

Ateneo de Manila University
Labor Laws I
 Post-Midterm

Title	Facts	Holding
Module 3: Working Conditions		
Management prerogative		
San Miguel Brewery Sales v. Ople	<p>SMC Sales Force Union and SMC had a CBA, which provided that employees are entitled to a basic monthly compensation plus commission based on their respective sales. The following year, SMC introduced a complementary distribution system (CDS) whereby its beer products were offered for sale directly to wholesalers through SMC's sales offices. The union filed a complaint for unfair labor practice (ULP), with a notice of strike on the ground that the CDS was contrary to the CBA. The minister of labor dismissed the union's notice of strike.</p> <p>Was the CDS contrary to the CBA? <u>NO</u></p>	<p><i>Except as limited by special laws</i>, an employer is free to regulate, according to his own discretion and judgment, <i>all aspects of employment</i>, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work.</p> <p>So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.</p>
PT&T v. NLRC	<p>Grace de Guzman was hired as a supernumerary project worker. Her employment was to be terminated upon expiration of the period. A month after her services were terminated, she applied as a probationary employee. In the job application form, she indicated in the portion for civil status therein that she was single, although she had contracted marriage a few months earlier. Upon learning that she's actually married, the company sent a letter to Grace on Jan. 15, 1992, requiring her to explain, and she was reminded of the company's policy of not accepting married women. Grace said she was not aware of the company policy. However, the company dismissed her on Jan. 29. Aggrieved, she filed a complaint for illegal dismissal.</p> <p>Was Grace illegally dismissed? <u>YES</u></p>	<p>An employer is free to regulate, according to his discretion and best business judgment, all aspects of employment, from hiring to firing, except in cases of unlawful discrimination or those which may be provided by law.</p> <p>PT&T's policy of not accepting any woman worker who contracts marriage runs afoul of the right against discrimination.</p> <p>A requirement that a woman employee must remain unmarried could be justified as a "bona fide occupational qualification," or BFOQ, where the particular requirements of the job would justify the same, but <u>not on the ground of a general principle</u>, such as the desirability of spreading work in the workplace. A requirement of that nature would be valid provided it reflects an inherent quality reasonably necessary for satisfactory job performance.</p>
Ymbong v. ABS-CBN	<p>In 1996, ABS-CBN issued a policy on employees seeking public office. In sum, the policy requires any employee who intends to run at least 30 days prior to the filing of COC. Any employee who likewise intends to join a political party or to openly and aggressively campaign for a candidate/group of candidates must</p>	<p>The company may nevertheless validly require them to resign as a matter of policy. In this case, the policy is justified on the following grounds: <i>Working for the government and the company at the same time is clearly disadvantageous and prejudicial to the rights and interest not only of the company but the public as well. In the</i></p>

	<p>file a leave of absence (LOA). Consequently, Ymbong and Patalinghug ran in the 1998 local elections. Ymbong filed a LOA, while Patalinghug resigned. They both lost, but ABS-CBN agreed to reinstate them just to wind-up the radio drama. Eventually, they were dismissed, prompting the two to file a complaint for illegal dismissal against ABS-CBN.</p> <p>Is the policy valid? <u>YES</u></p>	<p><i>event an employee wins in an election, he cannot fully serve, as he is expected to do, the interest of his employer. The employee has to serve two employers, obviously detrimental to the interest of both the government and the private employer. In the event the employee loses in the election, the impartiality and cold neutrality of an employee as broadcast personality is suspect, thus readily eroding and adversely affecting the confidence and trust of the listening public to employer's station.</i></p> <p>So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.</p>
Goya v. Goya Employees Union	<p>Goya Inc. hired contractual employees from PESO to perform temporary and occasional services in its factory. This prompted the Union to request for a grievance conference on the ground that the contractual workers do not belong to the categories of employees stipulated in the existing CBA. The Union asserted that the hiring of contractual employees from PESO is not a management prerogative and in gross violation of the CBA tantamount to unfair labor practice. The voluntary arbitrator (VA) dismissed the Union's complaint, but also found Goya violating the CBA.</p> <p>Did Goya violate the CBA? <u>YES</u></p>	<p>Declaring that a particular act falls within the concept of management prerogative is significantly different from acknowledging that such act is a valid exercise thereof. What the VA and the CA correctly ruled was that the Company's act of contracting out/outsourcing is within the purview of management prerogative. Both did not say, however, that such act is a valid exercise thereof. Obviously, this is due to the recognition that the CBA provisions agreed upon by the Company and the Union delimit the free exercise of management prerogative pertaining to the hiring of contractual employees.</p>
Tabuk MPC v. Duclan	<p>Tabuk Multi-Purpose Cooperative Inc. (TAMPCO) introduced Special Investment Loans (SIL) to its qualified member-borrowers. Duclan is TAMPCO's cashier. The TAMPCO BOD issued board actions limiting, then halting the grant of SILs, pending collection of outstanding loans. Despite the issuance of the board resolutions, additional SILs were granted to Falgui and Kotoken, which were approved and released by Duclan. Thus, following a fact-finding, Duclan was dismissed. Aggrieved, Duclan filed a complaint for illegal dismissal. Duclan pointed out that the former GM of TAMPCO was allowed to retire, despite also approving the loans.</p> <p>Was Duclan illegally dismissed? <u>NO</u></p>	<p>The law protects both the welfare of employees and the prerogatives of management. Courts will not interfere with prerogatives of management on the discipline of employees, as long as they do not violate labor laws, collective bargaining agreements if any, and general principles of fairness and justice.</p> <p>Moreover, management is not precluded from condoning the infractions of its employees; as with any other legal right, the management prerogative to discipline employees and impose punishment may be waived.</p>
Coverage		

<p>National Sugar Refineries Corp. v. NLRC</p>	<p>Should supervisory employees be considered as officers/members of the managerial staff and hence are not entitled to overtime rest day and holiday pay? <u>YES</u></p>	<p>In determining whether an employee is within the terms of the statutes, the criterion is the <u>character of the work performed</u>, rather than the title of the employee's position.</p> <p>Officers or members of the managerial staff:</p> <ol style="list-style-type: none"> 1. Their primary duty consists of the performance of work directly related to management policies of their employer 2. They customarily and regularly exercise discretion and independent judgment 3. They regularly and directly assist the managerial employee whose primary duty consist of the management of a department of the establishment in which they are employed 4. They execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge 5. They execute, under general supervision, special assignments and tasks 6. They do not devote more than 20% of their hours worked in a work-week to activities which are not directly and clearly related to the performance of their work hereinbefore described
<p>Ramil v. Stoneleaf Inc.</p>	<p>Ramil was hired as a spa supervisor of Stoneleaf. Ramil was also an incorporator/director in Stoneleaf's Articles of Incorporation. One day, Ramil was told to act as a cashier. However, it was discovered that on said day, P350 was missing and a transaction was not recorded in the computer. Thus, Stoneleaf dismissed Ramil due to serious misconduct, betrayal of trust and loss of confidence. This prompted Ramil to file a complaint for illegal dismissal. The LA dismissed the complaint, but ordered Stoneleaf to pay her SIL, holiday pay, and prorated 13th month pay. The CA, however, modified the award, and removed said monetary benefits as Ramil was a supervisory/managerial employee.</p> <p>Is Ramil entitled to the SIL, holiday pay, prorated 13th month pay and attorney's fees? <u>YES</u></p>	<p>The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer, and whether such authority is not merely routine or clerical in nature, but requires the use of independent judgment. Simply put, the functions of the position are not managerial in nature if they only execute approved and established policies leaving little or no discretion at all whether to implement said policies or not.</p> <p>Ramil is a fiduciary rank-and-file employee. <i>Wesleyan University Phils. v. Reyes</i> defines a fiduciary rank-and-file employee as one who in the normal and routine exercise of his/her functions regularly handles significant amounts of money or property.</p>
<p>Peñaranda v. Banganga Plywood Corp.</p>	<p>Peñaranda was hired as an employee of Baganga Plywood Corporation (BPC) to take charge of the operations and maintenance of its steam plant boiler. In May 2001, Peñaranda filed a Complaint for illegal dismissal with money claims against BPC and its general manager, Hudson Chua, before the NLRC. The LA ruled that there was no illegal dismissal, but he was nevertheless entitled to overtime pay, premium pay for working on rest days, and attorney's fees. The NLRC, however, deleted the award, holding</p>	<p>Article 82 of the Labor Code exempts managerial employees from the coverage of labor standards. Under this provision, managerial employees are those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision.</p> <p>The Implementing Rules of the Labor Code state that managerial employees are those who meet the following conditions:</p>

	<p>that Peñaranda was a managerial employee.</p> <p>Is Peñaranda a managerial employee? <u>NO, but he is a member of the managerial staff.</u></p>	<ol style="list-style-type: none"> 1. Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof; 2. They customarily and regularly direct the work of two or more employees therein; and 3. They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight. <p>Like managerial employees, officers and member of the managerial staff are not entitled to the provisions of law on labor standards. The Implementing Rules of the Labor Code define members of a managerial staff as those with the following duties and responsibilities:</p> <ol style="list-style-type: none"> 1. The primary duty consists of the performance of work directly related to management policies of the employer; 2. Customarily and regularly exercise discretion and independent judgment; 3. - <ol style="list-style-type: none"> a. Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or b. Execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or c. Execute under general supervision special assignments and tasks; and 4. Who do not devote more than 20 percent of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above. <p>His work necessarily required the use of discretion and independent judgment to ensure the proper functioning of the steam plant boiler. As supervisor, petitioner is deemed a member of the managerial staff.</p>
<p>San Miguel Brewery Inc. v. Democratic Labor Organization</p>	<p>After the morning roll call, the employees leave the plant of the company to go on their respective sales routes either at 7:00 a.m. for soft drinks trucks, or 8:00 a.m. for beer trucks. They do not have a daily time record. The company never require them to start their work as outside sales personnel earlier than the above schedule.</p>	<p>We are in accord with this view, for in our opinion <u>the Eight-Hour Labor Law only has application where an employee or laborer is paid in a monthly or daily basis, or is paid a monthly or daily compensation</u>, in which case, if he is made to work beyond the requisite period of 8 hours, he should be paid the additional</p>

	<p>The sales routes are so planned that they can be completed within 8 hours at most, or that the employees could make their sales on their routes within such a number of hours variable in the sense that sometimes they can be completed in less than 8 hours, sometimes 6 or 7 hours, or more. The moment these outside or field employees leave the plant and while in their sales routes they are on their own; and oftentimes when the sales are completed, or when making short trip deliveries only, they go back to the plant, load again, and make another round of sales. These employees receive monthly salaries and sales commission in variable amounts. The amount of compensation they receive is uncertain depending upon their individual efforts or industry. Besides the monthly salary, they are paid sales commission that range from P30, P40, sometimes P60, P70, to sometimes P90, P100, and P109 a month, at the rate of P.01 to P.01 1/2 per case.</p> <p>Are the employees entitled to overtime compensation as required by the 8-hour labor law? <u>NO</u></p>	<p>compensation prescribed by law.</p> <p>This law has no application when the employee or laborer is paid on a piece-work, “pakiao,” or commission basis, regardless of the time employed. The philosophy behind this exemption is that his earnings are in the form of commission based on the gross receipts of the day. His participation depends upon his industry so that the more hours he employs in the work the greater are his gross returns and the higher his commission. In lieu of overtime he ordinarily receives commissions as extra compensation.</p>
<p>Labor Congress of the Philippines v. NLRC</p>	<p>99 employees of Empire Food Products filed against the management a complaint for payment of money claims and for violation of labor standard laws. The Union argued that they were underpaid.</p> <p>Were the employees—who were piece-rate workers—entitled to the benefits (e.g., holiday pay, premium pay, 13th month pay and SIL)? <u>REMAND</u></p>	<p><u>Field personnel</u> and other employees whose time and performance is unsupervised by the employer, including those who are engaged on <u>task or contract basis, purely commission basis</u>, or those who are <u>paid a fixed amount for performing work irrespective of the time consumed in the performance thereof</u> are excluded from receiving nighttime pay, holiday pay, service incentive leave and 13th month pay.</p> <p>Piece workers are specifically mentioned as being entitled to holiday pay.</p> <p>Piece-rate basis workers are to be paid 13th month pay.</p> <p>As to overtime pay, the rules, however, are different. Workers who are paid by results including those who are paid on piece-work, takay, pakiao, or task basis, if their output rates are in accordance with the standards prescribed under Sec. 8, Rule VII, Book III, of these regulations, or where such rates have been fixed by the Secretary of Labor in accordance with the aforesaid section, are <u>not entitled to receive overtime pay</u>.</p>
<p>David v. Macasio</p>	<p>Macasio filed before the LA a complaint against David for nonpayment of overtime pay, holiday pay, and 13th month pay. He also claimed payment for service incentive leave (SIL). David countered that Macasio is hired on a “pakyaw” or task basis, because he received the fixed amount of P700.00 per engagement, regardless of the actual number of hours that he</p>	<p>A distinguishing characteristic of “pakyaw” or task basis engagement, as opposed to straight-hour wage payment, is the non-consideration of the time spent in working.</p> <ul style="list-style-type: none"> - In task-basis work, the emphasis is on the task itself, in the sense that payment is reckoned in terms of completion of the work, not in terms of the number of time spent in the

spent chopping the delivered hogs.

Is Macasio entitled to the said benefits? PARTLY

completion of work.

- Once the work or task is completed, the worker receives a fixed amount as wage, without regard to the standard measurements of time generally used in pay computation.

On Holiday and SIL pay

[Holiday] Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof are not entitled to a holiday pay.

[SIL] Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof are not entitled to SIL pay.

General rule: Holiday and SIL pay provisions cover all employees.

- To be excluded from their coverage, an employee must be one of those that these provisions expressly exempt, strictly in accordance with the exemption.
- Under the IRR, exemption from the coverage of holiday and SIL pay refer to “field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis.” Note that unlike Article 82 of the Labor Code, the IRR on holiday and SIL pay do not exclude employees “engaged on task basis” as a separate and distinct category from employees classified as “field personnel.” Rather, **these employees are altogether merged into one classification of exempted employees.**

In short, the payment of an employee on task or *pakyaw* basis alone is insufficient to exclude one from the coverage of SIL and holiday pay. They are exempted from the coverage of Title I (including the holiday and SIL pay) only if they qualify as “field personnel.”

In determining whether workers engaged on “pakyaw or task basis” is entitled to holiday and SIL pay, the presence (or absence) of employer supervision as regards the worker's time and performance is the key: if the worker is simply engaged on pakyaw or task basis, then the general rule is that he is entitled to a holiday pay and SIL pay unless exempted from the exceptions specifically

		<p>provided under Article 94 (holiday pay) and Article 95 (SIL pay) of the Labor Code. However, if the worker engaged on a pakyaw or task basis also falls within the meaning of “field personnel” under the law, then he is not entitled to these monetary benefits.</p> <p>In this case, Macasio is not a field personnel because he performs his duties at the principal place of business, his actual hours of work could be determined with reasonable certainty, and David supervised his time and performance of duties.</p> <p>On 13th month pay Under Section 3 (e), “employers of those who are paid on ... task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof” are exempted.</p> <ul style="list-style-type: none"> - Unlike the Labor Code IRR, the IRR on PD 851 exempts employees “paid on task basis” without any reference to field personnel. - Thus, Macasio is not entitled to 13th month pay.
Hours of work		
Manila Terminal Co. v. CIR	<p>The Manila Terminal Company Inc. (MTC) hired 30 men as watchmen on 12-hour shifts at a compensation of P3/day for the day shift and P6/day for the night shift. The watchmen of the petitioner continued in the service with a number of substitutions and additions, their salaries having been raised during the month of February to P4 per day for the day shift and P6.25 per day for the night shift. On May 24, 1947, MTC instituted the system of strict 8-hour shifts. Eventually, the Manila Terminal Relief and Mutual Aid Association filed a petition with the Court of Industrial Relations praying that MTC be ordered to pay to its watchmen overtime pay from the commencement of their employment.</p> <p>Are the workers entitled to overtime pay? <u>YES</u></p>	<p>The Eight-Hour Law, in providing that any agreement or contract between the employer and the laborer or employee contrary to the provisions of this Act shall be null and void <i>ab initio</i>, intended said provision for the benefit of the laborers or employees. The Association cannot be said to have impliedly waived the right to overtime compensation, for the obvious reason that they could not have expressly waived it.</p>
San Juan De Dios Hospital Employees Association v. NLRC	<p>The Union sent to management a request for the implementation and payment of the 40-hours/5-day workweek with compensable weekly 2 days off. The Union’s basis is Policy Instruction No. 54 of Labor Sec’y Drilon: That personnel in subject hospital and clinics are entitled to a full weekly wage for seven days if they have completed the 40-hour/5-day workweek in any given workweek.</p> <p>Are the workers entitled to the statutory benefits? <u>NO</u></p>	<p>A cursory reading of art. 83 of the Labor Code betrays petitioners’ position that hospital employees are entitled to a full weekly salary with paid two (2) days’ off if they have completed the 40-hour/5-day workweek. What art. 83 merely provides are:</p> <ol style="list-style-type: none"> 1. The regular office hour of 8 hours a day, 5 days per week for health personnel; and 2. Where the exigencies of service require that health personnel work for 6 days or 48 hours then such health personnel shall be entitled to an additional compensation of at least 30% of their regular wage for work on the sixth

		<p>day.</p> <p>There is nothing in the law that supports the Sec'y of Labor's assertion that personnel in subject hospitals and clinics are entitled to a full weekly wage for seven (7) days if they have completed the 40-hour/5-day workweek in any given workweek. The issuance is <i>ultra vires</i>.</p>
Rada v. NLRC	<p>Rada was hired as a driver. Due to his satisfactory performance, his contract was renewed thrice, and the third contract was extended for a number of times. Two weeks before the end of the last extension, Rada applied for personnel clearance. Thus, he received P3,796.2 representing his unused leave credits and financial assistance. He also signed a release waiver and quitclaim. However, Rada filed a complaint before the NLRC for nonpayment of separation pay and overtime pay. Rada alleged that he was illegally dismissed and he was not paid overtime pay though he was made to render 3 hours overtime from Monday to Saturday for three years.</p> <p>Is Rada entitled to overtime pay? <u>YES</u></p>	<p>The fact that he picks up employees of Philnor at certain specified points along EDSA in going to the project site and drops them off at the same points on his way back from the field office going home to Marikina, Metro Manila is not merely incidental to petitioner's job as a driver. Philnor adopted the policy of allowing certain employees — not necessarily project drivers — to bring home project vehicles, so that employees could be afforded fast, convenient and free transportation to and from the project field office.</p> <p>But since the assigned task of fetching and delivering employees is indispensable and consequently mandatory, then the time required of and used by petitioner in going from his residence to the field office and back, that is, from 5:30 A.M. to 7:00 A.M. and from 4:00 P.M. to around 6:00 P.M., which the labor arbiter rounded off as averaging three hours each working day, should be paid as overtime work. Quintessentially, Rada should be given overtime pay for the three excess hours of work performed during working days from January, 1983 to December, 1985.</p>
University of Pangasinan Faculty Union v. University of Pangasinan	<p>The Union filed a complaint seeking the payment of ECOLA during the semestral break, salary increases from the TOFI, and payment of salaries for suspended extra loads. The university claims that the teachers are not entitled to the ECOLA because the semestral break is not an integral part of the SY and there being no actual services rendered, the principle of "no work, no pay" applies. Moreover, aside from their regular loads, some professors were given extra loads to handle during the same 1981-82 school year. Some of them had extra loads to teach on September 21, 1981, but they were unable to teach as classes in all levels throughout the country were suspended, although said day was proclaimed by the President of the Philippines as a working holiday. Those with extra loads to teach on said day claimed they were not paid their salaries for those loads, but the university claims otherwise.</p> <p>Are the professors entitled to the payment for extra load? <u>NO</u></p>	<p>We are now concerned with extra, not regular loads for which the petitioners are paid regular salaries every month regardless of the number of working days or hours in such a month. <u>Extra loads should be paid for only when actually performed by the employee. Compensation is based, therefore, on actual work done and on the number of hours and days spent over and beyond their regular hours of duty.</u> Since there was no work on September 21, 1981, it would now be unfair to grant the Union's demand for extra wages on that day.</p>
National Shipyards and Steel Corp. v. CIR	NASSCO owns several barges and tugboats. So that its bargemen	We can not agree with the Court below that respondent Malondras

