I. GENERAL PROVISIONS

A. Basic Policy on Labor

1. What is the basic policy on labor?

The State shall afford protection to labor, promote full employment, equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work *(LABOR CODE, Art. 3)*.

B. Construction in Favor of Labor

2. N Manufacturing hired O as a shipping expediter on a probationary basis for a period of six (6) months. Before the end of the probationary period, O received a memorandum terminating his employment in view of his failure to meet performance standards set by the company but without indicating the particular acts or instances showing O's poor performance. To contest the dismissal, O filed a complaint for illegal dismissal. N Manufacturing argued that O, being a mere probationary employee, may be validly dismissed when he failed to qualify reasonable standards and that employers should be given leeway in the application of his right to choose efficient workers. If you were the judge, how will you rule on the given argument?

If I were the judge, I will not sustain the argument of N Manufacturing. Article 4 of the Labor Code provides that all doubts in the implementation and interpretation of the provisions of the Labor Code shall be resolved in favor of labor. Thus, in the interpretation of the protection to labor and social justice provisions of the Constitution and the labor laws and rules and regulations implementing the constitutional mandate, the Supreme Court has always adopted the liberal approach which favors the exercise of labor rights. While the right of an employer to freely select or discharge his employees is recognized, the same is subject to regulation by the State in the exercise of its paramount police power. In this case, N Manufacturing failed to substantiate its claim that O was indeed inefficient and failed to meet its performance standards *(Euro-Linea v. NLRC, G.R. No. 75782, December 1, 1987)*.

3. A was employed by X Company as a sales assistant. M, the store manager, accused A of stealing money from the cashier box and thereafter dismissed A. In the illegal dismissal case filed by A before the Labor Arbiter, A denied the allegations. In ruling in favor of A, the Labor Arbiter held that the sole testimony of B was doubtful and thus applied Article 4 of the Labor Code in the appreciation of the evidence in favor of A as a laborer. On appeal to the NLRC, the decision of the Labor Arbiter was reversed when it was held that Article 4 cannot be applied if the doubt relates to the evidence. NLRC explained that Article 4 applies only when the doubt involves the "implementation and interpretation" of the Labor Code provisions. Is the NLRC correct?

No, the NLRC is not correct. Article 4 of the Labor Code provides that all doubts in the implementation and interpretation of the provisions of the Labor Code shall be resolved in favor of labor. The rule enunciated in Article 4 of the Labor Code has been consistently applied in the appreciation of evidence in labor proceedings. Thus, the consistent rule is that if doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter. In the case at bar, M failed to establish his accusation with substantial evidence. As between the bare allegation of M and the clear denial of A, the scales of justice shall be tilted in favor of A *(Dreamland Hotel Resort v. Johnson, G.R. No. 191455, March 12, 2014)*.

C. Constitutional and Civil Code provisions relating to Labor Law

4. What provisions in the 1987 Constitution are relevant to Labor Law?

The following are the constitutional provisions relevant to Labor Law:

a. State Policies (CONST., Art. II, Secs. 9, 10, 18, and 20)
   i. Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all;
   ii. Sec. 10. The State shall promote social justice in all phases of national development;
   iii. Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare; and
   iv. Sec. 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

b. Bill of Rights (CONST., Art. III, Sections 4, 8, 10, 16, and 18(2))
   i. Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances;
   ii. Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law, shall not be abridged;
   iii. Sec. 10. No law impairing the obligation of contracts shall be passed;
   iv. Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies; and
   v. Sec. 18 (2). No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

c. Social Justice (CONST., Art. XIII, Sections 2, 3, 13, and 14)
   i. Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance;
   ii. Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

   It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

   The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

   The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth;

   iii. Sec. 13. The state shall establish a special agency for disabled persons for their rehabilitation, self-development and self-reliance and their integration into the mainstream of society; and
   iv. Sec. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

5. What Civil Code provisions are relevant to Labor Law?

The following are the Civil Code provisions relevant to Labor Law:

a. Article 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.
b. Article 1701. Neither capital nor labor shall act oppressively against the other or impair the interest or convenience of the public.
c. Article 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living of the laborer.
d. Article 1703. No contract which practically amounts to involuntary servitude, under any guise whatsoever, shall be valid.

