through union, 118  
x. Compromise made through lawyer, 119  
y. Willingness to compromise as a mitigating factor, 119  

6. **QUITCLAIM AND RELEASE, 119**  
a. Constitutional and legal concept, 119  
b. Requisites for validity of quitclaim, 119  
c. Standards for validity of quitclaim and waiver, 120  
d. Employer and employee, not on equal footing, 120  
e. Quitclaims not a bar to demand full measure of benefits, 120  
f. Concept of "dire necessity", 121  
g. Quitclaims not valid where consent was vitiated by mistake or fraud or when there is undue pressure or duress, 122  
h. Amounts received, how disposed of in invalid quitclaims, 122  
i. If employees received full measure of benefits, the quitclaims are valid, 122  
j. Quitclaims executed by persons who do not need special protection are valid, 123  
k. Burden of proof on voluntariness of quitclaims, 123  
l. Notarization of quitclaims, effect, 123  

7. **RULE OF RES JUDICATA AS APPLIED TO LABOR CASES, 124**  
a. Nature of doctrine, 124  
b. Provision in the Rules of Court, 124  
c. Elements of res judicata, 124  
d. Two concepts of res judicata, 125  
e. Application of rule in case of two or more judgments, 125  
f. Underlying principles, 125  
g. Res judicata applies to adversarial proceedings only, 125  
h. Res judicata applies even to a party belatedly impleaded on appeal, 126  
i. Cases where res judicata was not applied, 126  

8. **DOCTRINE OF LITIS PENDENCIA AS APPLIED TO LABOR CASES, 127**  
a. Litis pendencia, defined, 127  
b. Litis pendentia or res judicata may result in forum-shopping, 127  

9. **LAW OF THE CASE. 127**

10. **PRINCIPLE OF ESTOPPEL AS APPLIED TO LABOR CASES, 128**  
a. Concept, 128  
b. Laches and prescription, distinguished, 128  

12. **RULE OF STARE DECISIS IN LABOR CASES, 129**

13. **CLASS SUIT IN LABOR CASES, 129**

14. **REPRESENTATIVE SUIT IN LABOR CASES, 130**  
a. Representative suit, meaning and nature, 130  
b. Class suit and representative suit, distinguished, 130  

15. **DISMISSAL OF A LABOR CASE WITHOUT PREJUDICE, 130**

16. **PRINCIPLE OF ABANDONMENT OF RIGHT OR CLAIM, 130**

**Article 222. Appearances and Fees.**  
1. **APPEARANCES OF LAWYERS OR NON-LAWYERS, 131**  
a. Rule on appearances of lawyers, non-lawyers and labor unions, 131
b. Form of appearances; requisites, 131
c. Change of address, 131
d. Change or withdrawal of counsel, 131
e. Rule on substitution of counsel or employment of additional counsel; requisites, 131
f. Notice to counsel is notice to parties, 132
g. Effect if only party is notified and not his counsel, 132
h. Service to any party other than the party's counsel, effect, 132
i. Rule when party is represented by two or more lawyers, 133
j. Authority to bind parties, 133
k. Action of lawyer binds party; effect of mistake or negligence, 133
l. Equally negligent client cannot blame negligent counsel, 134
m. System for receipt of mail, responsibility of parties/lawyers, 134
n. Complaint against lawyers for unethical conduct; Labor Arbiter or NLRC has no jurisdiction, 134

2. ATTORNEY’S FEES ARISING FROM CBA NEGOTIATIONS, 135
   a. Entitlement to attorney’s fees is guaranteed under the law, 135
   b. Attorney’s fees arising from CBA negotiations, 135
   c. Relevant cases, 136

Chapter III ........................................................................................................ 138
APPEAL ............................................................................................................ 138
Article 223. Appeal ............................................................................................ 138
1. APPEAL, 138
   a. Appeal, defined, 138
   b. Article 223 applies only to appeals from Labor Arbiter’s decisions to NLRC; it does not apply to appeals from NLRC decisions to the CA, 139
2. APPEAL FROM DECISIONS, AWARDS OR ORDERS OF LABOR ARBITER.
   a. Ten (10) calendar days, 139
   b. Saturdays, Sundays and Legal Holidays included in reckoning 10-day reglementary period, 139
c. Exceptions to 10-calendar day period rule, 139
d. NLRC’s power to waive defect in substance or form, 142
e. Period to perfect an appeal, not extendible, 142
f. Motion for reconsideration of Labor Arbiter’s decision, not allowed, 142
g. When to reckon start of running of 10-calendar day period, 142
h. Failure to appeal within 10-calendar day reglementary period, 142
i. Affirmative relief, not available to party who failed to appeal, 143
j. Failure to appeal when decision is favorable; effect, 143
k. Effect of miscomputation of reglementary period, 143
l. Date of mailing of appeal memorandum is date of filing, 144
m. Receipt by one of two counsels is receipt by the party, 144
n. Negligence of counsel in not filing the appeal binds the client, 144
o. When negligence of counsel does not bind the client, 144

3. APPEAL FROM DECISIONS, AWARDS OR ORDERS OF THE REGIONAL DIRECTOR/HEARING OFFICERS UNDER ARTICLE 129 OF THE LABOR CODE, 145
4. APPLICABILITY TO OTHER AGENCIES OF NLRC RULES GOVERNING APPEALS, 145
5. PERIODS ARE MANDATORY, 145
6. GROUNDS FOR APPEAL TO NLRC FROM DECISIONS, RESOLUTIONS OR ORDERS OF THE LABOR ARBITER, 145
7. PERFECTION OF APPEAL, 146
   a. Requisites for perfection of appeal, 146
   b. Mere notice of appeal, insufficient, 146
c. “Petition for Relief”, treated as appeal, 146
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>d. No motion for extension of time to perfect an appeal</td>
<td>146</td>
</tr>
<tr>
<td>e. Effect of perfection of appeal</td>
<td>147</td>
</tr>
<tr>
<td>f. Perfection of appeal, mandatory and jurisdictional</td>
<td>147</td>
</tr>
<tr>
<td>g. Appeal, where filed</td>
<td>147</td>
</tr>
<tr>
<td>h. Memorandum of Appeal</td>
<td>147</td>
</tr>
<tr>
<td>i. Review of issues raised on appeal; assigned/unassigned errors</td>
<td>147</td>
</tr>
<tr>
<td>j. Lack of verification in an appeal, not fatal nor jurisdictional</td>
<td>148</td>
</tr>
<tr>
<td>k. Failure to allege material date in the appeal memorandum</td>
<td>148</td>
</tr>
<tr>
<td>l. Appeal fee</td>
<td>149</td>
</tr>
<tr>
<td>m. Failure to pay appeal fee, effect</td>
<td>149</td>
</tr>
<tr>
<td>n. Proof of service to adverse party, effect of failure to serve a copy</td>
<td>149</td>
</tr>
<tr>
<td>o. Answer or reply of appellee</td>
<td>150</td>
</tr>
<tr>
<td>p. Records of cases on appeal</td>
<td>150</td>
</tr>
<tr>
<td>q. Immediate transmittal of records of cases on appeal</td>
<td>150</td>
</tr>
<tr>
<td>8. REINSTATEMENT ASPECT OF DECISION, IMMEDIATELY EXECUTOR</td>
<td></td>
</tr>
<tr>
<td>a. Reinstatement pending appeal, nature</td>
<td>150</td>
</tr>
<tr>
<td>b. Constitutionality of reinstatement pending appeal</td>
<td>150</td>
</tr>
<tr>
<td>c. Distinguished from reinstatement under Article 279</td>
<td>150</td>
</tr>
<tr>
<td>d. Reinstatement pending appeal, similar to return-to-work order</td>
<td>151</td>
</tr>
<tr>
<td>e. Failure to report back to work, effect</td>
<td>151</td>
</tr>
<tr>
<td>f. Amendment of Article 223 on reinstatement pending appeal, not retroactive</td>
<td>151</td>
</tr>
<tr>
<td>g. Award of reinstatement pending appeal, self-executory; hence, no writ of execution required</td>
<td>151</td>
</tr>
<tr>
<td>h. Appeal does not prevent execution of immediate reinstatement</td>
<td>152</td>
</tr>
<tr>
<td>i. Posting of bond does not stay immediate reinstatement</td>
<td>152</td>
</tr>
<tr>
<td>j. Reinstatement pending appeal, ministerial duty of Labor Arbiter</td>
<td>152</td>
</tr>
<tr>
<td>k. Issuance of partial writ pending appeal</td>
<td>152</td>
</tr>
<tr>
<td>l. Effect when reinstatement is not stated in the decision</td>
<td>152</td>
</tr>
<tr>
<td>m. Options of the employer</td>
<td>152</td>
</tr>
<tr>
<td>n. Employer has to notify employee of his choice of option</td>
<td>152</td>
</tr>
<tr>
<td>o. Failure to exercise option, employer should pay salary</td>
<td>152</td>
</tr>
<tr>
<td>p. NLRC cannot exercise option of employer by choosing payroll reinstatement pending appeal</td>
<td>153</td>
</tr>
<tr>
<td>q. Remedy in case of employer’s refusal to comply with writ of execution to reinstate is contempt citation</td>
<td>153</td>
</tr>
<tr>
<td>r. Employer must pay for the salary of employee, as if he was reinstated</td>
<td>153</td>
</tr>
<tr>
<td>s. Effect of issuance of TRO by the Supreme Court</td>
<td>154</td>
</tr>
<tr>
<td>t. Reinstatement in case of two successive dismissals</td>
<td>154</td>
</tr>
<tr>
<td>u. Reinstatement when position already filled up</td>
<td>154</td>
</tr>
<tr>
<td>v. No reinstatement pending appeal when antipathy and antagonism exist</td>
<td>154</td>
</tr>
<tr>
<td>9. APPEAL INVOLVING MONETARY AWARD, 155</td>
<td></td>
</tr>
<tr>
<td>a. Perfection of appeal in case of monetary judgment</td>
<td>155</td>
</tr>
<tr>
<td>b. Bond should be posted within the 10-calendar day reglementary period</td>
<td>155</td>
</tr>
<tr>
<td>c. Posting of bond is not only mandatory but jurisdictional</td>
<td>156</td>
</tr>
<tr>
<td>d. Filing of appeal and perfection of appeal, distinguished</td>
<td>156</td>
</tr>
<tr>
<td>e. Award of damages and attorney’s fees, excluded from computation of bond</td>
<td>156</td>
</tr>
<tr>
<td>f. No monetary award, no appeal bond required</td>
<td>157</td>
</tr>
<tr>
<td>g. Labor Arbiter’s decision or order is required to state the amount awarded</td>
<td>157</td>
</tr>
<tr>
<td>h. Surety bond must be issued by accredited bonding company</td>
<td>157</td>
</tr>
<tr>
<td>i. Documents to accompany bond</td>
<td>157</td>
</tr>
<tr>
<td>j. Irregular or not genuine bond, effect</td>
<td>157</td>
</tr>
<tr>
<td>k. Real property bond in lieu of cash or surety bond now allowed</td>
<td>158</td>
</tr>
<tr>
<td>l. Suretyship, meaning</td>
<td>158</td>
</tr>
<tr>
<td>m. Non-posting of bond, fatal</td>
<td>158</td>
</tr>
<tr>
<td>n. Remedy of employee in case employer failed to post bond</td>
<td>158</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>o.</td>
<td>Motion to reduce bond, when proper, 158</td>
</tr>
<tr>
<td>p.</td>
<td>Motion to reduce bond does not stop running of period to perfect appeal; exception, 159</td>
</tr>
<tr>
<td>q.</td>
<td>Liberal construction and relaxation of rule on posting of appeal bond, 159</td>
</tr>
<tr>
<td>r.</td>
<td>The failure to post the bond must be caused by a third party, not by the appellant himself, 160</td>
</tr>
<tr>
<td>s.</td>
<td>If no motion to reduce bond is filed, decision becomes final, 161</td>
</tr>
<tr>
<td>t.</td>
<td>Motion to reduce bond, when not proper, 161</td>
</tr>
<tr>
<td>u.</td>
<td>Alternative remedy is to pay partial appeal bond while motion to reduce bond is pending with the NLRC, 162</td>
</tr>
<tr>
<td>v.</td>
<td>The partial payment of bond must be made during the reglementary period, 162</td>
</tr>
<tr>
<td>w.</td>
<td>Improper granting of motion to reduce bond, 162</td>
</tr>
<tr>
<td>x.</td>
<td>Effect when NLRC grants additional time to post bond after denial of motion to reduce bond, 163</td>
</tr>
<tr>
<td>y.</td>
<td>Motion for extension of time to file bond, effect, 163</td>
</tr>
<tr>
<td>z.</td>
<td>Inaccuracy in computation of monetary awards must be proved, 163</td>
</tr>
<tr>
<td>aa.</td>
<td>Financial difficulties, not sufficient ground, 163</td>
</tr>
<tr>
<td>bb.</td>
<td>Long Christmas holiday, not an excuse, 163</td>
</tr>
<tr>
<td>10.</td>
<td>FRIVOLOUS OR DILATORY APPEAL, 164</td>
</tr>
<tr>
<td>11.</td>
<td>SUBMISSION OF NEW OR ADDITIONAL EVIDENCE ON APPEAL, 164</td>
</tr>
<tr>
<td>a.</td>
<td>General rule, 164</td>
</tr>
<tr>
<td>b.</td>
<td>Exception, 165</td>
</tr>
<tr>
<td>c.</td>
<td>Evidence may not be presented for the first time on certiorari with the Court of Appeals, 165</td>
</tr>
<tr>
<td>d.</td>
<td>Evidence may not be presented for the first time on appeal with the Supreme Court, 166</td>
</tr>
<tr>
<td>12.</td>
<td>CHANGE OF THEORY ON APPEAL, NOT ALLOWED, 166</td>
</tr>
<tr>
<td>a.</td>
<td>General rule, 166</td>
</tr>
<tr>
<td>b.</td>
<td>Exception: when change of theory is grounded on lack of jurisdiction, 167</td>
</tr>
<tr>
<td>13.</td>
<td>NEW ISSUES ON APPEAL, NOT ALLOWED, 167</td>
</tr>
<tr>
<td>a.</td>
<td>New issues cannot be raised on appeal, 167</td>
</tr>
<tr>
<td>b.</td>
<td>Unassigned errors, 168</td>
</tr>
<tr>
<td>14.</td>
<td>EXHAUSTION OF ADMINISTRATIVE REMEDIES; MOTION FOR RECONSIDERATION OF NLRC DECISION REQUIRED, 168</td>
</tr>
<tr>
<td>a.</td>
<td>Motion for reconsideration of NLRC decision; not found in the law but in the NLRC Rules, 168</td>
</tr>
<tr>
<td>b.</td>
<td>Motion for reconsideration is both mandatory and jurisdictional, 169</td>
</tr>
<tr>
<td>c.</td>
<td>Motion for reconsideration is the plain and adequate remedy referred to in Section 1, Rule 65 of the Rules of Court, 169</td>
</tr>
<tr>
<td>d.</td>
<td>Exceptions to the rule on exhaustion of administrative remedies, 169</td>
</tr>
<tr>
<td>e.</td>
<td>Parties cannot arrogate to themselves the determination of whether to file a Motion for Reconsideration or not, 171</td>
</tr>
<tr>
<td>f.</td>
<td>10-calendar day period, reckoned from receipt of resolution on the Motion for Reconsideration, 171</td>
</tr>
<tr>
<td>g.</td>
<td>Prematurity, proper ground for failure to file motion for reconsideration, 171</td>
</tr>
<tr>
<td>15.</td>
<td>APPEAL FROM NLRC TO SECRETARY OF LABOR AND THE PRESIDENT, ABOLISHED, 171</td>
</tr>
<tr>
<td>16.</td>
<td>NO APPEAL FROM NLRC DECISIONS; JUDICIAL REVIEW, 172</td>
</tr>
<tr>
<td>a.</td>
<td>No statutory grant of right to appeal from NLRC decision, 172</td>
</tr>
<tr>
<td>b.</td>
<td>Section 2, Rule 43, 1997 Rules of Civil Procedure, 172</td>
</tr>
<tr>
<td>17.</td>
<td>CERTIORARI IN LABOR CASES UNDER RULE 65 OF RULES OF COURT, 173</td>
</tr>
<tr>
<td>a.</td>
<td>Certiorari, nature, 173</td>
</tr>
<tr>
<td>b.</td>
<td>Certiorari may be filed even if the NLRC decision has become final and executory, 173</td>
</tr>
<tr>
<td>c.</td>
<td>Wide breadth of discretion in certiorari proceedings, 174</td>
</tr>
<tr>
<td>d.</td>
<td>Even if not assigned, matters may be reviewed to arrive at a just decision, 174</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

e. The petition in the Court of Appeals must state the prima facie basis for the issuance of the writ of certiorari, 174
f. Errors of jurisdiction distinguished from errors of judgment, 174
g. Jurisdictional issue; meaning, 175
h. “Grave abuse of discretion amounting to lack or excess of jurisdiction”, meaning, 175
i. Certiorari petition under Rule 65 is cognizable by the CA and not by the SC, 176
j. Period within which to file certiorari petition – 60 days, 177
k. When late-filing was allowed, 178
l. Procedural rules have retroactive application, 178
m. 60-day period, how computed, 179
n. The 60-day period should be reckoned from receipt of decision/award by counsel, not by party, 179
o. Ignorance of procedural rules, not an excuse, 180
p. Contents and filing of the petition; effect of non-compliance with requirements, 180
q. Proof of service to adverse party and NLRC, 184
r. Documents required to accompany the certiorari petition, 185
s. Additional requirement – written explanation why service or filing was not done personally, 186
t. Affidavit of service, not substitute to explanation required under Section 11, Rule 13 of the Rules of Court, 187
u. The petition must be sufficient in form and substance, 187
v. When is there forum-shopping, 187
w. Verification and certificate of non-forum shopping; distinguished, 187
x. Verification, only formal, not a jurisdictional requirement, 188
y. If parties are numerous, not all are required to sign the verification or certificate of non-forum shopping, 188
z. Certificate of non-forum shopping, obligatory but not jurisdictional, 189
aa. Relaxation of the rules in some cases, 190
bb. Certificate of non-forum shopping necessary in initiatory pleadings filed before the NLRC, 192
c. Certificate of non-forum shopping should be executed by petitioner and not by counsel, 192
d. Rule when party is a corporation, 192
e. Rule when certificate of non-forum shopping is signed by the lawyer on behalf of a corporation, 193
ff. Rule is different if petitioner is not a corporate entity but a natural person, 194
gg. Rule when party is a general partnership, 194
hh. Rule when a corporate officer is held solidarily liable with the corporation, 194
ii. Verified statement of material dates, effect of non-compliance, 195
jj. A certiorari petition dismissed on the basis of non-compliance with requirements may be refiled, 195
kk. Defect may be cured in a Motion for Reconsideration, 195
ll. When defect may not be cured in a Motion for Reconsideration, 195
mm. Who are the private and public respondents and who shall answer the costs in a certiorari case, 196
nn. The role of the public respondents in a certiorari case, 196
oo. Office of the Solicitor General, excused from filing comment, 196
pp. Order to comment, 196
qq. Jurisdiction over the person of the respondent; how acquired, 196
rr. Action of court before giving due course to petition for certiorari, 197
ss. Pleadings in certiorari case may be filed only with leave of court, 197
tt. Proceedings after comment is filed; grant or dismissal of certiorari petition, 197
uu. Certiorari petition must fail if no jurisdictional issue is raised, 197
vv. Injunctive relief is a mere interlocutory order;
TABLE OF CONTENTS

18. APPEALS TO AND EXERCISE OF JURISDICTION BY THE
   DOLE SECRETARY; INSTANCES ALLOWED BY LAW AND RULES, 202
19. CERTIORARI TO THE COURT OF APPEALS FROM DECISIONS OF THE
   DOLE SECRETARY UNDER RULE 65 OF THE RULES OF COURT, 204
   a. Background, 204
   b. Rule 65 certiorari to the Court of Appeals, 205
   c. Motion for reconsideration of DOLE Secretary’s decision, pre-requisite to filing of certiorari to Court of Appeals, 205
20. APPEAL FROM THE COURT OF APPEALS TO THE SUPREME COURT - BY
    PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45, 205
   a. Rule 45, the mode of elevating case from CA to the Supreme Court, 205
   b. May certiorari under Rule 65 be availed of from the decision of the CA to the Supreme Court? Yes and No, 206
   c. Question of law, 207
e. Question of fact, 207
   e. Only questions of law may be raised under Rule 45; exceptions, 207
   f. Certificate of forum-shopping under Rule 45, 208
   g. NLRC need not be impleaded as party respondent in petitions under Rule 45, 208
   h. CA need not be impleaded in appeals under Rule 45, 209
   i. Factual findings given finality if based on substantial evidence, 209
   j. Similarities in the factual findings of the Labor Arbiter, NLRC and the Court of Appeals; effect, 209
   k. Variance in the factual findings of the Labor Arbiter, NLRC and the Court of Appeals; effect, 210
   l. Unassigned errors, may be reviewed on appeal, 210
   m. When 2nd motion for reconsideration is allowed by the Supreme Court, 210
   n. When remand from the Supreme Court to the Court of Appeals proper, 211
   o. When remand from the Supreme Court to the CA or lower tribunal not proper, 210
   p. When remand from the Court of Appeals to the Labor Arbiter proper, 212

Article 224. Execution of decisions, orders or awards .................................................... 212

1. OFFICES/OFFICIALS EMPOWERED TO ISSUE WRIT OF EXECUTION, 212
2. DEFINITION OF TERMS, 213
3. FINALITY OF DECISIONS OR AWARDS, 213
   a. Final judgment or order, defined, 213
   b. When decisions or awards become final and executory, 213
   c. A final decision constitutes the law of the case; it is not appealable, 213
d. Order of execution, not subject to appeal but manner of execution may be appealed, 214
4. FINAL DECISIONS CANNOT BE DISTURBED; EXCEPTIONS, 214
   a. General rule, 214
   b. Exceptions, 215
5. EXECUTION OF DECISIONS, ORDERS OR AWARDS, 217
   a. Within five (5) years from finality of decisions or orders, 217
   b. After five (5) years from finality of decisions or orders, 217
c. Execution of judgment by mere motion after 5 years, when allowed, 217