	<p>could immediately be called to duty whenever their services are needed, they are required to stay in their barges, for which reason they are given living quarters therein and a subsistence allowance of P1.50/day during the time they are on board. However, 39 crew members filed with the CIR a complaint for the payment of overtime compensation. The parties admitted that the workers have to work when so required in excess of 8 hours a day and/or during Sundays and legal holidays. They weren't paid overtime. As in the case of Malondras, the CIR found that he was in the boat for 24 hours, thus awarding him 16 hours of overtime pay. NASSCO argued that Malondras should only be paid for his actual service in excess of 8 hours that he can prove.</p> <p>Is Malondras entitled for overtime pay for the times he is in the boat? <u>NO</u></p>	<p>should be paid overtime compensation for every hour in excess of the regular working hours that he was on board his vessel or barge each day, irrespective of whether or not he actually put in work during those hours. Seamen are required to stay on board their vessels by the very nature of their duties, and it is for this reason that, in addition to their regular compensation, they are given free living quarters and subsistence allowances when required to be on board. It could not have been the purpose of our law to require their employers to pay them overtime even when they are not actually working: otherwise, every sailor on board a vessel would be entitled to overtime for sixteen hours each day, even if he had spent all those hours resting or sleeping in his bunk, after his regular tour of duty.</p> <p>Test: Whether they actually rendered service in excess of said number of hours.</p> <ul style="list-style-type: none"> - Malondras can only be paid an overtime of 5 hours a day, as in the case of others.
National Development Co. v. CIR	<p>At the NDC, there were four shifts of work: 8-4; 6-2; 2-10; and 10-6. In each shift, there was a one-hour meal time period: 11-12; and 7-8. Despite the mealtime, NDC nevertheless credited workers with 8 hours of work. However, since 1953, whenever workers in one shift were required to continue working until the next shift, NDC only credited 6 hours of OT, and not 8 hours of OT (the 2 break periods were disregarded). Thus, the Union demanded payment of additional overtime pay corresponding to mealtime periods.</p> <p>Should mealtime breaks be considered working time? <u>YES</u></p>	<p>While it may be corrected to say that it is impossible for an employee to work while he is eating, yet under § 1 of CA 444 such a <u>time for eating can only be segregated or deducted from his work, if the same is not continuous and the employee can leave his working place and rest completely.</u> The time cards show that the work was continuous and without interruption. There is also the evidence adduced by the petitioner that the pertinent employees cannot freely leave their working places nor rest completely. There is furthermore the aspect that during the period covered by the computation the work was on a 24 hour basis and as previously stated divided into shifts.</p> <p>From these facts, the CIR correctly concluded that work in the petition company was continuous and therefore the mealtime breaks should be counted as working time for purposes of overtime compensation.</p>
Sime Darby Pilipinas v. NLRC	<p>All company factory workers in Sime Darby's Marikina factory worked from 7:45 a.m. to 3:45 p.m. with a 30-minute paid "on call" lunch break. However, Sime Darby issued a memorandum, discontinuing the 30-minute paid "on call" lunch break, instead replacing it with an unpaid 12-1 lunch break and a 10-minute break. Aggrieved, the Union filed a complaint for ULP. The NLRC ruled that the change was constitutive of diminution of benefits, in violation of art. 100.</p> <p>Is the act of management in revising the work schedule of its</p>	<p>The right to fix the work schedules of the employees rests principally on their employer. In this case, the reason for adjustment was for efficiency and improved production.</p> <p>Even if denominated as lunch break, the 30-minute period could very well be <u>considered as working time</u> because the factory employees were <u>required to work if necessary</u> and were paid accordingly for working. With the new work schedule, the employees are now given a one-hour lunch break without any interruption from their employer. For a full one-hour undisturbed</p>

	<p>employees and discarding their paid lunch break constitutive of unfair labor practice? <u>NO</u></p>	<p>lunch break, the employees can freely and effectively use this hour not only for eating but also for their rest and comfort which are conducive to more efficiency and better performance in their work. Since the employees are no longer required to work during this one-hour lunch break, there is no more need for them to be compensated for this period.</p>
<p>Bisig ng Manggagawa ng PRC v. PRC</p>	<p>The Union filed a petition for declaratory relief, praying that a judgment be rendered that the Christmas bonus and other determinable fringe benefits be included for the purpose of computation of the overtime spread throughout the 12 months period of each year. The pertinent provision of the CBA provides: "Overtime pay at the rate of regular base pay plus 50% thereof shall be paid for all work performed in excess of eight hours on ordinary days within the work week (that is to say, Monday to Friday)."</p> <p>Does the phrase "regular base pay" in the CBA include Christmas bonus and other fringe benefits? <u>NO</u></p>	<p>The phrase "regular base pay" is clear, unequivocal and requires no interpretation. It means regular basic pay and necessarily excludes money received in different concepts such as Christmas bonus and other fringe benefits.</p> <p>All employers covered by said law are under legal compulsion to grant their employees overtime compensation in amounts not less than their basic pay and the fringe benefits regularly and continuously received by them plus 25% thereof. This does not however mean that agreements concerning overtime compensation should always provide for a computation based on the employee's "regular wage or salary" <i>i.e.</i>, regular base pay plus fringe benefits regularly and continuously received.</p> <p>The parties may agree for the payment of overtime compensation in an amount to be determined by applying a formula other than the statutory formula of "regular wage or salary, plus at least twenty-five per centum additional" provided that the result in applying the contractual formula is not less than the result in applying said statutory formula.</p>
<p>PAL Employees Savings and Loan Association Inc. v. NLRC</p>	<p>Esquejo started working with PESALA as a company guard. He was required to work 12 hours a day. Esquejo alleged that he was required to perform overtime work without any additional compensation. PESALA, meanwhile, claimed that Esquejo's Appointment Memorandum stipulated that he is to work 12 hours per day with one day off.</p> <p>Is an employee entitled to overtime pay for work rendered in excess of eight hours a day, given the fact that his employment contract specifies a 12-hour workday at a fixed monthly salary rate that is above the legal minimum wage? <u>YES</u></p>	<p>While it is true that the complainant received a salary rate which is higher than the minimum provided by law, it does not however follow that any additional compensation due the complainant can be offset by his salary in excess of the minimum, especially in the absence of an express agreement to that effect. To consider otherwise would be in disregard of the rule of nondiminution of benefits which are above the minimum being extended to the employees. Furthermore, such arrangement is likewise in disregard of the manner required by the law on how overtime compensation must be determined. There is further the possibility that in view of subsequent increases in the minimum wage, the existing salary for 12 hours could no longer account for the increased wage level together with the overtime rate for work rendered in excess of eight hours.</p> <p>Inasmuch as in this particular instance the contract in question would have been deemed in violation of pertinent labor laws, the provisions of said laws would prevail over the terms of the contract,</p>

		and private respondent would still be entitled to overtime pay.
Lagatic v. NLRC	<p>Lagatic was employed by Cityland as a marketing specialist, whose role is to make cold calls. The number of cold calls depends on the sales generated by each: more sales mean less cold calls. Likewise, in order to assess cold calls made by the sales staff, as well as to determine the results thereof, Cityland requires the submission of daily progress reports. Cityland issued a written reprimand to Lagatic for failing to submit reports on several dates. In his defense, Lagatic claimed it was an honest mistake. He was suspended for 3 days, but despite this he still failed to submit reports for several days. He was ordered to submit, but failed to do so, writing "TO HELL WITH COLD CALLS! WHO CARES?" Cityland found Lagatic guilty of insubordination and dismissed him. Aggrieved, he filed a complaint for illegal dismissal, etc. Cityland maintains that Saturday and Sunday call-ins were voluntary activities on the part of sales personnel who wanted to realize more sales and thereby earn more commissions. The LA and NLRC dismissed the complaint.</p> <p>Is Lagatic entitled to overtime pay, rest day pay and holiday premiums? <u>NO</u></p>	<p>In addition to the above, the LA and the NLRC sanctioned Cityland's practice of offsetting rest day or holiday work with equivalent time on regular workdays on the ground that the same is authorized by Department Order 21, Series of 1990. As correctly pointed out by Lagatic, <u>said DO was misapplied</u> in this case. The DO involves the shortening of the workweek from six days to five days but with prolonged hours on those five days. Under this scheme, <u>nonpayment of overtime premiums was allowed in exchange for longer weekends for employees</u>. In the instant case, <i>Lagatic's workweek was never compressed</i>. Instead, he claims payment for work over and above his normal 5½ days of work in a week. Applying by analogy the principle that overtime cannot be offset by undertime, <u>to allow off-setting would prejudice the worker</u>. He would be <i>deprived of the additional pay for the rest day work he has rendered and which is utilized to offset his equivalent time off on regular workdays</i>. To allow Cityland to do so would be to circumvent the law on payment of premiums for rest of the day and holiday work.</p> <p>However, Lagatic failed to show his entitlement to overtime and rest day pay due to lack of evidence as to the number of days and hours when he rendered overtime and rest day work.</p>
Interphil Laboratories Employees Union v. Interphil Laboratories	<p>During the negotiations for the next CBA, all rank-and-file employees of Interphil refused to follow their regular two-shift work schedule of 6-6; 6-6. At 2 p.m. and 2 a.m., the employees stopped working and left their workplace without sealing the containers and securing the raw materials they were working on. The Union and the management then met. In the meeting, Enrico Gonzales, a union director, told Salazar (VP) that the employees would only return to their normal work schedule if the company would agree to their demands as to the effectivity and duration of the new CBA. Salazar again told the union officers that the matter could be better discussed during the formal renegotiations of the CBA. Since the union was apparently unsatisfied with the answer of the company, the overtime boycott continued. In addition, the employees started to engage in a work slowdown campaign during the time they were working, thus substantially delaying the production of the company. Thus, Interphil filed a petition to declare illegal the Union's overtime boycott and work slowdown, which purportedly amounted to illegal strike. The Labor Secretary sided with the company and declared the actions as an illegal strike.</p> <p>Did the CA err in affirming the order of the Labor Secretary? <u>NO</u></p>	<p>It is evident from the CBA provision that the working hours may be changed, <u>at the discretion of the company</u>, should such change be necessary for its operations, and that the employees shall observe such rules as have been laid down by the company. In the case before us, Labor Arbiter Caday found that the company had to adopt a continuous 24-hour work daily schedule because of the nature of its business and the demands of its clients. It was established that the employees adhered to the said work schedule since 1988. <u>The employees are deemed to have waived the eight-hour schedule since they followed, without any question or complaint, the two-shift schedule while their CBA was still in force and even prior thereto</u>. The two-shift schedule effectively changed the working hours stipulated in the CBA. As the employees assented by practice to this arrangement, they cannot now be heard to claim that the overtime boycott is justified because they were not obliged to work beyond eight hours.</p>

<p>Ramirez v. Polyson Industries</p>	<p>Obrero (union) asked Polyson to voluntarily recognize it as the sole and exclusive bargaining agent of the rank-and-file employees of Polyson. Polyson refused. Furious, Obrero threatened that the union will show its collective strength in the coming days. On Jun. 7, 2011, Polyson received a rush order for 100,000 pcs. of plastic bags. Thus, Polyson needed workers to work overtime because of the said order. No one wanted to work overtime; of the five workers who signed up for overtime work, only two showed up. This resulted in the cancellation of the order due to the delay. Eventually, Polyson gave notices to the union officers asking them to explain why no disciplinary action would be taken against them. Polyson decided to terminate them on the ground that they instigated an illegal concerted activity resulting in losses to the company.</p> <p>Were petitioners validly dismissed? <u>YES</u></p>	<p>Petitioners are guilty of instigating their co-employees to commit slowdown, an inherently and essentially illegal activity even in the absence of a no-strike clause in a collective bargaining contract, or statute or rule. Slowdown is a strike on the installment plan; as a willful reduction in the rate of work by concerted action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute; as an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands. The Court also agrees that such a slowdown is generally condemned as inherently illicit and unjustifiable, because while the employees “continue to work and remain at their positions and accept the wages paid to them,” they at the same time “select what part of their allotted tasks they care to perform of their own volition or refuse openly or secretly, to the employer’s damage, to do other work;” in other words, they “work on their own terms.”</p> <p>Nothing in the law requires that a slowdown be carefully planned and that it be participated in by a large number of workers. The essence of this kind of strike is that the workers do not quit their work but simply reduce the rate of work in order to restrict the output or delay the production of the employer. While a cessation of work by the concerted action of a large number of employees may more easily accomplish the object of the work stoppage than if it is by one person, there is, in fact no fundamental difference in the principle involved as far as the number of persons involved is concerned, and thus, if the act is the same, and the purpose to be accomplished is the same, there is a strike, whether one or more than one have ceased to work.</p>
<p>Mercury Drug Co. v. Dayao</p>	<p>Some 71 workers of Mercury Drug filed a complaint for payment of, among others, payment of extra compensation for work done at night. Mercury Drug contends that the workers waived the said benefit and there was no evidence for it.</p> <p>Are the workers entitled for nighttime work premiums? <u>YES</u></p>	<p>The “waiver rule” is not applicable in the case at bar. Additional compensation for nighttime work is founded on public policy, hence the same cannot be waived. On this matter, we believe that the respondent court acted according to justice and equity and the substantial merits of the case, without regard to technicalities or legal forms and should be sustained. In fact, no additional evidence (DTR) was necessary to prove that the employees were entitled to additional compensation for whether or not they were entitled to the same is a question of law which the respondent court answered correctly.</p>
<p>Prangan v. NLRC</p>	<p>Masagana Security Services (MSC) hired Prangan as one of its security guards. Thereafter, he was assigned to the Cat House Bar and Restaurant with a monthly salary of P2,000.00 until its closure on August 31, 1993. Thus, Prangan filed a complaint for underpayment of wages, nonpayment of salary, overtime pay,</p>	<p>There is no dispute that matters concerning an employee’s actual hours of work are within the ambit of management prerogative. However, when an employer alleges that his employee <i>works less than the normal hours of employment as provided for in law (i.e., 8 hours)</i>, he bears the burden of proving his allegation with clear and</p>

	<p>premium pay for holiday, rest day, night shift differential, uniform allowance, service incentive leave pay and 13th month pay. The LA granted Prangan's complaint, but only considered that he worked for 4 hours and not 12 hours a day. As proof of Prangan's actual hours of work, MSC submitted the daily time records allegedly signed by the petitioner himself. Prangan denied making any DTR, alleging that he was assigned to a single post and the DTR were all falsified.</p> <p>Did the NLRC commit grave abuse of discretion in holding that Prangan only rendered 4 hours of work per day? <u>YES</u></p>	<p>satisfactory evidence.</p> <p>Here, NLRC based its holding on the DTR. However, these documents cannot be considered substantial evidence to conclude that Prangan only worked for four hours. Yet, even as it insists that petitioner only worked for four hours and not twelve, no employment contract, payroll, notice of assignment or posting, cash voucher or any other convincing evidence which may attest to the actual hours of work of the petitioner was even presented. Instead, what the private respondent offered as evidence was only petitioner's daily time record, which the latter categorically denied ever accomplishing, much less signing.</p> <p>If doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee. Since it is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the worker's favor.</p>
<p>National Semiconductors Distribution Ltd. v. NLRC</p>	<p>Santos was hired as a technician by NSC. He was assigned to work from 10 p.m. to 6 a.m., but on Jan. 8, 1993, he did not work. He only returned to work on Jan. 9, but he nevertheless made entries in his DTR to make it appear that he worked on both Jan. 8 and 9. Thus, Santos was required to explain. Santos merely said it was due to oversight or carelessness. Finding Santos' explanation unsatisfactory, NSC dismissed him for dishonesty and serious misconduct. Aggrieved, Santos filed a complaint for illegal dismissal and non- payment of back wages, premium pay for holidays and rest days, night shift differential pay, allowances, separation pay, moral damages and attorney's fees.</p> <p>Is Santos entitled to recover unpaid night shift differential pay? <u>YES</u></p>	<p>The burden of proving payment rests on petitioner NSC. Santos' allegation of non-payment of this benefit, to which he is by law entitled, is a negative allegation which need not be supported by evidence unless it is an essential part of his cause of action. Santos's main cause of action is his illegal dismissal, and the claim for night shift differential is but an incident of the protest against such dismissal. Thus, <u>the burden of proving that payment of such benefit has been made rests upon the party who will suffer if no evidence at all is presented</u> by either party (i.e., NSC).</p> <p>Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. For sure, Santos cannot adequately prove the fact of non-payment of night shift differentials since the pertinent employee files, payrolls, records, remittances and other similar documents—which will show that NSC rendered night shift work; the time he rendered services; and, the amounts owed as night shift differentials—are not in his possession but in the custody and absolute control of NSC.</p> <p>By choosing not to fully and completely disclose information to prove that it had paid all the night shift differentials due to Santos, NSC failed to discharge the burden of proof.</p>

Rest Periods and Holidays

<p>Jose Rizal College v. NLRC</p>	<p>Unable to receive their corresponding holiday pay, the National Alliance of Teachers and Office Workers (NATOW) on behalf of the faculty and personnel of Jose Rizal College filed with the Ministry of Labor a complaint against JRC for non-payment of holiday pay.</p> <p>Are school faculty who are paid per lecture hour entitled to <i>unworked</i> holiday pay? <u>NO</u></p>	<p><u>Regular holidays</u> Regular holidays specified as such by law are known to both school and faculty members as “no class days”; certainly the latter do not expect payment for said unworked days, and this was clearly in their minds when they entered into the teaching contracts.</p> <p><u>Special public holidays</u> It is readily apparent that the declared purpose of the holiday pay which is the prevention of diminution of the monthly income of the employees on account of work interruptions is defeated when a regular class day is cancelled on account of a special public holiday and class hours are held on another working day to make up for time lost in the school calendar. Thus, the faculty member, although forced to take a rest, does not earn what he should earn on that day. Be it noted that when a special public holiday is declared, the faculty member paid by the hour is deprived of expected income, and it does not matter that the school calendar is extended in view of the days or hours lost, for their income that could be earned from other sources is lost during the extended days. Similarly, when classes are called off or shortened on account of typhoons, floods, rallies, and the like, these faculty members must likewise be paid, whether or not extensions are ordered.</p>
<p>San Miguel Corp. v. CA</p>	<p>A routine inspection in the premises of SMC revealed that there was underpayment by SMC of regular Muslim holiday pay to its employees. Thus, the DOLE issued a compliance order, directing SMC to consider Muslim holidays as regular holidays and to pay both its Muslim and non-Muslim employees holiday pay.</p> <p>Did the CA err in granting Muslim holiday pay to non-Muslim employees? <u>NO</u></p>	<p>Art. 169 of the Muslim Code, which lists down five Muslim holidays, must be read with art. 94 of the Labor Code. There should be no distinction between Muslims and non-Muslims as regards payment of benefits for Muslim holidays. We must remind SMC that wages and other emoluments granted by law to the working man are determined on the basis of the criteria laid down by laws and certainly not on the basis of the worker's faith or religion.</p> <p>Considering that all private corporations, offices, agencies, and entities or establishments operating within the designated Muslim provinces and cities are required to observe Muslim holidays, both Muslim and Christians working within the Muslim areas may not report for work on the days designated by law as Muslim holidays.</p>
<p>Insular Bank of Asia and America Employees Union v. Inciong</p>	<p>The Union filed a complaint against the bank for payment of holiday pay. The Union won and the bank complied. Meanwhile, the IRR of the Labor Code was promulgated, whereby it provided that: “Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage <i>shall be presumed to be paid for all days in the month whether worked or not.</i>” The Sec’y</p>	<p>Monthly paid employees are <u>not</u> excluded from the benefits of holiday pay (art. 94 in relation to art. 82).</p> <p>In view of the foregoing, Section 2, Rule IV, Book III of the Rules to implement the Labor Code and Policy Instruction No. 9 issued by the then Secretary of Labor must be declared null and void. Accordingly, public respondent Deputy Minister of Labor Amado G.</p>

	<p>of Labor clarified the new rule, thus: “The new determining rule is this: If the monthly paid employee is receiving not less than P240, the maximum monthly minimum wage, and his monthly pay is uniform from January to December, he is presumed to be already paid the ten (10) paid legal holidays. However, if deductions are made from his monthly salary on account of holidays in months where they occur, then he is still entitled to the ten (10) paid legal holidays.” As a result, the bank stopped the payment of holiday pay to all its employees.</p> <p>Are the IRR provision and policy instruction null and void? <u>YES</u></p>	<p>Inciong had no basis at all to deny the members of petitioner union their regular holiday pay as directed by the Labor Code.</p>
<p>Wellington Investment and Manufacturing Corp. v. Trajano</p>	<p>Following a routine inspection by the DOLE, Wellington Flour Mills was cited for the non-payment of regular holidays falling on Sundays for its monthly-paid employees. Wellington contested this finding, arguing that their use of a “314 factor”—calculated by subtracting 51 Sundays from the 365 days of the year—already accounted for all 10 unworked regular holidays and unexpected closures within the fixed monthly salary. However, the Regional Director ruled against the company, asserting that when a holiday coincides with a Sunday, an additional working day is effectively created that requires separate compensation. This position was upheld by Undersecretary Trajano, who denied Wellington’s appeal on the grounds that the 314 divisor failed to reliably reflect actual working days, ultimately ordering the company to pay for the six additional holiday-Sundays occurring between 1988 and 1990.</p> <p>Did the DOLE commit grave abuse of discretion in ordering Wellington to pay the employees six additional working days resulting from regular holidays falling on Sundays? <u>YES</u></p>	<p>An employer is not required to pay an extra day whenever a holiday falls on a Sunday, so long as it complies with the requirement that the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve and to pay that salary for all days in the month whether worked or not, and irrespective of the number of working days therein.</p> <p>The monthly compensation is evidently intended precisely to avoid computations and adjustments resulting from the contingencies just mentioned which are routinely made in the case of workers paid on a daily basis. There is no provision of law requiring any employer to make such adjustments in the monthly salary rate set by him to take account of legal holidays falling on Sundays in a given year, or, contrary to the legal provisions bearing on the point, otherwise to reckon a year at more than 365 days.</p>
<p>Caltex Regular Employees at Manila Office v. Caltex (Phils.) Inc.</p>	<p>Sometime in Aug. 1986, the Union called Caltex’s attention to alleged violations by Caltex of Annex “B” of the CBA, e.g., nonpayment of NSD, OT pay, and “first day-off rates” for work performed on a Saturday. Despite evaluation, no differential payment was made with respect to work performed on the first 2.5 hrs. on a Saturday. Thus, the Union filed a complaint for ULP against Caltex for shortchanging its employees when Caltex compensated work performed on the first 2.5 hours of Saturday, an employee’s day of rest, <i>at regular rates</i>, when it should be paid at “day of rest” or “day off rates.” Caltex argued that Saturday was never designated as a rest day, much less a day off. Sunday was the rest day.</p> <p>Should Saturday work be paid at regular rates? <u>YES</u></p>	<p>The intention of the parties to the 1985 CBA was to provide the employees with only one day of rest. The plain and ordinary meaning of the language of Article III is that Caltex and the Union had agreed to pay “day of rest” rates for work performed on “an employee’s one day of rest.” The use of the word “one” emphasizes the fact that the parties had agreed that only a single day of rest shall be scheduled and shall be provided to the employee.</p> <p>Work performed on a Saturday is accordingly to be paid at regular rates of pay, as a rule, unless the employee shall have been required to render work in excess of 40 hours in a calendar week. The employee must, however, have in fact rendered work in excess of 40 hours before hours subsequently worked become payable at premium rates.</p>