II. PRE-EMPLOYMENT

A. Recruitment and Placement of Local and Migrant Workers (Labor Code and RA 8042, as amended by RA 10022)

ILLEGAL RECRUITMENT AND OTHER PROHIBITED ACTIVITIES

6. While in Iloilo, V introduced herself to L, M, N and O as a recruiter of workers for Malaysia and showed them a job order and calling card. Believing such representations, L, M, N and O submitted their applications and paid PhP10,000 to V. After about a month, V informed them that they cannot be deployed and that the fees collected cannot be returned anymore. V explained that the visa or the medical certificates had already expired. Suspicious on the matter, they later discovered upon inquiry that V did not have authority to recruit. Is V guilty of any crime?

Yes, V is guilty of illegal recruitment in large scale. Article 38 of the Labor Code provides that any recruitment activity to be undertaken by non-licensee or non-holders of authority shall be deemed illegal and punishable. Section 6 of R.A. No. 8042, as amended, also provides that illegal recruitment includes the failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment in cases where the deployment does not actually take place without the worker's fault. In either case, such illegal recruitment is deemed committed in large scale if committed against three or more persons individually or as a group. In the present case, A was a non-licensee or non-holder of authority to recruit workers for deployment abroad; she offered or promised employment abroad to more than three private complainants; she received monies from said complainants purportedly as placement or processing fees and complainants were not actually deployed to Malaysia *(People of the Philippines v. Gilda Abellanosa, G.R. No. 214340, July 19, 2017, **Covered Case**)*.

7. H was introduced to M as a person who can facilitate papers for workers. During a meeting, H explained the requirements for working as a teaching personnel in UK. H also showed pictures of other people she had supposedly helped to get employment. With such representations, M agreed to apply for work in the UK. M paid PhP150,000 for which H promised to personally process the visa application. After repeated but vain follow-ups, M discovered that H did not have any license or authority to recruit. In the case for illegal recruitment, H did not dispute her lack of license or authority to conduct recruitment activities, but she maintained that the transaction was only for securing a visa which did not qualify as a "recruitment activity". Is the argument of H tenable?

The argument is not tenable. Illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes. Non-license holders are liable by the simple act of engaging in recruitment and placement activities. Under Article 13(b) of Presidential Decree No. 442, as amended, also known as the Labor Code of the Philippines, recruitment and placement refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contact services, promising or advertising for employment, locally or abroad, whether for profit or not. It is the absence of the necessary license or authority to recruit and deploy workers that renders the recruitment activity unlawful. To prove illegal recruitment, it must be shown that the accused gave the complainants the distinct impression that she had the power or ability to deploy the complainants abroad in a manner that they were convinced to part with their money for that end *(People of the Philippines v. Erlinda A. Sison "Margarita S. Aguilar", G.R. No. 187160, August 9, 2017, **Covered Case**)*.

8. X is the President of ABC Company, a duly registered recruitment agency whose license is temporarily suspended. During the period of suspension, X promised employment abroad to A, B, C, D, and E in consideration of placement fees. X failed to deploy A, B, C, D, and E, and no reimbursements were made on their placement fees. In a prosecution for illegal recruitment in large scale, X claimed that she could not have committed the said crime because ABC Company's license was only temporarily suspended. Is X liable for illegal recruitment in large scale?

Yes, X is liable for illegal recruitment in large scale. Under Sec. 6 of R.A. No. 8042, as amended, the failure to reimburse expenses, in cases where deployment does not actually take place without the worker's fault, is considered as illegal recruitment. X's contention that she was a holder of a license to operate as a recruiter during the period when the crimes were committed does not matter because she was still performing an act considered to be an illegal recruitment by failing to reimburse the expenses incurred by the complainants. Therefore, X is liable for illegal recruitment *(People v. Molina, G.R. No. 207811, June 1, 2016, **Covered Case**)*.