8. ISSUANCE OF WRIT OF EXECUTION IN NLRC CASES, 21
   a. Pre-execution conference, 218
   b. Issuance of a writ of execution, 218

9. ISSUANCE, FORM AND CONTENTS OF A WRIT OF EXECUTION, 218
10. PERFECTION OF APPEAL, EFFECT ON EXECUTION, 219
11. COMPUTATION OF MONETARY AWARDS, 219
    a. Decision should state the detailed and full amount of monetary awards, 219
    b. Computation during execution, 219
    c. Computation by the NLRC’s Research and Information Unit, 219

12. EXECUTION IN CASE COMPANY IS UNDER REHABILITATION RECEIVERSHIP, 22

13. MOTION TO QUASH WRIT OF EXECUTION, 220
14. ENTRY OF JUDGMENT, 220
    a. Book of Entries of Judgment, 220
    b. Allowance for delay of mail in the issuance of entries of judgment, 220
    c. Disposition/Remand of records, 220
    d. Records of case, necessary before writ may be issued, 221

15. FILING OF PETITION FOR CERTIORARI, EFFECT ON EXECUTION, 221
16. THE EXECUTION PROCESS, 221
    a. Enforcement of writ of execution, 221
    b. Assignment of writs of execution, 221
    c. Execution in case of death of party, 221
    d. Properties exempt from execution, 221
    e. The rule exempting properties from execution applies only to natural persons and not to juridical entities, 222
    f. Execution of money judgment, 222
    g. Description with pinpoint precision of levied properties, not required, 223
    h. Voluntary satisfaction of money judgment, 223
    i. Hours and days when writ of execution shall be served, 223
    j. Break-open order; when issued, 223
    k. Referral of questions relative to enforcement of writ of execution, 223
    l. Execution of judgment in areas where there are no arbitration branches, 223
m. Execution of decisions, orders or awards of Voluntary Arbitrators, 223

17. LEVY, 223
    a. Levy on personal property, 223
    b. Garnishment; effect, 224
    c. Meaning of “possession and control”, 224
    d. Levy on real property, 224
    e. Effect of levy, 225
    f. Effect of levy on debts and credits, 225
    g. Storing of levied property, 225

18. THIRD-PARTY CLAIM, 225
    a. Definition, 225
    b. Resolution of third-party claim, 225
    c. Two options of third-party claimant, 226
    d. Resolution of the third-party claim; effect, 226
    e. Fraudulent third-party claim, effect, 226

19. SALE OF PROPERTY ON EXECUTION, 227
    a. Notice of sale, 227
    b. No sale if judgment and costs paid, 228
c. How property sold on execution, 228

D. Sale in mass of separate properties, 228

e. Refusal of purchaser to pay, 228

f. Prevailing party as purchaser, 228

g. Adjournment of sale, 228

h. Conveyance to purchaser of personal property capable of manual delivery, 228

i. Conveyance to purchaser of personal property not capable of manual delivery, 228

j. Conveyance of real property; certificate thereof given
   to purchaser and filed with the Register of Deeds, 229

k. Certificate of sale where property claimed by third party, 229

l. Redemption of real property sold; who may redeem, 229

m. Successive redemptions; time and manner; amounts payable, 229

n. Effect of redemption by losing party; when a certificate to be delivered
   and recorded thereupon; to whom payments on redemption made, 229

O. Period of redemption:
   is it twelve (12) months or one (1) year from date of registration of sale?, 230

p. Proof required of redemptioner, 230

q. Deed and possession to be given at expiration of redemption period;
   by whom executed or given, 230

r. Recovery of price if sale not effective; revival of judgment, 231

20. THE SHERIFF, 231

   a. Duties, responsibilities and bond, 231

   b. Norm of conduct, 231

   c. Special sheriffs; administrative fines, 231

   d. Deputization of the PNP and other law enforcement agencies, 231

   e. Control and supervision over the sheriff, 231

   f. Sheriff’s return, 231

   g. Prohibition; alias writ of execution, 232

   h. Sheriff’s status report, 232

   i. Sheriff’s execution fees, 232

   j. Sheriff’s identification, 232

Article 225. Contempt powers of the Secretary of Labor…………………………………… 232

1. NATURE, 232

2. CONTEMPT POWER; PENALTIES, 232

   a. Direct contempt; person guilty of misbehavior, 232

   b. Indirect contempt, 233

   c. Indirect contempt must be initiated by the quasi-judicial body before the RTC, 233

Title III

BUREAU OF LABOR RELATIONS

Article 226. Bureau of Labor Relations…………………………………………………………… 234

1. JURISDICTION, 234

   a. Bureau of Labor Relations (Bureau), 234

   b. Labor Relations Division (LRD), 234

   c. Concurrent jurisdiction of the Bureau and LRD, 234

   d. Original and exclusive jurisdiction, 234

   e. Period to decide cases, 234

   f. Referendum, when proper, 235

   g. Referendum, when not proper, 235

   h. The Bureau’s factual findings, given finality, 235

   i. Administrative functions, 235

   j. Decisions appealable to Bureau of Labor Relations, 235

   k. Direct contempt; person guilty of misbehavior, 235

   l. Indirect contempt, 236

2. INTER/INTRA-UNION DISPUTES, 236

   a. Inter-union or representation disputes, 236
# TABLE OF CONTENTS

- **b. Intra-union or internal union disputes**, 236  
- **c. Exhaustion of administrative remedies under the constitution and by-laws necessary**, 236  
- **d. Coverage of inter/intra-union disputes**, 237  
- **e. Intra-union dispute does not include labor-management relations conflicts**, 237  

3. **OTHER RELATED LABOR RELATIONS DISPUTE**, 237
    - **a. Related labor relations dispute, meaning**, 237  
    - **b. Coverage of other related labor relations disputes**, 237  
    - **c. Interpleader, meaning**, 237

4. **PROVISIONS APPLICABLE TO INTER/INTRA-UNION AND OTHER RELATED LABOR RELATIONS DISPUTES**, 238
    - **a. Effects of the filing/pendency of inter/intra-union and other related labor relations disputes**, 238  
    - **b. Who may file**, 238  
    - **c. 30% union support in case of complaint affecting entire membership**, 238  
    - **d. Where to file**, 238  
    - **e. Formal requirements of the complaint or petition**, 239  
    - **f. Raffle of the case**, 239  
    - **g. Notice of preliminary conference**, 239  
    - **h. Conduct of preliminary conference**, 239  
    - **i. Conduct of hearing(s)**, 240  
    - **j. Affirmation of testimonial evidence**, 240  
    - **k. Filing of pleadings**, 240  
    - **l. Position papers not required**, 240  
    - **m. Hearing and resolution of the complaint or petition in the Bureau**, 240  
    - **n. Decision**, 240  
    - **o. Release of decision**, 240  
    - **p. Appeal**, 240  
    - **q. Where to file appeal**, 241  
    - **r. Finality of Decision**, 241  
    - **s. Period to reply**, 241  
    - **t. Decision of the Bureau/Office of the Secretary**, 241  
    - **u. Finality of decision of Bureau/Office of the Secretary**, 241  
    - **v. Execution of decision**, 241  
    - **w. Transmittal of records to the Regional Office/Bureau**, 241

5. **AUTHORITY UNDER THE ADMINISTRATIVE CODE OF 1987**, 241

6. **NATIONAL CONCILIATION AND MEDIATION BOARD (NCMB)**, 242
    - **a. The “Board” under the Labor Code**, 242  
    - **b. Conciliator-Mediator, defined**, 242  
    - **c. Conciliation or mediation, meaning**, 242  
    - **d. Jurisdiction over conciliation, mediation and voluntary arbitration cases**, 242  
    - **e. Composition**, 242  
    - **f. Functions**, 243

7. **INTERVENTION OF NCMB IN CASE OF DISPUTE**, 243
    - **a. Ways of bringing issue to the NCMB**, 243  
    - **b. Subpoena**, 243  
    - **c. Prohibited acts**, 243  
    - **d. Privileged communication**, 243  
    - **e. Voluntary arbitration**, 243

8. **ROLE OF NCMB IN STRIKE/LOCKOUT SITUATIONS**, 243

9. **TRIPARTITE VOLUNTARY ARBITRATION ADVISORY COUNCIL**

- **Article 227. Compromise agreements**..........................................................244
  1. **a. Coverage of Article 227**, 244  
     **b. Compromise agreement under Article 227 must be in writing and signed before the Bureau or Regional Director or authorized representative**, 244
c. Prohibition; exception, 245
d. Labor standards cases may be made subject of compromise agreement, 245

**Article 228. Indorsement of cases to Labor Arbiters**

**Article 229. Issuance of subpoenas**
1. NATURE AND EXTENT OF POWER, 245
2. KINDS OF SUBPOENAS, 245

**Article 230. Appointment of bureau personnel**
1. ARTICLE 230 PRIOR TO ITS AMENDMENT BY R. A. NO. 6715, 246
2. ARTICLE 230 AS AMENDED BY R. A. NO. 6715, 246

**Article 231. Registry of unions and file of collective bargaining agreements**
1. MAINTENANCE OF CENTRAL REGISTRY OF LABOR ORGANIZATIONS, WORKERS' ASSOCIATIONS AND COLLECTIVE BARGAINING AGREEMENTS, 247
   a. Duty to maintain registry and records, 247
   b. Restrictive guidelines, 247
   c. Forms for registration, 247
   d. Transmittal of records; central registry, 247
2. REGISTRY OF LEGITIMATE LABOR ORGANIZATIONS, 247
3. REGISTRATION OF COLLECTIVE BARGAINING AGREEMENTS, 248
   a. Registration of agreement, meaning, 248
   b. Where to file, 248
   c. Requirements for registration, 248
   d. Payment of registration fee, 248
   e. Action on the application, 248
4. NON-COMPLIANCE WITH PROCEDURAL REQUIREMENT, EFFECT, 248
5. DEREGISTRATION OF AGREEMENT, 248
6. APPEAL FROM DECISION GRANTING OR DENYING CBA REGISTRATION, 249
   a. Denial of CBA registration; grounds for appeal, 249
   b. Period and manner of disposition of appeal, 249

**Article 232. Prohibition on certification election**
1. CONTRACT-BAR RULE, 249
2. EXCEPTIONS, 250

**Article 233. Privileged communication**
1. PRIVILEGED COMMUNICATION, INADMISSIBLE EVIDENCE, 250
2. PRIVILEGED COMMUNICATION IN STRIKES/LOCKOUTS, 250

**Title IV LABOR ORGANIZATIONS**

**Chapter I REGISTRATION AND CANCELLATION**

**Article 234. Requirements of registration**
1. FREE TRADE UNIONISM, 251
2. NATURE AND PURPOSE OF REGISTRATION PROCEEDINGS, 252
3. LABOR ORGANIZATION, 252
   a. Labor organization; defined, 252
   b. Union, defined, 252
4. WORKERS' ASSOCIATION, 252
5. LABOR ORGANIZATION AND WORKERS' ASSOCIATION, DISTINGUISHED, 252
6. PURPOSES OF A LABOR ORGANIZATION, 253
   a. Collective bargaining, 253
   b. Dealing with employer, 253
7. BARGAINING UNIT, 253
   a. Bargaining unit, meaning, 253
   b. Bargaining unit - 20% requirement, 253
   c. Constitution and By-laws, 254
8. REGISTRATION OF LABOR ORGANIZATION, 254
   a. Registration, meaning, 254
TABLE OF CONTENTS

b. Purpose of registration, 254
c. Registration of labor organization and workers’ association; effectivity date, 254
d. Legal personality may not be collaterally attacked, 254
e. Registration requirements are mandatory, 254
f. Effect of incorporation under the Corporation Code, 254
g. Effect of registration on freedom of assembly and association, 255
h. Where to file applications for registration of independent labor unions, chartered locals and workers’ associations, 255
i. Requirements for application for registration of an independent labor union, 255

9. REGISTRATION OF WORKERS' ASSOCIATIONS, 255
   a. Requirements for application for registration of a workers’ association, 255
   b. Requirements for application for registration
      of workers’ association operating in more than one region, 256

10. REGISTRATION OF HOMEWORKERS’ ORGANIZATIONS, 256

11. REGISTRATION OF GOVERNMENT EMPLOYEES’ ORGANIZATIONS, 256

12. MERGER/CONSOLIDATION OF LABOR ORGANIZATIONS
    AND WORKERS’ ASSOCIATION, 257
    a. Merger, defined, 257
    b. Consolidation, defined, 257
    c. Notice of merger/consolidation of labor organizations; where filed, 257
    d. Notice of merger; documents required, 257
    e. Certificate of registration of merged labor organizations, 257
    f. Notice of consolidation of labor organizations; documents required, 257
    g. Certificate of registration of a consolidated labor organization, 257
    h. Effect of merger or consolidation, 258

13. CHANGE OF NAME OF LABOR ORGANIZATIONS, 258
    a. Notice of change of name of labor organizations; where filed, 258
    b. Notice of change of name; documents required, 258
    c. Certificate of registration/Certificate of creation of chartered local
       for change of name, 258
    d. Effect of change of name, 258

Article 235. Action on application

1. PROCESSING OF APPLICATION FOR REGISTRATION OF LABOR
   ORGANIZATIONS AND WORKERS’ ASSOCIATIONS, NOTICE FOR
   CHANGE OF NAME, MERGER, CONSOLIDATION AND AFFILIATION, 258
   a. Attestation requirements, 258
   b. Payment of registration fee, 258
   c. Accompanying documents, 258
   d. Action on the application/notice of change of name, affiliation, merger
      and consolidation, 259

2. REASON FOR 30-DAY PERIOD, 259
3. REASON FOR REQUIRING CERTIFICATION UNDER OATH, 259
4. MANDAMUS, NOT CERTIORARI, IS PROPER REMEDY, 259

Article 236. Denial of registration; appeal

1. DENIAL OF APPLICATION FOR REGISTRATION/RETURN OF NOTICE
   OF CHANGE OF NAME, AFFILIATION, MERGER AND CONSOLIDATION, 259
2. FORM OF DENIAL OF APPLICATION/RETURN OF NOTICE OF CHANGE
   OF NAME, AFFILIATION, MERGER OR CONSOLIDATION; APPEAL, 259
3. PROCEDURE ON APPEAL, 260

Article 237. Additional requirements for federations or national unions

1. ARTICLE 238 REFERRED TO IN ARTICLE 237 REPEALED
   BY EXECUTIVE ORDER NO. 111, 260
2. REQUIREMENTS FOR APPLICATION FOR REGISTRATION
   OF FEDERATIONS OR NATIONAL UNIONS, 260
3. REQUIREMENTS FOR APPLICATION FOR REGISTRATION
   OF INDUSTRY UNION, 261
4. DEFINITION OF RELEVANT TERMS, 261
   a. National Union or Federation, meaning, 261
   b. Affiliate, meaning, 261
c. Chartered local, meaning, 261
d. Independent union, meaning, 261
5. CHARTERING OF LABOR ORGANIZATIONS, 261
   a. Creation of chartered local; issuance of charter certificate by federation
      or national union, 261
   b. No independent registration required for a chartered local
      to acquire legal personality, 262
6. AFFILIATION OF INDEPENDENT UNION, 262
   a. Affiliation with federation or national union, 262
   b. Nature and extent of relationship between affiliate and federation, 262
c. Report of affiliation with federations or national unions; where filed, 263
d. Affiliation; documents required, 263
7. DISAFFILIATION, 263
   a. Right to disaffiliate, 263
   b. Disaffiliation does not divest affiliate of its personality, 264
c. Disaffiliation is not an act of disloyalty, 264
d. Disaffiliation does not terminate status of members as employees, 264
e. Disaffiliation of independently-registered union and chartered local,
   distinction, 264
f. Disaffiliation should be approved by the majority, 264
g. Disaffiliation terminates right to check-off federation dues, 265
h. Disaffiliation does not affect CBA, 265
i. Substitutionary doctrine, 265
j. The act of the union in disaffiliating and entering into a CBA with
   the employer does not constitute unfair labor practice, 266
k. Disaffiliation, not a violation of union security clause, 266
l. Election protest involving both the mother federation and local union,
   not a bar to disaffiliation, 266
m. Certification election after disaffiliation, 267
8. JURISDICTION OVER AFFILIATION/DISAFFILIATION ISSUE, 267
   Article 238. Conditions for registration of federations or national unions... 267
   1. ARTICLE 238 REPEALED BY E. O. NO. 111, 267
   Article 238. Cancellation of registration; appeal.............................. 267
   1. CANCELLATION PROCEEDINGS AGAINST LABOR ORGANIZATION
      OR WORKERS’ ASSOCIATION, 267
      a. Cancellation proceedings; meaning, 267
      b. Where to file; due process must be observed, 267
      c. Who may file, 268
d. Action on the petition, 268
e. Effect of filing or pendency of a cancellation proceeding, 268
f. Effect of cancellation during the pendency of a case, 268
   2. CANCELLATION OF REGISTRATION OF LABOR ORGANIZATIONS
      DUE TO NON-COMPLIANCE WITH THE REPORTORIAL REQUIREMENTS, 268
      a. When proper, 268
      b. Procedure, 269
c. Publication of notice of cancellation of registration, 269
d. Cancellation of registration, 269
e. Conditions for administrative cancellation of certificate of registration, 269
   3. APPEAL IN CANCELLATION PROCEEDINGS, 269
      a. Appeal, 269
      b. Where to file appeal in cancellation proceedings, 269
c. Finality of decision rendered in cancellation proceedings, 269
TABLE OF CONTENTS

d. Period to reply in cancellation proceedings, 270
e. Decision of the Bureau/Office of the Secretary, 270
f. Finality of decision of Bureau/Office of the Secretary, 270
g. Execution of decision, 270
h. Transmittal of records to the Regional Office/Bureau, 270
4. APPELLATE JURISDICTION OF BUREAU OF LABOR RELATIONS
   AND DOLE SECRETARY, DISTINGUISHED, 270
   a. Abbott Laboratories case, 270
   b. Decisions of the Bureau in appealed cases, remedy is certiorari under Rule 65, 271
   c. Decisions of DOLE Secretary in appealed cases, remedy is certiorari under Rule 65, 271

Article 239. Grounds for cancellation of union registration ........................ 271
   1. CANCELLATION OF REGISTRATION; NATURE AND GROUNDS, 272
   2. FRAUDULENT ACTS, 272
   3. ILLEGAL ACTS, 273
   4. FAILURE TO COMPLY WITH REPORTORIAL REQUIREMENTS, 273
   5. DISCLOSURE OF DONATIONS, DONORS AND PURPOSES, 274
   6. ILLEGAL STRIKE DOES NOT JUSTIFY CANCELLATION OF REGISTRATION, 274
   7. LEGAL PERSONALITY OF UNION CANNOT BE COLLATERALLY ATTACHED IN A CERTIFICATION ELECTION, 274

Article 240. Equity of the incumbent ............................................................. 275
   1. EQUITY OF THE INCUMBENT OF FEDERATIONS AND NATIONAL UNIONS, 275

Chapter II ............................................................................................................. 276
RIGHTS AND CONDITIONS OF MEMBERSHIP ......................................................... 276

Article 241. Rights and conditions of membership in a labor organization...276
   1. RELATIONSHIP OF THE UNION AND ITS MEMBERS, 278
   2. RIGHT TO UNION MEMBERSHIP, 278
      a. Right to union membership is not absolute, 278
      b. Freedom of choice, 278
      c. Right to join union acquired from first day of employment, 279
      d. Union members who are not employees do not possess the right to join union or be certified as bargaining agent, 279
   3. RIGHTS OF UNION MEMBERS UNDER ARTICLE 241, 279
      a. Financial rights, 279
      b. Right to information, 279
      c. Political rights, 280
      d. Right to participate in decision-making, 280
   4. ELECTION OF OFFICERS OF LABOR ORGANIZATIONS AND WORKERS’ ASSOCIATIONS, 280
      a. Term of office; defined, 280
      b. Qualifications, 280
      c. Disqualifications, 280
      d. Disqualification, effect on election, 281
      e. Manner of election of officers, 281
      f. Eligibility to vote, how determined, 281
      g. Conduct of election of union officers; procedure in the absence of provisions in the constitution and by-laws, 281
      h. Dispute over conduct of election of officers, 282
      i. Formal requirements and proceedings, 282
      j. Pre-election conference and conduct of election, 282
      k. Applicability of the provisions of the labor organization’s constitution and by-laws, 282
      l. Period to file protest, 282
      m. Election conducted to deprive members of right to vote, 283
   5. IMPEACHMENT OR EXPULSION OF OFFICERS OR MEMBERS, 283
a. Expulsion of union officers, grounds, 283
b. Elected union officers cannot be expelled for past wrongdoings, 283
c. Expulsion, not referendum, is proper remedy against erring officers, 283
d. Expulsion of union officer or member, due process required, 283
e. Indefinite suspension without investigation is illegal, 283
f. Rule of exhaustion of intra-union remedies, 284
g. Exceptions to the rule on exhaustion of intra-union remedies, 284

6. ASSSESSMENTS AND CHECK-OFFS, 284
a. Right of union to collect dues and agency fees, 284
b. Check-off, defined, 284
c. Check-off is for the benefit of the union, 285
d. Legal basis of check-off, 285
e. Requisites for validity of union special assessments, 285
f. Individual written authorization, when required, 285
g. Individual written authorization, when not required, 286
h. Effect of withdrawal of written authorizations, 286
i. Form of disauthorization, 286
j. Effect of representation case or intra-union dispute on right of union to collect dues, 286
k. “Majority of all members in a general membership meeting”, required, 286

7. SUBMISSION OF FINANCIAL AND OTHER REPORTS, 287
a. Reportorial requirements, 287
b. Financial statements/reports should be submitted promptly, 287

8. ADMINISTRATION OF TRADE UNION FUNDS AND ACTIONS ARISING THEREFROM, 287
a. Actions arising from Article 241, treated as intra-union disputes, 287
b. Actions arising from Article 274, not an intra-union disputes, 288
c. Actions arising from Article 241, where filed, 288
d. Actions arising from Article 274, where filed, 288
e. Filing of complaint, not an act of misconduct or disloyalty, 288
f. Audit Examiner, 288
g. Prescription of action involving union funds, 288
h. Decision granting the conduct of audit, 288
i. Pre-audit conference, 289
j. Issuance of subpoena, 289
k. Conduct of audit examination, 289
l. Period of audit, 289
m. Audit Report, 289
n. Completion of audit, 290
o. Decision after audit, 290
p. Appeal, 290
q. Period of inquiry or examination, 290