<i>Divisor</i>		
Chartered Bank Employees' Association v. Ople	<p>The bank and the Union had a CBA, which provided that in computing overtime pay and premium pay for work done during regular holidays, the divisor used in arriving at the daily rate of pay is 251 days (formerly the divisor used was 303 days and this was when the respondent bank was still operating on a 6-day work week basis). However, for purposes of computing deductions corresponding to absences without pay the divisor used is 365 days. The workers were paid monthly. The Union filed a complaint with the MOLE for payment of 10 unworked legal holidays and for premium and overtime differentials for worked legal holidays from Nov. 1, 1974.</p> <p>Are the workers entitled to the holiday pay for 10 legal holidays and premium or overtime pay differentials for those who rendered work during the legal holidays? <u>YES</u></p>	<p>Their salary does not include the holiday pay provided by law. One strong argument in favor of the Union's stand is the fact that the Bank, in computing overtime compensation for its employees, employs a "divisor" of 251 days. The 251 working days divisor is the result of subtracting all Saturdays, Sundays, and the 10 legal holidays from the total number of calendar days in a year. If the employees are already paid for all non-working days, the divisor should be 365 and not 251.</p> <p>The situation is muddled somewhat by the fact that, in computing the employees' absences from work, the respondent bank uses 365 as divisor. Any slight doubts, however, must be resolved in favor of the workers (art 4, Labor Code).</p> <p>Thus, whenever monthly paid employees work on a holiday, they are given an additional 100% base pay on top of a premium pay of 50%. If the employees' monthly pay already includes their salaries for holidays, they should be paid only premium pay but not both base pay and premium pay.</p>
Odango v. NLRC	<p>The employees are monthly-paid workers of ANTECO, whose workdays are from Monday to Friday and half of Saturday. After a routine inspection, the DOLE found ANTECO liable for underpayment of monthly salaries. Thus, the employees filed complaints with the NLRC. The LA granted the complaint, but the NLRC reversed, which the CA affirmed. The employees assert that they should be paid for all the 365 days in a year. They argue that since in the computation of leave credits, ANTECO uses a divisor of 304, ANTECO is not paying them 61 days every year.</p> <p>Are the employees entitled to wage differentials? <u>NO</u></p>	<p>The basic rule in this jurisdiction is "no work, no pay." The right to be paid for unworked days is generally limited to 10 legal holidays in a year.</p> <p>The use of a divisor less than 365 days cannot make ANTECO automatically liable for underpayment. The employees only work from Monday to half-day Saturday. Thus, the minimum allowable divisor is 287, which is the result of 365 days, less 52 Sundays and less 26 Saturdays (or 52 half Saturdays). Any divisor below 287 days means that ANTECO's workers are deprived of their holiday pay for some or all of the 10 legal holidays. The 304 days divisor used by ANTECO is clearly above the minimum of 287 days.</p>
Service Incentive Leave		
Cebu Institute of Technology v. Ople	<p>Petitioner claims that private respondents are engaged by the school on a contract basis. Hence, they are not entitled to SIL.</p> <p>Are they entitled to SIL? <u>YES</u></p>	<p>The phrase "those who are engaged on task or contract basis" should be <i>related with</i> "field personnel." Clearly, petitioner's teaching personnel cannot be deemed field personnel which refers "to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.</p>
Auto Bus Transport Systems v. Bautista	Antonio is the driver of Autobus, paid on a commission basis—7% of	Under art. 95, the grant of SIL applies only to those employees not

	<p>the total gross income per travel, on a twice a month basis. Antonio figured in an accident, leading to his termination. Aggrieved, Antonio filed a complaint for illegal dismissal with money claims for nonpayment of 13th month pay and SIL. The LA dismissed Antonio's complaint, but granted his money claims.</p> <p>Is Antonio entitled to SIL? <u>YES</u></p>	<p>explicitly excluded by the IRR. Specifically, SIL is not paid to "field personnel." The phrase "other employees whose performance is unsupervised by the employer" must <u>not</u> be understood as a separate classification of employees to which service incentive leave shall not be granted. Rather, it serves as an amplification of the interpretation of the definition of field personnel under the Labor Code as those "whose actual hours of work in the field cannot be determined with reasonable certainty." The same is true with respect to the phrase "those who are engaged on task or contract basis, purely commission basis." Said phrase should be related with field personnel, applying the rule on <i>ejusdem generis</i> that general and unlimited terms are restrained and limited by the particular terms that they follow. Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless they fall under the classification of field personnel.</p> <p>Thus, what must be ascertained is whether someone is a field personnel.</p>
Employees Paid by Results		
<p>Tan v. Lagrama</p>	<p>Tan is the president of Supreme Theater Corp. (STC) and the general manager of Crown and Empire Theaters. Meanwhile, Lagrama is a painter, making ad billboards and murals for the motion pictures shown at the theaters. On Oct. 17, 1998, Tan summoned Lagrama, accusing that the latter once again urinated in his work area. Thus, he was dismissed. Lagrama filed a complaint for illegal dismissal. Tan alleged that Lagrama wasn't his employee and was paid on a fixed piece-work basis, <i>i.e.</i>, he was paid for every painting turned out as ad billboard or mural. Lagrama prevailed in the tribunals below.</p> <p>Is there an EER between the parties? <u>YES</u></p>	<p>That Lagrama worked for Tan on a fixed piece-work basis is of no moment. Payment by result is a method of compensation and does not define the essence of the relation. It's a method of computing compensation, not a basis for determining the existence or absence of employer-employee relationship. One may be paid on the basis of results or time expended on the work, and may or may not acquire an employment status, depending on whether the elements of an employer-employee relationship are present or not.</p> <p><u>On backwages</u> Two groups of workers paid by results:</p> <ol style="list-style-type: none"> 1. Those whose time and performance is supervised by the employer 2. Those whose time and performance is unsupervised by the employer <p>If a piece worker is <u>supervised</u>, there is an employer-employee relationship, as in this case. However, such an employee is not entitled to service incentive leave pay since he is paid a fixed amount for work done, regardless of the time he spent in accomplishing such work.</p>
<p>Serrano v. Severino Santos Transit</p>	<p>Serrano was hired as a bus conductor by Severino. After 14 years of service, he applied for optional retirement. This required him to sign a prepared quitclaim for before his retirement pay could be</p>	<p>Under the SIL Law, the exclusion from its coverage of workers who are paid on a purely commission basis is only with respect to field personnel. Employees engaged on task or contract basis or paid on</p>

	<p>released. He signed this under protest. Thus, he filed a complaint with the LA, alleging that the company erred in its computation. He alleged that his retirement pay should have been computed at 22.5 days per year of service to include the cash equivalent of the 5-day service incentive leave (SIL) and 1/12 of the 13th month pay which the company did not. The LA ruled in his favor, but the NLRC reversed, holding that he was excluded from the coverage of the laws on 13th month pay and SIL pay.</p> <p>Is Serrano entitled to 13th month and SIL pay? <u>YES</u></p>	<p>purely commission basis are not automatically exempted from the grant of service incentive leave, unless they fall under the classification of field personnel.</p>
<p>Labor Congress of the Philippines v. NLRC</p>	<p>Are the petitioners, who are piece-rate workers, entitled to holiday pay, premium pay, 13th month pay and SIL pay? <u>YES</u></p>	<p>The Labor Code IRR excludes certain employees from receiving benefits such as nighttime pay, holiday pay, SIL and 13th month pay, <i>inter alia</i>:</p> <ol style="list-style-type: none"> 1. field personnel and other employees whose time and performance is unsupervised by the employer, including <ol style="list-style-type: none"> a. those who are engaged on task or contract basis, b. purely commission basis, or c. those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof <p>Petitioners as piece-rate workers do not fall within this group. Not only did they labor under the control of their employer, they also toiled throughout the year with the fulfillment of their quota as supposed basis for compensation.</p> <p>Moreover, under bk. III, rule IV, § 8 (b) of the IRR, piece-rate workers are specifically entitled to holiday pay.</p> <p>Under the IRR of the 13th month pay law, piece-rate workers are <i>excluded</i> from the <i>exemption</i> from paying 13th month pay.</p> <p>As to overtime pay, according to bk. III, rule I, § 2 (e) of the IRR, workers who are paid by results (e.g., piece-work, pakyaw or task basis) if their output rates are in accordance with the standards prescribed in bk. III, rule VII, § 8 of the IRR. In this case, no allegation was proven, thus, they are entitled to overtime pay.</p>
<p>David v. Macasio</p>	<p><i>Supra.</i></p>	

Ateneo de Manila University
Labor Laws I
Post-Midterm

Title	Facts	Holding
Module 4: Special groups of employees and nondiscrimination		
Women		
Philippine Telegraph & Telephone Co. v. NLRC	<i>Supra.</i>	Employment rules that forbid or restrict the employment of married women, but do not apply to married men, are void for being violative of the constitution and Art. 136 of the Labor Code. The government, to repeat, abhors any stipulation or policy in the nature of that adopted by petitioner PT&T. Art. 136 of the Labor Code makes it unlawful for an employer to require a condition of employment that a woman should not get married. PT&T's company policy also assaults good morals and public policy as it deprives a woman of the freedom to choose her status, a privilege that by all accounts inheres in the individual as an intangible and inalienable right.
Duncan Association of Detailman v. Glaxo Wellcome	<p>Pedro Tecson was hired by Glaxo as a medical representative in 1995. His contract of employment stipulates that he should disclose any existing or future relationship with employees of competing drug companies. Should the management find a conflict of interest, he must resign from the company. The Employee Code of Conduct likewise provides a similar provision. While assigned in the Camarines Sur-Camarines Norte sales area, Tecson entered into a romantic relationship with Betsy, an employee of Astra, a competitor of Glaxo. Betsy was Astra's branch coordinator in Albay. They married in 1998. In 1999, Glaxo told Pedro that his marriage gave rise to a conflict of interest, and told him they should decide who among them will resign from their jobs. Tecson sought more time to comply, explaining that Betsy was planning to avail of a redundancy package by Astra. With Betsy's separation, the conflict of interest will be resolved. However, Glaxo instead assigned Pedro to its Butuan City-Surigao City-Agusan del Sur sales area. He defied the transfer order. Failing to resolve the issue, they entered voluntary arbitration.</p> <p>Is Glaxo's policy against its employees marrying employees from competitor companies valid? <u>YES</u></p>	Glaxo's policy against its employees marrying employees from competitor companies is a valid exercise of its management prerogative. Glaxo has a right to guard its trade secrets from competitors, especially so that it and Astra are rival companies in the highly competitive pharmaceutical industry. The prohibition against personal/marital relationships of competitor companies is reasonable because said relationships must compromise the interests of the company. Glaxo only aims to protect its interests against the possibility that a competitor company will gain access to its secrets and procedures. Glaxo also possesses the right to protect its economic interests. While the laws seek to give life to the constitutional policy on social justice and the protection of labor, it also recognizes that the management has rights entitled to respect in the interest of fair play.
Star Paper Corp. v. Simbol	Star Paper Corporation has a company policy, promulgated in 1995,	The requirement of reasonableness must be clearly established to

	<p>that new applicants will not be hired if they have a relative already employed. In case two employees get married, one should resign to maintain the prohibition on close relatives working in the same company. Rolando Simbol, Wilfreda Comia and Lorna Estrella were all regular employees of the company. Rolando met Alma Dayrit (also an employee), whom he married on Jun. 27, 1998. Pursuant to the policy, Rolando resigned on Jun. 20, 1998. Wilfreda, meanwhile, met Howard Comia (also an employee). Wilfreda and Howard married on Jun. 1, 2000, prompting Wilfreda to resign on Jun. 30, 2000. Finally, Lorna met Luisito Zuñiga, an employee. Star Paper alleged that Zuñiga was a married man who get Lorna pregnant. Star Paper wanted to terminate Lorna for immoral conduct, but opted to resign on Dec. 21, 1999. The respondents offer a different version: Rolando and Wilfreda said they were compelled to resign due to the company policy. Meanwhile, Lorna said she chose to resign instead of being dismissed so she would still receive her 13th month pay. The 3 later filed a complaint for unfair labor practice, constructive dismissal, separation pay and attorney's fees, arguing the company policy is contrary to Art. 136 of the Labor Code. The labor arbiter dismissed the complaint, which the NLRC affirmed. The Court of Appeals reversed the NLRC, hence this petition for review.</p> <p>Is the policy of the employer banning spouses from working in the same company a valid exercise of management prerogative? <u>NO</u></p>	<p>uphold the questioned employment policy, as the court held in <i>PT&T v. NLRC</i> and <i>Duncan v. Glaxo</i>. The employer has the burden to prove the existence of a reasonable business necessity. The court held that the standard of reasonableness must be used to assess the exercise of a management prerogative, like the policy of banning spouses from working in the same company. Star Paper doesn't have a reasonable business necessity in implementing the policy. The policy is premised on the mere fear that employees married to each other will be less efficient. The court said that upholding the questioned rule without valid justification will allow the employer to create policies based on an unproven presumption of a perceived danger at the expense of an employee's right to security of tenure. The questioned policy may not facially violate Art. 136, but it creates a disproportionate effect. Under the disparate impact theory, the only way it could pass judicial scrutiny is a showing that it is reasonable despite the discriminatory, albeit disproportionate, effect. The failure of petitioners to prove a legitimate business concern in imposing the questioned policy cannot prejudice the employee's right to be free from arbitrary discrimination based upon stereotypes of married persons working together in one company. Therefore, for failure of the company to present undisputed proof of a reasonable business necessity, the court held that the questioned policy.</p>
<p>Dela Cruz-Cagampan v. One Network Bank</p>	<p>The Bank hired Catherine as an accounting specialist. Eventually, the Bank implemented an "Exogamy Policy" which stated: "When two employees working for One Network Bank are subsequently married through Church or Civil Court rites, one must terminate employment immediately after marriage. This policy shall not affect co-employees of the bank who are already married to each other as of the end of April 2006." Later on, Catherine married Audie, a co-worker. Catherine was terminated by the Bank. Thus, Catherine filed a complaint for illegal dismissal against the Bank.</p> <p>Was Catherine illegally dismissed? <u>YES</u></p>	<p>Under the Magna Carta of Women, the State commits to eliminate discrimination against women and ensures their right to freely choose a spouse. Particularly, Article 134 [136] of the Labor Code prohibits employers from discriminating women employees. An employer's dismissal of a female employee solely because of her marriage is precisely the discrimination that the Labor Code expressly prohibits. This Court cannot countenance respondents' unlawful acts.</p> <p>In determining whether an employer's policy prohibiting spouses from working in the same company or a "no-spouse employment policy" is unlawful, <i>Star Paper Corp. v. Simbol</i> discussed the bona fide occupational qualification that may possibly justify it. To justify a bona fide occupational qualification, the employer must prove two factors: (1) that the employment qualification is reasonably related to the essential operation of the job involved; and, (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the job. Weighed against the constitutionally mandated full protection to labor and the various statutory protections accorded</p>

		<p>to the sector, this Court finds that respondents failed to demonstrate the reasonable business necessity for its no-spouse employment policy.</p> <ul style="list-style-type: none"> - First, the no-spouse qualification is not reasonably related to the bank's essential operation of its business. It unduly discourages all employees from marrying a fellow worker at the pain of termination. - Second, there is no factual basis to conclude that all of their employees who marry each other would be unable to perform their duties, entailing one's dismissal. The policy was couched in a general manner, that whenever any two of their employees marry, one must terminate employment immediately after marriage.
<p>Domingo v. Rayala</p>	<p>Domingo filed a complaint for sexual harassment against Rogelio Rayala, the NLRC chairman, averring to wit: "Sa ibang mga pagkakataon nilalapitan na ako ni Chairman at hahawakan ang aking balikat sabay pisil sa mga ito habang ako ay nagta-type at habang nagbibigay siya ng diktasyon"; "Chairman: Lot, I like you a lot. Naiiba ka sa lahat. At pagkatapos ako ay kaniyang inusisa tungkol sa mga personal na bagay sa aking buhay. Ang ilan dito ay tungkol sa aking mga magulang, kapatid, pag-aaral at kung may boyfriend na raw ba ako"; "Palakad-lakad siya sa aking likuran habang nag-didikta. Huminto siya pagkatapos, at nilagay niya ang kanang kamay niya sa aking kanang balikat at pinisil-pisil ito pagkatapos ay pinagapang niya ito sa kanang bahagi ng aking leeg, at pinagapang hanggang kanang tenga at saka kiniliti. Dito ko inalis ang kaniyang kamay sa pamamagitan ng aking kaliwang kamay." The CODI found Rayala guilty of the offense as charged and recommended a six-month suspension. On elevation to OP, Rayala was dismissed, which the CA modified by only suspending him for a year.</p> <p>Is Rayala guilty of sexual harassment? <u>YES</u></p>	<p>Basic in the law of public officers is the three-fold liability rule, which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others. This rule applies with full force to sexual harassment. The CA, thus, correctly ruled that Rayala's culpability is not to be determined solely on the basis of Section 3 because he is charged with the administrative offense, not the criminal infraction, of sexual harassment.</p> <p>It is true that this provision calls for a "demand, request or requirement of a sexual favor." But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones — all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor. Likewise, contrary to Rayala's claim, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee. That the acts of Rayala generated an intimidating and hostile environment for Domingo is clearly shown by the common factual finding of the Investigating Committee, the OP and the CA that Domingo reported the matter to an officemate and, after the last incident, filed for a leave of absence and requested transfer to another unit.</p> <p>To repeat, this factual milieu in Aquino does not obtain in the case</p>

		<p>at bench. While in Aquino, the Court interpreted the acts (of Judge Acosta) as casual gestures of friendship and camaraderie, done during festive or special occasions and with other people present, in the instant case, Rayala's acts of holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, and the inappropriate comments, were all made in the confines of Rayala's office when no other members of his staff were around. More importantly, and a circumstance absent in Aquino, Rayala's acts, as already adverted to above, produced a hostile work environment for Domingo, as shown by her having reported the matter to an officemate and, after the last incident, filing for a leave of absence and requesting transfer to another unit.</p>
<p>LBC Express-Vis v. Palco</p>	<p>On January 16, 2009, Monica C. Palco (Palco) started working for LBC Express- Vis Inc. (LBC) as a customer associate in its Gaisano Danao Branch (LBC Danao). The Branch's Team Leader and Officer-in-Charge, Arturo A. Batucan (Batucan), endorsed her application for the post and acted as her immediate superior. While employed at LBC, Palco had initially noticed that Batucan would often flirt with her, which made her uncomfortable. Later, Batucan started sexually harassing her. Palco filed a complaint with the management. However, sensing that management did not immediately act on her complaint, Palco resigned. She asserted that she was forced to quit since she no longer felt safe at work. Eventually, Palco filed a complaint for illegal dismissal against the company. Meanwhile, LBC suspended Batucan for 60 days without pay. Palco also filed a <i>criminal complaint</i> for sexual harassment. As to the labor case, the LA and NLRC found LBC guilty of illegal dismissal.</p> <p>Should LBC be held liable for constructive dismissal?</p>	<p>The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. One of the ways by which a hostile or offensive work environment is created is through the sexual harassment of an employee. Workplace sexual harassment occurs when a supervisor, or agent of an employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates in an intimidating, hostile, or offensive environment for the latter. Batucan cannot be deemed a mere co-employee of LBC. The determination of whether an employee is part of the managerial staff depends on the employee's duties and responsibilities. At the very least, Batucan held a supervisory position, which made him part of the managerial staff. Batucan was petitioner's team leader and officer-in-charge in LBC Danao. Nonetheless, although Batucan holds a supervisory position, he cannot be deemed to have acted on LBC's behalf in committing the acts of sexual harassment. It cannot be assumed that all the illegal acts of managerial staff are authorized or sanctioned by the company, especially when it is committed in the manager's personal capacity. Constructive dismissal cannot be assumed if an officer of the company wronged an employee, but the employer did not authorize the act. The distinction between the employer and an erring managerial officer is likewise present in sexual harassment cases. Under Section 5 of the Anti-Sexual Harassment Act, the employer is only solidarily liable for damages with the perpetrator in case an act of sexual harassment was reported and it did not take immediate action on the matter. This provision thus illustrates that the employer must first be informed of the acts of the erring managerial officer before it can be held liable for the latter's acts. Conversely, if the employer has been informed of the acts of its managerial staff, and does not contest or question it, it is deemed to have authorized or be complicit to the acts of its erring employee. Despite this, LBC failed</p>