9. What are the other prohibited activities under Art. 34, and considered as illegal recruitment under R.A. 8042, as amended by R.A. No. 10022?

The following acts are the prohibited activities under Art. 34, and considered as illegal recruitment under Sec. 6 of R.A. No. 8042 (as amended by R.A. No. 10022):

- **Illegal exaction** – To charge greater amount than that specified in the schedule of allowable fees;
- **False information** – To furnish any false information in relation to recruitment or employment;
- **False statements** – To give any false notice, testimony, etc. or commit any act of misrepresentation to secure a license or authority;
- **Obstruct inspection** – To obstruct or attempt to obstruct inspection by the Labor Secretary or his authorized representatives;
- **Unjustified non-deployment** – Failure to deploy a contracted worker without a valid reason as determined by the DOLE;
- **Non-reimbursement upon failure** – Failure to reimburse expenses incurred by the worker in connection with the documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault;
- **Delegation to an alien** – To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency;
- **Withholding travel documents** – To withhold travel documents from applicant workers before departure for unauthorized monetary considerations;

- **Influencing not to employ** – To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- **Travel agency officer recruiting** – To become an officer or member of the board of any corporation engaged in the management of a travel agency;
- **Harmful jobs** – To engage in the recruitment or placement of jobs harmful to public health, morality or to the dignity of the Philippines;
- **Alteration of contracts** – To substitute or alter employment contracts without the approval of the Labor Secretary;
- **Failure to comply with rules and regulations** – To fail to file reports on the status of employment, placement, etc. and such other matters as may be required by the Labor Secretary;
- **Pirating** – To induce or attempt to induce a worker to quit his job in lieu of another offer unless it is designed to liberate the worker from oppressive terms of employment.

Elements

10. K was employed with R Agency as a cashier. Under direction of her employer, K recruited A, B, C, D and E for overseas employment and assured them that R Agency can deploy them to Taiwan as factory workers. Being the cashier, K received the payments of the said applicants and transmitted the same to the company treasurer. However, the applicants were never deployed. When they found out that K did not have any license or authority to recruit, they filed a criminal complaint for illegal recruitment in large scale against K. In her defense, K contended that she cannot be held liable for illegal recruitment because she did not benefit from the transaction and that only her employer should be held liable. Is the contention correct?

No, the contention is not correct. For illegal recruitment in large scale to prosper, the prosecution has to prove three essential elements: (1) the accused undertook a recruitment activity under Article 13(b) or any prohibited practice under Article 34 of the Labor Code; (2) the accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers; and (3) the accused committed such illegal activity against three or more persons individually or as a group. In this case, all the elements are present. K cannot escape liability by conveniently limiting her participation as a cashier of R Agency. Section 6 of RA 8042, as amended, is equivocal that illegal recruitment may or may not be for profit. It is immaterial therefore whether K remitted the placement fee to the agency treasurer or appropriated them. Even if K was a mere cashier, such fact did not make her any less an employee to be held liable for illegal recruitment as principal by direct participation, together with the employer, as it was shown that she actively and consciously participated in the recruitment process *(People v. Chua, G.R. No. 184058, March 10, 2010)*.

Types of illegal recruitment

11. When is illegal recruitment considered a crime of economic sabotage? Explain briefly. *(2002, 2007, 2015 Bar)*

Under Section 6 of RA 8042, as amended, illegal recruitment is considered a crime of economic sabotage when committed by a syndicate or in large scale. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme which is an act of illegal recruitment. Meanwhile, illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Illegal recruitment vs. *Estafa*

12. Differentiate illegal recruitment and *estafa*.

The following are the differences between illegal recruitment and *estafa:*

- As to nature: Illegal recruitment is *malum prohibitum* where criminal intent is not necessary, whereas *estafa* is *malum in se* where criminal intent is necessary;
- As to governing law: Illegal recruitment is penalized under the Labor Code, whereas *estafa* is penalized under the Revised Penal Code;
- As to scope: Illegal recruitment is limited to acts related to recruitment activities, whereas *estafa* is wider in scope covering deceits whether related to recruitment activities or not.