9. NUMBER OF MEMBERS REQUIRED TO REPORT VIOLATION, 290
a. 30% requirement under Article 241, 290
b. 20% rule under Article 274, 290
c. Article 241 and Article 274, reconciled, 290

10. CRIMINAL AND CIVIL LIABILITY, 291
a. Legal provision, 291
b. Proof of actual authorization or ratification necessary, 291

11. LABOR EDUCATION AND RESEARCH, 291
a. Labor education of workers and employees, 291
b. Mandatory conduct of seminars, 291
c. Special fund for labor education and research, 291
d. Request for assistance, 291
e. Coverage of education seminars, 292
### TABLE OF CONTENTS

f. Manner of holding seminars, 292  
g. Site of seminar, 292  
h. Report of activity, 292  
i. Foreign assistance, 292  
j. Submission of annual Labor Education and Research Report, 292  
k. Accounts examination, 293  
l. When seminars are deemed compliance, 293  
m. Failure to conduct seminars, 293  

### Chapter III

----------------------------------------------------------------------------------------------------------------------------------- 294  
RIGHTS OF LEGITIMATE LABOR ORGANIZATIONS ..................................................... 294  

**Article 242. Rights of legitimate labor organizations** ............................................. 294  
1. LEGITIMATE LABOR ORGANIZATION/ WORKERS’ ASSOCIATION, 294  
   a. Legitimate labor organization; defined, 294  
   b. Legitimate workers’ association; defined, 294  
   c. Importance of legitimate status, 294  
   d. When does a labor organization acquire legitimacy? 295  
2. RIGHT TO REPRESENT MEMBERS, 295  
3. NO RIGHT TO REPRESENT NON-UNION MEMBERS, 296  
4. CLAIMS OF MEMBERS, WHEN UNION NOT PARTY-IN-INTEREST, 296  
5. RIGHT OF UNION TO FILE PETITION FOR CERTIFICATION ELECTION DURING PENDENCY OF REGISTRATION, 297  
6. CANCELLATION OF REGISTRATION DURING PENDENCY OF CASE, EFFECT, 297  
7. RIGHT TO REQUEST FOR AUDITED FINANCIAL STATEMENTS, 297  
8. RIGHT TO OWN PROPERTY, 297  
9. RIGHT TO ORGANIZE AND OPERATE COOPERATIVE, HOUSING WELFARE AND OTHER LAWFUL PROJECTS, 297  
10. TAX-FREE INCOME AND PROPERTIES, 297  

### Title V

**COVERAGE**

**Article 243. Coverage and employees’ right to self-organization** ....................... 299  
1. CONSTITUTIONAL BASIS, 299  
2. INTERNATIONAL LABOR ORGANIZATION CONVENTIONS, 299  
   a. Doctrine of incorporation, 299  
   b. Conventions of the ILO, 299  
3. ILO CONVENTION NOS. 87 AND 98, 299  
4. POLICY OF THE LAW, 300  
5. WHO MAY JOIN LABOR ORGANIZATIONS AND WORKERS ASSOCIATION, 300  
   a. All employees may join union, 300  
   b. Rule on the right of supervisors to join union, 300  
   c. Rule on the right of managerial employees to join union, 300  
   d. Rule on the right of alien employees to join union, 300  
   e. Right to join union starts from first day of employment, 300  
   f. Employees who may organize labor organization  
      not for collective bargaining purposes, 301  
   g. Right to join union cannot be made subject of CBA stipulation, 301  
   h. Government intervention in labor organizations, 301  
6. RIGHT OF WORKING CHILDREN TO SELF-ORGANIZATION, 301  
7. RIGHT OF HOMEWORKERS TO SELF-ORGANIZATION, 301  
8. RIGHT OF EMPLOYEES OF CONTRACTORS AND SUBCONTRACTORS TO SELF-ORGANIZATION, 301  
   a. Agreement should contain a stipulation on free exercise of right to self-organization, 301  
9. RIGHT OF EMPLOYEES IN THE CIVIL SERVICE TO SELF-ORGANIZATION, 301  
10. RIGHT OF MEMBERS OR EMPLOYEES OF COOPERATIVES TO SELF-ORGANIZATION, 302
# TABLE OF CONTENTS

11. TRADE UNIONS IN THE CONSTRUCTION INDUSTRY, 302

**Article 244. Right of employees in the public service** .......................... 302

1. KINDS OF EMPLOYEES IN THE GOVERNMENT SERVICE FOR PURPOSES OF LABOR RELATIONS, 302
   a. Government employees referred to under Article 244, 302
   b. Government employees referred to under Article 276, 302

**Article 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees** .......................... 303

1. CATEGORIES OF EMPLOYEES, 303
   a. Three (3) categories of employees, 303
   b. Managerial employee, elements, 303
   c. Members of a managerial staff, elements, 303
   d. Test of managerial status, 303
   e. Types of managerial employees, 304

2. MANAGERIAL EMPLOYEES CANNOT JOIN UNION, 305
   a. First sentence of Article 245 declared constitutional, 305

3. SUPERVISORY EMPLOYEES’ RIGHT TO ORGANIZE, HISTORICAL BACKGROUND, 305
   a. Republic Act No. 875, the law before the Labor Code, 305
   b. P. D. No. 442, the Labor Code, 306
   c. P. D. No. 442, as amended by R. A. No. 6715, 307

4. MANAGERIAL AND SUPERVISORY EMPLOYEES, DISTINGUISHED, 308

5. RIGHT OF MANAGERIAL AND SUPERVISORY EMPLOYEES TO SELF-ORGANIZATION, 309
   a. Managerial employees under Book III and Book V of the Labor Code, 309
   b. Supervisory employees may organize own union; prohibition against joining rank-and-file union, 309
   c. Issue on membership of supervisory employees in a rank-and-file union must be raised seasonably before the Med-Arbiter, 311
   d. Inclusion of disqualified employees (supervisory employees) in a rank-and-file union is not a ground to cancel union registration, 311

6. SEPARATION OF UNIONS DOCTRINE, 311

7. CONFIDENTIAL EMPLOYEE RULE, 313
   a. Confidential employees, criteria, 313
   b. Confidential employee rule, 313
   c. Ineligibility of confidential employees to join unions, 314
   d. Cases where confidential employees were allowed to join unions, 315

8. RIGHT OF SECURITY GUARDS TO SELF-ORGANIZATION, 316
   a. Legal controversy, 316
   b. Present rule - security guards may join rank-and-file or supervisory union, 316

**Article 246. Non-abridgment of right to self-organization** .......................... 317

1. OBJECT OF THE LAW, 317

2. PENALTY FOR VIOLATION OF ARTICLE 246, 317

**Title VI

UNFAIR LABOR PRACTICES

Chapter I

CONCEPT

**Article 247. Concept of unfair labor practice and procedure for prosecution thereof** .......................... 318

1. UNFAIR LABOR PRACTICE, DEFINITION, 318

2. CONCEPT, 319
   a. Batas Pambansa Bilang 70, 319
   b. ULP should be related to exercise of right to self-organization and collective bargaining, 320

3. PARTIES WHO/WHICH MAY COMMIT UNFAIR LABOR PRACTICES ACTS, 320
TABLE OF CONTENTS

4. ELEMENTS OF UNFAIR LABOR PRACTICE, 320
5. ASPECTS OF UNFAIR LABOR PRACTICE, 320
6. COMPLAINT FOR UNFAIR LABOR PRACTICE, NATURE, 321
7. ALL ACTS OF UNFAIR LABOR PRACTICE MUST BE ALLEGED, 321
8. EFFECT ON PRESCRIPTIVE PERIOD, 321
9. EVIDENTIAL WEIGHT OF FINAL JUDGMENT, 321
10. COMPROMISE OF ULP CASES, 321

Chapter II .................................................................................................................. 323
UNFAIR LABOR PRACTICES OF EMPLOYERS ............................................................ 323

Article 248. Unfair labor practices of employers .......................................................... 323
1. INTERFERENCE, RESTRAINT OR COERCION. 323
   a. Interference, test, 323
   b. Totality of conduct doctrine, 324
   c. Interference in the choice of union’s bargaining panel, 324
   d. Interference in the employees’ right to self-organization, 325
   e. When termination of union president constitutes interference with the employees’ right to self-organization, 326
2. YELLOW DOG CONTRACT, 326
3. CONTRACTING OUT OF SERVICES AND FUNCTIONS, 326
4. COMPANY UNION, 326
5. DISCRIMINATION, 327
   a. Concept, 327
   b. Discrimination and classification, distinguished, 327
   c. Coverage of prohibition, 327
   d. The purpose of alleged discriminatory act is material, 327
   e. Employees must follow standards set by employer, 328
   f. Imposition of conditions, when not ULP, 328
   g. Recall of workers while excepting some is not ULP, 328
   h. Discrimination in grant of bonus, 328
6. UNION SECURITY CLAUSE, 329
   a. Nature of stipulation, 329
   b. Decision of employee should be respected, 329
   c. Classification, 329
   d. Closed shop agreement, 329
   e. Maintenance of membership agreement, 331
   f. Union shop agreement, 331
   g. Modified union shop agreement, 332
   h. Exclusive bargaining agent agreement, 332
   i. Bargaining for members only agreement, 332
   j. Agency shop agreement, 332
   k. Preferential hiring agreement, 332
   l. Inclusion of union shop in addition to maintenance of membership clause in CBA, 332
7. DUE PROCESS REQUIRED BEFORE DISMISSAL BASED ON UNION SECURITY CLAUSE, 332
   a. Employer should still afford due process to the expelled unionists, 332
   b. Employer’s liability in illegal dismissal based on union security clause, 333
8. STRICT INTERPRETATION AND CONSTRUCTION OF UNION SECURITY CLAUSE, 334
9. EFFECT OF UNION SECURITY CLAUSE ON RELIGIOUS FREEDOM, 334
   a. Constitutional basis, 334
   b. Historical background, 334
   c. Current law and jurisprudence, 335
10. AGENCY FEE, CHECK-OFF FROM NON-UNION MEMBERS, 336
11. FILING OF CHARGES OR GIVING OF TESTIMONY, 336
12. VIOLATION OF CBA OR REFUSAL TO COMPLY THEREWITH, 337
a. CBA-related ULPs, 337
b. Violation of duty to bargain collectively, 337
c. Failure or refusal of management to give counter-proposal, effect, 337
d. “Surface bargaining” on the part of management, 338
e. “Blue-sky bargaining” on the part of union, 338
f. Refusal to furnish financial information is ULP; exception, 338
g. Signing of CBA does not estop a party from raising issue of ULP, 339
h. Negotiation fees or attorney’s fees, 339
i. Violation of CBA, 339
13. RUNAWAY SHOP, 339
14. BURDEN OF PROOF IN ULP CASES UNDER ARTICLE 248, 340
15. ILLUSTRATIVE CASES INVOLVING UNFAIR LABOR PRACTICES OF EMPLOYERS, 340
16. CASES NOT INVOLVING UNFAIR LABOR PRACTICES, 342
17. PERSONS LIABLE FOR ULP OF EMPLOYER, 344

Chapter III .......................................................................................................................... 345
UNFAIR LABOR PRACTICES OF LABOR ORGANIZATIONS .............................................. 345

Article 249. Unfair labor practices of labor organizations ................................................. 345
1. RESTRAINT AND COERCION, 345
2. DISCRIMINATION, 346
3. DUTY TO BARGAIN COLLECTIVELY, 346
4. FEATHERBEDDING, 346
5. NEGOTIATION OR ATTORNEY’S FEES, 346
6. VIOLATION OF CBA, 347
7. ILLUSTRATIVE CASES WHERE UNION WAS DECLARED GUILTY OF UNFAIR LABOR PRACTICE, 347
8. PERSONS LIABLE FOR ULP OF LABOR ORGANIZATION, 348

Title VII
COLLECTIVE BARGAINING AND ADMINISTRATION OF AGREEMENTS

Article 250. Procedure in collective bargaining .............................................................. 349
1. CONSTITUTIONAL BASIS AND STATE POLICY, 349
   a. Constitutional basis, 349
   b. State policy, 349
2. BARGAINING COLLECTIVELY, HISTORICAL PERSPECTIVE, 349
3. COLLECTIVE BARGAINING AGREEMENT, DEFINED, 350
4. ESSENTIAL REQUISITES OF COLLECTIVE BARGAINING, 350
5. CERTIFICATION YEAR, 350
6. ESSENCE OF COLLECTIVE BARGAINING NEGOTIATIONS, 350
   a. Basic principle, 350
   b. Parties have power to fix the terms and conditions of employment, 351
   c. CBA is the law between the parties, 352
7. COLLECTIVE BARGAINING PROCESS, 352
8. COLLECTIVE BARGAINING PROCEDURE IN ARTICLE 250 IS MANDATORY, 353
9. KINDS OF BARGAINING UNDER THE LATEST IMPLEMENTING RULES, 353
10. SINGLE-ENTERPRISE BARGAINING, 353
    a. When single-enterprise bargaining available, 353
    b. Procedure in single-enterprise bargaining, 354
11. MULTI-EMPLOYER BARGAINING, 354
    a. When multi-employer bargaining available, 354
    b. Procedure in multi-employer bargaining, 354
12. COMMON STIPULATIONS AND CLAUSES IN A CBA, 355
13. MANDATORY CBA STIPULATIONS, 356
14. MANDATORY REQUIREMENTS OF PUBLICATION, RATIFICATION AND REGISTRATION OF CBA, 356
### Article 251. Duty to bargain collectively in the absence of collective bargaining agreements

1. DUTY TO BARGAIN WHEN THERE IS NO CBA YET, 357
   a. Concept, 357
   b. Effect of legislated wage order on duty to bargain, 358

### Article 252. Meaning of duty to bargain collectively

1. MEANING AND SIGNIFICANCE OF COLLECTIVE BARGAINING, 358
   a. Duty to bargain collectively, defined, 358
   b. Management’s prerogative is limited by CBA, 358
   c. Whether a party has discharged his duty to bargain collectively is a question of fact, 359
   d. Disclosure of information during CBA negotiations, 359
   e. A proposal not embodied in CBA is not part thereof, 359
   f. Minutes of CBA negotiation, nature and effect on CBA, 359
   g. Making a promise during the CBA negotiation is not considered bad faith, 359
   h. Adamant stance resulting in impasse, not bad faith, 360
   i. Inclusion of terms and conditions in CBA which the law and the parties did not intend to reflect therein, 360
   j. Refusal of party to negotiate the CBA, 360
   k. Refusal of party to sign the CBA, 360
   l. No meeting of the minds, no CBA to speak of, 360
   m. Signing bonus, not demandable under the law, 361
   n. Allegations of bad faith, wiped out with signing of CBA, 361
   o. CBA during suspension of operation, 361
   p. CBA in case of closure of business, 361

2. SUBSEQUENT EMPLOYER, DUTY TO BARGAIN, 362

3. SUBSTITIONARY DOCTRINE, 362

4. ABSORPTION DOCTRINE, 362

5. BENEFITS FROM CBA AND LAW, SEPARATE AND DISTINCT, 362

6. LAW IS PRESUMED PART OF CBA, 363
   a. Automatic incorporation clause, 363
   b. Effect of CBA stipulation on mandated wage increases, 363

7. CBA STIPULATIONS BELOW MINIMUM LEGAL STANDARDS, 363

8. BINDING EFFECT OF CBA, 363
   a. Binding effect on all workers, 363
   b. Who are entitled to the benefits from the CBA?, 364

9. RESOLVING DOUBTS OR AMBIGUITIES IN LABOR CONTRACT, 364

10. CBA PROPOSED BY UNION MAY BE IMPOSED LOCK, STOCK AND BARREL ON EMPLOYER WHO REFUSED TO NEGOTIATE A CBA, 366
   a. CBA proposed by union may be adopted as the new CBA if employer refused to negotiate, 366
   b. General Milling Corporation vs. CA, 366
   c. Kio Loy vs. NLRC, 366
   d. Divine Word University of Tacloban vs. Secretary of Labor and Employment, 366
   e. Distinction between the aforesaid cases, disregarded, 367

11. PENDENCY OF PETITION FOR CERTIFICATION ELECTION; EFFECT ON THE CBA NEGOTIATION, 367
   a. When suspension of CBA negotiation is appropriate due to pendency of petition for certification election, 367
   b. When pendency of a petition for certification election does not suspend CBA negotiation, 367
**TABLE OF CONTENTS**

**Article 253. Duty to bargain collectively when there exists a collective bargaining agreement** ......................................................... 368

1. DUTY TO BARGAIN COLLECTIVELY WHEN THERE IS A CBA, 368
2. FREEDOM PERIOD, 368
3. AUTOMATIC RENEWAL CLAUSE, 368
   a. If unchallenged, majority status should be respected, 368
   b. Status quo should be maintained, 368
   c. Automatic renewal clause deemed incorporated in all CBAs, 369

**Article 253-A. Terms of a collective bargaining agreement** .............................................................. 369

1. REPRESENTATION STATUS, 370
   a. Term of 5 years, 370
   b. “Representation aspect,” defined, 370
2. ALL PROVISIONS OTHER THAN REPRESENTATION ISSUE. 370
   a. Renegotiation of CBA, 370
   b. The phrase “all other provisions,” defined, 370
   c. Renegotiation of “all other provisions” of CBA, 371
   d. Renegotiated CBA, where filed, 371
3. CBA MAY BE FOR FIVE YEARS STRAIGHT, 371
4. RETROACTIVITY OF CBA, 371
   a. Rule in case CBA is voluntarily concluded, 371
   b. CBAs concluded through arbitral awards, 372
   c. The Meralco case [G. R. No. 127598], 372
5. SUSPENSION OF CBA FOR TEN (10) YEARS HELD VALID, 373
6. DEADLOCK, 375

**Article 254. Injunction prohibited** ........................................................................................................... 375

1. POLICY BEHIND PROHIBITION, 375
2. OFFICIALS EMPOWERED TO ISSUE INJUNCTION, 376
3. EXISTENCE OF LABOR DISPUTE NECESSARY, 376
4. INJUNCTION OR RESTRAINING ORDER, 376
   a. General rule, 376
   b. Exceptions referred to in Article 254, 376
5. INJUNCTION IN PROCEEDINGS BEFORE THE NATIONAL WAGES AND PRODUCTIVITY COMMISSION AND REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARDS, 377

**Article 255. Exclusive bargaining representation and workers’ participation in policy and decision-making** ........................................................................... 377

1. CONSTITUTIONAL BASIS, 377
2. POLICY OF THE STATE IN THE DETERMINATION OF REPRESENTATION STATUS, 378
   a. Exclusive bargaining representative; meaning, 378
3. EXCLUSIVE BARGAINING REPRESENTATION, 378
   a. Exclusive bargaining representative; meaning, 378
4. BARGAINING UNIT, 378
   a. Bargaining unit, meaning, 378
   b. One bargaining agent for one bargaining unit, 378
   c. “One-Union, One-Company”, 379
   d. Multi-employer bargaining, 379
   e. “One-Union, One-Industry”, 379
   f. Factors to determine appropriate bargaining unit, 379
   g. Substantial mutual interests rule, 379
   h. Globe doctrine [will of the employees], 380
   i. Collective bargaining history, 381
   j. Employment status, 381
   k. Application of foregoing 4 factors in one case, 382
   l. Spin-off of business, effect on bargaining unit, 382
   m. Excluded employees may be included in the bargaining unit
under the new CBA, 382
n. Employees of one entity cannot join the union in another entity, 382
5. PARTICIPATION IN POLICY AND DECISION-MAKING PROCESS, 383
6. CREATION OF LABOR-MANAGEMENT COUNCIL, 383
   a. Creation of labor-management and other councils, 383
   b. Selection of representatives (in organized and unorganized establishments), 384
7. LABOR-MANAGEMENT COMMITTEE UNDER REPUBLIC ACT NO. 6971, 384
   a. Labor-Management Committee, 384
   b. Coverage, 384
   c. Composition, 384
   d. Selection of labor representatives, 384
   e. Voting rights, 384
   f. Effect on existing Labor-Management Committees, 385
   g. Productivity Incentives Program, 385
   h. Effect of Productivity Incentives Program on CBA, 385