		<p>to take immediate action on respondent's complaint. Its lack of prompt action reinforced the hostile work environment created by Batucan.</p> <p><u>Safe Spaces Act</u> In recognizing the need to address these concerns, the State's policy against sexual harassment has been strengthened through Republic Act No. 11313, otherwise known as the Safe Spaces Act. This law has expanded the definition of gender-based sexual harassment in the workplace and has added to the duties of an employer as to its prevention, deterrence, and punishment. It explicitly requires that complaints be investigated and resolved within 10 days or less upon its reporting.</p>
<p>Buban v. Dela Peña</p>	<p>Buban, a customer care senior specialist of Xerox Business, experienced sexual harassment from Dela Peña, her TL. From then on, she detested going to work for fear of running into Dela Peña. As a result, her health deteriorated. At work, she became anxious and paranoid, and would find herself uncontrollably crying whenever she saw Dela Peña. However, as a single parent, she could not afford to quit. Thus, she was left with no choice but to continue working. She reported the incident and filed a formal complaint with the Human Resources Department. However, her case was never heard, and no protective measure was afforded to her by the management. Dela Peña continued to work in the same area and same shift with her, magnifying her distress. Thus, Buban filed a Complaint before the Labor Arbiter against Xerox Business, Rojan, and Dela Peña for sexual harassment, with prayer for payment of unpaid salary, moral damages, exemplary damages, and attorney's fees.</p> <p>Did the CA err in reducing the moral and exemplary damages? <u>NO</u></p>	<p><u>No constructive dismissal</u> Preliminarily, Buban was constructively dismissed on account of the hostile, offensive, and intimidating work environment perpetrated by Xerox Business. In cases involving sexual harassment, <i>LBC v. Palco</i>, held that an employee is considered constructively dismissed if he or she was sexually harassed by her superior and her employer failed to act on his or her complaint with prompt and sensitivity. However, in <i>LBC</i>, we awarded separation pay, backwages, moral damages, exemplary damages, and attorney's fees upon a categorical finding of constructive dismissal. A reading of the case reveals that the award of the twin benefits of separation pay and full backwages was premised upon Palco's actual, albeit involuntary, resignation from work. In this case, Buban did not resign. Thus, there is no economic loss to speak of to warrant the imposition of payment of separation benefits and backwages.</p> <p><u>Liability of Xerox Business</u> Xerox Business was remiss in its duty under Sec. 4 of RA 7877 to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Specifically, it failed to create a CODI to promptly act upon the allegation of sexual harassment filed by Buban. Accordingly, pursuant to Sec. 5 of the law, Xerox Business was adjudged solidarily liable with Dela Peña for payment of damages arising from the acts of sexual harassment committed in the employment.</p> <p><u>Amount of damages</u> To put things in proper perspective, Section 3 (a) of RA 7877 provides that workplace sexual harassment occurs when the employer, agent of the employer, or any other person who has authority over another in a work environment, imposes sexual</p>

		<p>favors on another, which creates an intimidating, hostile, or offensive environment for the latter. The essence of sexual harassment is the abuse of power by the offender, not the violation of the offended party's sexuality. Such abuse of power emanates from the fact that the superior can remove the subordinate from the workplace should the latter refuse the superior's amorous advances. What the law intends to correct "is the undue exercise of power and authority manifested through sexually charged conduct or one filled with sexual undertones." In <i>Philippine Airlines, Inc. v. Yanez</i>, this Court re-emphasized that the "demand, request, or requirement of a sexual favor" requirement in Section 3 is not essential before an act can be qualified as sexual harassment in an administrative charge. It suffices that the offender's actions created an intimidating, hostile, or offensive environment for the employee. Under the Anti-Sexual Harassment Act, Buban is not precluded from filing a separate civil action for any affirmative relief arising from the alleged acts of sexual harassment.</p>
<p>Re: Anonymous Complaint against Atty. Crescencio P. Co Untian, Jr.</p>	<p>An anonymous complaint by a "law practitioner" was filed against Atty. Crescencio P. Co Untian for alleged sexual harassment of his students in Xavier University. In the complaint, law students Antoinette Toyco, Christina Sagarbarria and Lea Dal were named as Co Untian's victims. Co Untian allegedly sent flowers and romantic text messages to Toyco, and even invited her to Camiguin. Toyco also allegedly showed Sagarbarria of a nude photograph, purportedly hers, to which she denied. Meanwhile, Dal recounted an instance during a recitation with Co Untian where the latter uttered sexually charged language. Sagarbarria was distressed by the incident to the point that she did not join the moot court practice anymore, Toyco was made uncomfortable by Co Untian's unwelcome flirtations through text messages, and Dal was embarrassed in front of her classmates after Co Untian's sexually charged joke. Co Untian countered by pointing out that the three students supposedly failed his class. Co Untian averred that he simply gave flowers to Toyco as a Valentine's Day gift. He added that he showed the nude photograph to Sagarbarria as they espouse an "open and uninhibited" relationship. Finally, Co Untian claimed that the joke he told Dal was simply a banter directed to himself and claimed that the student even laughed at his joke.</p> <p>Is a law professor who did not explicitly ask for sexual favors from his students, but committed sexually charged acts which resulted to a hostile school environment, guilty of educational sexual harassment? <u>YES</u></p>	<p>Co Untian is guilty of sexual harassment as it is not necessary that there was an offer for sex as a superior's conduct with sexual underpinnings, which offends the survivor or creates a hostile environment, would suffice. Education related sexual harassment as defined by RA 7877 is sexual harassment committed by a teacher, instructor, professor, coach, trainer or any other person who, having authority, influence or moral ascendancy over another in an education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the same is accepted by the object of the act. It is deemed committed if:</p> <ol style="list-style-type: none"> 1. Against one who is under the case, custody or supervision of the offender; 2. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender; 3. When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or 4. When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice. <p>In <i>Philippine Aeolus Automotive United Corporation v. NLRC</i>, the court held that the essence of sexual harassment is the abuse of power by the offender. RA 7877 seeks to punish that abuse of power manifested through sexually charged conduct or one with sexual undertones. Co Untian substantially admitted--but justified--the allegations in the anonymous complaint. In doing the</p>

		<p>said acts, Co Untian abused the power and authority he possessed. His acts created a hostile environment for the three survivors.</p>
<p>Escandor v. People of the Philippines</p>	<p>An Information against Escandor was filed for violating the Anti-Sexual Harassment Act toward his subordinate, Cindy: telling her that he has fallen in love with her and has been attracted to her for a long time already, maliciously grabbing her hands, embracing her and planting a kiss on her forehead; telling her that if it were possible, he would have prevented her marriage with her husband; asking her for a date; groping her thigh; sending her Winpop messages showing his amorous concern for her; on the office Christmas party of 2002, by grabbing her on a stairway and kissing her on the lips; giving her gifts of chocolates, wine and a bracelet on that same Christmas, and consistently throughout this time, sending her text messages suggestive of sex; which acts of the accused resulted to an intimidating, hostile, or offensive environment as these caused discomfort and humiliation on his subordinate. Escandor's sexual advances allegedly continued, until Gamallo finally quit her job in November 2003. The SB found him guilty.</p> <p>Is Escandor guilty? <u>YES</u></p>	<p><u>Anti-Sexual Harassment Act</u> Under Republic Act No. 7877, an act of sexual harassment may result in three distinct liabilities: criminal, civil, and administrative. 80 An action for each can proceed independently of the others. Sexual harassment as defined and penalized under Republic Act No. 7877 requires three elements for an accused to be convicted:</p> <ol style="list-style-type: none"> 1. that the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has authority, influence, or moral-ascendancy over another; 2. the authority, influence, or moral ascendancy exists in a work-related, training-related, or education-related environment, and 3. the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who has authority, influence, or moral-ascendancy over another makes a demand, request, or requirement of a sexual favor. <p>Since Republic Act No. 7877 is a special criminal statute, the offense of sexual harassment is malum prohibitum. Thus, in prosecuting an offender for sexual harassment, intent is immaterial. Mere commission is sufficient to warrant a conviction.</p> <p><u>Safe Spaces Act</u> It addresses 4 categories of gender-based sexual harassment:</p> <ol style="list-style-type: none"> 1. gender-based streets and public spaces sexual harassment; 2. gender-based online sexual harassment; 3. gender-based sexual harassment in the workplace; and, 4. gender-based sexual harassment in educational and training institutions. <p>The Safe Spaces Act does not undo or abandon the definition of sexual harassment under the Anti-Sexual Harassment Law of 1995. The gravamen of the offenses punished under the Safe Spaces Act is the act of sexually harassing a person on the basis of the his/her sexual orientation, gender identity and/or expression, while that of the offense punished under the Anti-Sexual Harassment Act of 1995 is abuse of one's authority, influence or moral ascendancy so as to enable the sexual harassment of a subordinate.</p>
<p>Househelpers</p>		
<p>Apex Mining Company, Inc. v. NLRC</p>	<p>Candido was employed by Apex to perform laundry services at its</p>	<p>The term "househelper" is synonymous to a "domestic servant" and</p>

	<p>staff house. She was paid on a monthly basis. While working, she accidentally slipped and hit her back on a stone. As a result of the accident, she was not able to continue with her work. Apex did not allow her to return to work and she was dismissed. Thus, she filed a complaint against Apex. The LA rendered a decision in her favor.</p> <p>Is Candido a kasambahay? <u>NO</u></p>	<p>shall refer to any person who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family. The definition clearly contemplates such househelper or domestic servant who is employed in the employer's home to minister exclusively to the personal comfort and enjoyment of the employer's family. Such definition covers family drivers, domestic servants, laundry women, yayas, gardeners, houseboys and other similar househelps. The definition cannot be interpreted to include househelp or laundry women working in staffhouses of a company, like petitioner who attends to the needs of the company's guest and other persons availing of said facilities. By the same token, it cannot be considered to extend to the driver, houseboy, or gardener exclusively working in the company, the staffhouses and its premises. They may not be considered as within the meaning of a "househelper" or "domestic servant" as above-defined by law. The criteria is the personal comfort and enjoyment of the family of the employer in the home of said employer. While it may be true that the nature of the work of a househelper, domestic servant or laundrywoman in a home or in a company staffhouse may be similar in nature, the difference in their circumstances is that in the former instance they are actually serving the family while in the latter case, whether it is a corporation or a single proprietorship engaged in business or industry or any other agricultural or similar pursuit, service is being rendered in the staffhouses or within the premises of the business of the employer.</p>
<p>Remington Industrial v. Castaneda</p>	<p>Erlinda started working in August 1983 as company cook with a salary of Php 4,000 for Remington, a corporation engaged in the trading business; that she worked for six days a week, starting as early as 6:00 a.m. because she had to do the marketing and would end at around 5:30 p.m., or even later, after most of the employees, if not all, had left the company premises; that she continuously worked with Remington until she was unceremoniously prevented from reporting for work when Remington transferred to a new site in Caloocan City. She averred that she reported for work at the new site in Caloocan City on January 15, 1998, only to be informed that Remington no longer needed her services. Erlinda believed that her dismissal was illegal because she was not given the notices required by law; hence, she filed her complaint for reinstatement without loss of seniority rights, salary differentials, service incentive leave pay, 13th month pay and 10% attorney's fees. The LA dismissed the suit, ruling that Erlinda is a domestic helper. The NLRC reversed, which the CA affirmed.</p>	<p>The situs and the nature of Erlinda's work as a cook, who caters not only to the needs of Mr. Tan and his family but also to that of the petitioner's employees, makes her fall squarely within the definition of a regular employee under the doctrine enunciated in the Apex Mining case. That she works within company premises, and that she does not cater exclusively to the personal comfort of Mr. Tan and his family, is reflective of the existence of the petitioner's right of control over her functions, which is the primary indicator of the existence of an employer-employee relationship. Moreover, it is wrong to say that if the work is not directly related to the employer's business, then the person performing such work could not be considered an employee of the latter. The determination of the existence of an employer-employee relationship is defined by law according to the facts of each case, regardless of the nature of the activities involved.</p>

	Is Erlinda a domestic helper? <u>NO</u>	
Atienza v. Saluta	<p>Saluta was hired as a company driver by CRV Corp., and was assigned to drive for Atienza, one of the company's top officials and received P9,000 monthly salary. Saluta figured in an accident. Eventually, he was verbally terminated by Atienza. Thus, Saluta filed a complaint for illegal dismissal. The LA dismissed his complaint, holding that he was a personal driver and his compensation for work and indemnity for dismissal were governed by arts. 1689, 1697, and 1699 of the Civil Code. This was reversed by the NLRC and affirmed by the CA.</p> <p>Is Saluta covered by the Labor Code? <u>NO</u></p>	<p>The <i>Kasambahay Law</i> did not mention family drivers in the enumeration of those workers who are covered by the law, unlike art. 141 of the Labor Code. Thus, Section 4 (d) of the <i>Kasambahay Law</i> pertaining to who are included in the enumeration of domestic or household help cannot also be interpreted to include family drivers because the latter category of worker is clearly not included. It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others—this is expressed in the familiar maxim, <i>expressio unius est exclusio alterius</i>. Due to the express repeal of the Labor Code provisions pertaining to househelpers, which includes family drivers, by the <i>Kasambahay Law</i>; and the non-applicability of the <i>Kasambahay Law</i> to family drivers, there is a need to revert back to the Civil Code. The reason for reverting back to the Civil Code provisions on household service is because, as discussed earlier, Section 44 of the <i>Kasambahay Law</i> expressly repealed Articles 141 to 152 of the Labor Code which deals with the rights of family drivers. On the other hand, art. 302 of the Labor Code did not repeal the said Civil Code provisions.</p> <p><i>In the case at bar</i></p> <p>Thus, Saluta shall be paid the compensation he had already earned plus that for 15 days by way of indemnity if he was unjustly dismissed. However, if respondent left his employment without justifiable reason, he shall forfeit any salary due him and unpaid for not exceeding 15 days. Given that there is neither dismissal nor abandonment in this case, none of the party is entitled to claim any indemnity from the other. Verily, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss. Otherwise stated, the Saluta's act of not reporting to work after a verbal miscommunication cannot justify the payment of any form of remuneration.</p>
Persons with disability		
Bernardo v. NLRC	Complainants (Bernardo, et al.) are deaf-mutes who were hired by Far East Bank & Trust Co. as money sorters and counters through a uniformly worded employment contract. The uniform employment contracts of the petitioners stipulated that they shall be trained for a period of one month, after which the employer shall determine whether or not they should be allowed to finish the 6-month term of	The stipulations in the contract indubitably conform with art. 80, LC, but the enactment of the Magna Carta for Disabled Persons (RA 7277) justify the application of art. 295 (regular and casual employment). The bank entered into the contract with a total of 56 handicapped workers and renewed the contracts of 37 of them. The renewal of the contracts of the handicapped workers and the

	<p>the contract. Furthermore, the employer may terminate the contract at any time for a just and reasonable cause. Unless renewed in writing by the employer, the contract shall automatically expire at the end of the term. All of them were eventually dismissed by the bank, who claimed that they were hired temporarily under a special employment arrangement. Thus, they filed a complaint for illegal dismissal.</p> <p>Are they regular employees? <u>YES, but only those who worked for more than 6 months and whose contracts were renewed.</u></p>	<p>hiring of others lead to the conclusion that their tasks were beneficial and necessary to the bank. More importantly, these facts show that they were qualified to perform the responsibilities of their positions. In other words, their disability did not render them unqualified or unfit for the tasks assigned to them. In this light, the Magna Carta mandates that a qualified disabled employee should be given the same terms and conditions of employment as a qualified able-bodied person (equal opportunity for employment, § 5). The fact that the employees were qualified disabled persons necessarily removes the employment contracts from the ambit of art. 80. Since the Magna Carta accords them the rights of qualified able-bodied persons, they are thus covered by art. 265.</p> <p><i><u>In the case at bar</u></i></p> <p>The primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. Without a doubt, the task of counting and sorting bills is necessary and desirable to the business of the bank. The contract signed by petitioners is akin to a probationary employment, during which the bank determined the employees' fitness for the job. When the bank renewed the contract after the lapse of the six-month probationary period, the employees thereby became regular employees.</p>
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Ateneo de Manila University
Labor Laws I
 Post-Midterm

Title	Facts	Holding
Module 5: Special Groups of Employees & Nondiscrimination Regulations		
Employment of Aliens		
<p>General Milling Corp. v. Torres</p>	<p>The DOLE issued an Alien Employment Permit (AEP) in favor of Earl Timothy Cone, a US citizen, as sports consultant and assistant coach for General Milling Corp. (GMC). GMC and Cone entered into a contract of employment (Cone to coach GMC). Thus, the BI approved Cone's application for a change of admission status to a prearranged employee. GMC also requested DOLE to renew Cone's AEP, and that it be allowed to employ Cone as a full-fledged coach. The DOLE granted this and issued a new AEP. However, the Basketball Coaches Association of the Philippines (BCAP) appealed the issuance of AEP to Cone. As a result, the sec'y of labor cancelled the AEP, holding that there was no showing that there is no person in the Philippines who is competent, able and willing to perform the services required nor that the hiring of petitioner Cone would redound to the national interest.</p> <p>Did the secretary of labor and employment commit grave abuse of discretion in cancelling Cone's AEP? <u>NO</u></p>	<p>Under art. 40, LC, an employer seeking employment of an alien must first obtain an employment permit from the Department of Labor. GMC's right to choose whom to employ is, of course, limited by the statutory requirement of an alien employment permit. Art. 40 applies only to "non-resident aliens," which must be given their technical connotation.</p> <p>GMC's contention that respondent Secretary of Labor should have deferred to the findings of BI as to the necessity of employing petitioner Cone, is, again, bereft of legal basis. The Labor Code itself specifically empowers respondent Secretary to make a determination as to the availability of the services of a "person in the Philippines who is competent, able and willing at the time of application to perform the services for which an alien is desired."</p> <ul style="list-style-type: none"> - In short, DOLE is the agency vested with jurisdiction to determine the question of availability of local workers. <p><u>On redounding to the national interest</u> The permissive language of the art. 40, ¶2 indicates that the authority granted involves the exercise of discretion on the part of the issuing authority (<i>i.e.</i>, the labor secretary can take into account the question of whether the employment of an alien would "redound to the national interest").</p>
<p>International School Alliance of Educators (ISAE) v. Quisumbing</p>	<p>International School Inc. hires both foreign and local teachers as members of its faculty, and are classified as such. The school employs four tests to determine whether a faculty member should be classified as a foreign or local hire:</p> <ol style="list-style-type: none"> 1. What is one's domicile? 2. Where is one's home economy? 3. To which country does one owe economic allegiance? 4. Was the individual hired abroad specifically to work in the School and was the School responsible for bringing that individual to the Philippines? <p>Should the answer to any of these point to the Philippines, the</p>	<p><u>Labor Code provisions</u> Discrimination, particularly in terms of wages, is frowned upon by the Labor Code. Art. 135, for example, prohibits and penalizes the payment of lesser compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labor practice for an employer to discriminate in regard to wages in order to encourage or discourage membership in any labor organization. The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of <i>equal pay for equal work</i>. Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar</p>

	<p>faculty is <i>local hire</i>. More benefits abound foreign hires: housing, transportation, shipping costs, taxes, and home leave travel allowance. Foreign hires are also paid a salary rate of 25% <i>more than local hires</i>. ISI justifies the difference on two significant economic disadvantages foreign hires have to endure: (1) dislocation factor and (2) limited tenure. Now, when negotiations for a new CBA were held, ISAE contested the difference in salary rates. This eventually caused a deadlock. Eventually, the SOLE assumed jurisdiction, which upheld the difference in salary rates.</p> <p>Is the difference in salary rate valid? <u>NO</u></p>	<p>conditions, should be paid similar salaries. This rule applies to the School, its “international character” notwithstanding.</p> <p><u>Equal protection</u></p> <p>If an employer accords employees the same position and rank, the presumption is that these employees perform equal work. This presumption is borne by logic and human experience. If the employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; <i>it is for the employer to explain why the employee is treated unfairly</i>. The employer in this case has failed to discharge this burden. There is no evidence here that foreign-hires perform 25% more efficiently or effectively than the local-hires. Both groups have similar functions and responsibilities, which they perform under similar working conditions. <i>The dislocation factor and limited tenure affecting foreign-hires are adequately compensated</i> by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances</p>
<p>McBurnie v. Ganzon [<i>En Banc</i>]</p>	<p>On May 11, 1999 McBurnie (Australian) signed a 5-year employment contract as EVP of EGI. McBurnie figured in an accident which required medical attention. While recuperating from his injuries in Australia, McBurnie was informed by President Ganzon that his services were no longer needed since the project had been permanently discontinued. Thus, McBurnie filed a complaint for illegal dismissal with prayer for the payment of his salary and benefits for the unexpired term of the contract, damages and attorney’s fees. The LA dismissed the complaint, but ordered Ganzon to pay the monetary award (USD 985,162 + P2M). Ten days later, Ganzon filed a memorandum of appeal and motion to reduce bond, arguing that the awards of the LA were null and excessive, “with the premeditated intention to render the employer incapable of posting an appeal bond.” The NLRC denied the motion to reduce bond and ordered Ganzon to post an additional bond of P54M. Ganzon’s MR was also denied. Thus, Ganzon filed a petition for <i>certiorari</i> and prohibition with the CA. The CA issued a TRO effective for 60 days. Following the expiration of the TRO, the NLRC dismissed the appeal and Ganzon’s subsequent MR. Aggrieved, Ganzon once again filed a petition for <i>certiorari</i> with the CA. The CA again issued a TRO, and eventually issued a WPI following Ganzon’s posting of a P10-M bond. Eventually, the CA <i>granted Ganzon’s motion to reduce the appeal bond and ordered the NLRC to give due course to the appeal</i>. The Supreme Court initially</p>	<p><u>Original decision</u></p> <p>The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. Moreover, the filing of the bond is not only mandatory but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer’s appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees’ just and lawful claims.</p> <p>While the bond may be reduced upon motion by the employer, this is subject to the conditions that:</p> <ol style="list-style-type: none"> (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellants, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. <p>Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or would deem such insufficient posting as</p>