LIABILITY OF LOCAL RECRUITMENT AGENCY AND FOREIGN EMPLOYER

13. X, a seafarer, signed a POEA-approved contract of employment with RV Company, with a duration of nine (9) months. The employment contract provides that the employer-employee relationship shall commence only upon the seafarer's actual departure from the port in the point of hire in Manila. Five days before the departure from Manila to Canada, the company informed X that he would not be allowed to leave for Canada because the company feared that he might jump ship. X filed a complaint for illegal dismissal, overtime pay, damages and attorney's fees with the Labor Arbiter against RV Company. In its defense, RV Company argued that the jurisdiction of the Labor Arbiter is limited to claims arising out of an employer-employee relationship and since such relationship did not commence without the seafarer's actual departure, it moved for the dismissal of the complaint for lack of jurisdiction. Is the motion to dismiss proper?

No, the motion to dismiss is not proper. Section 10 of R.A. No. 8042 (as amended) provides that the Labor Arbiter shall have the original and exclusive jurisdiction to hear and decide claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary, and other forms of damage. In *Santiago v. CF Sharp Crew Management*, the Supreme Court made a distinction between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the employment contract occurs when the parties agree on the object and cause, as well as the rest of the terms and conditions therein. On the other hand, the employer-employee relationship commences when the worker is actually deployed from the point of hire. Thus, even before the start of the employer-employee relationship, contemporaneous with the perfection of the employment contract is the birth of certain right and obligations, the breach of which may give rise to a cause of action against the erring party. Applying to the case at bar, the claim is based on the employment contract entered into between X and RV Company for overseas employment. Therefore, X's claims are cognizable by the Labor Arbiter *(Santiago v. CF Sharp Crew Management, Inc., G.R. No. 162419, July 10, 2007)*.

Solidary liability

14. In 2012, H filed a complaint for permanent total disability against X Manning Agency and B, the company president. H alleged that he fell on deck while lifting heavy loads of lube oil drum, with his left arm hitting the floor. The incident resulted in his being permanently unfit for further sea service. While the LA and NLRC held that there was no permanent disability, X Manning Agency and B were held solidarily liable for payment of temporary disability benefits. B contended that he cannot be held liable without showing that he acted beyond the scope of his authority or with malice. Is the argument of B correct?

No, B's argument is incorrect. Section 10 of RA 8042, as amended, expressly provides for joint and solidary liability of corporate directors and officers with the recruitment/placement agency for all money claims or damages that may be awarded to Overseas Filipino Workers (OFWs). While a corporate director, trustee, or officer who entered into contracts in behalf of the corporation generally cannot be held personally liable for the liabilities of the latter, in deference to the separate and distinct legal personality of a corporation from the persons composing it, personal liability of such corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach when he is made by a specific provision of law personally answerable for his corporate action, as in this case *(Gargallo v. Dohle Seafront Crewing et al., G.R. No. 215551, August 17, 2016)*.

Theory of Imputed Knowledge

15. S, a local recruitment agency, deployed D to Hongkong under a 12-month contract as a domestic helper for the foreign employer, Y. Unknown to the local agency, D and Y agreed to extend the employment for two more years under a second contract. When D returned to the Philippines, she filed a complaint against S for underpayment of salaries and refund of tax payments under such second contract. In its defense, S argued that it cannot be held liable under the extended contract which it had no knowledge of. Meanwhile, D insists that S, as local recruitment agency, is solidarily liable because he is charged with knowledge of the extended contract under the theory of imputed knowledge. Is the argument of D valid?