**Article 256. Representation issue in organized establishments** .......................... 385

1. ORGANIZED ESTABLISHMENT, 385
2. INTER-UNION OR REPRESENTATION DISPUTES, 385
3. MODES OF DETERMINING REPRESENTATION STATUS, 386
4. VOLUNTARY RECOGNITION, 386
   a. Voluntary recognition, defined, 386
   b. Voluntary recognition, when proper, 386
   c. Notice of voluntary recognition, when and where filed, 386
   d. Requirements for voluntary recognition, 386
   e. Action on the notice, 386
   f. Recording of fact of voluntary recognition, effect, 387
   g. Voluntary recognition of a union made during pendency of a petition for certification election filed by another union, effect, 387
5. CERTIFICATION ELECTION, 387
   a. Certification election, meaning, 387
   b. Certification election, nature, 387
   c. Certification election principles, 387
   d. Delay in issuance of registration certificate to a union participating in the certification election, effect, 388
   e. Pendency of petition for cancellation of union registration, effect on certification election, 388
   f. Pendency of ULP case filed against a union, effect, 388
   g. Direct certification, not allowed, 388
   h. Requisites for certification election in organized establishments, 388
      i. 25% written support, 388
      j. Who may file petition for certification election, 389
      k. Form and contents of a petition for certification election, 389
      l. When to file petition for certification election; general rule, 390
      m. Exceptions, 390
      n. Certification year-bar rule, 390
      o. Bargaining deadlock-bar rule, 390
      p. Contract-bar rule, 391
      q. Effect of CBA renewal or registration before or during 60-day period, 392
      r. Referral to LACC or other bodies, not a bar to holding of election, 392
      s. Where to file petition for certification election, 393
      t. Consolidation of several petitions, 393
      u. Raffle of the case, 393
      v. Notice of preliminary conference, 393
      w. Forced intervenor, 393
      x. Motion for intervention, 393
      y. Preliminary conference; hearing, 394
**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>z.</td>
<td>Consent election, when agreed upon by the parties, 394</td>
</tr>
<tr>
<td>aa.</td>
<td>Number of hearings; pleadings, 394</td>
</tr>
<tr>
<td>bb.</td>
<td>Failure to appear despite notice, 394</td>
</tr>
<tr>
<td>cc.</td>
<td>Retraction of consent by employees, 394</td>
</tr>
<tr>
<td>dd.</td>
<td>Order/Decision on the petition for certification election, 395</td>
</tr>
<tr>
<td>ee.</td>
<td>Denial of the petition for certification election; grounds, 395</td>
</tr>
<tr>
<td>ff.</td>
<td>Prohibited grounds for the denial/suspension of the petition, 395</td>
</tr>
<tr>
<td>gg.</td>
<td>Release of order/decision within 10 days from the last hearing, 396</td>
</tr>
<tr>
<td>hh.</td>
<td>Effects of early agreements, 396</td>
</tr>
<tr>
<td>ii.</td>
<td>Non-availability of Med-Arbiter, 396</td>
</tr>
<tr>
<td>jj.</td>
<td>No certification election in entities immuned from suit, 396</td>
</tr>
<tr>
<td>6.</td>
<td>CONSENT ELECTION, 396</td>
</tr>
<tr>
<td>a.</td>
<td>Consent election, meaning, 396</td>
</tr>
<tr>
<td>b.</td>
<td>Consent election and certification election, distinguished, 396</td>
</tr>
<tr>
<td>c.</td>
<td>Consent election agreed upon by parties to a certification election proceeding, 396</td>
</tr>
<tr>
<td>d.</td>
<td>Holding of consent election where petition for certification election was filed, effect, 397</td>
</tr>
<tr>
<td>e.</td>
<td>Holding of consent election where no petition for certification election was filed, effect, 397</td>
</tr>
<tr>
<td>7.</td>
<td>RUN-OFF ELECTION, 397</td>
</tr>
<tr>
<td>a.</td>
<td>Run-off election, meaning, 397</td>
</tr>
<tr>
<td>b.</td>
<td>Qualification of voters, 397</td>
</tr>
<tr>
<td>8.</td>
<td>CONDUCT OF CERTIFICATION ELECTION, 397</td>
</tr>
<tr>
<td>a.</td>
<td>Certification election proceedings; definition, 397</td>
</tr>
<tr>
<td>b.</td>
<td>Who hears and resolves petitions for certification election?, 397</td>
</tr>
<tr>
<td>c.</td>
<td>Election Officer, 397</td>
</tr>
<tr>
<td>d.</td>
<td>Raffle of the case, 398</td>
</tr>
<tr>
<td>e.</td>
<td>Pre-election conference, 398</td>
</tr>
<tr>
<td>f.</td>
<td>Proper time to question list of qualified voters, 398</td>
</tr>
<tr>
<td>g.</td>
<td>Employer’s obligation to submit list of employees; effect of refusal, 398</td>
</tr>
<tr>
<td>h.</td>
<td>Waiver of right to be heard, 398</td>
</tr>
<tr>
<td>i.</td>
<td>Minutes of pre-election conference, 398</td>
</tr>
<tr>
<td>j.</td>
<td>Qualification of voters; inclusion-exclusion, 398</td>
</tr>
<tr>
<td>k.</td>
<td>Posting of notices, 399</td>
</tr>
<tr>
<td>l.</td>
<td>Secrecy and sanctity of the ballot, 399</td>
</tr>
<tr>
<td>m.</td>
<td>Preparation of ballots, 399</td>
</tr>
<tr>
<td>n.</td>
<td>Marking of votes, 399</td>
</tr>
<tr>
<td>o.</td>
<td>Challenging of votes, grounds, 399</td>
</tr>
<tr>
<td>p.</td>
<td>Procedure in the challenge of votes, 400</td>
</tr>
<tr>
<td>q.</td>
<td>On-the-spot questions, 400</td>
</tr>
<tr>
<td>r.</td>
<td>Spoiled ballots, not reckoned to determine majority, 400</td>
</tr>
<tr>
<td>s.</td>
<td>Protest; when perfected, 400</td>
</tr>
<tr>
<td>t.</td>
<td>Canvassing of votes, 400</td>
</tr>
<tr>
<td>u.</td>
<td>Conduct of election and canvass of votes, 401</td>
</tr>
<tr>
<td>v.</td>
<td>Collective bargaining agent, when certified, 401</td>
</tr>
<tr>
<td>w.</td>
<td>Number of votes required for validity of election, 401</td>
</tr>
<tr>
<td>x.</td>
<td>Failure of election, 401</td>
</tr>
<tr>
<td>y.</td>
<td>Effect of failure of election; holding of another election within 6 months, 401</td>
</tr>
<tr>
<td>z.</td>
<td>Action on the motion to hold another certification election, 401</td>
</tr>
<tr>
<td>aa.</td>
<td>Proclamation and certification of the result of the election, 401</td>
</tr>
<tr>
<td>bb.</td>
<td>Invalidation of a certification election, 401</td>
</tr>
<tr>
<td>9.</td>
<td>MED-ARBITER, 402</td>
</tr>
<tr>
<td>a.</td>
<td>Med-Arbiter; authority to decide issues, 402</td>
</tr>
<tr>
<td>b.</td>
<td>Injunctive power, 402</td>
</tr>
</tbody>
</table>
### Table of Contents

#### Article 257. Petitions in unorganized establishments

1. UNORGANIZED ESTABLISHMENT, 402
2. “AUTOMATIC” HOLDING OF CERTIFICATION ELECTION QUALIFIED BY REQUIREMENT OF LEGITIMACY OF PETITIONING UNION, 403
3. FILING OF NOTICE OF STRIKE OR PREVENTIVE MEDIATION CASES IN UNORGANIZED ESTABLISHMENTS, 404

#### Article 258. When an employer may file petition

1. EMPLOYER’S RIGHT TO FILE PETITION, 405
2. ALLEGATIONS IN THE PETITION WHEN FILED BY EMPLOYER, 405
3. ROLE OF EMPLOYER IN THE CERTIFICATION ELECTION PROCEEDINGS, 405
   a. Employer is a mere bystander, 405
   b. Employer has no legal standing to oppose petition, 405
4. PERIODS TO DECIDE ALL CERTIFICATION ELECTION CASES AND CONDUCT THEREOF, 406
   a. Period to decide, 406
   b. Period to conduct certification election, 406
   c. Periods merely directory, 407

#### Article 259. Appeal from certification election orders

1. APPEAL IN CERTIFICATION ELECTION CASES, 407
   a. Appeal to the DOLE Secretary, 407
   b. Appeal; different rule for organized and unorganized establishments, 407
   c. Who may appeal, 407
   d. Employer is not a proper party to file an appeal from the certification election order, 407
   e. Memorandum of appeal, 408
   f. Grounds for appeal, 408
   g. The only order of the Med-Arbiter appealable refers to certification election order, 408
   h. Where to file appeal, 408
   i. Effect of appeal seasonably filed, 408
   j. Finality of Order/Decision, 409
   k. Period to Reply, 409
   l. Decision of the Secretary, final and executory; no motion for reconsideration allowed, 409
   m. Transmittal of records to the Regional Office, 409

### Title VII-A

#### GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION

#### Article 260. Grievance machinery and voluntary arbitration

1. CONSTITUTIONAL BASIS, 410
2. LEGAL BASIS, 410
3. GRIEVANCE AND GRIEVANCE PROCEDURE/MACHINERY, 411
   a. Grievance, defined, 411
   b. Grievance machinery, defined, 411
   c. Grievance procedure, defined, 411
   d. Establishment of grievance machinery, 411
   e. No particular setup for grievance machinery under the law, 411
   f. Number of arbitrators, not specified in the law, 411
   g. Procedure in handling grievances, 412
   h. Submission to voluntary arbitration, 412
   i. Minimum legal requirements for establishment of grievance procedure, 412
   j. Compulsory submission of grievance to grievance machinery, 413
   k. Grievance procedure, a “must” provision in the CBA, 413
   l. Standards which may be used as guides in formulating an effective grievance procedure, 413
TABLE OF CONTENTS

1. JURISDICTION OF VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS, 424
   a. Original and exclusive jurisdiction, 424
   b. Jurisdiction over other labor disputes, 424
   c. Cases cognizable by Voluntary Arbitrator but filed with NLRC and DOLE Regional Offices, 425
   d. Cases cognizable by Voluntary Arbitrator but filed with RTC, 425
   e. Powers of Voluntary Arbitrator or panel of Voluntary Arbitrators, 425
   f. When jurisdiction is exercised, 425

4. ARBITRATION, 417
   a. Concept, 417
   b. Arbitration; classification, 417

5. VOLUNTARY ARBITRATION, 417
   a. Voluntary arbitration, defined, 417
   b. Voluntary Arbitrator, 417
   c. Two kinds of Voluntary Arbitrators, 418
   d. Types of labor disputes that may be submitted to voluntary arbitration, 418
   e. Distinction between interest disputes and rights disputes, 418
   f. Role of Voluntary Arbitrator in rights disputes, 418
   g. Role of Voluntary Arbitrator in interest disputes, 419
   h. Voluntary arbitration, how resorted to, 419
   i. Arbitration clause, defined, 419
   j. Arbitrability issues, 419
   k. Voluntary arbitrator decides arbitrability issues, 420

6. COMPULSORY ARBITRATION, 420
   a. Compulsory arbitration, defined, 420
   b. Historical perspective, 420
   c. Absence of provision on compulsory arbitration in the 1987 Constitution, 421
   d. Compulsory arbitration under the Labor Code, 421

7. APPLICABLE CIVIL LAW PROVISIONS, 422

8. BARANGAY CONCILIATION AND ARBITRATION, 422

9. PHILIPPINE ARBITRATION LAW, 422

10. ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004, 422

11. ARTICLE 260 CONTEMPLATES UNIONIZED ESTABLISHMENTS ONLY, 423

12. VOLUNTARY ARBITRATION IN PRIVATE SCHOOLS, 423

Article 261. Jurisdiction of Voluntary Arbitrators
2. ARBITRATION, HOW INITIATED, 426
   a. Initiation of arbitration, 426
   b. Submission Agreement, defined, 426
   c. Contents of Submission Agreement, 426
   d. Notice to Arbitrate, defined, 426
   e. Submission to arbitration through Notice to Arbitrate, 426
   f. Contents of a Notice to Arbitrate, 426
   g. Contents of an Appointment from the Board, 426
   h. Voluntary Arbitrator has wide discretion to decide relevant issues raised in the Submission Agreement, 427
   i. Submission Agreement and Notice to Arbitrate, distinguished, 427
   j. Parties to a case may still choose to execute a submission agreement even if there is already an arbitration clause in the CBA, 427

3. JURISDICTION OVER UNFAIR LABOR PRACTICES, BARGAINING DEADLOCKS AND OTHER LABOR DISPUTES, 428

4. JURISDICTION OVER TERMINATION CASES, 428

5. JURISDICTION OF VOLUNTARY ARBITRATOR VIS-À-VIS JURISDICTION OF LABOR ARBITER OVER MONEY CLAIMS CASES, 429

6. JURISDICTION OVER STRIKE/LOCKOUT CASES, 430

7. JURISDICTION OVER VIOLATION OF THE CBA, 430

8. JURISDICTION OVER WAGE DISTORTION CASES, 430
   a. Wage distortion issue; the law distinguishes between organized and unorganized establishments, 430
   b. Wage distortion; meaning, 430

9. JURISDICTION OVER DISPUTES INVOLVING PRODUCTIVITY INCENTIVES PROGRAM, 431

10. JURISDICTION OVER CASES INVOLVING TEACHING AND ACADEMIC NON-TEACHING PERSONNEL IN SCHOOLS, 431

11. SELECTION AND ACCREDITATION OF VOLUNTARY ARBITRATOR, 431
   a. General considerations in the choice of a Voluntary Arbitrator, 431
   b. Attributes or criteria which a Voluntary Arbitrator should possess, 431
   c. Some established indicators of acceptability of an arbitrator, 432
   d. Nature of accreditation as Voluntary Arbitrator; period of effectivity, 432
   e. Minimum criteria for accreditation as Voluntary Arbitrator, 432
   f. How to apply for accreditation with the NCMB, 432
   g. Training requirement, 432
   h. Exception to pre-accreditation training requirement, 433
      i. Roll of Accredited Voluntary Arbitrators, 433
   j. Reason and necessity for accreditation with NCMB, 438
   k. Renewal of accreditation, 433
   l. Mode of selecting Voluntary Arbitrator, 433
   m. Distinction between temporary or ad hoc Voluntary Arbitrator and permanent Voluntary Arbitrator, 433
   n. Advantages and disadvantages of appointing temporary Voluntary Arbitrator, 434
   o. Advantages and disadvantages of permanent Voluntary Arbitrator, 434
   p. Advantages and disadvantages of Tripartite Arbitration Board, 434
   q. Assistance of NCMB in selection of Voluntary Arbitrator, 434
   r. Inhibition of Voluntary Arbitrator, 434

12. DE-LISTING OF VOLUNTARY ARBITRATORS, 435
   a. Types of de-listing, 435
   b. De-listing initiated at the NCMB level; procedure, 435
   c. Complaints initiated at PAVA level, 435
   d. Inactive list of AVAs, 435
   e. Accreditation and de-listing of Voluntary Arbitrators, centralized processing, 436

Article 262. Jurisdiction over other labor disputes
                      436
   1. CONCURRENT JURISDICTION, 436
TABLE OF CONTENTS

a. Jurisdiction conferred by agreement of the parties, 436
b. All labor-management disputes subject to voluntary arbitration, 436

2. CONFERMENT OF JURISDICTION, 436

Article 262-A. Procedures

1. DUTIES AND POWERS OF VOLUNTARY ARBITRATOR AND PANEL OF VOLUNTARY ARBITRATORS, 437
   a. Powers, 437
   b. Adjudicatory power, 437
   c. Compulsory power, 437
   d. Attendance in the arbitration proceedings, 437
   e. Duty to conciliate and mediate, 438
   f. Duty to encourage the parties to enter into stipulation of facts, 438
   g. Necessity to take oath and authority to administer oath, 438

2. RULES OF PROCEDURE GOVERNING ARBITRATION PROCEEDINGS, 438

3. PLEADINGS AND APPEARANCES IN VOLUNTARY ARBITRATION PROCEEDINGS, 438
   a. Caption and title of pleadings, 438
   b. Where to file pleadings, 439
   c. Service of copies of pleadings, notices and awards, 439
   d. Representations, 439
   e. Limitation on authority to bind parties, 439

4. PROCEEDINGS BEFORE VOLUNTARY ARBITRATOR, 439
   a. Nature of proceedings before a Voluntary Arbitrator, 439
   b. Setting of initial conference, notice to parties, 440
   c. Initial conference, 440
   d. Stipulation of facts, 440
   e. Simplification of arbitrable issue/s, 440
   f. Formulation of ground rules, 440
   g. Effect of non-appearance, 440
   h. Submission of position papers and other pleadings, 440
   i. Determination of necessity of a clarificatory conference including conduct of ocular inspection, 440
   j. Recording, 441
   k. Exhibits; how offered, 441
   l. Attendance of persons, 441
   m. Arbitration conference, 441
   n. Due process to be observed in proceedings before Voluntary Arbitrator, 442
   o. Employers are entitled to due process even in voluntary arbitration proceedings, 442
   p. Opening statements by the parties, 442
   q. Closing of hearing; statements of the parties; submission of briefs and memoranda, 442
   r. Appreciation of evidence, 443
   s. Continuance or adjournment of hearing, 443
   t. Ex-parte proceedings and default awards, 443
   u. Re-opening of hearing, 443
   v. Withdrawal of case from arbitration; when allowed, 443

5. EXPEDITED PROCEDURES FOR VOLUNTARY ARBITRATION OF LABOR-MANAGEMENT DISPUTES, 443

6. ARBITRATION AWARDS, 444
   a. Decision in an arbitration case, 444
   b. Award distinguished from opinion, 444
   c. Elements of a good decision, 444
   d. Binding effect of jurisprudence on Voluntary Arbitrator’s decisions, 444
   e. Mandatory period to render award or decision; effect of failure
TABLE OF CONTENTS

to decide within the period, 445
f. Full and complete settlement during arbitration, 445
g. Factual and legal basis of the decision, 445
h. Rule in case of monetary award, 445
i. Finality of award/decision, 445
j. Effect of dissenting opinion on finality of decision of panel
of Voluntary Arbitrators, 445
k. Motion for reconsideration of Voluntary Arbitrator’s decision, not allowed, 446
l. Modification of award, by motion or motu proprio by arbitrator, 446
7. JUDICIAL REVIEW OF DECISIONS OF VOLUNTARY ARBITRATORS, 447
a. General rule; decisions are final and executory, 447
b. Judicial review, 447
c. Factual findings of Voluntary Arbitrators,
   accorded not only respect but finality, 447
8. APPEAL FROM AWARDS, JUDGMENTS, FINAL ORDERS
   OR RESOLUTIONS OF VOLUNTARY ARBITRATORS, 448
a. The mode is ordinary appeal under Rule 43, 1997 Rules of Civil Procedure, 448
b. Luzon Development Bank is still a good law, 449
c. Effect of erroneously using Rule 65 instead of Rule 43 as mode of appeal, 450
d. Effect of erroneous caption, 451
e. Rule may be disregarded due to compelling reasons, 451
9. EXECUTION PROCEEDINGS IN VOLUNTARY ARBITRATION CASES, 451
a. Compliance with decision, 451
b. Enforcement of decision, 452
c. Pre-execution conference, 452
d. Issuance of a writ, 452
e. Enforcement of writ, 452
f. Designation of Special Sheriffs, 452
g. Effect of filing of petition for certiorari on execution, 452
10. NCMB PROCEDURAL GUIDELINES IN THE EXECUTION OF
    VOLUNTARY ARBITRATION AWARDS/DECISIONS [JUNE 01, 2001], 452
11. REPORTORIAL REQUIREMENTS, 459
a. Monitoring and reporting requirements, 459
b. Maintenance of case records, 460

Article 262-B. Cost of voluntary arbitration and Voluntary Arbitrator’s fee..460
1. COST OF VOLUNTARY ARBITRATION, ARBITRATOR’S FEE, 460
   a. Cost of voluntary arbitration and voluntary arbitrator’s fee, 460
   b. Withdrawal of case after selection of Voluntary Arbitrator
      and date of hearing already set, 460
2. SPECIAL VOLUNTARY ARBITRATION FUND, 460
3. REVISED GUIDELINES ON FEES AND SUBSIDY ENTITLEMENT, 461
   a. TVAAC Resolution No. 2, Series of 1995, 461
   b. TVAAC Resolution No. 2, Series of 1997, 461
   c. TVAAC Resolution No. 9, Series of 1992, repealed, 462
4. GUIDELINES FOR SUBSIDY UNDER THE FREE LEGAL AID
   AND VOLUNTARY ARBITRATION SERVICES PROGRAM [FLAVAS], 462
   a. Coverage, 462
   b. Amount of subsidy, 462
   c. Procedure for the payment of subsidy, 462
   d. Repealing clause, 463
5. SIMPLIFIED PROCEDURES ON SUBSIDY ENTITLEMENT, 463

Title VIII

STRIKES AND LOCKOUTS AND FOREIGN INVOLVEMENT IN TRADE UNION
ACTIVITIES

Chapter I............................................................................................................................................... 464

STRIKES AND LOCKOUTS...................................................................................................................... 464
Article 263. Strikes, picketing and lockouts