	<p>reversed and set aside the NLRC's order. Thus, this MR filed by McBurnie.</p> <p>Should the Decision be reconsidered? <u>YES</u></p>	<p>sufficient to perfect the appeal.</p> <p><u>En Banc resolution on MR</u> Without the reversal of the Decision and the dismissal of the complaint against the respondents, McBurnie would be allowed to claim benefits under our labor laws despite his failure to comply with a settled requirement for foreign nationals.</p> <p>Considering that McBurnie, an Australian, alleged illegal dismissal and sought to claim under our labor laws, it was necessary for him to establish, first and foremost, that he was qualified and duly authorized to obtain employment within our jurisdiction.</p> <p>McBurnie failed to present any employment permit which would have authorized him to obtain employment in the Philippines. This circumstance negates McBurnie's claim that he had been performing work for the respondents by virtue of an employer-employee relationship. The absence of the employment permit instead bolsters the claim that the supposed employment of McBurnie was merely simulated, or did not ensue due to the non-fulfillment of the conditions that were set forth in the letter of May 11, 1999.</p>
<p>Rouche v. French Chamber of Commerce in the Philippines – Le Club</p>	<p>The French Chamber of Commerce (FCC) engaged Rouche as a consultant, which shall be effective upon approval of a visa and an AEP. Rouche were able to secure these. Eventually, Rouche was engaged as a managing director for a three-year term via an employment contract. Despite the new role, Rouche did not renew his employment via or AEP. A year later, the FCC terminated Rouche's services on the ground of loss of trust, without specifying particular acts Rouche committed. Thus, Rouche filed a case for illegal dismissal, claiming nonpayment of his salary for the unexpired portion of his contract, commissions, 13th month pay, paternity leave benefits and relocation cost. The LA found Rouche illegally dismissed and awarded him backwages and attorney's fees.</p> <p>Can Rouche seek redress from Philippine labor tribunals despite his lack of a valid visa and AEP? <u>YES</u></p>	<p>Article 40 requires non- resident aliens to secure a permit when seeking admission to the country for employment purposes. The requirement to obtain the permit applies before a foreigner enters the country and commences their employment. Aside from the Alien Employment Permit issued by the Department of Labor and Employment, an alien seeking employment in the Philippines shall likewise secure a working visa from the Bureau of Immigration. The Alien Employment Permit is a documentary requirement for the issuance of such a visa.</p> <p>What makes Rouche's case different from <i>McBurnie</i> is that he was a holder of both a valid AEP and visa <i>before</i> he began his employment with FCC. Rouche's problems arose when he became managing director without yet acquiring the necessary documents. Under art. 41, the transfer of an alien's employment <i>without prior approval is prohibited</i>.</p> <p><u>However</u>, even prior to the expiration of his visa, Rouche had already been in contract with FCC's counsel, Paras & Manlapaz for the processing of his visa renewal. However, the firm later said it was unable to do so because of the negligence of its lawyers. Rouche was not remiss in following up his concern with Perez & Manlapaz. By the time he was informed about the true status of his</p>

		<p>visa application, Rouche was already left with no choice but to remedy his situation.</p> <p><u>In the interest of justice</u>, FCC should not be able to use the negligent acts of their own counsel to evade its responsibility to an employee. To allow Rouche's defeat based on the actions of the FCC's lawyer, and especially where he was left without further recourse to rectify the problem caused by FCC's own counsel, would be unjust.</p> <p>The full protection afforded to labor is a constitutional policy that extends to all workers, even to aliens engaged for local employment. They, too, have the right to security of tenure. That alien employment is regulated by the State does not remove them from constitutional and statutory protections.</p>
Overseas Employment		
<p>JMM Promotion and Management, Inc. v. CA</p>	<p>The Secretary of Labor, on January 6, 1994, issued Department Order No. 3 establishing various procedures and requirements for screening performing artists under a new system of training, testing, certification and deployment of the former. Performing artists successfully hurdling the test, training and certification requirement were to be issued an Artist's Record Book (ARB), a necessary prerequisite to processing of any contract of employment by the POEA. The Federation of Entertainment Talent Managers of the Philippines (FETMOP), on January 27, 1995 filed a class suit assailing these department orders.</p> <p>Are the department orders valid? <u>YES</u></p>	<p>The Artist Record Book requirement and the questioned Department Order related to its issuance were issued by the Secretary of Labor pursuant to a valid exercise of the police power.</p> <p>The welfare of Filipino performing artists, particularly the women, was paramount in the issuance of Department Order No. 3. Short of a total and absolute ban against the deployment of performing artists to "high-risk" destinations, a measure which would only drive recruitment further underground, the new scheme at the very least rationalizes the method of screening performing artists by requiring reasonable educational and artistic skills from them and limits deployment to only those individuals adequately prepared for the unpredictable demands of employment as artists abroad. The tests are aimed at segregating real artists or performers from those passing themselves off as such, eager to accept any available job and therefore exposing themselves to possible exploitation.</p>
<p>Philippine Association of Service Exporters, Inc. (PASEI) v. Drilon [<i>En Banc</i>]</p>	<p>PASEI challenges the validity of Department Order No. 1, Series of 1988, of the Department of Labor and Employment, in the character of "GUIDELINES GOVERNING THE TEMPORARY SUSPENSION OF DEPLOYMENT OF FILIPINO DOMESTIC AND HOUSEHOLD WORKERS," in this petition for certiorari and prohibition. Specifically, the measure is assailed for "discrimination against males or females;" that it "does not apply to all Filipino workers but only to domestic helpers and females with similar skills;" and that it is violative of the right to travel. It is held likewise to be an invalid exercise of the lawmaking power, police power being legislative, and not executive, in character.</p>	<p>The Court is satisfied that the classification made—the preference for female workers—rests on substantial distinctions.</p> <p>The Court is well aware of the unhappy plight that has befallen our female labor force abroad, especially domestic servants, amid exploitative working conditions marked by, in not a few cases, physical and personal abuse. The sordid tales of maltreatment suffered by migrant Filipina workers, even rape and various forms of torture, confirmed by testimonies of returning workers, are compelling motives for urgent Government action. The same, however, cannot be said of our male workers. In the first place,</p>

	Is DO 1 valid? <u>YES</u>	there is no evidence that, except perhaps for isolated instances, our men abroad have been afflicted with an identical predicament.
Philippine National Bank v. Cabansag	<p>Cabansag arrived in SG as a tourist. She applied for employment with the SG branch of PNB. She was hired. She then filed an application with the SG Government for the issuance of an “employment pass.” Her application was approved for a period of 2 years. Barely 3 months in office, GM Tobias asked her to resign as a cost-cutting measure, and said that the branch will be sold/transformed into a remittance office. Cabansag refused to resign. Tobias again summoned Florence O. Cabansag to his office and demanded that she submit her letter of resignation, with the pretext that he needed a Chinese-speaking Credit Officer to penetrate the local market, with the information that a Chinese-speaking Credit Officer had already been hired and will be reporting for work soon. On Apr. 20, 1999, she was finally terminated. Aggrieved, Cabansag filed a complaint for illegal dismissal.</p> <p>Does the arbitration branch of the NLRC in NCR have jurisdiction over the complaint? <u>YES</u></p>	<p><u>Jurisdiction</u> Labor arbiters clearly have original and exclusive jurisdiction over claims arising from employer-employee relations, including termination disputes involving all workers, among whom are Overseas Filipino Workers (Art. 217, LC; § 10, RA 8042).</p> <p>The working permit does not automatically mean that the non-citizen is thereby bound by local laws only. It does not at all imply a waiver of one's national laws on labor. Absent any clear and convincing evidence to the contrary, such a permit simply means that its holder has a legal status as a worker in the issuing country. Noteworthy is the fact that Cabansag likewise applied for and secured an Overseas Employment Certificate. Under PH law, this document authorized her working status in a foreign country and entitled her to all benefits and processes under our statutes. Moreover, PNB admits that it is a domestic corporation doing business through a branch office in SG. This circumstance militates <i>against</i> PNB's contention that respondent was “locally hired”; and totally “governed by and subject to the laws, common practices and customs” of SG, not of the PH. Instead, with more reason does this fact reinforce the presumption that respondent falls under the legal definition of migrant worker, in this case one deployed in SG.</p> <p><u>Venue</u> As a migrant worker/OFW, she has the option to choose the venue of her complaint against PNB:</p> <ol style="list-style-type: none"> 1. Regional Arbitration Branch where she resides, or 2. Regional Arbitration Branch where the principal office of her employer is situated.
Recruitment and Placement		
People v. Diaz	<p>Navarro, Ramirez and Fabricante were commerce graduates of commerce in colleges in Davao City. Their teacher, Aplicador, told them if they wanted to work abroad, particularly in Brunei where they could earn USD700 for 4 hours daily work. The three met one Diaz who was allegedly a recruiter. However, they met Diaz who was inside the CIS Detention Center. Diaz explained that he was in jail because 4 applicants had filed a case against him because they could not accept that they were sick of hepatitis. Diaz went on to enumerate the requirements, and mentioned a P2,500 processing fee, and P65,000 placement fee, but only P20,000 for airfare (the balance of P45,000 to be paid via salary deduction). The three</p>	<p>Elements of the crime of illegal recruitment:</p> <ol style="list-style-type: none"> 1. The offender has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers 2. The offender undertakes either any activity within the meaning of recruitment and placement defined under art. 13 (b) or any prohibited practices under art. 34 <p>Any of the acts mentioned in art. 13 (b) will constitute recruitment and placement even if only one prospective worker is involved. The number of persons dealt with is not an essential ingredient of the</p>

	<p>eventually paid P2,300, P2,500, and P2,000 to Diaz. After submitting the papers, Diaz told them to wait 3-4 weeks. However, at the POEA, the three learned that Diaz's agency was a fake one. Thus, the three withdrew their applications. Diaz, meanwhile, returned the processing fees.</p> <p>Is Diaz guilty of illegal recruitment? <u>YES</u></p>	<p>act of recruitment and placement.</p> <p>Elements of illegal recruitment in large-scale:</p> <ol style="list-style-type: none"> 1. the offender is a non-licensee or non-holder of authority to engage in recruitment and placement activity 2. the offender undertakes recruitment and placement activity defined under Article 13(b), or any prohibited practices enumerated under Article 34, and 3. illegal recruitment is committed against 3 or more persons individually or as a group <p><i>In this case</i></p> <p>Diaz was neither a licensee nor a holder of authority to qualify him to lawfully engage in recruitment and placement activity. Diaz was never granted an authority to conduct recruitment for overseas employment.</p> <p>As to the third element of the crime, there were obviously three persons who were victims of the appellant's nefarious act of large scale illegal recruitment.</p> <p>Relative to the question of whether or not Diaz was engaged in recruitment activity, it is clear from the testimonies of the three complainants that Diaz undertook to recruit them</p> <ul style="list-style-type: none"> - The acts of the appellant, which were clearly described in the lucid testimonies of the three victims, such as collecting from each of the complainants payment for passport, medical tests, placement fee, plane tickets and other sundry expenses, promising them employment abroad, contracting and advertising for employment, unquestionably constitute acts of large scale illegal recruitment. <p>Likewise, it is the settled rule that a person is guilty of illegal recruitment when he gives the impression that he has the power to send workers abroad.</p>
<p>People v. Panis</p>	<p>Four informations were filed, alleging that Abug without first securing a license from the Ministry of Labor as a holder of authority to operate a fee-charging employment agency, did then and there wilfully, unlawfully and criminally operate a private fee-charging employment agency by charging fees and expenses (from) and promising employment in Saudi Arabia to four separate individuals. Abug filed a MTQ, alleging that what was punished was recruiting two or more persons, per art. 13 (b).</p>	<p>The number of persons dealt with is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned in the basic rule in Article 13(b) will constitute recruitment and placement even if only one prospective worker is involved. The <i>provisio</i> merely lays down a rule of evidence that where a fee is collected in consideration of a promise or offer of employment to two or more prospective workers, the individual or entity dealing with them shall be deemed to be engaged in the act of recruitment and placement. The words "shall be deemed" create</p>

	Should the MTQ be granted? <u>NO</u>	that presumption.
Darvin v. CA	<p>Darvin was charged with simple illegal recruitment under art. 38 and 39, in relation to art. 13 (b) (c). Toledo, the complainant, met Darvin, whereby in the said meeting, Darvin allegedly convinced Toledo that by giving her P150,000.00, the latter can immediately leave for the United States without any appearance before the U.S. embassy. Thus, Toledo paid Darvin, as evidenced by a receipt stating that the amount was for visa and airfare. However, when after a week, there was no word from Darvin, Toledo went to her residence to inquire about any development, but could not find Darvin. The POEA issued a certification stating that Darvin is not licensed nor authorized to recruit workers for overseas employment. In her defense, Darvin said she was with a travel agency before and she merely acted as a travel agent. The lower courts convicted her.</p> <p>Is Darvin guilty of simple illegal recruitment? <u>NO</u></p>	<p>To uphold the conviction of Darvin, two elements need to be shown: (1) the person charged with the crime must have undertaken recruitment activities; and (2) the said person does not have a license or authority to do so.</p> <p>To prove that the accused was engaged in recruitment activities as to commit the crime of illegal recruitment, it must be shown that the accused appellant gave private respondent the distinct impression that she had the power or ability to send the private respondent abroad for work such that the latter was convinced to part with her money in order to be so employed.</p> <p><u>In this case</u> We find no sufficient evidence to prove that Darvin offered a job to private respondent. It is not clear that Darvin gave the impression that she was capable of providing the private respondent work abroad. What is established, however, is that the private respondent gave Darvin P150,000. The claim of the Darvin that the P150,000 was for payment of private respondent's air fare and US visa and other expenses cannot be ignored because the receipt for the P150,000, which was presented by both parties during the trial of the case, stated that it was "for Air Fare and Visa to USA."</p> <p>By themselves, procuring a passport, airline tickets and foreign visa for another individual, without more, can hardly qualify as recruitment activities. Aside from the testimony of Toledo, there is nothing to show that Darvin engaged in recruitment activities.</p>
People v. Yabut	<p>Cortez and Vega were charged with estafa and illegal recruitment in large scale, but only Yabut stood trial. Ilar, the private complainant, met the accused. Ilar handed over to them the initial DP of P10K for the processing of papers and visa for Japan where he was to work as a roomboy in a hotel. Yabut assured Ilar not to worry since he would be able to leave for Japan otherwise his money would be refunded. Additional amounts were given by Ilar to Yabut. Finally, Ilar was made to sign a one (1) year contract but he was not furnished a copy of the same. Ilar was scheduled to leave for Japan on Oct. 8, 1993 but this date was postponed allegedly due to problems. Sensing fraudulent practice on the part of the couple, Ilar verified from the POEA whether the appellant and his co-accused were authorized or licensed to engage in recruitment and placement activities. A certification was issued by the POEA stating that the couple were neither licensed nor authorized to</p>	<p>The offense of illegal recruitment is <i>malum prohibitum</i> where the criminal intent of the accused is not necessary for conviction, while <i>estafa</i> is <i>malum in se</i> where the criminal intent of the accused is crucial for conviction.</p> <p>Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2 (a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and <i>vice versa</i>.</p>

	<p>recruit workers for overseas employment. Ilar never left the country. The same circumstance happened to Claudio. Claudio was scheduled to depart five times but not one of those scheduled departures for Japan materialized. Similar occurrences happened to Casanova, Bernardo, and Diana. The courts below rendered a decision acquitting Yabut for estafa, but finding him guilty of large scale illegal recruitment.</p> <p>May Yabut be convicted of illegal recruitment in large scale despite his acquittal of the crime of estafa? <u>YES</u></p>	
<p>People v. Delos Reyes</p>	<p>Matheus was charged with 6 counts of estafa and one count of large scale illegal recruitment based on the complaints by Suratos, Guillarte, Alayon, Bagay Jr., Dudulao and Gloria. The RTC rendered its decision which convicted Matheus of the crime of large scale illegal recruitment and five counts of estafa.</p> <p>Did the courts below err in finding Matheus guilty of both crimes? <u>NO</u></p>	<p><u><i>Illegal recruitment in large scale</i></u> Elements:</p> <ol style="list-style-type: none"> 1. the person charged undertook any recruitment activity as defined under Section 6 of RA 8042 2. accused did not have the license or the authority to lawfully engage in the recruitment of workers 3. accused committed the same against three or more persons individually or as a group <p>These elements are obtained in this case.</p> <ol style="list-style-type: none"> 1. First, the RTC found accused-appellant to have undertaken recruitment activity when she promised the private complainants overseas employment for a fee. 2. Second, the March 1, 2004 Certification issued by the Philippine Overseas Employment Administration unmistakably reveals that the accused-appellant neither had a license nor authority to recruit workers for overseas employment. 3. Third, it was established that there were five complainants, i.e., Suratos, Guillarte, Alayon, Bagay, Jr., and Duldulao. <p><u><i>Estafa under art. 315(2)(a)</i></u> Elements:</p> <ol style="list-style-type: none"> 1. the accused defrauded another by abuse of confidence or by means of deceit 2. the offended party or a third party suffered damage or prejudice capable of pecuniary estimation <p>Here, the prosecution proved beyond reasonable doubt that the accused-appellant deceived private complainants into believing that she had the authority and capability to send them abroad for employment, despite her not being licensed by the POEA to recruit workers for overseas employment. Because of the assurances given by accused-appellant, the private complainants parted with their hard-earned money for the payment of the agreed placement</p>

		<p>fee, for which accused-appellant issued petty cash vouchers and used fictitious names evidencing her receipt of the payments.</p>
<p>Athena International Manpower v. Villanos</p>	<p>Villanos applied to work overseas through Athena. He was assessed a P100,000 placement fee, which was reduced to P94,000, on the condition that the remaining balance of P64,000 shall be paid through salary deductions upon his deployment. Villanos received no receipt for the P30,000 cash that he advanced as partial placement fee. Instead, Athena gave him a schedule of his monthly salary deduction. In Oct. 1998, Villanos's Contract of Employment with a certain Wei Yu Hsien arrived. Under this contract, he was to work as caretaker for one year, ten months and twenty-eight days with a monthly pay of New Taiwan Dollars (NT\$) 15,840. Upon his arrival in Taiwan, he was assigned to a mechanical shop, owned by Hsien, as a hydraulic installer/repairer for car lifters, instead of the job for which he was hired. Barely a month after his placement, he was terminated by Hsien. Aggrieved, he filed a complaint against Athena for illegal dismissal, violation of contract, and recovery of unpaid salaries and other benefits before the NLRC. The LA held Athena and Wei Yu Hsien solidarily liable for the wages representing the unserved portion of the employment contract, the amount unlawfully deducted from respondent's monthly wage, moral damages, exemplary damages and attorney's fee, which was affirmed by the CA.</p> <p>Did the CA err in awarding monetary damages, especially the supposed salaries for the entire unexpired portion and the reimbursement of the placement fee? <u>NO</u></p>	<p>Pertinent to this issue is RA 8042, § 10. For the computation of the lump-sum salary due an illegally dismissed overseas employee, there are two clauses as points of reckoning:</p> <ul style="list-style-type: none"> - first is the cumulative salary for the unexpired portion of his employment; and - the other is the grant of three months salary for every year of the unexpired term, whichever is lesser. <p>Since respondent was dismissed after only one month of service, the unexpired portion of his contract is admittedly one year, nine months and twenty-eight days. But the applicable clause is not the first but the second: three months salary for every year of the unexpired term, as the lesser amount, hence it is what is due the respondent.</p> <p>Under the aforementioned provision, an illegally dismissed overseas worker is also entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum.</p> <p>Lastly, because of the breach of contract and bad faith alleged against the employer and the petitioner, we must sustain the award of P50,000 in moral damages and P50,000 as exemplary damages, in addition to attorney's fees of ten percent (10%) of the aggregate monetary awards.</p>
<p>Rodolfo v. People</p>	<p>Rodolfo was charged before the RTC Makati for illegal recruitment. The scheme was as follows: Rodolfo approached private complainants Ferre and Corpus and invited them to apply for overseas employment in Dubai. The two agreed and went to Rodolfo's office, "Bayside Manpower Export Specialist." Ferre gave P1,000 as processing fee and another P4,000. Corpus gave P7,000. However, private complainants and all the other applicants were not able to depart on the said date as their employer allegedly did not arrive. Thus, their departure was rescheduled to September 23, but the result was the same. Suspecting that they were being hoodwinked, private complainants demanded Rodolfo to return their money. Only Ferre's P1,000 was reimbursed. The POEA testified during trial that Rodolfo was neither licensed nor authorized by the then Ministry of Labor and Employment to recruit workers for overseas employment. In her defense, Rodolfo said she merely helped the two and referred them to the agency.</p>	<p>The act of referral, which is included in recruitment, is the act of passing along or forwarding of an applicant for employment <i>after an initial interview of a selected applicant for employment to a selected employer</i>, placement officer or bureau. Petitioner's admission that she brought private complainants to the agency whose owner she knows and her acceptance of fees including those for processing betrays her guilt.</p> <p>That Rodolfo issued provisional receipts indicating that the amounts she received from the private complainants were turned over to Luzviminda Marcos and Florante Hinahon does not free her from liability. The act of recruitment may be for profit or not. It is sufficient that the accused promises or offers for a fee employment to warrant conviction for illegal recruitment.</p>

	Is Rodolfo guilty? <u>YES</u>	
Capricorn Travel and Tours vs. CA & Sameer	<p>In a civil case, judgment was rendered in favor of Capricorn and against Sameer, ordering the latter to pay P91,216.6. A writ of execution was issued and a notice of garnishment of the cash bond posted by Sameer was served on the POEA. POEA was reluctant, but eventually delivered the cash bond to Capricorn's counsel. Sameer moved to quash the notice of garnishment, but the RTC denied. The CA reversed and quashed the notice of garnishment.</p> <p>May the cash bond posted by a recruitment agency in the POEA be garnished by a judgment creditor of the agency? <u>NO</u></p>	<p>From the Labor Code:</p> <ol style="list-style-type: none"> a. The cash bond is a requisite for the issuance and renewal of a license or authority to engage in the business of recruitment and overseas placement b. The cash bond is to answer for the liabilities of the agency arising from violations of the conditions for the grant or use of the license or authority or the contracts of employment, the Labor Code, the POEA rules and Labor Department issuances and all liabilities that the POEA may impose c. The amount of the cash bond must be maintained during the lifetime of the license or authority d. The amount of the cash bond shall be returned to the agency only when it surrenders its license or authority, <u>and</u> only upon posting of a surety bond of the same amount valid for three years <p>The posting of a cash bond is also an indispensable adjunct to the requirement that the agency undertakes to assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract of overseas employment and to guarantee compliance with existing labor and social legislation of the Philippines and the country of employment.</p> <p>Considering the rationale for requiring the posting of a cash bond and its nature, it cannot therefore be argued that the cash bond is not exempt from execution by a judgment creditor simply because it is not one of those enumerated in rule 39, sec. 12 of the Rules of Court. To accede to such an argument would be tantamount to turning a blind eye to the clear intent of the law to reserve the cash bond for the employment-related claims of overseas workers and for violations of labor laws.</p>
Stronghold Insurance Co. vs. CA	<p>Acting on behalf of its foreign principal, Pan Asian Logistics, a domestic recruiting and placement agency, hired Adriano Urtesuela as captain of the vessel M/V Oryx for the stipulated period of 12 months. The required surety bond, in the amount of P50,000, was submitted by Pan Asian and Stronghold Insurance Co., Inc., to answer for the liabilities of the employer. Urtesuela assumed his duties, but three months later his services were terminated and he was repatriated to Manila. He filed a complaint against Pan Asian and his former employer with the POEA for breach of contract and damages. The POEA rendered a decision in his favor for the</p>	<p>In the surety bond, Stronghold bound itself to answer for all liabilities which the POEA may adjudge/impose against the principal in connection with the recruitment of Filipino seafarers.</p> <ul style="list-style-type: none"> - Strictly interpreted, this would mean that the petitioner agreed to answer for whatever decision might be rendered against the principal, whether or not the surety was impleaded in the complaint and had the opportunity to defend itself. There is nothing in the stipulation calling for a direct judgment against the surety as a co-defendant in an action against the principal.