No, the argument of D is not valid. The theory of imputed knowledge ascribes the knowledge of the agent to the principal-foreign employer, and not the other way around. The knowledge of the principal-foreign employer Y cannot, therefore, be imputed to its agent S. There being no substantial proof that S knew of and consented to be bound under the 2-year employment contract extension, it cannot be said to be privy thereto. As such, it and its "owner" cannot be held solidarily liable for any of D's claims arising from the 2-year employment extension *(Sunace International Management Service v. NLRC, G.R. No. 161757, January 25, 2006)*.

Note: Section 10 of Republic Act No. 8042 provides that unlawfully dismissed overseas workers are entitled to the reimbursement of his or her placement fee with an interest rate of 12% per annum. BSP Circular No. 799 which revised the interest rate for forbearance from 12% to 6% in the absence of stipulation is not applicable when there is a law that states otherwise. However, awards of salary for the unexpired portion of the employment contract under Republic Act No. 8042 are covered by Circular No. 799 because the law does not provide for a specific interest rate that should apply *(R.A. No. 8042, as amended; Sameer Overseas Placement v. Cabilles, August 5, 2014)*.

TERMINATION OF CONTRACT OF MIGRANT WORKER WITHOUT JUST OR VALID CAUSE

16. X Agency hired P as an assistant cook onboard *Royale*, a cruise ship belonging to a foreign principal, Z Cruise Lines. He signed a one-year contract where he was mainly tasked to assist the chief cook in preparing meals. Sometime during his 3rd month, C began harassing P while at work. In dire need of income, P tolerated the acts of the chief cook until he was suddenly told that his services would be terminated as soon as the cruise ship arrives at the next port, in Thailand. P had to spend his own money to go back home. Upon arriving in the Philippines, P filed a money claim with the NLRC, which ruled that there was illegal dismissal. Thus, the NLRC awarded full reimbursement of his placement fee with interest at 12% per annum and the payment of his salaries for the unexpired portion of the contract. X Agency and Z Cruise Lines argued that pursuant to R.A. 8042, as amended by R.A. 10022, P shall only be entitled to three months for every year of the unexpired term, since it is less than the unexpired term of the contract. Is the contention of X Agency and Z Cruise Lines tenable?

No, the contention is not tenable. Section 10 of R.A. No. 8042, as amended, provides that in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less. In the case of *Serrano v. Gallant Maritime Services Inc.*, the Court has declared the clause "or for three (3) month for every year of the unexpired term, whichever is less" as unconstitutional for violating the equal protection clause and substantive due process. Accordingly, P is entitled to full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion the contract *(R.A. No. 8042, as amended; Sameer Overseas Placement v. Cabilles, G.R. No. 170139, August 5, 2014)*.

BAN ON DIRECT HIRING

17. What is the rule on direct hiring of migrant workers?

Article 18 of the Labor Code provides that no employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Thus, no employer shall directly hire an Overseas Filipino Worker for overseas employment *(LABOR CODE, Art. 18; Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased OFW, Sec. 123)*.

However, the rule is not absolute. The 2016 Revised POEA Rules and Regulations state that the following are exempted from the ban on direct hiring:

a. Members of the diplomatic corps;
b. International organizations;
c. Heads of state and government officials with the rank of at least deputy minister; or
d. Other employers as may be allowed by the Secretary of Labor and Employment, such as:
    i. Those provided in (a), (b) and (c) who bear a lesser rank, if endorsed by the POLO, or Head of Mission in the absence of the POLO;
    ii. Professionals and skilled workers with duly executed/authenticated contracts containing terms and conditions over and above the standards set by the POEA. The number of professional and skilled Overseas Filipino Workers hired for the first time by the employer shall not exceed five (5). For the purpose of determining the number, workers hired as a group shall be counted as one; or
    iii. Workers hired by a relative/family member who is a permanent resident of the host country *(Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased OFW, Sec. 124).*