1. CONSTITUTIONAL BASES AND STATE POLICY, 466
2. NATURE OF THE RIGHT TO STRIKE AND LOCKOUT, 466
   a. Constitutional and statutory right, 466
   b. Law may prohibit strike but not right to self-organization, 467
3. STRIKE, 467
4. LOCKOUT, 467
5. PICKETING, 468
   a. Picketing, defined, 468
   b. Right to picket is protected by the constitution and law, 468
   c. Absence of employer-employee relationship, effect on picketing, 468
   d. Limitations on right to picket, 468
   e. Use of foul language during the picket, 468
6. DIFFERENT FORMS OF STRIKES, 468
7. INDUSTRIAL OR LABOR DISPUTE, 469
8. MANDATORY PROCEDURAL REQUISITES OF A LAWFUL STRIKE OR LOCKOUT, 470
   a. Procedural requisites, 470
   b. All procedural requisites are mandatory, 470
9. FIRST REQUISITE: VALID AND FACTUAL GROUND, 470
   a. Valid grounds, 470
   b. Collective bargaining deadlock, 470
   c. Unfair labor practices, 471
   d. Grounds not allowed, 471
10. SECOND REQUISITE: NOTICE OF STRIKE OR NOTICE OF LOCKOUT, 473
    a. Notice of strike, 473
    b. Notice of lockout, 473
    c. When to file notice, 473
    d. Parties who may file notice, 473
    e. Contents of notice of strike or notice of lockout, 474
    f. Effect of non-compliance with content-requirement of notice, 474
    g. Form of notice, 474
    h. Where to file notice or request for preventive mediation, 474
    i. Service of copy of notice or request for preventive mediation, 474
    j. Identification of issues, 474
    k. Action on notice, 474
    l. Unresolved grievances, when raised in the notice of strike/lockout, how processed, 475
11. THIRD REQUISITE: 24-HOUR NOTICE TO THE NCBM-DOLE PRIOR TO THE CONDUCT OF STRIKE/LOCKOUT VOTE BY SECRET BALLOTING, 475
12. FOURTH REQUISITE: STRIKE/LOCKOUT VOTE, 476
    a. Majority approval of strike, 476
    b. Majority approval of lockout, 476
    c. Failure to comply with strike vote and strike vote report, 476
13. FIFTH REQUISITE: STRIKE/LOCKOUT VOTE REPORT, 476
    a. Purpose for requiring a strike/lockout vote report, 476
    b. When to submit strike/lockout vote report, 477
14. SIXTH REQUISITE: COOLING-OFF PERIOD, 477
    a. General rule, 477
    b. Exception in the case of union-busting, 477
    c. In union-busting, except for the cooling-off period, all other requisites should be complied with, 477
    d. Reckoning of cooling-off period, 477
    e. Purpose of the cooling-off period, 477
15. SEVENTH REQUISITE: 7-DAY WAITING PERIOD OR STRIKE BAN, 478
<table>
<thead>
<tr>
<th>TABLE OF CONTENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. UNION-BUSTING, 480</td>
</tr>
<tr>
<td>15. EMPLOYMENT OF UNLAWFUL MEANS OR COMMISSION OF PROHIBITED ACTS OR PRACTICES, 481</td>
</tr>
<tr>
<td>a. Labor Code provision, 481</td>
</tr>
<tr>
<td>b. Revised Penal Code provision, 481</td>
</tr>
<tr>
<td>c. Use of force, violence, threats, coercion, etc., 481</td>
</tr>
<tr>
<td>d. Liability for use of force, 481</td>
</tr>
<tr>
<td>e. Barricades, blockades and obstructions, 481</td>
</tr>
<tr>
<td>f. Violence committed by both union and management, effect, 481</td>
</tr>
<tr>
<td>16. CONVERSION OF THE NOTICE OF STRIKE/LOCKOUT INTO A PREVENTIVE MEDIATION CASE, 482</td>
</tr>
<tr>
<td>a. NCMB’s authority to effect conversion, 482</td>
</tr>
<tr>
<td>b. Effect of conversion of notice into a preventive mediation case, 482</td>
</tr>
<tr>
<td>19. STRIKE IN VIOLATION OF ASSUMPTION OR CERTIFICATION ORDER, 483</td>
</tr>
<tr>
<td>20. STRIKE IN VIOLATION OF TEMPORARY RESTRAINING ORDER OR INJUNCTION, 484</td>
</tr>
<tr>
<td>21. STRIKE STAGED BY A MINORITY UNION, 484</td>
</tr>
<tr>
<td>22. STRIKE STAGED BY A UNION WHICH IS NOT LEGITIMATE, 484</td>
</tr>
<tr>
<td>23. UNLAWFUL PURPOSES OF STRIKE, 484</td>
</tr>
<tr>
<td>a. Strike for unlawful purpose is illegal, 484</td>
</tr>
<tr>
<td>b. Strike to compel dismissal of employee, 485</td>
</tr>
<tr>
<td>c. Union-recognition-strike, illegal, 485</td>
</tr>
<tr>
<td>d. Trivial and puerile purpose, 485</td>
</tr>
<tr>
<td>e. Premature strike, 486</td>
</tr>
<tr>
<td>f. Strike to circumvent contracts and judicial orders, 486</td>
</tr>
<tr>
<td>24. GOOD FAITH STRIKE, 486</td>
</tr>
<tr>
<td>a. Concept, 486</td>
</tr>
<tr>
<td>b. Strikers may not be dismissed in cases of “good faith” strikes, 486</td>
</tr>
<tr>
<td>c. Strikers may be dismissed if strike is illegal and in bad faith, 487</td>
</tr>
<tr>
<td>25. CONVERSION DOCTRINE, 487</td>
</tr>
<tr>
<td>a. Conversion of strike from economic to ULP or vice versa, 487</td>
</tr>
<tr>
<td>26. CERTIFIED CASES, 492</td>
</tr>
<tr>
<td>a. Policy and purpose, 492</td>
</tr>
<tr>
<td>b. Certified labor disputes, 492</td>
</tr>
<tr>
<td>c. Role of the NLRC, 492</td>
</tr>
<tr>
<td>d. Certification of labor dispute to NLRC, effects, 492</td>
</tr>
<tr>
<td>e. Jurisdiction in case entity has several workplaces in different regions, 492</td>
</tr>
</tbody>
</table>
29. INJUNCTION IN PICKETING, STRIKE OR LOCKOUT CASES, 494  
   a. Picketing may not be enjoined; exceptions, 494  
   b. Strikes or lockouts may not be enjoined; exceptions, 494  

30. RETURN-TO-WORK ORDER, 494  
   a. Nature of return-to-work order, 494  
   b. Authority to issue return-to-work order, 495  
   c. Return-to-work order, part of assumption/certification order  
      even if not expressly stated therein, 495  
   d. Meaning of the phrase “all striking or locked-out employees  
      and “readmit all workers”, 495  
   e. Meaning of status quo ante, 496  
   f. Meaning of the phrase “under the same terms and conditions prevailing  
      before the strike”, 496  
   g. Payroll reinstatement, when proper, 497  
   h. Payroll reinstatement, when not proper, 497  
   i. Non-waiver of demands upon voluntary return to work, 498  
   j. Motion for reconsideration does not affect return-to-work order, 498  

31. EFFECT OF DEFIANCE OF ASSUMPTION OR CERTIFICATION  
ORDER OR RETURN-TO-WORK ORDER ISSUED  
BY THE DOLE SECRETARY OR NLRC, 499  
   a. General effect, 499  
   b. Effect on strikers in case of strike, 499  
   c. Effect on employers in case of lockout, 499  
   d. Effect on the legality of strike, 499  
   e. Contempt citation, 500  
   f. Assistance of law enforcement agencies, 500  
   g. Execution of certified case, 500  
   h. Refusal to acknowledge receipt of assumption order, 500  
   i. The certification/assumption order may be served at any time of the day, 501  
   j. Period of defiance of return-to-work order, not material, 501  

32. PRESIDENTIAL PREROGATIVES, 501  

33. INDUSTRIES INDISPENSABLE TO NATIONAL INTEREST, 502  
   a. Determination of industries indispensable to national interest, 502  
   b. What constitutes national interest cases, 502  

34. STRIKES IN HOSPITALS, CLINICS AND MEDICAL INSTITUTIONS, 502  
   a. Exceptional case, 502  
   b. Assumption or certification within 24 hours from strike or lockout, 503  

35. CONCERTED ACTIVITIES AND STRIKES  
IN THE GOVERNMENT SERVICE, 503  
   a. Governing law, 503  
   b. Prohibition against strike, 503  
   c. Constitutional provisions allowing strike in the public sector, 503  

36. ROLE OF NCMB AND SUBMISSION TO VOLUNTARY ARBITRATION, 504  
   a. Role upon receipt of notice of strike or lockout, 504  
   b. Conciliation of labor-management disputes other than  
      notices of strike or lockout, 504  
   c. Privileged communication, 504  
   d. Issuance of subpoena, 504  
   e. Appearances of parties, 504  
   f. Action on strikeable issues, 504  
   g. Action on non-strikeable issues, 504  
   h. Action when issues are cognizable under the grievance machinery  
      or voluntary arbitration or NLRC, 505  
   i. Guidelines in the conversion of notice to a preventive mediation case, 505  
   j. Duty to convert strike or lockout to preventive mediation, 506
TABLE OF CONTENTS

k. Effect when labor dispute matures into a voluntary arbitration case, 506
l. Declaration of strike or lockout; duty to continue conciliation even after start of strike or lockout, 506
m. Verification of actual strike or lockout, 506
37. UNION'S LIABILITY FOR DAMAGES DUE TO ILLEGAL STRIKE, 506
38. FINALITY OF DECISION IN STRIKE OR LOCKOUT CASES, 506

Article 264. Prohibited activities

1. PROHIBITED ACTS AND PRACTICES, 507
2. LIABILITY OF PERSONS COMMITTING PROHIBITED ACTS UNDER ARTICLE 264; IMPOSABLE PENALTY, 508
3. STRIKE-BREAKER, 508
4. SCAB, 509
5. STRIKE AREA, 509
6. NATURE OF INGRESS TO AND EGRESS FROM ESTABLISHMENT, 509
7. HIRING OF REPLACEMENTS, 509
   a. Hiring of replacements, when permanent, 509
   b. Hiring of replacements, when not permanent, 509
   c. Hiring of replacements for strikers who refuse to return to work, 509
8. GUIDELINES IN THE CONDUCT OF PNP PERSONNEL, PRIVATE SECURITY GUARDS AND COMPANY GUARD FORCES DURING STRIKES, LOCKOUTS AND LABOR DISPUTES IN GENERAL, 510
   a. General Policy, 510
   b. Peace-keeping details, 510
   c. Arrests/searches and seizures, 511
   d. Service of DOLE, court or lawful orders/writs, 511
   e. Administrative jurisdiction, 511
   f. Socializing, 511
   g. Liaison, 512
   h. Administrative Action, 512
   i. Role of Security Guards, 512
9. OBSTRUCTIONS AND BLOCKADES, 512
   a. Guidelines, 512
   b. Illegal detention, 512
10. PARTICIPATION IN LAWFUL STRIKES, 512
11. PARTICIPATION IN ILLEGAL STRIKES, 518
   a. General rule, 513
   b. Distinction between ordinary workers and union officers, 513
   c. No ipso facto dismissal of union officers, 513
   d. Union officers, how determined and proved, 514
   e. Only the union officers during the strike are liable, 514
   f. No wholesale forfeiture of employment status, 514
   g. Union officers ordered dismissed despite illegal strike for only 1 day, 514
12. PARTICIPATION IN THE COMMISSION OF ILLEGAL ACTS DURING A STRIKE, 515
13. RIGHT OF EMPLOYER TO TAKE DISCIPLINARY ACTION, 515
   a. Authority to discipline under Article 263 [g], 515
   b. Authority to discipline under Article 264 [a], 515
   c. Authority to discipline under NLRC Rules of Procedure, 515
   d. Authority to discipline under the NCMB Primer on Strike, Picketing and Lockout, 515
   e. Authority to discipline under DOLE Guidelines Governing Labor Relations, 516
   f. Authority to discipline under existing jurisprudence, 516
   g. Employer can no longer dismiss employees if it has already filed a complaint on the illegality of strike, 516
   h. Payment of separation pay during pendency of illegal strike case, not an act of condonation of illegal acts committed during the strike, 516
14. **REINSTATEMENT OF WORKERS AS A CONSEQUENCE OF STRIKE, 516**
   a. No reinstatement for strikers who committed violent acts, 516
   b. Strikers who failed to return to work forfeit reinstatement, 517
   c. Voluntary reinstatement constitutes waiver of illegality of strike, 517
   d. Strikers who found a job during the strike may not be reinstated, 517
   e. Discriminatory reinstatement, 517

15. **BACKWAGES AND DAMAGES IN STRIKE CASES, 518**
   a. Wages during period of lawful strike, 518
   b. Wages during period of illegal strike, 518
   c. Remedy of strikers is to ask for reimbursement from their union, 518
   d. The strike may be legal but strikers are not entitled to backpay, 518
   e. Agreement on strike duration pay, 518
   f. Voluntary and unconditional return to work by strikers, 518
   g. Locked-out employees who did not participate in the strike, entitled to backwages, 519
   h. Deduction for work done for another employer during a strike, 519
   i. When reinstatement is impossible, backwages must be paid, 519
   j. Award of backwages, discretionary on labor court, 519
   k. Finding of illegality of strike, not justification to award backwages, financial assistance or separation pay, 520

16. **CONSEQUENCE OF ILLEGALITY OF LOCKOUT, 520**

**Article 265. Improved offer balloting**
1. IMPROVED OFFER BALLOTTING, 520
2. REDUCED OFFER BALLOTTING, 520
3. NATURE OF SECRET BALLOTTING, 520
4. FINAL AGREEMENT, 520

**Article 266. Requirement for arrest and detention**
1. RATIONALE OF THE LAW, 521
2. PROTECTION OF RIGHT TO ENGAGE IN UNION ACTIVITIES, 521
   a. General rule, 521
   b. Exception, 521

**Chapter II**

**ASSISTANCE TO LABOR ORGANIZATIONS**

**Article 267. Assistance by the Department of Labor**
1. CONSTITUTIONAL BASIS, 522
2. POLICY OF THE LAW, 522
3. DUTY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, 522

**Article 268. Assistance by the Institute of Labor and Manpower Studies**
1. INSTITUTE OF LABOR AND MANPOWER STUDIES, 523
   a. Abolition under Executive Orders Nos. 126 and 251, 523
   b. Functions of the Institute for Labor Studies, 523
2. ASSISTANCE TO EMPLOYER, 523

**Chapter III**

**FOREIGN ACTIVITIES**

**Article 269. Prohibition against aliens; exceptions**
1. ALIEN PARTICIPATION IN TRADE UNION ACTIVITIES, 524
   a. General rule, 524
   b. Exceptions, 524
2. EMPLOYMENT OF NON-RESIDENT ALIENS, 524
   a. Employment permit, when issued, 524
   b. Prohibition against transfer of employment, 525

**Article 270. Regulation of foreign assistance**
1. PROHIBITION UNDER ARTICLE 270, NOT ABSOLUTE, 525
2. FORMS OF ASSISTANCE, 525
3. DONATIONS, GRANTS, CONTRIBUTIONS AND GIFTS ARE TAX-FREE, 526
TABLE OF CONTENTS

4. ASSISTANCE ON LABOR EDUCATION PROGRAMS, 526
5. TRADE UNION ACTIVITIES, 526
6. CLEARANCE FOR ASSISTANCE, 526
7. DOES THE PROHIBITION APPLY TO EMPLOYERS?, 527
8. REGISTRATION AND REPORTING REQUIREMENTS, 527
9. COORDINATION OF ASSISTANCE BY BUREAU OF LABOR RELATIONS, 527

Article 271. Applicability to farm tenants and rural workers

1. PROHIBITION OF FOREIGN INTERVENTION IN
   ORGANIZATIONS OF FARM TENANTS AND RURAL WORKERS, 527
2. POWER OF THE SECRETARY OF AGRARIAN REFORM, 528

Chapter IV

PENALTIES FOR VIOLATION

Article 272. Penalties

1. VIOLATION OF ARTICLE 264, A CRIMINAL OFFENSE, 529
   a. Specific acts criminalized under Article 272 [a], 529
   b. Article 272 [a] penalizes all prohibited acts under Article 264, 529
2. PROSECUTION OF CRIMINAL OFFENSES UNDER ARTICLE 264, 529
3. PROCEDURE FOR CRIMINAL PROSECUTION OF LABOR-RELATED CASES, 529
4. JURISDICTION OVER CRIMINAL CASES UNDER ARTICLE 272, 530
5. VIOLATION BY ALIENS, 530
   a. Report on violations, where filed, 530
   b. Report form, 530
   c. Case disposition, 530
   d. Report and recommendation, 530
6. PENALTY FOR VIOLATION UNDER ARTICLE 272 [b]
   AND ARTICLE 288, DISTINGUISHED, 530
   a. Penalty under Article 272 [b], 530
   b. Penalty under Article 288, 530
   c. Article 272 [b] and Article 288, reconciled, 530
   d. The fine and/or imprisonment provided in Article 272 (a)
      and Article 288 are the same, 531
7. VIOLATION COMMITTED BY ALIEN ORGANIZATION, 531
8. ROLE OF SECRETARY OF LABOR AND EMPLOYMENT AND
   SECRETARY OF NATIONAL DEFENSE, 531

Title IX

SPECIAL PROVISIONS

Article 273. Study of labor-management relations

1. POWERS AND FUNCTIONS OF THE SECRETARY OF LABOR
   AND EMPLOYMENT, 532
2. MANDATE AND OBJECTIVES OF THE DEPARTMENT OF LABOR
   AND EMPLOYMENT, 533
3. POWERS AND FUNCTIONS OF THE DEPARTMENT OF LABOR
   AND EMPLOYMENT, 533

Article 274. Visitorial power

1. VISITORIAL POWER OF THE DOLE SECRETARY, 534
   a. Visitorial power under Article 274, 534
   b. Visitorial power under Article 128, 534
   c. Actions arising from Article 241 and 274, distinguished, 534
2. POWER TO INQUIRE INTO FINANCIAL ACTIVITIES OF UNION, 534

Article 275. Tripartism and tripartite conferences

1. TRIPARTISM IN THE GOVERNMENT, 535
2. TRIPARTITE CONFERENCE, 537

Article 276. Government employees

1. TERMS AND CONDITIONS OF EMPLOYMENT IN THE GOVERNMENT,
   CONSTITUTIONAL BASIS, 538
2. RIGHT TO SELF-ORGANIZATION IN THE GOVERNMENT SERVICE,
TABLE OF CONTENTS

CONSTITUTIONAL BASIS, 539
3. EMPLOYEES IN THE GOVERNMENT SERVICE, DISTINGUISHED, 539
4. APPLICABLE LAWS, 539
   a. Civil Service Decree of the Philippines, 539
   b. Memorandum Circular No. 6, 539
   c. The Magna Carta For Public School Teachers, 540
   d. The Magna Carta for Public Health Workers, 540
   e. Executive Order No. 180 and its Implementing Rules, 541
5. RIGHT TO ORGANIZE GOVERNMENT EMPLOYEES’ ORGANIZATIONS, 541
   a. Right to organize employees’ organizations; who may join, 541
   b. “Employees’ organization”, defined, 541
   c. “Registered employees’ organization”, defined, 541
   d. “Accredited employees’ organization”, defined, 541
   e. Who may not join employees’ organizations, 541
   f. Classification of employees in the government, 541
   g. Organizational activities, 542
   h. Registration of employees’ organizations, 542
   i. Application for registration; where filed, 542
   j. Application for registration; 10% support of employees needed, 542
   k. Rights and privileges of a registered employees’ organization, 543
   l. Organizational unit, 543
   m. Sole and exclusive representative, 543
   n. Certification election, 544
   o. Who may file petition for certification election, 544
   p. Petition for certification election, where filed, 544
   q. Bureau of Labor Relations has jurisdiction over certification elections in the public sector, 544
   r. Legal basis for exercise of jurisdiction of Bureau of Labor Relations over certification election cases in the public sector, 544
   s. Form and contents of petition for certification election, 545
   t. 20% support for petition for certification election, 545
   u. One-year prohibition, 545
   v. Procedure in certification election, 545
   w. Terms and conditions subject to negotiation, 546
   x. Government workers who may collectively bargain, 546
   y. Matters subject to negotiation, 547
   z. Matters not subject to negotiation, 547
   aa. Intervention by the court, 548
   bb. Peaceful concerted activities and strikes, 548
   cc. Public Sector Labor-Management Council, 548
   dd. Settlement of disputes, 548
   ee. Cancellation or revocation of certificate of registration; grounds, 549

Article 277. Miscellaneous provisions……………………………………………………………..550
1. AUTHORITY OF UNIONS TO COLLECT FEES, DUES, ASSESSMENTS, FINES AND CONTRIBUTIONS FROM MEMBERS, 552
   a. Articles 277 [a] and 241, distinguished, 552
   b. Authority under the old law, 552
   c. Authority under the present law, 552
2. DUE PROCESS, 553
   a. Labor Code provision on due process, 553
   b. Original provision under the Labor Code, 553
   c. The provision as amended by B. P. Blg. 130, 553
   d. The provision as amended by R. A. No. 6715, 553
e. Simplified restatement of Article 277 [b], 554
3. RIGHT OF MEMBERSHIP IN A UNION, 554
4. DOCKET FEES, 554
5. POSITION RECLASSIFICATION, 554
6. SPECIAL VOLUNTARY ARBITRATION FUND, 554
7. LABOR-MANAGEMENT COOPERATION PROGRAMS
   IN ORGANIZED ESTABLISHMENTS, 554
8. LABOR-MANAGEMENT COMMITTEES
   IN UNORGANIZED ESTABLISHMENTS, 555
9. MANDATORY PERIODS TO RENDER DECISIONS OR
   RESOLUTIONS IN LABOR RELATIONS CASES, 555

BOOK SIX

POST EMPLOYMENT

Title I

TERMINATION OF EMPLOYMENT

Article 278. Coverage

1. COVERAGE, 556

Article 279. Security of tenure

1. SECURITY OF TENURE, 556
   a. Constitutional basis, 556
   b. Security of tenure, not exclusively applicable to regular employment, 557
   c. Security of tenure of probationary employees, 557
   d. Security of tenure of managerial employees, 557
   e. Security of tenure of employees covered by contracting
      or subcontracting arrangements, 557
   f. Security of tenure in the construction industry, 557
   g. Security of tenure of teachers, 557
   h. Security of tenure of househelpers, 557
   i. Security of tenure of apprentices, 558

2. MANAGEMENT RIGHTS AND PREROGATIVES, 558
   a. Right of employer to regulate all aspects of employment, 558
   b. Wide latitude of discretion in formulating policies, rules and regulations, 558
   c. Limitations on the exercise of management prerogative, 558
   d. Right of management to expect adequate
      and diligent work from its employees, 559

3. PREROGATIVE TO PRESCRIBE WORKING METHODS,
   TIME, PLACE, MANNER AND OTHER ASPECTS OF WORK, 559

4. PREROGATIVE TO TRANSFER OR RE-ASSIGN WORKERS, 559
   a. Transfer; concept and meaning, 559
   b. Transfer of employees, inherent right of management, 559
   c. Test to determine validity of transfer, 560
   d. No vested right to position, 560
   e. Refusal to transfer, 560
   f. Continued refusal to report to new work assignment, 562
   g. Refusal to transfer due to parental obligations,
      additional expenses and anguish, 562
   h. Refusal to transfer consequent to promotion, 562
   i. Refusal to transfer to overseas assignment distinguished
      from refusal to transfer within the country, 562
   j. Transfer due to standard operating procedure of management, 562
   k. Transfer pursuant to company policy, 562
   l. Transfer in accordance with pre-determined and established office policy
      and practice, 562
   m. Rotation among bank employees, legally required, 563
   n. Transfer to avoid conflict of interest, 563
   o. Frequent transfers of short duration, effect, 563
p. Transfer occasioned by abolition of position, 563
q. Transfer may constitute constructive dismissal, 563
r. Damages, in addition to reinstatement, may be recovered for illegal transfer, 564

5. PREROGATIVE TO REORGANIZE, 564
6. PREROGATIVE TO PROMOTE, 564
   a. Promotion, defined, 564
   b. Distinction between transfer and promotion, 564
   c. Refusal to be promoted, legal effect, 564

7. PREROGATIVE TO DEMOTE, 565
   a. Concept, 565
   b. Due process principle in termination cases applies to demotions, 565