	<p>amount of P6,374.94, representing his salaries for the unexpired portion of his contract and the cash value of his unused vacation leave, plus attorney's fees and costs, which the respondents were required to pay. It became final and executory. Thus, a writ of execution was issued against Pan Asian, but could be enforced only against its cash bond of P10,000.00, the company having ceased to operate. Urtesuela then filed a complaint with the Insurance Commission against Stronghold on the basis of the aforementioned surety bond and prayed for the value thereof plus attorney's fees and litigation costs. Stronghold prays for reversal, because it was not impleaded in the POEA decision.</p> <p>May Stronghold be liable? <u>YES</u></p>	<p>Moreover, under the stipulation that notice to the principal is notice to the surety, Stronghold is deemed to have been given an opportunity to participate in the litigation and to present its side, if it so chose, to avoid liability.</p> <p>The circumstance that the chance to be heard is not availed of does not disparage that opportunity and deprive the person of the right to due process. Due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. It should be obvious that if he opts to be silent where he has a right to speak, he cannot later be heard to complain that he was unduly silenced.</p> <p>The surety bond required of recruitment agencies is intended for the protection of our citizens who are engaged for overseas employment by foreign companies. The purpose is to insure that if the rights of these overseas workers are violated by their employers, recourse would still be available to them against the local companies that recruited them for the foreign principal. The foreign principal is outside the jurisdiction of our courts and would probably have no properties in this country against which an adverse judgment can be enforced. This difficulty is corrected by the bond, which can be proceeded against to satisfy that judgment.</p>
<p>Catan v. NLRC</p>	<p>M.S. Catan Placement Agency, as agent of a Saudi Arabian firm (Ali and Fahd), recruited Reyes to work in Saudi Arabia as a steelman. The contract was for 1 year, but with an automatic renewal clause. During the renewed period, Reyes's right ankle was crushed under the machine he was operating. After the expiration of the renewed term, Reyes returned to the PH and was treated in hospital, for which he incurred expenses. He returned to Saudi Arabia, but was repatriated the following year. Upon his return, he had his ankle treated for which he incurred further expenses. On the basis of the provision in the employment contract that the employer shall compensate the employee if he is injured or permanently disabled in the course of employment, Reyes filed a claim against the agency with the POEA. The POEA granted Reyes's claim, which the NLRC affirmed.</p> <p>Did the tribunals below err in awarding Reyes's claims? <u>NO</u></p>	<p>Reyes's contract of employment can not be said to have expired on May 14, 1982 as it was automatically renewed since no notice of its termination was given by either or both of the parties at least a month before its expiration, as so provided in the contract itself.</p> <p>A private employment agency may be sued jointly and solidarily with its foreign principal for violations of the recruitment agreement and the contracts of employment. Thus, a recruitment agency was solidarily liable for the unpaid salaries of a worker it recruited for employment in Saudi Arabia (<i>Ambraque v. NRLC</i>).</p> <p>Even if indeed petitioner and the Saudi principal had already severed their agency agreement at the time the private respondent was injured, the agency may still be sued for a violation of the employment contract because no notice of the agency agreement's termination was given to the private respondent (art. 1921, NCC) (<i>i.e.</i>, the termination was not binding as to Reyes).</p> <p>While MS Catan was no longer the accredited agent, its responsibility over the proper implementation of Reyes's employment/service contract and the welfare of Reyes himself in</p>

		<p>the foreign job site, still existed, the contract of employment in question not having expired yet. This must be so, because the obligations covenanted in the recruitment agreement entered into by and between the local agent and its foreign principal are not coterminous with the term of such agreement so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.</p>
<p>Royal Crown Internationale v. NLRC</p>	<p>Royal Crown, a licensed private employment agency, recruited and deployed Nacionales for Zamel, an architectural firm in Saudi Arabia. A service agreement was executed by Nacionales and Zamel, whereby the former was to receive per month a salary of US\$500.00 plus US\$100.00 as allowance for a period of one year commencing from the date of his arrival in Saudi Arabia. However, before the 1-year period ended, on Feb. 13, 1984, Zamel terminated the employment of Nacionales. For 3 days, he was detained at his quarters and was not allowed to report to work until his exit papers were ready. Nacionales was repatriated. When he got back, he filed a complaint for illegal termination against Royal Crown and Zamel with the POEA. The POEA and NLRC sided with Nacionales.</p> <p>May Royal Crown be held solidarily liable with the foreign employer? <u>YES</u></p>	<p>Royal Crown voluntarily assumed solidary liability under the various contractual undertakings it submitted to the Bureau of Employment Services.</p> <p>In applying for its license to operate a private employment agency for overseas recruitment and placement, petitioner was required to submit, among others, a <i>document or verified undertaking whereby it assumed all responsibilities for the proper use of its license and the implementation of the contracts of employment</i> with the workers it recruited and deployed for overseas employment.</p> <p>It was also required to file with the Bureau a formal appointment or agency contract executed by the foreign-based employer in its favor to recruit and hire personnel for the former, which <i>contained a provision empowering it to sue and be sued jointly and solidarily with the foreign principal</i> for any of the violations of the recruitment agreement and the contracts of employment.</p> <p>Petitioner was required as well to post such cash and surety bonds as determined by the Secretary of Labor to <i>guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as appropriate.</i></p>
<p>Salazar v. Achacoso</p>	<p>In Oct. 1987, Tesoro filed a complaint with the POEA against Salazar for withholding her Philippine Entertainment Certification Center (PECC) Card and failing to secure her employment in Japan as promised. Upon verifying that Salazar lacked a valid license to operate a recruitment agency, POEA Administrator Tomas Achacoso issued a Closure and Seizure Order against her residence and studio. On January 26, 1988, a designated POEA team, accompanied by police and media, executed the order at the</p>	<p>Under Const. art. III, § 2, it is only a judge who may issue warrants of search and arrest. It cannot be done by mayors, nor by a mere prosecuting body. The basis of art. 38 (c) was PD 2018, enacted by Marcos Sr. The decrees in question, it is well to note, stand as the dying vestiges of authoritarian rule in its twilight moments.</p> <p>Thus, the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go</p>

	<p>Hannalie Dance Studio in Mandaluyong. During the raid, officials discovered numerous performers practicing on-site and seized various costumes used for the unauthorized recruitment activities. This legal action was taken under the authority of Presidential Decree No. 1920 to curb illegal recruitment practices.</p> <p>May the SOLE/POEA administrator issue warrants of arrest and seizure under art. 38 (c) of the Labor Code? <u>NO</u></p>	<p>through the judicial process. To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.</p> <p>The exception is in cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation, for the purpose of deportation.</p>
<p>Republic v. Human Link Manpower</p>	<p>Carlos applied at Worldview (foreign) as a driver in Doha, Qatar. After undergoing the required medical examination, Worldview submitted Carlos' application and other documents to the POEA under Humanlink as his recruiting agency. During processing of his application, he paid a placement fee adding up to a total of P60,000 (no receipt). While awaiting his departure at the airport, he was made to sign an employment contract stating that he was to work as a duct man with a salary of \$400.00, instead of the heavy equipment driver position he applied for. He was told that the duct man contract was only for entry purposes and was assured that he would work as a heavy equipment driver in Doha as advertised. However, in Doha, he was made to sign another contract which slashed his salary by half. He filed a complaint with the Qatar Labor Office. On Apr. 29, 2008, Carlos was informed that his visa was cancelled and that he was being repatriated at his own expense. Thus, Carlos filed a complaint against Worldview and Humanlink. The POEA and DOLE sided with Carlos. As a consequence Humanlink's license was canceled. POEA also ordered that its officers and directors are disqualified from participating in the overseas employment program of the government.</p> <p>Did the tribunals below err in disqualifying the directors and officers? <u>NO</u></p>	<p>Under art. 35, LC and RA 8042, Congress empowered DOLE and POEA to regulate private sector participation in the recruitment and overseas placement of workers. Thus, POEA may cancel the license of erring recruitment agencies. Moreover, the cancellation of a license, persons, officers and directors of the concerned corporations are automatically prohibited from engaging in recruiting and placement of land-based overseas Filipino workers.</p> <p>The grant of a license is a privilege and not a right thus making it a proper subject of its regulatory powers. If we are to protect the welfare of vulnerable overseas workers, then we must prevent all instances wherein they may be taken advantage upon. This must be so since the rules must be read as a whole to achieve its particular purpose.</p> <p>The law and rules implementing the same unequivocally state that once a recruitment license of an entity is cancelled, its officers and directors are automatically prohibited from engaging in such activity. The failure of the POEA and DOLE to indicate this fact cannot by any means indicate the contrary.</p>
<p>Virjen Shipping v. NLRC [<i>En Banc</i>]</p>	<p>Seamen entered into separate contracts of employment with the Company, engaging them to work onboard M/T Jannua for 12 months. They boarded. Bisula received an advisory form the company, advising him of the possibility that they may be called to ITF-controlled ports and at the same time informing him of the procedure to be followed in the computation of the special or additional compensation of crew members while in said ports. The company informed Bisula of the amounts each of the officers will receive as additional compensation. The company also informed them that they have been enrolled as ITF members, and the membership fee has been paid. In response, the crew now demanded a 50% increase of basic salary to "solve the ITF problem." The company proposed only a 25% increase. This was</p>	<p>Neither the National Seamen Board nor the National Labor Relations Commission should, as a matter of official policy, legitimize and enforce dubious arrangements where shipowners and seamen enter into fictitious contracts similar to the addendum agreements or side contracts in this case whose purpose is to deceive. At the very least, such a sensitive matter involving no less than our dignity as a people and the welfare of our workmen must proceed from the Batasang Pambansa in the form of policy legislation, not from administrative rule making or adjudication.</p> <p>The form contracts approved by the National Seamen Board are designed to protect Filipino seamen not foreign shipowners who can take care of themselves. The standard forms embody the basic</p>

	<p>accepted. Eventually, the Company canceled the contracts of employment due to the actuations, and that they were terminated upon the vessel's arrival in Manila. They were repatriated to Manila. There is no showing that the Seamen were given the opportunity to at least comment on the Company's request for the cancellation of their contracts, although they had served only 3 out of the 12 months' duration of their contracts. Thus, the seamen filed a complaint for illegal dismissal and nonpayment of wages with the National Seamen Board (NSB). The Vir-jen Shipping and Marine Services Inc. in turn filed a complaint for breach of contract and recovery of excess salaries and overtime pay against the seamen. The NSB granted Vir-jen's complaint and denied that of the seamen. The NLRC reversed.</p> <p>Did the NLRC err in ordering Vir-jen to pay the wages and other monetary benefits corresponding to the unexpired portion of the contract on the ground that the seamen were illegally terminated? <u>NO</u></p>	<p>minimums which must be incorporated as parts of the employment contract. They are not collective bargaining agreements or immutable contracts which the parties cannot improve upon or modify in the course of the agreed period of time. To state, therefore, that the affected seamen cannot petition their employer for higher salaries during the 12 months duration of the contract runs counter to established principles of labor legislation.</p> <p>The facts show that Vir-jen initiated the discussions which led to the demand for increased wages. The seamen made a proposal and the petitioner answered with a counter-proposal. The ship had not yet gone to Australia or any ITF controlled port. There was absolutely no mention of any strike, much less a threat to strike. The seamen had done no act which under Philippine law or any other civilized law would be termed illegal, oppressive, or malicious. Whatever pressure existed, it was mild compared to accepted and valid modes of labor activity.</p>
Seagull Maritime v. Balatongan	<p>A crew agreement was entered into between Balatongan and Philimare. Philimare employed Balatongan as seaman in M/V Santa Cruz, with a monthly salary of USD300. The contract was approved by the NSB. While on board said vessel, the parties entered into a <i>supplementary contract of employment</i>, which provided that the employer is obliged to insure the employee for death or permanent total disability caused by accident. During his employment, Balatongan met with an accident in the Suez Canal, Egypt as a result of which he was hospitalized at Suez Canal Authority Hospital. Later, he was repatriated to the Philippines and was hospitalized at the Makati Medical Center. His disability was permanent in nature. Thus, he demanded payment for his claim for total disability insurance in the amount of \$50,000. His claim was denied. Thus, he filed a complaint against Philmare and Seagull in the POEA. Balatongan won in the POEA and NLRC. Petitioners argue that the supplemental contract was illegal as it was not approved by the NSB.</p> <p>Is the supplemental contract valid and binding? <u>YES</u></p>	<p>The supplementary contract of employment was entered into between petitioner and private respondent to modify the original contract of employment. The reason why the law requires that the POEA should approve and verify a contract under art. 34 (i) of the Labor Code is to insure that the employee shall not thereby be placed in a disadvantageous position and that the same are within the minimum standards of the terms and conditions of such employment contract set by the POEA. This is why a standard format for employment contracts has been adopted by the Department of Labor. However, there is no prohibition against stipulating in a contract more benefits to the employee than those required by law.</p> <p>Thus, in this case wherein a "supplementary contract" was entered into affording greater benefits to the employee than the previous one, and although the same was not submitted for the approval of the POEA, the public respondents properly considered said contract to be valid and enforceable. Indeed, said pronouncements of public respondents have the effect of an approval of said contract.</p>
Dagasdas v. Grand Placement and General Services Corporation	<p>GPGS is a licensed recruitment/placement agency, while Aramco is its counterpart in Saudi Arabia. ITM is the principal of GPGS, a Saudi Arabia corporation. GPGS, on behalf of ITM, employed Dagasgas as a network technician. Nonetheless, his job offer indicated that he was accepted by Aramco and ITM for the position of "Supt." Purportedly, the position of Network Technician was only</p>	<p>Security of tenure remains even if employees, particularly the Overseas Filipino Workers (OFWs), work in a different jurisdiction. Since the employment contracts of OFWs are perfected in the Philippines, and following the principle of <i>lex loci contractus</i> (the law of the place where the contract is made), these contracts are governed by our laws, primarily the Labor Code of the Philippines</p>

	<p>for the purpose of securing a visa for Saudi Arabia because ITM could not support visa application for Civil Engineers. Dagasdas arrived in Saudi Arabia. There, he signed a new employment contract which stipulated that the latter contracted him as Superintendent or in any capacity within the scope of his abilities with salary of SR5,112.00 and allowance of SR2,045.00 per month. Under this contract, Dagasdas shall be placed under a three-month probationary period; and, <i>this new contract shall cancel all contracts prior to its date from any source</i>. In reality, he was given tasks for a mechanical engineer. He was transferred as Civil Construction Engineer for a month. He was eventually terminated during the probationary period. Before his repatriation, Dagasdas signed a Statement of Quitclaim. Upon arrival in the PH, he filed a complaint for illegal dismissal against GPGS, ITM and Aramco. The LA dismissed the complaint, which the NLRC reversed, but the CA dismissed.</p> <p>Was Dagasgas validly dismissed from work? <u>NO</u></p>	<p>and its implementing rules and regulations. At the same time, our laws generally apply even to employment contracts of OFWs as our Constitution explicitly provides that the State shall afford full protection to labor, whether local or overseas. Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.</p> <p><u><i>In the case at bar</i></u> Prior to his deployment, Dagasdas was made to sign a POEA-approved contract with GPGS, on behalf of ITM; and, upon arrival in Saudi Arabia, ITM made him sign a new employment contract. Nonetheless, this new contract, which was used as basis for dismissing Dagasdas, is void.</p> <ol style="list-style-type: none"> 1. First, Dagasdas' new contract is in clear violation of his right to security of tenure. <ol style="list-style-type: none"> a. He was terminated without cause, based on the contract. b. The above-cited clause is contrary to law because as discussed, our Constitution guarantees that employees, local or overseas, are entitled to security of tenure. To allow employers to reserve a right to terminate employees without cause is violative of this guarantee of security of tenure. c. Moreover, even assuming that Dagasdas was still a probationary employee when he was terminated, his dismissal must still be with a valid cause 2. Second, the new contract was not shown to have been processed through the POEA. <ol style="list-style-type: none"> a. Unless the employment contract of an OFW is processed through the POEA, the same does not bind the concerned OFW because if the contract is not reviewed by the POEA, certainly the State has no means of determining the suitability of foreign laws to our overseas workers. b. This new contract also breached Dagasdas' original contract as it was entered into even before the expiration of the original contract approved by the POEA. Therefore, it cannot supersede the original contract.
Sunace International Management Services v. NLRC	Sunace deployed to Taiwan Divina as a domestic helper under 12-month contract. The deployment was through the assistance of Wang, a Taiwanese broker. After her 12-month contract expired on	The CA's basis was Sunace knew and impliedly consented to the extension of Divina's 2-year contract. However, the alleged continuous communication was not between Divina and Sunace,

	<p>February 1, 1998, Divina continued working for her Taiwanese employer, Hang Rui Xiong, for two more years, after which she returned to the Philippines on February 4, 2000. After her return, Divina on Feb. 14, 2000 filed a complaint before the NLRC against Sunace, the Taiwanese broker, one Perez and the employer-foreign principal alleging she was jailed for 3 months and that she was underpaid. Divina alleged that the deductions for savings and income tax for 1998 and 1999 weren't returned to her. The LA ruled in favor of Divina, which the NLRC and CA affirmed.</p> <p>Is Sunace liable? <u>NO</u></p>	<p>but between Divina and the Taiwanese broker.</p> <p>The finding of the Court of Appeals solely on the basis of the above-quoted telefax message, that Sunace continually communicated with the foreign "principal" (sic) and therefore was aware of and had consented to the execution of the extension of the contract is misplaced. <i>The telefax does not provide evidence that Sunace was privy to the new contract.</i></p> <p>Parenthetically, since the telefax message is dated February 21, 2000, it is safe to assume that it was sent to enlighten Sunace who had been directed, by Summons issued on February 15, 2000, to appear on February 28, 2000 for a mandatory conference following Divina's filing of the complaint on February 14, 2000</p> <ul style="list-style-type: none"> - The telefax happened <i>after</i> the filing of the Complaint! <p>The theory of imputed knowledge ascribes the knowledge of the agent, Sunace, to the principal, employer Xiong, not the other way around. The knowledge of the principal-foreign employer cannot, therefore, be imputed to its agent Sunace.</p> <p>There being no substantial proof that Sunace 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 Divina's claims arising from the 2-year employment extension. Moreover, there was an <i>implied revocation</i> of the agency relationship when, after the termination of the original contract, the foreign principal directly negotiated with Divina.</p>
<p>Interorient Maritime Enterprises, Inc. v. NLRC</p>	<p>Pineda, an oiler on the vessel MV Amazonia, died on Oct. 2, 1989, after being shot by a Thai policeman during a flight stopover in Bangkok while undergoing repatriation to Manila. His family alleged that the ship's captain was negligent for allowing Pineda to travel alone despite his suffering from mental disorders and threats from fellow crew members. In defense, the recruitment agency argued that Pineda had already completed his contract and was acting on his own free will when he missed his connecting flight and attacked a police officer with a knife. The agency maintained it was not liable for death benefits, asserting that the fatality resulted from Pineda's own willful and provocative act, which forced the officer to fire in self-defense.</p> <p>Are the local crewing or manning agent and its foreign principal (the shipowner) liable for the death of a Filipino seaman-employee who, after having been discharged, was killed in transit while being</p>	<p>Pineda was no longer acting sanely when he attacked the Thai policeman. The report of the Philippine Embassy in Thailand dated Oct. 9, 1990 depicting the <i>deceased's strange behavior shortly before he was shot dead</i>, after having <i>wandered around Bangkok for four days</i>, clearly shows that the man was not in full control of his own self.</p> <ul style="list-style-type: none"> - Since Pineda attacked the Thai policeman when he was no longer in complete control of his mental faculties, the aforementioned provision of the Standard Format Contract of Employment exempting the employer from liability should not apply in this case. <p><i>First</i>, the fact that the deceased suffered from mental disorder at the time of his repatriation means that he must have been deprived of the full use of his reason, and that thereby, his will must have been impaired, at the very least.</p>