8. PREROGATIVE TO DISCIPLINE AND/OR DISMISS ERRING EMPLOYEES, 565
   a. Right to discipline, 565
   b. Right to dismiss, 566
   c. Right to discipline and/or dismiss, subject to police power, 566
   d. Right to determine who to punish, 566
   e. Right to prescribe company rules and regulations, 566
   f. Right to impose penalty; proportionality rule, 566
   g. Right to choose which penalty to impose, 567
   h. Right to impose heavier penalty than what the company rules prescribe, 568
   i. Rule in case of first offense; effect when management tolerates
      violation of company policy, 568
   j. Right to dismiss must be tempered with compassion and understanding, 569

9. DUE PROCESS, 569
10. VIOLATION OF NOTICE REQUIREMENT IS
    NOT A DENIAL OF CONSTITUTIONAL DUE PROCESS, 569
    a. Serrano vs. NLRC case, 569
    b. Agabon vs. NLRC case, 570

11. ASPECTS OF DUE PROCESS, 571
    a. Due process under Article 277 [b], 571
    b. Two-fold due process requirement, 573
    c. Twin requirements of notice and hearing, 573
    d. Purpose behind notice and hearing, 573
    e. Summary dismissal, even if agreed to by employee, not allowed, 573
    f. If employee does not answer, hearing should proceed, 573
    g. Affidavits not required in company-level investigations, 573
    h. Transcript of company-level investigations, 573
    i. The phrase “you’re fired” indicates that employee is being terminated, 573
    j. The phrase “get out” indicates that employee is being terminated, 574

12. RIGHT OF EMPLOYERS TO DUE PROCESS, 574
13. SUBSTANTIVE DUE PROCESS, 574
    a. Concept, 574
    b. Just causes and authorized causes, 574

14. PROCEDURAL DUE PROCESS, 575
    a. Standardizing the due process requirement, 575
    b. For termination based on just causes under Article 282, 575
    c. For termination based on authorized causes under Article 283, 575
    d. For termination based on disease under Article 284, 575
    e. For termination based on completion of contract or phase thereof, 575
    f. For termination of probationary employment based
       on failure to meet the standards of employment, 575
    g. Clearance to terminate, no longer required, 575
    h. Monthly report of dismissal to DOLE for policy guidance and
       statistical purposes; when treated as evidence of valid dismissal, 576
    i. Right against self-incrimination in administrative proceedings, 576
TABLE OF CONTENTS

j. Right to counsel in administrative proceedings, 576
k. Right against unreasonable searches and seizures in administrative proceedings, 576
l. Right to equal protection of the laws in administrative proceedings, 576

15. NOTICE REQUIREMENT IN CASE OF TERMINATION FOR JUST CAUSE, 577
   a. Two-notice rule, 577
   b. No prescribed form for notices, 577
   c. Instances where notices alone, without the benefit of hearing, were held to be compliant with due process requirement, 577
   d. Instance when notice alone will not suffice, 579
   e. Notice to explain must correctly and fully inform the employee of the charges against him, 579
   f. The employee must be dismissed based on the same grounds mentioned in the first notice, 579
   g. Notice of preventive suspension and mere interview, not adequate compliance with two-notice rule, 580
   h. Notice should be served at employee’s last known address, 580
   i. Notice posted in bulletin board, not sufficient, 580
   j. Notice in a newspaper, not sufficient, 580
   k. Remedy if employee refused to receive notice - service by registered mail to last known address, 581

16. ANSWER IN CASE OF TERMINATION FOR JUST CAUSE, 581
   a. Reasonable period to answer charges, 581
   b. When is a period reasonable?, 581

17. HEARING IN TERMINATION FOR CAUSE, 581
   b. Ample opportunity to be heard, 581
   c. Meeting or consultation is not the hearing required by law, 582
   d. Administrative hearing is not a full adversarial proceeding, 582
   e. Administrative proceeding, when adversarial in nature, 583
   f. Outright termination violates due process, 583
   g. Bizarre case of employee illegally dismissed twice, 583
   h. When dismissal was already a foregone conclusion, 583
   i. Suspicion cannot take the place of proof, 583
   j. Co-conspirator’s confession, not sufficient to merit dismissal, 583
   k. Dismissal of employee based on complaint lodged by customer, 584
   l. Investigation still required even if incident was witnessed by many, 584
   m. When hearing before NLRC does not cure defect of lack of hearing at the company level, 584
   n. When hearing before NLRC cures the defect, 584
   o. Prior consultation with union, not compliance with due process, 584
   p. Dismissal due to violation of Union Security Clause, employer must accord separate due process, 585

18. INSTANCES WHEN HEARING IS NOT REQUIRED, 585
   a. Admission of guilt by employee, 585
   b. Termination due to authorized causes under Article 283, 585
   c. Termination due to disease under Article 284, 585
   d. Termination by the employee (resignation), 585
   e. Termination after 6 months of bona-fide suspension of operation, 586
   f. Termination due to expiration of fixed-period employment, 586
   g. Termination of casual employment, 586
   h. Termination due to completion of project in project employment, 586
   i. Termination due to lapse of season in case of seasonal employment, 586
   j. Termination due to expiration of period of probationary employment, 586
   k. Termination due to expiration of tenure made coterminous with lease, 586
   l. Termination due to expiration of contractual employment, 586
TABLE OF CONTENTS

- m. Termination due to abandonment, 587
- n. Termination due to closure or stoppage of work by government authorities, 587

19. SIX SITUATIONS IN TERMINATION DISPUTES, 587
20. TERMINATION FOR JUST OR AUTHORIZED CAUSE AND WITH DUE PROCESS, 587
21. TERMINATION WITHOUT JUST OR AUTHORIZED CAUSE BUT WITH DUE PROCESS, 587
22. TERMINATION WITHOUT JUST OR AUTHORIZED CAUSE AND WITHOUT DUE PROCESS, 587
23. TERMINATION FOR JUST CAUSE BUT WITHOUT DUE PROCESS, 587
   a. Synopsis on the developments in the law, 587
   b. Dismissal is legal but employer is liable to pay indemnity in the form of nominal damages, 589
   c. Measure of penalty or indemnity - no longer full backwages but nominal damages, 590
   d. Past rulings under the Wenphil rule revisited, 591
   e. Rulings after the Agabon doctrine, 591
   f. Indemnity is not incompatible with backwages, 592
24. TERMINATION FOR AUTHORIZED CAUSE BUT WITHOUT DUE PROCESS; PENALTY IS MORE SEVERE, 592
25. TERMINATION FOR FALSE OR NON-EXISTENT CAUSE, 593
26. CASES WHERE THERE IS NO EVIDENCE OF DISMISSAL, 593
   a. Remedy is reinstatement but without backwages, 593
   b. Reinstatement is proper but not as a relief; separation pay, not proper, 594
   c. Case where reinstatement was held not proper, 594
   d. Case where the employee filed illegal dismissal case to pre-empt lawful dismissal, 595
27. PROCEDURAL RULES ON TERMINATION LAID DOWN BY EMPLOYER, 595
28. DECISION TO DISMISS, 595
29. EMPLOYER’S ACT OF CONDONATION, 595
30. RIGHT TO CONTEST TERMINATION, 596
31. BURDEN OF PROOF IN ILLEGAL DISMISSAL CASES, 596
   a. Burden of proof rests on the employer, 596
   b. Quantum of evidence required - mere substantial evidence and not “clear and convincing evidence”, 597
   c. Other standards of evidence, not applicable, 598
32. SUSPENSION OF EFFECTS OF TERMINATION, 598
   a. Power to suspend effects of termination, 598
   b. Grounds, 598
   c. Reinstatement pending hearing, 599
   d. Distinguished from power to assume or certify labor dispute, 599
33. PREVENTIVE SUSPENSION, 599
   a. Legal basis, 599
   b. Justification for imposition of preventive suspension, 600
   c. Preventive suspension, not a penalty, 600
   d. Preventive suspension, not dismissal, 600
   e. Period of preventive suspension; entitlement to wages, 600
   f. Extension of period must be justified, 601
   g. Indefinite preventive suspension amounts to constructive dismissal, 601
   h. Non-reinstatement after 30-day period amounts to constructive dismissal, 601
   i. Forced leave, when equivalent to preventive suspension, 601
   j. Penalty for violating 30-day preventive suspension, 601
   k. Salary differential ordered for improperly-imposed preventive suspension, 601
   l. Preventive suspension of workers in the construction industry, only 15 days, 601
34. SUSPENSION AS A PENALTY, 602  
   a. Concept, 602  
   b. Distinguished from preventive suspension, 602  
   c. When mere suspension and not dismissal is proper penalty, 602
35. DISMISSAL AS PENALTY, 603
36. CONSEQUENCE OF ILLEGALITY OF DISMISSAL, 603  
   a. Reliefs under Article 279, 603  
   b. Reliefs under Articles 279 and 283, distinguished, 604
37. REINSTATEMENT, 604  
   a. Reinstatement under Articles 279 and 223, distinguished, 604  
   b. Reinstatement does not depend on status of employment, 604  
   c. Reinstatement with full backwages, 604  
   d. Reinstatement without backwages, 604  
   e. Separation pay as a substitute remedy, only proper for reinstatement, 605  
   f. Reinstatement when not prayed for, effect, 605  
   g. Reinstatement when what is prayed for is separation pay, 605  
   h. Employee ordered reinstated may, at the end of the proceeding,  
      opt for separation pay instead, 605  
   i. Reinstatement not possible due to old age, 606  
   j. Reinstatement when position no longer exists, 606  
   k. Reinstatement rendered moot and academic by supervening events, 606  
   l. Judgment of reinstatement may be enforced against new owner, 606  
   m. Strained relations or antagonism may effectively bar reinstatement, 607  
   n. Strained relations must be raised before the Labor Arbiter, 607  
   o. Litigation, by itself, does not give rise to strained relations  
      that may justify non-reinstatement, 607  
   p. Nature of position, material in determining validity of "strained relations", 607  
   q. Non-settlement of dispute after long period of time does  
      not indicate strained relations, 608  
   r. Refusal to be reinstated, indicates strained relations, 608  
   s. Criminal prosecution indicates strained relations, 608  
   t. Non-reinstatement of a managerial employee; exception, 608  
   u. Reinstatement is proper if strained relations existed  
      with former owner but not with new owner, 609  
   v. Change in the financial circumstances of employer may bar reinstatement, 609  
   w. Violent temper of employee may prevent reinstatement, 609  
   x. Length of time may prevent reinstatement, 609  
   y. Termination due to unfair labor practice act of employer,  
      reinstatement is proper, 609  
   z. Reinstatement of employees imprisoned or detained by military, 609  
   aa. Failure to reinstate after settlement of strike, 609  
   bb. Applicable salary rate upon reinstatement, 609  
   cc. Reinstatement rendered impossible due to subsequent retrenchment, 609
38. SEPARATION PAY IN LIEU OF REINSTATEMENT, 610  
   a. Concept, 610  
   b. No constructive/illegal dismissal, no separation pay required, 610  
   c. Separation pay despite lawful dismissal for cause, 611  
   d. The San Miguel test, 611  
   e. Separation pay under the Labor Code and jurisprudence, 612  
   f. When separation pay in lieu of reinstatement is ordered paid, 612  
   g. Absence of strained relations, separation pay not justified, 613  
   h. Amount of separation pay, components, 613  
   i. Allowances, if regularly received, are included, 613  
   j. Commissions, may or may not be included, 613  
   k. Separation pay and backwages, not inconsistent, 614  
   l. Separation pay of ½ month pay per year of service, when not valid, 614
39. BACKWAGES, 615
   a. Concept, 615
   b. Background, 615
   c. Mercury Drug rule, fixed three-year backwages, 616
   d. Ferrer doctrine or “Deduction of earnings elsewhere” rule, 617
   e. The Bustamante rule [the prevailing doctrine], 617
   f. Urbanes, Jr. vs. CA case, 617
   g. March 21, 1989, the reckoning date for applicability of the Bustamante doctrine, 617
   h. R. A. No. 6715 has no retroactive effect on backwages, 618
   i. Other benefits must be paid in addition to backwages, 618
   j. Dismissed employee’s ability to earn, irrelevant in the award of backwages, 618
   k. Salary increase during period of demotion, not covered by backwages, 618
   l. Good faith may mitigate or absolve payment of backwages, 619
   m. Failure to claim backwages in complaint may be corrected, 620
   n. When Labor Arbiter or NLRC failed to award any backwages, the same may be corrected on appeal even if worker did not appeal, 620
   o. If there is an award of backwages but no appeal therefrom is instituted, the same, although erroneous, is binding and may no longer be corrected, 620
   p. Distinction between Solidbank and the other cases, 620
   q. When backwages should only be for one (1) year, 621
   r. When backwages should not only be for one (1) year, 621
   s. Full backwages, period covered in case reinstatement is ordered, 621
   t. Full backwages, period covered if separation pay is ordered in lieu of reinstatement, 621
   u. Different rule if employment is for a definite period, 622
   v. Full backwages, how computed when dismissed employee has reached 60 years of age, 622
   w. Full backwages, how computed when dismissed employee has reached 65 years of age, 622
   x. Full backwages, how computed when termination was made effective immediately, 622
   y. Full backwages, how computed when company has already ceased operations, 622
   z. Full backwages, how computed when valid retrenchment supervened, 622
   aa. Period of suspension, deductible from backwages, 623
   bb. Backwages should be reckoned from end of valid suspension, 623
   cc. Backwages should include period of preventive suspension, 623
   dd. Employer’s offer to reinstate does not forestall payment of full backwages, 623
   ee. Full backwages, in case of refusal of employer to reinstate, 623
   ff. Proper wage rate to be used in computation of backwages, 624
   gg. Backwages and salary differentials, distinguished, 624

40. REINSTATEMENT, SEPARATION PAY AND BACKWAGES, DISTINCTIONS, 624
   a. Distinction between reinstatement and separation pay, 624
   b. Distinction between reinstatement and backwages, 624
   c. Distinction between separation pay and backwages, 625

41. TERMINATION OF EMPLOYMENT OF OVERSEAS FILIPINO WORKERS (OFWs); MONETARY AWARDS, 625
   a. OFWs need protection of our laws, 625
   b. OFWs are not entitled to the reliefs under Article 279, 626
   c. Monetary awards to illegally dismissed OFWs, how reckoned, 626
   d. OFW who worked for only 21 days of her 1-year contract, 626
   e. OFW who worked for only a month of his contract for 1 year,
10 months and 28 days, 627

f. OFW’s monetary awards include reimbursement of placement fee, 627
g. Reimbursement of repatriation expenses such as return airfare, 627
h. Award of backwages and separation pay to OFWs, upheld, 627
i. Entitlement to moral and exemplary damages and attorney’s fees, 628
j. Monetary awards in foreign currency; how paid, 628
k. Joint and solidary obligation of local agency and foreign principal, 628
l. Legal bases for joint and solidary liability, 628

42. TERMINATION OF EMPLOYMENT OF PROJECT EMPLOYEES
   IN THE CONSTRUCTION INDUSTRY, 629
   a. Project employees not entitled to separation pay, 629
   b. Project employees entitled to separation pay, 629
   c. Entitlement to completion bonus, 629
   d. Reliefs granted to illegally dismissed project employees, 629

43. TERMINATION OF EMPLOYMENT OF CONTRACTUAL EMPLOYEES
   UNDER A VALID CONTRACTING OR SUBCONTRACTING ARRANGEMENT, 630
   a. Rights of a contractual employee, 630
   b. Effect of termination of contractual employment prior to expiration of contract, 630
   c. Effect of termination of contractual employment upon expiration of contract, 630

44. FINANCIAL ASSISTANCE, 630
   a. Concept, 630
   b. Amount of financial assistance, 630
   c. Long years of service, equity or compassionate justice as basis, 631
   d. When compassionate justice, equity and long years of service, disregarded, 631
   e. Financial assistance not allowed in case of abandonment, 632

45. MONETARY CLAIMS; EMPLOYER HAS BURDEN OF PROOF, 632

46. DAMAGES IN GENERAL, 633
   a. Concept, 633
   b. Kinds of damages, 633
   c. Proof required to prove damages, in general, 633

47. ACTUAL OR COMPENSATORY DAMAGES, 633

48. MORAL DAMAGES AWARDED IN LABOR CASES, 633
   a. Concept, 633
   b. Legal basis of award of moral damages, 634
   c. Malice or bad faith, explained, 634
   d. Absent any qualifying circumstances, mere finding of illegal dismissal does not justify award of moral damages, 634
   e. Determination of amount of damages and attorney’s fees discretionary on Labor Arbiter, 635

49. EXEMPLARY OR CORRECTIVE DAMAGES AWARDED IN LABOR CASES, 635
   a. Concept, 635
   b. Circumstances justifying award of exemplary damages, 635

50. INSTANCES WHERE MORAL AND/OR EXEMPLARY DAMAGES
    WERE AWARDED IN LABOR CASES, 635

51. NOMINAL DAMAGES AND OTHER FORMS OF DAMAGES, 636
   a. Legal basis for award of other forms of damages, 636
   b. Nominal damages, 636
   c. Temperate or moderate damages, 637
   d. Liquidated damages, 637

52. ATTORNEY’S FEES, 637
   a. Article 111 of Labor Code and Article 2208 of Civil Code as basis, 637
   b. Rule on entitlement to attorney’s fees, 638
   c. Attorney’s fees must be awarded once rendition of legal service is established, 638

53. LEGAL INTEREST ON UNPAID CLAIMS, 638

54. COSTS OF SUIT; WHO IS RESPONSIBLE THEREFOR, 639

55. PERSONAL LIABILITY OF STOCKHOLDERS OR CORPORATE
OFFICERS FOR CLAIMS OF EMPLOYEES, 639
a. Concept and legal basis, 639
b. When officers are solidarily liable, 641
c. Rule when company ceased operations, 641
d. Settled instances where officers are liable without necessarily piercing the veil of corporate fiction, 641
e. The corporate officer must be identified as such to hold him liable, 641
f. Absence of clear identification of officer directly responsible, the President or highest officer should be held liable, 641
g. Corporate officers cannot be held liable absent any finding in the decision to that effect, 642
h. Decision must state in its fallo that the obligation is solidary, 642
i. Close family corporation, liability of stockholder for company tort, 642
j. Liability under provisions of the Labor Code, 643
k. Significant cases where corporate officers were held solidarily liable, 643
l. Liability for criminal acts, 644
m. Liability for litigation expenses in criminal cases, 644
56. INSOLVENCY OF EMPLOYER; LIABILITY OF LIQUIDATOR OR RECEIVER IN CASE OF RECEIVERSHIP; EXTENT THEREOF, 644
57. CHANGE IN EMPLOYER; EFFECT OF ASSUMPTION OF LIABILITY, 645
58. PIERCING THE VEIL OF CORPORATE ENTITY [ALTER EGO DOCTRINE], 645
a. General rule, 645
b. Elements of piercing the veil of corporate entity, 646
c. When “piercing the veil of corporate entity” rule may be invoked, 646
d. Once the corporate veil is pierced, there is no need to implead the other party, 648
e. Factors to justify application of alter ego doctrine, 648
f. “Instrumentality” or “alter ego” rule, 648
59. SO-CALLED “GROUP OF COMPANIES”, NO LEGAL PERSONALITY, 648
60. RELEVANCE OF EMPLOYEE’S RECORD OF PAST VIOLATIONS, 649
a. Totality of conduct rule, 649
b. Past violations may only be used as justification to dismiss employee for subsequent similar offense, 649
c. Past infractions for which the employee had already amply explained cannot be cited as basis to dismiss, 649
d. Past infractions for which employee was already penalized cannot again be cited for present offense, 650
e. Employer has to prove subsequent offense by substantial evidence, 650
61. OUTCOME IN CRIMINAL CASE VIS-À-VIS LABOR CASE, 650
a. General rule, 650
b. Filing of criminal case against employee not a bar to filing of complaint for illegal dismissal by employee, 650
c. Criminal conviction not essential to terminate employment, 651
d. Strange case of an employee criminally convicted for the same act for which her dismissal was held to be illegal, 651
e. Evidence established after preliminary investigation by City Prosecutor, 651

Article 280. Regular and casual employment………………………………………………………652
1. NATURE OF ARTICLE 280, 652
a. Rationale for the law, 652
b. Article 280 not a yardstick to determine employment relationship, 652
2. KINDS OF EMPLOYMENT, 652
a. Employment under Article 280 of the Labor Code, 652
b. Other forms of employment under Book VI, 653
c. Nature of employment under Article 280, 653
3. REGULAR EMPLOYMENT, 653
a. Tests to determine regularity of employment, 653
b. Concept of regular and casual employment under Article 280, 654

4. CASUAL EMPLOYMENT, 656
   a. Casual employment, 656
   b. Casual employee becomes regular after one year of service, 656
   c. Repeated rehiring, effect, 656
   d. Proviso in the second paragraph of Article 280 refers only to casual employees, 657
   e. Wage and benefits should not be diminished, 657

5. PROJECT EMPLOYMENT, 657
   a. Concept, 657
   b. Project employment in the construction industry, 657
   c. Indicators of project employment, 657
   d. “Project” refers to 2 types of activities, 658
   e. Meaning of the phrase “specific project or undertaking” in Article 280, 658
   f. When may a project employee become regular employee?, 658
   g. Regular employment is inconsistent with project employment, 659
   h. Project employment is akin to seasonal employment, 659
   i. Project employees enjoy security of tenure, 659
   j. Project employees must be apprised of the project nature of employment, 659
   k. Length of service, not determinant of regularity of employment, 660
   l. When length of service of project employee indicates regularity of employment, 660
   m. Absence of “day certain” in the employment contract, effect, 661
   n. Termination of project employment prior to or after the lapse of project employment, effect, 661
   o. Intervals in employment contracts, legal significance, 662
   p. “Project-to-project” basis of employment, 662
   q. Types of non-project employees in the construction industry, 662
   r. Status of employees in a work pool, 663
   s. Application of “work pool” principle to industries other than construction industry, 663
   t. Contracting and sub-contracting arrangement in the construction industry, 663
   u. Contracting and sub-contracting arrangement in areas other than the construction industry, 664
   v. Statutory benefits, 664
   w. Compliance with labor and social legislation, 664
   x. Termination of employment of project and regular employees, distinguished, 664
   y. Notice of termination, not required; report to DOLE necessary, 664
   z. Burden of proof in termination of project employment, 665
   aa. Legal consequences of termination of project employment, 665
   bb. Backwages, how computed when project is completed during pendency of suit, 665

7. SEASONAL EMPLOYMENT, 665
   a. Concept, 665
   b. No regularity of employment even after one year of service, 665
   c. Rulings that seasonal workers become regular employees after one year of service, 666
   d. Regular seasonal employees, 666
   e. Applicability of concept of regular seasonal employment to construction employment, 668
   f. Failure to re-hire regular seasonal employee for next season amounts to illegal dismissal, 668

8. FIXED-TERM EMPLOYMENT, 669
   a. Criteria for fixed contracts of employment, 669
   b. Fixed-term employment; effect if duties are usually
necessary or desirable in the employer’s usual business, 669

c. Brent School case, 669

d. Other cases upholding validity of fixed-term employment, 672

e. Cielo case, when term employment nullified, 673

f. Notice to terminate not necessary in fixed-term employment, 673

g. Employees allowed to work beyond fixed term become regular employees, 673

h. Work rendered for more than one year, effect, 674

i. Successive renewal of fixed-period contracts, effect, 674

j. Hiring of employees on a 6-month period basis, 674

k. Employment on a “day-to-day basis for a temporary period”, 674

l. Employment on “as the need arises” basis, 675

m. Termination prior to lapse of fixed-term contract, effect, 675

n. Illegal dismissal of fixed-term employee, liability is only for salary
   for unexpired portion, 676

9. EMPLOYMENT OF OVERSEAS FILIPINO WORKERS (OFWs), 676

a. OFWs can never acquire regular employment, 676

b. OFWs do not become regular employees by reason of nature of work, 676

c. Case where OFWs were considered regular employees, 677

d. Series of re-hiring of OFWs cannot ripen into regular employment, 677

e. The employment of OFWs for a fixed period is not discriminatory, 677

f. The contracts of OFWs cease upon expiration thereof, 677

g. Hiring of seaman for overseas employment but assigning him to local vessel,
   effect, 677

10. PART-TIME EMPLOYMENT, 678

a. Realities of the times, 678

b. Part-time employment, defined, 678

c. Security of tenure of part-time employees, 678

d. Probationary employment of part-time employees, 678

e. Indicators of regular employment of part-time employees, 679

11. EMPLOYMENT OF PROFESSORS, INSTRUCTORS AND TEACHERS, 679

a. Special employment status of teaching and non-teaching personnel, 679

b. Permanent tenure of teachers, 679

c. Full-time teacher, defined, 679

d. Part-time teachers cannot acquire permanent tenure, 680

e. Non-permanent tenure of teachers, 680

f. Written contracts of employment, 681

g. Part-time teachers enjoy security of tenure during effectivity of contract, 681

h. Judicial notice on period of part-time employment of teacher, 681

i. Ratio of full-time permanent teachers, 681

12. WORKING SCHOLARS, 681

13. RESIDENT PHYSICIANS IN TRAINING, 681

14. EMPLOYEES SUPPLIED BY INDEPENDENT CONTRACTOR
   AND LABOR-ONLY CONTRACTOR, 682

a. Status of contractual employees; regular employees of contractor
   or subcontractor, 682

b. Status of employees under labor-only contracting;
   regular employees of principal, 683

15. EMPLOYMENT OF CHILDREN, 683

a. Children, when allowed to work, 683

b. May working minors/children become regular employees?, 683

c. Conditions of employment, 684

d. Employment of minors as homeworkers, 684

e. Employment of minors as learners, 684

16. EMPLOYMENT OF HOUSEHELPERS, 684

a. Domestic/household service, meaning, 684
### TABLE OF CONTENTS

b. Fixed-term employment of househelpers, 684  
c. Assignment to non-household work, 684  
d. Security of tenure, 684  

17. EMPLOYMENT OF HOMEWORKERS, 684  
   b. Regularity of employment, 685  

18. EMPLOYMENT OF PIECE-RATE WORKERS, 685  

19. EMPLOYMENT OF FIELD PERSONNEL, 685  
   a. Observations on the legal provisions, 685  
   b. Status of field personnel, 686  

20. EMPLOYMENT OF WOMEN IN NIGHTCLUBS AND SIMILAR ESTABLISHMENTS, 686  
   a. Status of women working in nightclubs and similar workplaces, 686  
   b. Regularity of employment, 686  

21. "CONTRACT OF ADHESION" APPLIES TO EMPLOYMENT CONTRACT, 686  

22. PROHIBITION AGAINST WORKING IN COMPETING FIRMS AFTER TERMINATION OF EMPLOYMENT, 686  
   a. Freedom to contract, 686  
   b. There must be limitation on the prohibition as to time and trade, 687  

**Article 281. Probationary employment**

1. CONCEPT OF PROBATIONARY EMPLOYMENT, 687  
2. POLICY INSTRUCTIONS NO. 11, 688  
3. STANDARDS OF PROBATIONARY EMPLOYMENT, 688  
   a. Standards should be made known to employee at start of engagement, 688  
   b. If standards are not made known to the employee at start of employment, he is deemed a regular employee from day one, 688  

4. REGULAR EMPLOYMENT AFTER PROBATIONARY PERIOD, 689  

5. PROBATIONARY PERIOD, 689  
   a. General rule, 689  
   b. Exceptions, 689  
   c. Probationary period, how reckoned and computed, 690  
   d. Extension of probationary period, 691  
   e. If no stipulation on probationary period, employment is deemed regular, 691  
   f. Employer’s act of rehiring a probationary employee, effect, 691  
   g. Probationary employment cannot be ad infinitum, 691  

6. PROBATIONARY PERIOD IN LEARNABLE OR APPRENTICIABLE JOBS, 692  
   a. Provision under the Implementing Rules, 692  
   b. Probationary period of apprentices, 692  
   c. Apprenticeship required by school or training program, 692  
   d. Probationary period of learners, 692  

7. PROBATIONARY PERIOD IN JOBS NOT LEARNABLE NOR APPRENTICIABLE, 693  

8. HANDICAPPED WORKERS, 693  

9. PROBATIONARY PERIOD OF TEACHERS, 693  
   a. Probationary period of academic personnel in private schools, 693  
   b. Probationary period of teachers in public schools, 693  

10. PROBATIONARY PERIOD OF PART-TIME WORKERS, 694  

11. TERMINATION OF PROBATIONARY EMPLOYMENT, 694  
   a. Security of tenure of probationary employee, 694  
   b. Grounds to terminate probationary employment, 694  
   c. Termination due to just or authorized causes, 694  
   d. Termination due to failure to qualify, 694  
   e. Assignment to a job different from that applied for, 695  
   f. Termination due to poor performance; effect of high performance rating after temporary reinstatement, 695  
   g. Termination prior to lapse of probationary period, 695
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>h. Termination one (1) day prior to expiration of probationary period</td>
<td>695</td>
</tr>
<tr>
<td>i. Termination four (4) days after lapse of probationary period</td>
<td>695</td>
</tr>
<tr>
<td>j. No obligation to pay unexpired portion in case of valid termination prior to lapse of probationary period</td>
<td>695</td>
</tr>
<tr>
<td>k. Peremptory termination of probationary employment</td>
<td>695</td>
</tr>
<tr>
<td>l. Remedies available to illegally dismissed probationary employees</td>
<td>703</td>
</tr>
<tr>
<td>m. Agabon doctrine applies if dismissal of probationary employee is without due process</td>
<td>696</td>
</tr>
<tr>
<td>n. Obligation to pay unexpired portion in case of illegal dismissal of probationary employee</td>
<td>696</td>
</tr>
<tr>
<td>Article 282. Termination by employer</td>
<td>696</td>
</tr>
<tr>
<td>1. JUST CAUSES OF TERMINATION, 697</td>
<td></td>
</tr>
<tr>
<td>a. Just causes for termination by employer</td>
<td>697</td>
</tr>
<tr>
<td>b. Just causes for termination by the employee</td>
<td>697</td>
</tr>
<tr>
<td>2. SERIOUS MISCONDUCT, 697</td>
<td></td>
</tr>
<tr>
<td>a. Concept, 697</td>
<td></td>
</tr>
<tr>
<td>b. Requisites, 697</td>
<td></td>
</tr>
<tr>
<td>c. Misconduct must relate to employee’s duties</td>
<td>697</td>
</tr>
<tr>
<td>d. Series of irregularities, when put together, may constitute serious misconduct</td>
<td>697</td>
</tr>
<tr>
<td>e. Throwing a stapler and uttering invectives against a plant manager</td>
<td>698</td>
</tr>
<tr>
<td>f. Rendering service to business rival</td>
<td>698</td>
</tr>
<tr>
<td>g. Selling of products of a competitor, a just cause for termination</td>
<td>698</td>
</tr>
<tr>
<td>h. Assailing employer in union newspaper, when deemed serious misconduct</td>
<td>698</td>
</tr>
<tr>
<td>i. Circulation of manifesto, when considered serious misconduct</td>
<td>698</td>
</tr>
<tr>
<td>j. Use of shabu, valid ground to terminate employment</td>
<td>699</td>
</tr>
<tr>
<td>k. Writing memo regarding company problems, not a ground for termination</td>
<td>699</td>
</tr>
<tr>
<td>l. Immorality</td>
<td>699</td>
</tr>
<tr>
<td>m. Immoral act committed beyond office hours</td>
<td>699</td>
</tr>
<tr>
<td>n. Sexual intercourse inside company premises constitutes serious misconduct</td>
<td>699</td>
</tr>
<tr>
<td>o. The act of a lady teacher in falling in love with a student, not immoral</td>
<td>700</td>
</tr>
<tr>
<td>p. Fighting as ground for termination</td>
<td>700</td>
</tr>
<tr>
<td>q. Challenging superiors to a fight, a just cause for termination</td>
<td>700</td>
</tr>
<tr>
<td>r. Fighting in the presence of superior</td>
<td>700</td>
</tr>
<tr>
<td>s. Assaulting another employee, a just cause for termination</td>
<td>701</td>
</tr>
<tr>
<td>t. Utterance of obscene, insulting or offensive words constitutes serious misconduct</td>
<td>701</td>
</tr>
<tr>
<td>u. When disrespectful conduct is not serious misconduct</td>
<td>702</td>
</tr>
<tr>
<td>v. Gambling within company premises, a serious misconduct</td>
<td>702</td>
</tr>
<tr>
<td>w. Deceiving a customer for personal gain, a just cause for termination</td>
<td>702</td>
</tr>
<tr>
<td>x. Intoxication as ground for termination</td>
<td>702</td>
</tr>
<tr>
<td>y. Pressure exerted by a teacher upon a colleague to change a failing grade of a student</td>
<td>702</td>
</tr>
<tr>
<td>z. Borrowing of money from customer</td>
<td>703</td>
</tr>
<tr>
<td>aa. Sleeping while on duty as a ground for termination</td>
<td>703</td>
</tr>
<tr>
<td>bb. Eating while at work</td>
<td>703</td>
</tr>
<tr>
<td>cc. Urinating in the workplace</td>
<td>703</td>
</tr>
<tr>
<td>3. SEXUAL HARASSMENT, 703</td>
<td></td>
</tr>
<tr>
<td>a. Declaration of policy</td>
<td>703</td>
</tr>
<tr>
<td>b. Acts penalized</td>
<td>704</td>
</tr>
<tr>
<td>c. Who may be liable for sexual harassment</td>
<td>704</td>
</tr>
<tr>
<td>d. Sexual harassment in a work-related or employment environment</td>
<td>704</td>
</tr>
<tr>
<td>e. Sexual harassment in an education or training environment</td>
<td>704</td>
</tr>
<tr>
<td>f. Duty of the employer or head of office</td>
<td>704</td>
</tr>
<tr>
<td>g. Solidary liability for damages of employer or head of office</td>
<td>705</td>
</tr>
<tr>
<td>h. Victim’s right to institute separate action for damages</td>
<td>705</td>
</tr>
<tr>
<td>TABLE OF CONTENTS</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td></td>
</tr>
<tr>
<td>i. Penalties; imprisonment and fine, 705</td>
<td></td>
</tr>
<tr>
<td>j. Jacutin vs. People, 705</td>
<td></td>
</tr>
<tr>
<td>k. Prescription of action, 705</td>
<td></td>
</tr>
<tr>
<td>l. Delay in filing the case for sexual harassment, 705</td>
<td></td>
</tr>
<tr>
<td>m. Victim is entitled to moral and exemplary damages, 706</td>
<td></td>
</tr>
<tr>
<td><strong>4. ACTS OF DISHONESTY, 706</strong></td>
<td></td>
</tr>
<tr>
<td>a. Concept, 706</td>
<td></td>
</tr>
<tr>
<td>b. Theft of company-owned property, 706</td>
<td></td>
</tr>
<tr>
<td>c. Penalty for theft or pilferage of company-owned property, factors to be considered, 707</td>
<td></td>
</tr>
<tr>
<td>d. Act of falsification, 707</td>
<td></td>
</tr>
<tr>
<td>e. Punching-in of time cards of other employees, a just cause for termination, 707</td>
<td></td>
</tr>
<tr>
<td>f. Circulating fake meal tickets is a just cause for termination, 707</td>
<td></td>
</tr>
<tr>
<td><strong>5. WILLFUL DISOBEDIENCE OF LAWFUL ORDERS, 707</strong></td>
<td></td>
</tr>
<tr>
<td>a. Company rules and regulations, 707</td>
<td></td>
</tr>
<tr>
<td>b. Company rules and regulations; requisites for validity, 708</td>
<td></td>
</tr>
<tr>
<td>c. Willful disobedience; requisites, 709</td>
<td></td>
</tr>
<tr>
<td>d. Quantum of evidence required, 709</td>
<td></td>
</tr>
<tr>
<td>e. Filing of case questioning validity of rules and policies, effect, 709</td>
<td></td>
</tr>
<tr>
<td>f. Rule against unauthorized use of company vehicles, 709</td>
<td></td>
</tr>
<tr>
<td>g. Rule against smoking in restricted areas, 709</td>
<td></td>
</tr>
<tr>
<td>h. Rule against marriage, when not valid, 709</td>
<td></td>
</tr>
<tr>
<td>i. Rule against marriage, when valid, 710</td>
<td></td>
</tr>
<tr>
<td>j. Unauthorized encashment of check, 710</td>
<td></td>
</tr>
<tr>
<td>k. Violation of an unwritten policy, 710</td>
<td></td>
</tr>
<tr>
<td>l. Violation of a policy which oftentimes has been relaxed in its implementation or has been acquiesced to by superiors, 710</td>
<td></td>
</tr>
<tr>
<td>m. Rule where violation of the rules was tolerated by employer, 710</td>
<td></td>
</tr>
<tr>
<td>n. Rule against acceptance of other employment without first resigning from present employer, 711</td>
<td></td>
</tr>
<tr>
<td>o. Penalty for insubordination or willful disobedience, 711</td>
<td></td>
</tr>
<tr>
<td><strong>6. GROSS AND HABITUAL NEGLECT OF DUTIES, 711</strong></td>
<td></td>
</tr>
<tr>
<td>a. Concept, 711</td>
<td></td>
</tr>
<tr>
<td>b. Test to determine negligence, 712</td>
<td></td>
</tr>
<tr>
<td>c. Element of habituality may be disregarded where loss is substantial, 712</td>
<td></td>
</tr>
<tr>
<td>d. Element of habituality may be disregarded if totality of evidence justifies dismissal, 712</td>
<td></td>
</tr>
<tr>
<td>e. Element of actual loss or damage, not an essential requisite, 712</td>
<td></td>
</tr>
<tr>
<td>f. Habitual tardiness or habitual absenteeism, 712</td>
<td></td>
</tr>
<tr>
<td>g. Authorized absences, 713</td>
<td></td>
</tr>
<tr>
<td>h. Relevance of past absences, 713</td>
<td></td>
</tr>
<tr>
<td>i. Totality of infraction during period of employment may be considered, 713</td>
<td></td>
</tr>
<tr>
<td>j. Long years of service, not a mitigating factor, 713</td>
<td></td>
</tr>
<tr>
<td>k. Unblemished record belies allegation of gross and habitual neglect, 713</td>
<td></td>
</tr>
<tr>
<td>l. Unsatisfactory rating, when considered a just cause, 713</td>
<td></td>
</tr>
<tr>
<td>m. Negligence is a question of fact, 714</td>
<td></td>
</tr>
<tr>
<td><strong>7. ABANDONMENT OF WORK, 714</strong></td>
<td></td>
</tr>
<tr>
<td>a. Nature, 714</td>
<td></td>
</tr>
<tr>
<td>b. Abandonment of work, requisites, 714</td>
<td></td>
</tr>
<tr>
<td>c. Abandonment is a factual issue, 714</td>
<td></td>
</tr>
<tr>
<td>d. Employer has the burden of proof to prove abandonment, 714</td>
<td></td>
</tr>
<tr>
<td>e. Requirement of notice before declaring abandonment, 715</td>
<td></td>
</tr>
<tr>
<td>f. Notices in abandonment cases, where sent, 715</td>
<td></td>
</tr>
<tr>
<td>g. Immediate filing of complaint negates abandonment, 715</td>
<td></td>
</tr>
<tr>
<td>h. When filing of complaint does not negate abandonment; consequence of failure to pray for reinstatement, 716</td>
<td></td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

i. When refusal to return to work does not constitute abandonment, 716  
j. Offer of reinstatement during proceedings before Labor Arbiter, effect, 716  
k. When employee may be absolved from the charge  
of abandonment of work but adjudged guilty of AWOL, 717  
l. Timing of refusal to allow workers to work, relevant, 717  
m. Requirement of notice prior to taking a leave of absence, 718  
n. Failure to report for work after expiration of leave, 718  
o. Failure to comply with reinstatement order, 718  
p. Failure to report for work after transfer of assignment, 718  
q. Absence to look for work elsewhere, 718  
r. Employment in another firm coinciding with filing of complaint, effect, 718  
s. Subcontracting for another company indicates abandonment, 718  
t. Reinstatement sans backwages despite abandonment, 718  
u. Imprisonment or detention by military, 718  
v. “Desertion” in case of seamen, meaning; requisites, 719  
8. ARTICLE 282 [c] CONTEMPLATES TWO (2) SEPARATE GROUNDS, 719  
9. FRAUD, 719  
a. Concept, 719  
b. Commission of fraud or deceit leading to loss of trust and confidence, 719  
c. Lack of damage or losses not necessary in fraud cases, 719  
d. Restitution does not have absolutory effect, 720  
e. Lack of misappropriation or shortage, immaterial, 720  
10. WILLFUL BREACH OF TRUST, 720  
a. Concept, 720  
b. Requisites, 720  
c. Breach must be work-related, 721  
d. Breach must be willful and without justifiable excuse, 721  
e. Employee’s position must be reposed with trust and confidence, 721  
f. Employer has burden of proof, 721  
g. There must be “some basis” for the loss of trust and confidence, 722  
h. Commission of acts inimical to the employer’s interest, 722  
i. Loss of confidence due to gross inefficiency and incompetence, 722  
j. Laxity in the accounting procedure, 723  
k. Prolonged practice, not an excuse for wrongful act, 723  
l. Grant of promotions and bonuses negates loss of trust and confidence, 723  
m. Long years of service, absence of derogatory record  
and small amount involved, when deemed inconsequential, 723  
n. Rules on termination of managerial employee, different from rank-and-file, 725  
o. When rank-and-file employees may be dismissed  
based on loss of trust and confidence, 726  
p. Examples of cases where rank-and-file employees may not  
be dismissed based on loss of trust and confidence, 726  
q. Some non-managerial positions held to be reposed with trust and confidence, 726  
11. COMMISSION OF CRIME OR OFFENSE, 727  
a. Concept, 727  
b. “Immediate member of the family” defined, 727  
12. OTHER ANALOGOUS CAUSES UNDER ARTICLE 282, 728  
a. Concept, 728  
b. Inefficiency or failure to attain work quota, an analogous cause, 728  
c. Violation of company rules and regulations, an analogous cause, 728  
13. OTHER JUST CAUSES RECOGNIZED UNDER OTHER PROVISIONS  
OF THE LABOR CODE, 728  

Article 283. Closure of establishment and reduction of personnel.................729  
1. AUTHORIZED CAUSES FOR TERMINATION, 729  
a. Concept, 729
TABLE OF CONTENTS

b. Grounds, 729
c. Justification, 729
d. Exclusivity of grounds, 730
e. Historical development of the law, 730
f. Observations, 730
g. Burden of proof, 731

2. AUTHORIZED CAUSES AND JUST CAUSES, DISTINGUISHED, 731

3. INSTALLATION OF LABOR-SAVING DEVICES, 731
b. Requisites, 732
c. Modernization program through introduction of machines, 732
d. Installation of machines for more economy and efficiency, 732
e. Proof of losses, not required, 732

4. REDUNDANCY, 732
a. When redundancy exists, 732
b. Requisites, 733
c. Fair and reasonable basis for redundancy, 733
d. Elimination of undesirables, abusers and worst performers through redundancy, not an indication of bad faith, 733
e. Characterization of service as redundant by employer, not subject to review; exception, 733
f. Burden of proof in redundancy rests on the employer, 734
g. Evidence of losses, not required, 734
h. Redundancy and retrenchment, distinguished, 734
i. Hiring of replacements, when not in bad faith, 734
j. Redundancy to save on labor costs, held valid, 734
k. Abolition of position or department, 734
l. Reorganization through redundancy, valid, 735
m. Contracting out of abolished position to independent contractors held valid, 735
n. Hiring of casuals after redundancy, held valid, 735
o. Duplication of work, 736
p. “Last In, First Out” [LIFO] rule, 736
q. LIFO rule, exception, 736
r. LIFO or FILO rule, no basis in law, 736
s. LIFO rule, not controlling, as employer has prerogative to choose who to terminate, 737
t. Hobson’s choice, 737