	<p>repatriated home? <u>YES</u></p>	<p><i>Second</i>, and apart from that, we also agree that in light of the deceased's mental condition, petitioners should have observed some precautionary measures and should not have allowed said seaman to travel home alone, and their failure to do so rendered them liable for the death of Pineda.</p> <p>The foreign employer may not have been obligated by its contract to provide a companion for a returning employee, but it cannot deny that it was expressly tasked by its agreement to assure the safe return of said worker. The uncaring attitude displayed by petitioners who, knowing fully well that its employee had been suffering from some mental disorder, nevertheless still allowed him to travel home alone, is appalling to say the least. Such attitude harks back to another time when the landed gentry practically owned the serfs, and disposed of them when the latter had grown old, sick or otherwise lost their usefulness.</p>
<p>Santiago v. C.F. Sharp</p>	<p>Paul Santiago, a seafarer for Smith Bell Management, Inc., <i>signed a POEA-approved nine-month contract to work on the MSV Seaspread starting Feb. 1998. However, a week before his departure, the company's Vice President sent a facsimile to the ship's captain alleging that Santiago intended to jump ship in Canada, similar to his brother's previous actions. The Vice President described Santiago as a "serpent" in his heart, leading the captain to cancel his deployment to avoid potential vessel penalties. Consequently, on Feb. 9, 1998, Santiago was informed he would no longer be leaving for Canada despite having a valid, signed contract. Although he was told he might be considered for future deployment, his scheduled employment was effectively terminated before it began based on these unverified reports.</i> Thus, Santiago filed a complaint for illegal dismissal, damages and attorney's fees against CF Sharp and its principal, Cable and Wireless Marine Ltd. The LA ruled in favor of Santiago, and found the respondents liable. The NLRC reversed, holding that there was no EER, which the CA affirmed.</p> <p>Is the seafarer, who was prevented from leaving the port of Manila and refused deployment without valid reason but whose POEA-approved employment contract provides that the employer-employee relationship shall commence only upon the seafarer's actual departure from the port at the point of hire, is entitled to relief? <u>YES</u></p>	<p>Considering that Santiago was not able to depart from the airport or seaport at the point of hire, the employment contract did not commence, and <i>no employer-employee relationship was created between the parties</i>. However, a distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship.</p> <ul style="list-style-type: none"> - Perfection – Occurred when the parties agreed on the object and the cause, as well as the rest of the T&Cs therein. - Commencement – This would have taken place had Santiago been actually deployed from the point of hire. <p>Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.</p> <p>Respondent's act of preventing petitioner from departing the port of Manila and boarding MSV Seaspread constitutes a breach of contract, giving rise to petitioner's cause of action. Respondent unilaterally and unreasonably reneged on its obligation to deploy petitioner and must therefore answer for the actual damages he suffered.</p> <ul style="list-style-type: none"> - Article 2199 of the Civil Code provides that one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Respondent is thus

		liable to pay petitioner actual damages in the form of the loss of nine (9) months' worth of salary as provided in the contract.
Repatriation		
Equi-Asia Placement, Inc. v. Department of Foreign Affairs	<p>Razon, an OFW, died of cardiac arrest while sleeping in her dormitory in South Korea (SK). Thus, the PH Overseas Labor Office (POLO) wrote to OWWA, that the next-of-kin must execute an SPA to facilitate the repatriation requirements of Razon's remains. The POEA also contacted Equi-Asia to provide prepaid ticket advice for the repatriation of remains and belongings of Razon. However, Equi-Asia refused to do so, arguing that he violated his employment contract by being a TNT. The POEA insisted, but Equi-Asia still refused to do so. Nevertheless, apprehensive of the repercussions, it advanced under protest the costs for the repatriation of Razon's remains.</p> <p>Did the POEA commit grave abuse of discretion in ordering Equi-Asia to pay the expenses for the repatriation of Razon? <u>NO</u></p>	<p>While RA 8042 does not expressly state that petitioner shall be primarily obligated to transport back here to the Philippines the remains of the deceased Razon, nevertheless, such duty is imposed upon him as the statute clearly dictates that "the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency." The mandatory nature of said obligation is characterized by the legislature's use of the word "shall." That the concerned government agencies opted to demand the performance of said responsibility solely upon petitioner does not make said directives invalid as the law plainly obliges a local placement agency such as herein petitioner to bear the burden of repatriating the remains of a deceased OFW with or without recourse to the principal abroad. Nor do we see any reason to stamp Section 53 of the Omnibus Rules as invalid for allegedly contravening Section 15 of the law which states that a placement agency shall not be responsible for a worker's repatriation should the termination of the employer-employee relationship be due to the fault of the OFW. To our mind, the statute merely states the general principle that in case the severance of the employment was because of the OFW's own undoing, it is only fair that he or she should shoulder the costs of his or her homecoming. As such determination would most likely take some time, it is only proper that an OFW be brought back here in our country at the soonest possible time lest he remains stranded in a foreign land during the whole time that recruitment agency contests its liability for repatriation.</p>
Dispute settlement		
Acuna v. CA	<p>Acuna, Ramones and Mendez are OFWs deployed by Join International Corp. (JIC) to 3D Pre-Color Plastic Inc. in Taiwan. After signing a uniform contract, they flew to Taiwan. However, while in Taiwan, they were made to sign another contract which stated that their salary was only NT\$11,840 (instead of NT\$15,840). For their accommodations, they were only given a small room with a cement floor so dirty and smelling with foul odor. Forty women were jam packed in the room, and each person was given a pillow. They were also using the men's bathroom. They were forced to work 12 hours a day (8-8). Because they can no longer bear the situation,</p>	<p><u>Constructive dismissal</u> Constructive dismissal covers the involuntary resignation resorted to when continued employment becomes impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to an employee. Petitioners admitted that they were told by the principal, upon their arrival, that the dormitory was still under construction and were requested to bear with the temporary inconvenience and the dormitory would soon be finished. We likewise note that petitioners</p>

	<p>they went back to Manila after only a week—at their own expense. Upon return, they sued JIC for illegal dismissal and other monetary claims (<i>i.e.</i>, 3 months' salary) before the NLRC. The LA ruled in their favor, which the NLRC affirmed. The CA, however, reversed.</p> <p>Were the petitioners illegally dismissed under RA 8042? <u>NO, but without prejudice to filing of illegal recruitment complaint pursuant to § 6 (i), RA 8042.</u></p>	<p>did not refute private respondents' assertion that they had deployed approximately sixty other workers to their principal, and to the best of their knowledge, no other worker assigned to the same principal has resigned, much less, filed a case for illegal dismissal. To our mind these cited circumstances do not reflect malice by private respondents nor do they show the principal's intention to subject petitioners to unhealthy accommodations. Under these facts, we cannot rule that there was constructive dismissal.</p> <p><u>As to overtime pay</u> The claim for overtime pay should not have been disallowed because of the failure of the petitioners to substantiate them. While normally we would require the presentation of payrolls, daily time records and similar documents before allowing claims for overtime pay, in this case, that would be requiring the near-impossible.</p> <p><u>Damages</u> Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Bad faith was not proven.</p> <p><u>Quitclaims</u> Quitclaims executed by the employees are commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the workers' legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity. Nonetheless, the economic difficulties and financial crises allegedly confronting the employee is not an acceptable ground to annul the compromise agreement unless it is accompanied by a gross disparity between the actual claim and the amount of the settlement. A perusal of the records reveals that petitioners were not in any way deceived, coerced or intimidated into signing a quitclaim waiver. Nor was there a disparity.</p>
<p>Serrano v. Gallant Maritime</p>	<p>Serrano was hired by Gallant as a chief officer. On the date of his departure, he was asked to sign a <i>downgraded employment contract</i> for the position of 2nd officer, with the promise that he will be a chief officer. Marlow Navigation (employer) failed to do so. Thus, after only 2 months out of 12 months, he returned to the Philippines. Thus, Serrano filed a complaint against Gallant and Marlow for illegal dismissal and for payment of his money claims <i>for the entire contract</i>. However, the LA and NLRC only awarded him 3</p>	<p><u>Equal protection clause</u> Upon cursory reading, the subject clause appears facially neutral, for it applies to all OFWs. However, a closer examination reveals that the subject clause has a discriminatory intent against, and an invidious impact on, OFWs at two levels:</p> <ol style="list-style-type: none"> 1. OFWs with employment contracts of less than one year vis-à-vis OFWs with employment contracts of one year or more

	<p>months' salary, pursuant to § 10, RA 8042: <i>In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract <u>or for three (3) months for every year of the unexpired term, whichever is less.</u></i></p> <p>Is § 10, RA 8042 unconstitutional? <u>YES</u></p>	<p>2. OFWs vis-à-vis local workers with fixed-period employment</p> <p>§ 10 only applies when the contract is at least one year.</p> <ul style="list-style-type: none"> - If the contract is less than one year, in case of illegal dismissal, they are entitled to their salaries for the entire unexpired portion of their contract. - If the contract is more than one year, in case of illegal dismissal, they are entitled to monetary award equivalent to only 3 months of the unexpired portion of their contracts. <p>The clause creates a sub-layer of discrimination among OFWs whose contract periods are for more than one year: those who are illegally dismissed with less than one year left in their contracts shall be entitled to their salaries for the entire unexpired portion thereof, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the subject clause, and their monetary benefits limited to their salaries for three months only.</p> <p>But with the enactment of RA 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.</p> <p><u>Strict scrutiny</u> There being a suspect classification involving a vulnerable sector protected by the Constitution, the Court now subjects the classification to a strict judicial scrutiny, and determines whether it serves a compelling state interest through the least restrictive means. The Court dug deep into the records but found no compelling state interest that the subject clause may possibly serve.</p>
<p>Sameer Overseas v. Cabiles</p>	<p>Joy Cabiles was hired by Sameer for a one-year quality control position in Taiwan, but she was instead assigned work as a cutter upon arrival. After less than a month of employment, she was abruptly terminated without prior notice and repatriated to the Philippines with significant deductions made from her earned wages. Consequently, Joy filed a formal complaint against the recruitment agency and her foreign employer with the NLRC.</p> <p>Was Joy illegally dismissed? <u>YES. Thus, Cabiles is entitled to her</u></p>	<p>Sameer merely alleged that respondent failed to comply with her foreign employer's work requirements and was inefficient in her work. No evidence was shown to support such allegations. Sameer did not even bother to specify what requirements were not met, what efficiency standards were violated, or what particular acts of respondent constituted inefficiency. Sameer failed to comply with the twin notices and hearing requirements. Joy started working on June 26, 1997. She was told that she was terminated on July 14, 1997 effective on the same day and barely a month from her first</p>

	<p><u>salary for the unexpired portion of her contract.</u></p>	<p>workday.</p> <p><u>Monetary claims</u> Following <i>Serrano</i>, Congress amended RA 8042, and reinstated the clause “or for three (3) months for every year of the unexpired term, whichever is less.” We observe that the reinstated clause, this time as provided in RA 10022, violates the constitutional rights to equal protection and due process. We reiterate our finding in <i>Serrano v. Gallant Maritime</i> that limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution.</p> <ul style="list-style-type: none"> - The rights violated when, say, a fixed-period local worker is illegally terminated are neither greater than nor less than the rights violated when a fixed-period overseas worker is illegally terminated. - In both cases, the workers are deprived of their expected salary, which they could have earned had they not been illegally dismissed. For both workers, this deprivation translates to economic insecurity and disparity. - The same is true for the distinctions between overseas workers with an employment contract of less than one year and overseas workers with at least one year of employment contract, and between overseas workers with at least a year left in their contracts and overseas workers with less than a year left in their contracts when they were illegally dismissed. <p>Putting a cap on the money claims of certain overseas workers does not increase the standard of protection afforded to them. On the other hand, foreign employers are more incentivized by the reinstated clause to enter into contracts of at least a year because it gives them more flexibility to violate our overseas workers’ rights.</p>
<p>Stolt-Nielsen v. Medequillo</p>	<p>After being hired as a Third Assistant Engineer and serving only three months of his initial nine-month contract, Medequillo was abruptly repatriated from the vessel <i>Stolt Aspiration</i> without explanation. Although <i>Stolt-Nielsen Marine Services, Inc.</i> subsequently signed him to a second POEA-approved contract for the vessel <i>Stolt Pride</i>, the agency failed to deploy him and refused to comply with the new agreement. Furthermore, the agency allegedly coerced him into signing an involuntary release document in exchange for the return of his essential travel and employment records. Thus, Medequillo filed a complaint before the POEA against <i>Stolt-Nielsen</i> and <i>Chung Gai Ship Management</i> for illegal dismissal under a first contract and for failure to deploy under a</p>	<p>The POEA Standard Employment Contract provides that employment shall commence “upon the actual departure of the seafarer from the airport or seaport in the port of hire.” However, this does not mean that the seafarer has no remedy in case of non-deployment without any valid reason. Distinction must be made between the perfection of the employment contract and the commencement of the employer-employee relationship. The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier discussed, would have</p>

	<p>second contract. The complaint was transferred to the LA, which declared the employer guilty of constructive dismissal, <i>on the basis of the 2nd contract which supposedly novated the 1st contract</i>. This was affirmed by the NLRC and the CA.</p> <p>Does the non-deployment give rise to obligations on the part of the employers? <u>YES</u></p>	<p>taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party. Thus, if the reverse had happened, that is the seafarer failed or refused to be deployed as agreed upon, he would be liable for damages.</p> <p><u>How will the seafarer be compensated by reason of the unreasonable non-deployment?</u></p> <p>§ 10, RA 8042 will apply, which provides for money claims by reason of a contract involving Filipino workers for overseas deployment: <i>Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the 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 damages.</i></p> <ul style="list-style-type: none"> - Following the law, the claim is still cognizable by the labor arbiters of the NLRC under the second phrase of the provision.
<p>Sto. Tomas v. Salac [<i>En Banc</i>]</p>	<p>The Cuaresmas filed a claim for death and insurance benefits and damages against Becmen and White Falcon for the death of their daughter Jasmin while working as a nurse in Riyadh. The LA dismissed the complaint on the ground that the Cuaresmas had already received insurance benefits arising from their daughter's death from the OWWA; it also gave credence to the findings of the KSA authorities that Jasmin died of suicide. The NLRC reversed; and held that Jasmin died of criminal violence and rape. Now, the directors and officers of Becmen filed an intervention, arguing that the 2nd paragraph of § 10, RA 8042: <i>If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.</i></p> <p>Is the assailed provision unconstitutional? <u>NO</u></p>	<p>The liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities. In the case of Becmen, while there is evidence that these companies were at fault in not investigating the cause of Jasmin's death, there is no mention of any evidence in the case against them that Becmen's corporate officers and directors, were personally involved in their company's particular actions or omissions in Jasmin's case.</p> <p><u>Venue</u></p> <p>A criminal action arising from illegal recruitment as defined herein shall be filed with the RTC of the province or city:</p> <ol style="list-style-type: none"> 1. where the offense was committed or 2. where the offended party actually resides at the time of the commission of the offense.
<p>Gopio v. Bautista</p>	<p>Bautista was hired as a project manager for Shorncliffe in PNG through Job Asia (owned by Gopio). Bautista's contract stated that his employment shall be valid and effective for 31 months with a net</p>	<p>§ 10, RA 8042 provides that <i>in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full</i></p>

	<p>monthly salary of P40,000. However, just nine months into the contract, Bautista was served a notice of termination effective Jul. 10, 2009 on the alleged grounds of unsatisfactory performance and failure to meet the standards of the company. He was repatriated on Jul. 11, 2009. Thus, Bautista sued for illegal dismissal against Job Asia, Shorncliffe and Gopio with the NLRC. The employer based his termination on art. 4.3 of the contract: <i>The Employer or Employee may terminate this contract on other grounds. The Employer should give one month's written notice of his intention to terminate or in lieu thereof pay the Employee a sum equivalent to one month's salary. The Employee may likewise terminate this Contract by giving three months' notice to the Employer.</i> The LA found Bautista illegally dismissed, which the NLRC reversed—but ordered that Bautista be paid nominal damages. On <i>certiorari</i>, the CA annulled the NLRC decision and reinstated the LA decision.</p> <p>Did the LA correctly awarded indemnity to Bautista? <u>YES</u></p>	<p><i>reimbursement of his placement fee with interest of 12% per annum, plus his salaries for the unexpired portion of his employment contract.</i> In this case, it is Bautista's monthly salary of P115,850 multiplied by 22 months—the remaining term—or a total amount of P2.5M.</p> <p><u><i>Gopio is solidarily liable with Shorncliffe</i></u> In the first place, such joint and solidary liability is required prior to the issuance of a license to petitioner to operate a recruitment agency. Consistent with the law and the POEA Rules, petitioner's joint and several liability is incorporated in Bautista's employment contract with Shorncliffe, which states. The provision on joint and several liability is in line with the state's policy of affording protection to labor and alleviating workers' plight. In any case, the law does not preclude it (the local agent) from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.</p>
<p>GBMLT Manpower Services v. Malinao</p>	<p>Malinao applied to GBMLT for a job as a teacher. Eventually, she was accepted for a monthly salary of USD900. She also signed a POEA-approved contract. She departed for Ethiopia to teach at the Alemaya University. However, there, she unilaterally decided to discontinue teaching the course in cooperative accounting that had been assigned to her. Another lecturer took over the course, and respondent spent the rest of the semester without a teaching load. The VP issued a memorandum which lowered the ranks of most of the Filipino teaching staff and asking them to sign a new contract reflecting a change in rank and salary. Malinao's salary was reduced to USD600/month. After a month, she was formally terminated, because the Department allegedly had to replace her in her classes twice. She was offered a position at the Internal Audit Department, but Malinao rejected this. Thus, she was repatriated on Jun. 27, 2006, and signed a quitclaim in favor of GBMLT. Upon arrival, she filed a complaint before the labor arbiter against petitioner as local agency and Alemaya University as foreign principal, for payment of the unexpired portion of the 2-year contract and damages.</p> <p>Is Malinao entitled to her claims? <u>NO</u></p>	<p><u><i>No illegal dismissal</i></u> § 10, RA 8042 applies only to an illegally dismissed overseas contract worker or a worker dismissed from overseas employment without just, valid or authorized cause as defined by law or contract. The monetary award provided in § 10 finds no application to cases in which the overseas Filipino worker was not illegally dismissed.</p> <p>In this case, it was Malinao who unilaterally terminated the contract when she did not want the new job for personal reasons. Ultimately, it was she who terminated the Contract of Employment, and she cannot now claim that she was illegally dismissed.</p>
<p>Industrial Personnel & Management Services Inc. (IPAMS) v. De Vera</p>	<p>IPAMS, acting on behalf of its Canadian principal SNC-Lavalin, hired Arriola as a Safety Officer for a 19-month project in Madagascar. Although the contract was processed through the POEA and signed in the Philippines, <i>SNC-Lavalin pre-terminated Arriola's employment after only three months</i>, citing a diminishing workload</p>	<p>The general rule is that PH laws apply <i>even to overseas employment contracts</i>. This rule is rooted in the constitutional provision that the State shall afford full protection to labor, whether local or overseas. Hence, even if the OFW has his employment abroad, it does not strip him of his rights to security of tenure,</p>

	<p>and financial difficulties. Arriola filed a complaint for illegal dismissal, arguing that he was not given a valid reason or sufficient notice under Philippine law and was owed the unexpired portion of his contract. In their defense, the petitioners claimed that Canadian law governed the agreement under the principle of <i>lex loci celebrationis</i> because the documents were processed in Canada. They further asserted that the termination was legal under Ontario's Employment Standards Act, or alternatively, justified as a valid retrenchment under Philippine law due to the global financial crisis.</p> <p>Is Canadian law applicable? <u>NO</u></p>	<p>humane conditions of work and a living wage under our Constitution.</p> <p>As an <u>exception</u>, the parties may agree that a foreign law shall govern the contract, subject to the following requisites:</p> <ol style="list-style-type: none"> 1. It is expressly stipulated in the overseas employment contract that a specific foreign law shall govern 2. The foreign law invoked must be proven before the courts pursuant to the Philippine rules on evidence 3. The foreign law stipulated in the overseas employment contract must not be contrary to law, morals, good customs, public order, or public policy of the Philippines 4. The overseas employment contract must be processed through the POEA <p><u>In the case at bar</u></p> <p>[1] <i>The foreign law was not expressly specified in the employment contract.</i> No foreign law was expressly stipulated in the overseas employment contract with Arriola. They failed to show on the face of the contract that a foreign law was agreed upon by the parties. Then, they emphasized provision 8.20 therein, regarding interpretation of the contract, which provides that said policy would be governed and construed with the laws of the country where the applicable SNC-Lavalin, Inc. office was located. However, this is only by implication. A better rule would be to obligate the foreign employer to expressly declare at the onset of the labor contract that a foreign law shall govern it. Finally, the contract was executed in Batangas—thus, <i>lex loci celebrationis</i> applies and PH law governs.</p> <p>[3] The foreign law invoked (Employment Standards Act, Canada) is contrary to the Constitution and the Labor Code. <i>First</i>, the ESA does not require any ground for the early termination of employment. <i>Second</i>, the ESA allows the employer to dispense with the prior notice of termination to an employee. The provisions of the ESA are patently inconsistent with the right to security of tenure. These also deprive the employee of due process.</p>
<p>JMM Promotion and Management Inc. v. NLRC</p>	<p>The NLRC dismissed JMM's appeal bond on the ground of failure to post the required appeal bond. The NLRC cited art. 223, providing that: <i>In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.</i> For JMM, the appeal bond was not necessary in the case of licensed recruiters</p>	<p>A reading of the POEA rules shows that in addition to the cash and surety bonds and the escrow money, an appeal bond in an amount equivalent to the monetary award is required to perfect an appeal from a decision of the POEA. Obviously, the appeal bond is intended to further insure the payment of the monetary award in favor of the employee if it is eventually affirmed on appeal to the NLRC.</p>