5. RETRENCHMENT, 737
a. Concept and Nature, 737
b. Requisites, 738
c. Standards to be observed in retrenchment, 738
d. If standards are present, wisdom to retrench cannot be questioned, 739
e. Standards in selection of employees to be retrenched, 739
f. Failure to follow fair criteria in selection, effect, 739
g. Justifications used in several cases, 740
h. Article 283 applies only to permanent retrenchment or lay-off, 740
i. Cost reduction measures prior to retrenchment, necessary, 740
j. Meaning of the phrase “retrenchment to prevent losses”, 741
k. Evidence of business losses or financial reverses, burden of proof, 741
l. Best evidence of losses - audited financial statements, 742
m. Period covered by financial statements, material, 742
n. Requirement of Labor Code, different from that of Tax Code, 742
o. Mere affidavit on alleged losses, not sufficient, 742
p. Best evidence of losses in a government-controlled corporation - financial statements audited by COA, 742
q. Rehabilitation receivership presupposes existence of losses, 743
r. Evidence of losses in a retrenchment case may be presented for the first time on appeal with the NLRC, 743
s. Audited financial statements belatedly filed in the CA, effect, 743
t. Evidence of losses may be allowed to be presented for the first time on appeal with NLRC but not with CA, 743
u. Retrenchment effected long after business losses, 744
v. Misdemeanors not proper additional ground for retrenchment, 744
w. Compulsory retirement to prevent losses, 744
x. Rotation of work may be tantamount to constructive dismissal or retrenchment, 744
y. Retrenchment due to liquidity problem, 744
z. Re-hiring of retrenched employees, effect, 744

6. CLOSURE OR CESSATION OF BUSINESS, 745
a. Concept, 745
b. Requisites, 745
c. Employer may close its business whether it is suffering from business losses or not; court cannot order employer to continue its business, 745
d. Principle of closure under Article 283 applies in cases of both complete and partial cessation of business operation, 746
e. Closure of outlets, branches, departments or sections, 747
f. Relocation of business amounts to cessation of operations, 747
g. The grounds must not be so flimsy and arbitrary, 747
h. Burden of proof in case closure is due to losses, 748
i. Audited financial statements necessary in closure due to losses, 748
j. Evidence of losses in a closure case should not be presented for the first time on appeal with the Court of Appeals or Supreme Court, 748
k. State intervention in closure of business, 748
l. Temporary shutdown of operation, 748
m. Closure by operation of law, 748
n. Closure due to Martial Law, 756
o. Closure due to CARP, 749

7. RETRENCHMENT AND CLOSURE OF BUSINESS, DISTINGUISHED, 749

8. SALE, TRANSFER OR SPIN-OFF OF BUSINESS, 750
a. Concept, 758
b. Change of ownership of business, not an authorized cause, 750
c. Liability of buyer or transferee of business in good faith, 750
d. Obligation to hire employees, when provided in contract, 758
e. Sale or transfer of business in bad faith, 751
f. Generous termination pay package indicates good faith, 751
g. Appointment of same directors and employees, not indicative of bad faith, 751
h. New owner is not assignee of CBA in sale in good faith, 752
i. Transfer of business due to death of owner, 752

9. MERGER, 752

10. DISSOLUTION OF CORPORATION, 752

11. NOTICES REQUIRED UNDER ARTICLE 283, 753
a. Historical basis for the notice requirement under Article 283, 753
b. Notice requirement, mandatory, 753
c. Rationale for the notice requirement, 754
d. Absence of notice does not render the dismissal ineffectual, defective or illegal, 754
e. Failure to observe 30-day prior notice rule, effect per Agabon case, 755
f. Notice should be served to employees themselves, 755
g. Notice to DOLE should state correct number of workers to be terminated, 755
h. Notice to DOLE need not be complied with in case of voluntary personnel reduction program, 755
i. Notice to DOLE need not be complied with if a case is heard
by a Voluntary Arbitrator, 756  
j. Advance payment of one month salary, not a substitute  
for written notice requirement, 756  
k. One-month notice requirement, applies to both permanent  
and temporary-lay off, 757  
l. Notice required in sale or transfer of assets or business, 757  

12. HEARING NOT REQUIRED IN TERMINATION UNDER ARTICLE 283, 758 
13. SEPARATION PAY UNDER ARTICLE 283, 758  
a. Basic constitutional precept behind concept of separation pay  
under Article 283, 758  
b. Amount of separation pay depends on the ground cited, 758  
c. Separation pay in cases of installation of labor-saving devices or redundancy, 758  
d. Separation pay in cases of retrenchment or closure  
not due to serious business losses or disease, 758  
e. “One month” pay, the minimum amount of separation pay under Article 283, 759  
f. Retrenchment case where separation pay of 1 month pay  
per year of service was ordered, 759  
g. Closure or cessation of operations; requisite for entitlement to separation pay, 760  
h. Closure or cessation of business; when separation pay is  
one month pay for every year of service, 761  
i. Separation pay in case of failure to recall employees  
who were temporarily laid off, 761  
j. Separation pay under Article 283, component, 761  
k. Basis of termination pay, computation, 762  
l. Period covered by separation pay, 762  
m. Financial assistance already given, effect on the computation  
of separation pay, 762  
n. Separation pay not subject to deduction for attorney’s fees or negotiation fees, 762  
o. Separation pay of illegally terminated employees under Article 283, 762  
p. Quitclaim, not a bar to question validity of termination under Article 283, 762  
q. Separation pay of retireable employees terminated under Article 283, 763  
r. Separation pay of seasonal worker and regular employee, distinguished, 763  
s. Separation pay of piece-rate workers, 763  
t. Separation pay of workers paid on commission basis, 763  
u. Separation pay in termination of househelpers, 763  
v. Separation pay due to sale or transfer of business, 764  

**Article 284. Disease as ground for termination** ........................................... 764  
1. DISEASE AS A GROUND FOR DISMISSAL, ........................................ 764  
a. Requisites, 764  
b. Burden of proof rests on the employer, 764  
c. When employer should not terminate, 764  
2. WOUND, APPLICABILITY OF ARTICLE 284, 765  
3. DEATH, NON-APPLICABILITY OF ARTICLE 284, 765  
4. REFUSAL OF EXAMINATION OR TREATMENT, 765  
5. COMPETENT PUBLIC HEALTH AUTHORITY, 765  
a. Company physician is not a “competent public health authority”, 765  
b. Medical certificate, an indispensable requisite, 766  
c. Medical certificate as evidence of illness, 766  
d. Medical certificate issued by Labor Attache and Ministry  
of Public Health of Kuwait, not sufficient, 766  
e. The certificate should be procured by the employer, 767  
f. Existence of certificate, burden of proof is on the employer, 767  
g. Employee dismissed without the medical certificate is entitled to moral  
and exemplary damages, 767  
6. NOTICE REQUIREMENT, 767  
a. Notice to employee, necessary, 767
TABLE OF CONTENTS

b. Notice to DOLE, required, 767
7. HEARING, 768
8. SEPARATION PAY, 768
   a. Separation pay in case of lawful dismissal based on disease, 768
   b. Reliefs if illegally terminated based on disease, 768
   c. Separation pay under company retirement plan, 768
   d. Resignation caused by disease, Article 284 applies, 768

Article 285. Termination by employee

1. TERMINATION OF EMPLOYMENT RELATION BY EMPLOYEE, 768
   a. Concept and basic principles, 768
   b. Observation on Article 285, 769
   c. Resignation and dismissal, distinguished, 769
2. TERMINATION WITHOUT JUST CAUSE, 769
   a. Requisites in termination without just cause, 769
   b. Consequence if requisite is not complied with, 769
   c. Rationale for the 30-day prior notice requirement, 769
   d. Acceptance of resignation, necessary, 770
   e. Withdrawal of resignation; effect of acceptance thereof, 770
   f. Verbal resignation, once accepted, makes resignation effective, 770
   g. Assumption of new job by employee prior to employer’s acceptance of resignation, effect, 771
   h. Employment elsewhere during the pendency of case, effect, 771
   i. Re-employment after acceptance of resignation, 771
   j. Resignation and execution of quitclaim, effect, 771
   k. Damages for which employee may be held liable under Article 285, 771
3. TERMINATION FOR JUST CAUSE, 771
   a. Just causes for termination of employment by employee, 771
   b. Notice not required, 772
4. SERIOUS INSULT, REQUISITES, 772
5. INHUMANE AND UNBEARABLE TREATMENT, REQUISITES, 772
6. COMMISSION OF CRIME, REQUISITES, 772
7. OTHER ANALOGOUS CAUSES - CONSTRUCTIVE DISMISSAL OR FORCED RESIGNATION, 772
   a. Concept, 772
   b. Constructive dismissal and forced resignation, distinguished, 772
   c. Voluntary resignation, not constructive dismissal, 773
   d. Instances of constructive dismissal or forced resignation, 773
   e. Resignation letter written and prepared by employer; effect, 774
   f. Resignation letters similarly worded and of same tenor, effect, 775
   g. Voluntariness of resignation may be inferred from the language thereof, 775
   h. Resignation of managerial employees and rank-and-file employees, distinguished, 775
   i. To vitiate consent, the threat leading to resignation must be unjust, 776
   j. Act of employer in giving the employee the choice between resignation or investigation, not illegal, 776
   k. Failure of employer to criminally prosecute employee who resigned, effect, 776
   l. Employee who alleges that she was coerced into resigning should prove such claim, 776
   m. Filing of complaint negates resignation; exception, 776
   n. Expression of gratitude to employer, effect, 777
   o. Special Voluntary Resignation (SVR) Program, held valid, 777
8. ABANDONMENT AS A FORM OF RESIGNATION, 777
   a. Abandonment and resignation, distinguished, 777
   b. Abandonment distinguished from constructive dismissal, 777
9. RESIGNATION PAY, 777
**TABLE OF CONTENTS**

**Article 286. When employment not deemed terminated**.......................... 778

1. TEMPORARY SUSPENSION OF OPERATIONS, AN EXERCISE OF MANAGEMENT PREROGATIVE, 778
2. SITUATIONS UNDER ARTICLE 286 WHEN EMPLOYMENT NOT DEEMED TERMINATED, 779
3. BONA-FIDE SUSPENSION OF OPERATION FOR SIX MONTHS, 779
   a. No law on temporary retrenchment or lay-off Article 286 applies only by analogy, 779
   b. Extent of suspension of operation, 779
   c. Six-month period applies only to bona-fide suspension of business or undertaking by employer, 779
   d. What constitutes “bona-fide” suspension of operation, 780
   e. Burden to prove bona-fide suspension of operation, 780
   f. Suggested grounds that may be invoked, 780
   g. Suspension of operation prior to closure, held as evidence of good faith, 780
   h. Compensation of employees during the six-month suspension, 780
   i. Within six months, employer-employee relationship deemed suspended, not terminated, 781
   j. The procedural requirements for termination of employment not relevant under Article 286, 781
   k. Employer may suspend his business operation for less than six months but not more, 781
   l. Suspension of work exceeding 6 months, effect, 782
   m. Period of 6 months - a defining cut-off in similar cases, 782
   n. Notification to the employees and the DOLE, 782
   o. Resumption of operation, 784
   p. When notice to resume work must be made by the employee, 784
   q. Effect if employee failed or refused to resume his work, 784
   r. Effect of employment in other establishment during 6 months period, 784
   s. Reinstatement to former position without loss of seniority rights, 784
   t. Payment of separation pay and other accrued benefits, 784

4. TEMPORARY “OFF-DETAIL” OR “FLOATING STATUS” UNDER ARTICLE 286, 785
   a. Temporary “off-detail” or “floating status” of security guards, 785
   b. Application of Article 286, 785
   c. Applicability of “floating status” rule to employees other than security guards, 786
   d. Legal consequence if off-detailed security guards are not re-assigned after six months, 786
   e. Off-detail status for 29 days, not constructive dismissal, 786

5. STOPPAGE OR SUSPENSION OF OPERATIONS BY THE GOVERNMENT, 786
   a. Stoppage or suspension of operation due to violation of law, 786
   b. Hearing, 787
   c. Payment of wages during period of stoppage or suspension of operations, 787
   d. Review of decision, 787
   e. Interference and injunction, prohibited, 787

6. FULFILLMENT OF MILITARY OR CIVIC DUTY, 787
   a. Constitutional mandate, 787
   b. Article 286 constitutes lawful and valid involuntary servitude, 788
   c. Employer cannot refuse military training of employee, 788
   d. Presidential Decree No. 183, 788
   e. Obligation of employer to pay salary during fulfillment of military or civic duty, 788
   f. Amount of wages to be paid during employee’s fulfillment of military or civic duty, 788
   g. Not all employers are liable to pay wages during period of military training, 789
   h. Six months period in Article 286 finds no application, 789
### Table of Contents

i. Employer-employee relationship is suspended during period of military training or performance of civic duty, 789
j. Employer should reinstate his employee after military training or performance of civic duty, 789

**Title II**  
**RETIREMENT FROM THE SERVICE**

**Article 287. Retirement**

1. **HISTORICAL PERSPECTIVE**, 790
   a. Retirement pay under the old provision of Article 287, 790
   b. The Llora vs. Drilon case, 791
   c. The Abaquin vs. Atienza case, 791
   d. The Esco Hale vs. NLRC case, 792

2. **REPUBLIC ACT NO. 7641 [RETIREMENT PAY LAW]**, 792
   a. What prompted enactment of the amendatory law, 792
   b. Coverage of Article 287, as amended by R. A. No. 7641, 793
   c. Employees not covered, 793
   d. Concept of retirement under Article 287, 793
   e. Contributory retirement plan, 795
   f. Right to non-contributory retirement plan, 795
   g. Optional or compulsory retirement, 795
   h. Who should exercise the option to retire?, 795
   i. May employers exercise the option to retire?, 796
   j. Retirement at an earlier or older age, 797
   k. Minimum 5-year service requirement; what are included, 797
   l. Interruption in the service, effect, 797
   m. Service in another firm, excluded in the computation of retirement benefits, 798
   n. Essence of retirement is termination of relationship, 798
   o. Extension of service beyond retirement, 798
   p. May an employer be compelled to extend service beyond retirement?, 798
   q. Retirement benefits, 799
   r. “One-half (½) month salary” means 22.5 days, 799
   s. Should 1/12 of 13th-month pay and 5 days of service incentive leave be included if the employees are not entitled thereto?, 800
   t. Exemption of retirement pay from tax, 800
   u. Penalty for violation of Retirement Pay Law, 801
   v. Non-diminution of retirement benefits, 801
   w. Gratuity pay and retirement pay; distinguished, 801
   x. Retroactive application of R. A. 7641, 801
   y. Cases where no retroactivity was granted, 802
   z. Liberal interpretation of retirement laws; exception, 802

3. **RETIREMENT AND DISMISSAL, DISTINGUISHED**, 803
   a. Retirement, 803
   b. Dismissal, 803
   c. Dismissal for cause, effect on entitlement to retirement benefits, 803

4. **RETIREMENT PAY AND SEPARATION PAY, DISTINGUISHED**, 803
   a. Distinctions, 803
   b. Cases where both separation pay and retirement pay must be paid, 804
   c. Case where separation pay was charged to retirement pay, 804
   d. Cases where employees are entitled only to one form of benefit, 804
   e. The provisions of the retirement plan are controlling, 805
   f. Forced retirement, 806
   g. Case of non-entitlement to retirement pay due to termination for cause, 806

5. **REPUBLIC ACT NO. 8558 [RETIREMENT OF UNDERGROUND MINE WORKERS]**, 806
   a. Special treatment of underground mine workers, 806
TABLE OF CONTENTS

b. Underground mine employee; meaning, 806
c. Optional retirement of underground mine employees, 806
d. Compulsory retirement of underground mine employees, 807
e. Minimum years of service requirement, 807
f. Retirement benefits of underground mine employees, 807
g. Components of one-half (½) month salary, 807
h. Underground mine employees who are paid by results, 807
i. Retirement under CBA or employment contract, 807
j. Exemption from tax of retirement pay, 808
k. Non-diminution of retirement benefits, 808
l. Penalty for violation of R. A. No. 8558, 808
6. RETIREMENT OF PART-TIME EMPLOYEES, 808
7. RETIREMENT IN PRIVATE EDUCATIONAL INSTITUTIONS, 808
   a. Policy Instructions No. 25, 808
   b. Retirement under Policy Instructions No. 25, 809
   c. Exercise of option to retire under Policy Instructions No. 25, 809
   d. PERAA benefits vis-à-vis retirement benefits under the law, 809
8. RETIREMENT IN PUBLIC SCHOOLS, 809
9. RETIREMENT OF PUBLIC HEALTH WORKERS, 809
10. REPUBLIC ACT NO. 7742
    [PAG-IBIG FUND AS SUBSTITUTE RETIREMENT PLAN], 809
11. SSS RETIREMENT PAY IS SEPARATE FROM
    RETIREMENT PAY UNDER THE LABOR CODE, 810
12. GSIS RETIREMENT BENEFITS, 810

BOOK SEVEN
TRANSITORY AND FINAL PROVISIONS

Title I
PENAL PROVISIONS AND LIABILITIES

Article 288. Penalties..................................................812
1. NATURE OF PENALTIES UNDER ARTICLE 288, 812
   a. When is a law considered a penal law?, 812
   b. Applicability of Article 288 as the general penalty clause of the Labor Code, 812
   c. Exceptions to coverage of Article 288, 812
2. INSTANCES WHERE THE LABOR CODE DECLARES CERTAIN ACTS
   UNLAWFUL OVER WHICH ARTICLE 288, AS THE GENERAL PENALTY
   CLAUSE IN THE LABOR CODE, MAY APPLY, 813
   a. Violation under Article 41, 813
   b. Violation under Article 77, 813
   c. Violation under Article 111 [a] and [b], 813
   d. Violation under Article 116, 813
   e. Violation under Article 117, 813
   f. Violation under Article 118, 813
   g. Violation under Article 119, 813
   h. Violation under Article 128 [d], 813
   i. Violation under Article 135, 813
   j. Violation under Article 136, 814
   k. Violation under Article 137 [a], [b] and [c], 814
   l. Violation under Article 241, 814
   m. Violation under Article 246, 814
   n. Violation under Articles 248 and 249 in relation to Article 247, 814
   o. Violation under Article 287, 814
3. INSTANCES NOT COVERED BY ARTICLE 288 BECAUSE THE LABOR CODE
   PROVIDES SEPARATE SPECIFIC PENALTIES THEREFOR, 814
4. INSTANCE WHEN THE AMENDATORY LAW PROVIDES FOR PENALTY WHICH, HOWEVER, IS NOT REFLECTED IN THE LABOR CODE, 815
5. VIOLATION BY ALIEN OR ALIEN ORGANIZATION, 815
   a. Violation under Article 39, 815
   b. Violation under Article 41, 816
   c. Violation under Article 288, 816
   d. Violation of Title VIII, Book V of the Labor Code, 816
6. JURISDICTION OVER CRIMINAL CASES, 816
   a. Under Article 241, 816
   b. Under Article 247, 816
   c. Under Article 272, 816
   d. Under Article 288, 816
7. CRIMINAL PROSECUTION UNDER THE LABOR CODE BARS PROSECUTION UNDER THE REVISED PENAL CODE, 816
8. APPLICATION OF PROCEDURAL REQUIREMENT UNDER ARTICLE, 817 TO CASES OTHER THAN ULP, 817

Article 289. Who are liable when committed by other than natural person...817
1. LIABILITY UNDER LABOR-RELATED SPECIAL LAWS, 817
   a. Rule on liability of responsible officers in labor-related special laws, 817
   b. Rationale for the law on liability, 818

Title II
PRESCRIPTION OF OFFENSES AND CLAIMS

Article 290. Offenses.................................................................820
1. PRESCRIPTIVE PERIOD OF OFFENSES, 820
   a. General rule, 820
   b. Exception; ULP cases, 820
   c. Pre-requisite for prosecution of criminal cases, 820
   d. Interruption of prescriptive period, 820
   e. Evidentiary value of the final judgment in the labor case, 820
   f. Consequence of non-compliance with prescriptive period, 821
   g. Illegal dismissal is not an “offense” under Article 290, 821
2. PRESCRIPTIVE PERIOD OF ACTIONS INVOLVING THE FUNDS OF THE UNION, 821
3. PRESCRIPTIVE PERIOD IN RELATED LAWS, 821
   a. Illegal recruitment, 821
   b. SSS violation, 821

Article 291. Money claims............................................................821
1. PRESCRIPTIVE PERIOD OF MONEY CLAIMS DURING THE REGIME OF THE LABOR CODE, 822
   a. Prescriptive period is 3 years, 822
   b. Money claims contemplated, 822
   c. Cause of action, elements, 822
   d. Meaning of “accrued” cause of action, 822
   e. Time to reckon prescription; date of filing of complaint, 825
   f. Prescription of claims for allowances and other benefits, 825
   g. Different prescriptive rule for service incentive leave, 825
   h. Incremental proceeds from tuition fee increases, 826
   i. Forfeiture of money claims already recovered under Article 129, 826
   j. Filing of a case with grievance machinery tolls the running of the prescriptive period, 826
2. PRESCRIPTIVE PERIOD OF MONEY CLAIMS PRIOR TO EFFECTIVITY OF LABOR CODE, 827
3. PRESCRIPTIVE PERIOD FOR ILLEGAL DISMISSAL, 827
4. PRESCRIPTIVE PERIOD OF EMPLOYEES’ COMPENSATION CLAIMS, 827
5. PRESCRIPTION OF MONEY CLAIMS AND DISCIPLINARY
<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>292.</td>
<td>Institution of money claims</td>
</tr>
<tr>
<td>293.</td>
<td>Application of law enacted prior to this Code</td>
</tr>
<tr>
<td>294.</td>
<td>Secretary of Labor to initiate integration of maternity leave benefits</td>
</tr>
<tr>
<td>295.</td>
<td>Funding of the Overseas Employment Development Board and the National Seamen’s Board referred to in Articles 17 and 20, respectively, of this Code shall initially be funded out of the unprogrammed fund of the Department of Labor and the National Manpower and Youth Council</td>
</tr>
<tr>
<td>296.</td>
<td>Termination of the workmen’s compensation program</td>
</tr>
<tr>
<td>297.</td>
<td>Continuation of insurance policies and indemnity bonds</td>
</tr>
<tr>
<td>298.</td>
<td>Abolition of the Court of Industrial Relations and the National Labor Relations Commission</td>
</tr>
<tr>
<td>299.</td>
<td>Disposition of pending cases</td>
</tr>
<tr>
<td>300.</td>
<td>Personnel whose services are terminated</td>
</tr>
<tr>
<td>301.</td>
<td>Separability provisions</td>
</tr>
<tr>
<td>302.</td>
<td>Repealing clause</td>
</tr>
</tbody>
</table>

1. LAWS REPEALED

---

-oOoOo-