	<p>for overseas employment because they are already required under Section 4, Rule II, Book II of the POEA Rules not only to pay a license fee of P30,000.00 but also to post a cash bond of P100,000.00 and a surety bond of P50,000.00. JMM also claims it has placed in escrow the sum of P200,000.00 with the Philippine National Bank in compliance with Section 17, Rule II, Book II of the same Rule, “to primarily answer for valid and legal claims of recruited workers as a result of recruitment violations or money claims.”</p> <p>Is JMM still required to post an appeal bond? <u>YES</u></p>	<p>It is true that the cash and surety bonds and the money placed in escrow are supposed to guarantee the payment of all valid and legal claims against the employer, but these claims are not limited to monetary awards to employees whose contracts of employment have been violated. The POEA can go against these bonds also for violations by the recruiter of the conditions of its license, the provisions of the Labor Code. As for the escrow agreement, it was presumably intended to provide for a standing fund, as it were, to be used only as a last resort and not to be reduced with the enforcement against it of every claim of recruited workers that may be adjudged against the employer.</p> <p><u>In this case</u></p> <p>The decision sought to be appealed grants a monetary award of about P170,000.00 to the dismissed employee. The standby guarantees required by the POEA Rules would be depleted if this award were to be enforced not against the appeal bond but against the bonds and the escrow money, making them inadequate for the satisfaction of the other obligations the recruiter may incur.</p>
<p>Dagasdas v. Grand Placement and General Services Corporation (GPGS)</p>	<p>GPGS is a licensed recruitment/placement agency, while Aramco is its counterpart in Saudi Arabia. ITM is the principal of GPGS, a Saudi Arabia corporation. GPGS, on behalf of ITM, employed Dagasdas as a network technician. Nonetheless, his job offer indicated that he was accepted by Aramco and ITM for the position of “Supt.” Purportedly, the position of Network Technician was only for the purpose of securing a visa for Saudi Arabia because ITM could not support visa application for Civil Engineers. Dagasdas arrived in Saudi Arabia. There, he signed a new employment contract which stipulated that the latter contracted him as Superintendent or in any capacity within the scope of his abilities with salary of SR5,112.00 and allowance of SR2,045.00 per month. Under this contract, Dagasdas shall be placed under a three-month probationary period; and, <i>this new contract shall cancel all contracts prior to its date from any source</i>. In reality, he was given tasks for a mechanical engineer. He was transferred as Civil Construction Engineer for a month. He was eventually terminated during the probationary period. Before his repatriation, Dagasdas signed a Statement of Quitclaim. Upon arrival in the PH, he filed a complaint for illegal dismissal against GPGS, ITM and Aramco. The LA dismissed the complaint, which the NLRC reversed, but the CA dismissed.</p> <p>Is Dagasdas precluded from filing this suit because he already signed a waiver? <u>NO</u></p>	<p>General rule: The waiver or quitclaim cannot prevent the employee from demanding benefits to which he or she is entitled, and from filing an illegal dismissal case.</p> <ul style="list-style-type: none"> - This is because waiver or quitclaim is looked upon with disfavor, and is frowned upon for being contrary to public policy <p>Exception: It is valid if it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking.</p> <ul style="list-style-type: none"> - The burden to prove that the waiver or quitclaim was voluntarily executed is with the employer. <p><u>In the case at bar</u></p> <p>In this case, however, neither GPGS nor its principal, ITM, successfully discharged its burden. GPGS and/or ITM failed to show that Dagasdas indeed voluntarily waived his claims against the employer. Even if Dagasdas signed a quitclaim, it does not necessarily follow that he freely and voluntarily agreed to waive all his claims against his employer. Besides, there was no reasonable consideration stipulated in said quitclaim considering that it only determined the actual payment due to Dagasdas from February 11, 2008 to April 30, 2008. Verily, this quitclaim, under the semblance of a final settlement, cannot absolve GPGS nor ITM from liability arising from the employment contract of Dagasdas.</p>

Disability claims of seafarers

Status Maritime Corp. v. Doctolero

Status Maritime (agent), for Admibros (principal), hired Doctolero as Chief Officer for 9 months, with a basic monthly salary of USD1,250. His PEME was "fit to work." He boarded the vessel in Aug. 2006. However, in Oct., Doctolero experienced chest and abdominal pains, where no clear diagnosis was made. On the same day, he again complained of abdominal pains, and he was diagnosed with esophago-gastritis-duodenitis. The doctor recommended his repatriation. The following day, Doctolero again experienced difficulty of breathing while waiting for his return flight schedule. He informed the ship's agent of his condition and requested assistance, but the latter extended no assistance to him. Thus, he, by himself, went to the Hospitales Nacionales, where he was admitted. He paid the hospital bills amounting to MXN\$7,032.17 on his own. He was repatriated in Nov. 2006, following assistance from the PH Embassy. The company physician evaluated Doctolero's condition and found normal upper GI endoscopy and negative *H. pylori* test. Doctolero was recommended for several other tests that were, however, not administered. In Jan. 2007, on account of the illness suffered while working on board the M/V Dimitris Manios II, Doctolero filed in the NLRC his complaint demanding payment of total and permanent disability benefits, reimbursement of medical and hospital expenses, sick wage allowance, moral and exemplary damages, and legal interest on his claims.

Is Doctolero entitled to claim permanent and total disability benefits from Status Maritime? NO

Art. 198 (c) (1) defines permanent and total disability: Temporary total disability lasting continuously for more than 120, except as otherwise provided for in the Rules. The IRR provides: *The income benefit shall be paid beginning the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.*

Pertinently, the POEA Rules provide: *Upon sign-off from the vessel or medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company- designated physician but in no case shall this period exceed one hundred twenty (120) days.*

In the case at bar

Doctolero's claim was premature. In order for a seafarer's claim for total and permanent disability benefits to prosper, any of the following conditions should be present:

- a. The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120- day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
- b. 240 days had lapsed without any certification issued by the company designated physician;
- c. The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
- d. The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
- e. The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

		<p>f. The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;</p> <p>g. The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and</p> <p>h. The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods</p> <p>While the fact that Doctolero suffered the disability during the term of his contract was undisputed, it was evident that he had filed his complaint for disability benefits before the company-designated physician could determine the nature and extent of his disability, or before even the lapse of the initial 120-day period. With Doctolero still undergoing further tests, the company-designated physician had no occasion to determine the nature and extent of his disability upon which to base Doctolero's "fit to work" certification or disability grading. Consequently, the petitioners correctly argued that Doctolero had no cause of action for disability pay and sickness allowance at the time of the filing of his complaint.</p>
<p>Maersk Filipinas Crewing Inc. v. Ramos</p>	<p>Maersk employed Ramos as an able-seaman for 4 months. However, a month into his contract, his left eye was hit by a screw and he was repatriated thereafter. He got the services of Dr. Dolor (company-designated physician) who performed an eye repair surgery, and opined that his left eye was disabled by 30%. Ramos also went to Dr. Aliwalas Jr. and the PGH for further tests. Eventually, he filed with the NLRC a complaint for total disability, illness allowance and damages. In this medical report, Dr. Dolor stated that Ramos is still fit to work and may be corrected through glasses. Nevertheless, Maersk paid Ramos's 120 days salary. In Oct. 2002, Ramos was examined by Dr. Catipon-Singson, who opined that Ramos can no longer be employed for any work requiring good vision unless condition improves. Dr. Dolor, however, disputed the finding of Dr. Aliwalas, because it's impossible that a cataract has formed just a month following Ramos's check-up with him and PGH.</p> <p>Is Ramos entitled to disability compensation? <u>YES</u></p>	<p>Disability does not refer to the injury or the pain that it has occasioned, but to the loss or impairment of earning capacity. There is disability when there is a diminution of earning power because of actual absence from work. This absence must be due to the injury or illness arising from, and in the course of, employment. Thus, the basis of compensation is reduction of earning power.</p> <p>Permanent partial disability occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work.</p> <p><u>In the case at bar</u></p> <p>Dr. Dolor admitted in the same breath that respondent's left eye could no longer be improved by medical treatment. As early as Apr. 2002, Dr. Dolor diagnosed Ramos's left eye as <i>permanently disabled</i>. Petitioners' argument that the injury was curable because respondent underwent cataract extraction in on both eyes in 2003, and Dr. Dolor issued a medical evaluation finding that respondent's best corrected vision for both eyes was 20/20 (with correctional</p>

		<p>glasses), are thus inconsequential. The curability of the injury does not preclude an award for disability because disability need not render the seafarer absolutely helpless or feeble to be compensable; it is enough that it incapacitates him to perform his customary work.</p> <p>Indeed, the operation, which supposedly led to the correction of Ramos’s vision, took place in 2003. Ramos sustained his injury way back in 2001. During the span of roughly two years, he was not able to reassume work as a seaman, resulting in the loss and impairment of his earning capacity. It is also interesting to note that despite Maersk’s contentions that Ramos had been diagnosed as fit to return to work, no reemployment offer was ever extended to him.</p>
<p>Manila Shipmanagement & Manning Inc. v. Aninang</p>	<p>Aninang was hired as chief engineer for Hellespont through Manila Shipmanagement (agent). The contract was for 6 months, with a basic monthly salary of USD2,435. Aninang boarded the vessel. Sometime thereafter, and while still aboard the vessel, the respondent experienced chest pain and shortness of breath. Thus, he requested for repatriation, but was refused. His contract was extended by a month, and he finally arrived in Feb. 2011–7 months after boarding. According to Aninang, he immediately went to MANSHIP for a post-employment medical examination, but the agent failed to refer him to a company-designated physician. He then sought the services of Dr. Esguerra, who diagnosed him with congestive heart failure and declared him physically unfit for sea services. On the basis of the foregoing, Aninang filed a complaint for disability benefits against MANSHIP and Hellespont.</p> <p>Did Aninang comply with the post-employment medical examination by a company-designated physician? <u>NO</u></p>	<p>When the seafarer suffers work-related illness during the term of his contract, the employer shall be liable to pay for:</p> <ol style="list-style-type: none"> 1. The seafarer’s wages 2. Costs of medical treatment until the seafarer is declared fit to work, or the disability rating is established by the company-designated physician 3. Sickness allowance (up to 120 days) 4. Reimbursement of reasonable medicine, traveling, and accommodation expenses <p>However, to be qualified for the foregoing monetary benefits, the seafarer must submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return to the Philippines, except when he is physically incapacitated to do so. The seafarer is likewise required to report regularly to the company-designated physician during the course of his treatment.</p> <ul style="list-style-type: none"> - Rationale: Reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. <p>In the event that a seafarer fails to comply with this mandatory reporting requirement, the seafarer shall not be qualified to receive his/her disability benefits. The seafarer shall forfeit these benefits.</p> <p><i>In the case at bar</i></p> <p>There’s no evidence that would suggest that he presented himself before the petitioners upon disembarkation. Indeed, he presented no witnesses that would support his allegations. He did not even bother to tell the Court who it is that he talked with in the petitioners’ office — if indeed he went to the petitioners’ office — on the day of the meeting. He did not even relay how his request for</p>

		<p>medical treatment was supposedly refused, and by whom. No date was even alleged. The only exception to the 3-day period is when the seafarer is physically incapacitated to report to the employer. Still, he must submit a written notice to the agency within the same period as compliance. This hasn't happened.</p>
<p>Orient Hope Agencies Inc. v. Jara</p>	<p>Jara was hired by Orient Hope, on behalf of its foreign principal, Zeo Marine, as engine cadet. The employment contract was for a duration of 10 months with a basic monthly salary of US\$230. However, the vessel sank, and Jara sustained leg injuries. He was treated there and was thereafter repatriated and confined on Aug. 3, 2007 in Manila. Jara was diagnosed to have suffered from fracture, shaft of left ulna and left fibula. However, Jara did not return to the company-designated doctor after his check up on March 17, 2008. Based on Jara's last follow-up, his suggested disability grading is Grade 11—stretching leg or ligaments of a knee resulting in instability of the joint. On Mar. 6, 2008, Jara filed a complaint with the LA, insisting that he was entitled to total permanent disability benefits amounting to US\$60,000.</p> <p>Is Jara entitled to permanent and total disability compensation considering that there was a Grade 11 disability grading given by the company-designated physician? <u>YES</u></p>	<p>The seafarer, upon sign-off from his vessel, must report to the company-designated physician within three days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work.</p> <ul style="list-style-type: none"> - He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. <p>If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.</p> <ul style="list-style-type: none"> - However, the 240-day extended period remains to be an exception, and as such, must be clearly shown to be warranted under the circumstances of the case before it can be applied. <p><u>In this case</u>, the company-designated physician did not issue a medical assessment within the 120-day period. Nonetheless, the surgical procedure performed on respondent on January 9, 2008, or 159 days from his repatriation, shows that his condition required further medical treatment, justifying the extension of the 120-day period to 240 days. Thus, this Court deems the temporary total disability period to be accordingly extended up to a maximum of 240 days.</p> <p>Failure of the company-designated physician to render a final and definitive assessment of a seafarer's condition within the 240-day extended period transforms the seafarer's temporary and total disability to permanent and total disability.</p> <ul style="list-style-type: none"> - Respondent was last seen by the company-designated physician on March 17, 2008, or on the 227th day from his repatriation. At this point, the company-designated physician is nearing the end of the extended period of 240 days, 13 days to be exact, within which to give

		<p>respondent's final disability assessment, yet none was given. Petitioners, however, would put the blame on respondent for not returning to the doctor for further consultation and treatment.</p> <p>In this regard, non-compliance with the third-doctor-referral provision as provided in the POEA-SEC will not prejudice respondent's claim. The third-doctor rule does not apply when there is no valid final and definitive assessment from a company-designated physician.</p>
<p>Jebsens Maritime Inc. v. Alcibar</p>	<p>Jebsens Maritime, Inc. and Aboitiz Jebsens Bulk Transport Corporation hired Jessie D. Alcibar as an ordinary seaman after he passed his pre-employment medical examination. While deployed aboard the M/V Maritime Victory, Alcibar was allegedly served meals high in fat and cholesterol, later developing severe anal pain and bloody stools in February 2011. Despite reporting his symptoms, he was initially ignored by senior officers and denied medicine until March 16, 2011, when a doctor in Canada diagnosed him with internal hemorrhoids. Alcibar was repatriated to the Philippines on April 5, 2011, but his request for medical assistance was delayed by petitioners pending management approval. After traveling to his province for his mother's internment without receiving an update from the petitioners, Alcibar sought an independent examination at AMOSUP Seamen's Hospital, where he was diagnosed with rectal cancer. Following surgery and confinement for his condition, Alcibar filed a complaint on September 8, 2011, seeking permanent disability compensation, sickness allowance, damages, and attorney's fees.</p> <p>Is Alcibar's illness compensable? <u>YES</u></p>	<p><u>First doctor rule</u> Jebsens failed to exercise their right to have Alcibar undergo a post-employment medical examination by their company-designated physician. This Court explained that the rationale for the post-employment medical examination is for the company-designated physician to accurately determine whether the illness sustained by the disability claimant was work-related. The employer, through its company-designated physician, is given the first opportunity to examine the seaman seeking disability claims and make a determination whether the illness was caused by the seaman's duties at sea. By failing to schedule Alcibar for a post-employment medical examination, petitioners waived their right to use the declaration of their designated physician as basis for rejecting Alcibar's disability claim.</p> <p><u>Compensable work-related illness</u> For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established:</p> <ol style="list-style-type: none"> 1. The seafarer's work must involve the risk described herein 2. The disease was contracted as a result of the seafarer's exposure to the described risks 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it 4. There was no notorious negligence on the part of the seafarer <p>Notably, this Court ruled that illnesses which are either: (1) acquired by the seaman on board the vessel; or (2) resulting from a pre-existing condition of the seaman which is aggravated by the conditions on board the vessel are compensable work-related diseases.</p>
<p>Heirs of Olorvida Jr. v. BSM Crew Service Center Philippines</p>	<p>Between November 20, 2003, and November 11, 2009, Marceliano N. Olorvida, Jr. was employed as a seafarer by respondent BSM Crew on board various vessels. For his final contract starting January 7, 2009, Marceliano was declared fit to work after a</p>	<p>Under the Standard Contract, the burden is on the seafarer's heirs to establish that:</p> <ol style="list-style-type: none"> 1. The seafarer's death was work-related; and 2. The death occurred during the term of employment.

	<p>pre-employment medical examination and served as a motorman aboard the Cosco Vancouver. During this deployment, Marceliano experienced severe coughing, chest pains, and shortness of breath due to stressful and hazardous work conditions, but the vessel's captain merely advised him to rest and take cough medicine. Upon the expiration of his contract on November 11, 2009, Marceliano returned to the Philippines and reported his deteriorating health to BSM Crew, but he was not referred to a company-designated physician. Marceliano sought medical attention at his own expense on January 22, 2010, resulting in a diagnosis of Stage IV lung cancer and brain metastasis, which ultimately led to his death on January 17, 2012.</p> <p>Are the Heirs entitled to the death benefits? <u>NO</u></p>	<p>a. Exception: The heirs of a deceased seafarer may still receive the death benefits when the seafarer was medically repatriated on account of work-related injury or illness</p> <p>The first requirement for claiming death benefits is to prove that the seafarer's death was work-related, by establishing that:</p> <ol style="list-style-type: none"> 1. The death was reasonably connected to the seafarer's work; 2. The illness, which caused the seafarer's death, is an occupational disease as defined in the standard contract; or 3. The working conditions aggravated or exposed the seafarer to the disease, which caused his death <p><i><u>In the case at bar</u></i></p> <p>Lung cancer is not an occupational disease under the standard contract. Notably, there is a disputable presumption that the lung cancer of Marceliano was work-related. The burden is then shifted to the respondents, as the employers, to overcome this presumption by substantial evidence. Remarkably, in the clinical abstract prepared by the Philippine General Hospital (PGH) at the time of Marceliano's admission to the hospital on May 26, 2010, it was established that Marceliano was a heavy smoker prior to being diagnosed with lung cancer. By virtue of these pieces of evidence, the respondents overcame the presumption that the lung cancer of Marceliano was work-related.</p>
<p>Jerzon Manpower and Trading Inc. v. Nato</p>	<p>Jerzon Manpower and Trading, Inc., on behalf of its principal United Taiwan Corp., hired Nato as a machine operator for a contract lasting over one and a half years. After deploying to Taiwan on June 8, 2008, the Nato passed multiple routine medical checkups while working eight-to-twelve-hour daily shifts exposed to hot vapors and machine emissions. About a year into his deployment, Nato developed severe, recurring stomachaches and vomiting, but his superior ignored his complaints and ordered him to continue working. A co-worker eventually took him to the hospital, where he was ultimately diagnosed with Stage V End-Stage Renal Disease alongside internal hemorrhoid bleeding, nausea, and swelling. On July 16, 2009, his broker discharged him from the hospital, placed him in a two-day hotel quarantine, and repatriated him to the Philippines. Upon arrival, Nato was immediately hospitalized due to the severity of his illness, yet the petitioners failed to assist him or inquire about his condition. On June 22, 2012, Nato filed a complaint against the petitioners for disability and medical benefits, hospitalization expenses, his airline ticket, and unearned salary.</p>	<p>Under art. 299, an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees. To be a valid ground for termination, there must be a certification by a competent public authority that the disease is of such nature or at such stage that it cannot be cured within a period of six (6) months even with proper medical treatment. Here, petitioners failed to adduce in evidence any medical certification issued by a competent public authority showing respondent's health condition. Hence, their act of unilaterally deciding to repatriate respondent failed to abide by the requirement mandated by law. Furthermore, in cases where the termination of employment is due to disease, the employer must furnish the employee with two written notices, namely: (1) the notice to apprise the employee of the ground for which his dismissal is sought; and (2) the notice informing the employee of his dismissal, to be issued after the employee has been given reasonable opportunity to answer and to</p>

	Was Nato illegally dismissed? <u>YES</u>	be heard on his defense. In the present case, petitioners failed to comply with the twin-notice requirement and simply repatriated respondent back to the Philippines without any kind of assistance.
Bunayog v. Foscon Shipmanagement Inc.	<p>Bunayog was hired by Foscon for Green as a chief cook for a period of 9 months. While onboard the vessel, he experienced cough, fever and difficulty in breathing. He was brought to a clinic in Japan where he was diagnosed with left lung pneumonia. He was declared by the doctor to be unfit for sea duty. Thus, he was repatriated to the Philippines on August 4, 2016 and referred immediately to a company-designated physician. After evaluation, petitioner was diagnosed to be suffering from pneumonia. Petitioner's treatment lasted until September 28, 2016. On such date, one of the company-designated physicians, Dr. Percival P. Pangilinan, declared petitioner fit to work. Bunayog thereafter, consulted a physician of his choice, Dr. Gaurano, who declared him unfit for sea duty. Thus, he notified Foscon of this finding. No response was made by Foscon. Thus, Bunayog filed a complaint for total and permanent disability benefits.</p> <p>Is Bunayog entitled to total and permanent disability benefits? <u>NO</u></p>	<p>In a plethora of cases, it was held that referral to a third doctor is mandatory in disability claims such that should the seafarer fail to comply therewith, he or she would be in breach of the POEA- SEC, and, as a consequence, the assessment of the company-designated physician shall be final and binding. This referral to a third doctor has been held by this Court to be a mandatory procedure as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.</p> <ul style="list-style-type: none"> - Exception: When the company-designated physician's medical conclusion is found to have been issued with a clear bias in favor of the employer, i.e., lacking in scientific basis, or unsupported by the medical records of the seafarer, the inherent merits of the respective medical findings shall be considered by the tribunals or court. <p><i>See 8-point guidelines in Bunayog.</i></p>
Arguelles v. Wilhelmsen Smith Bell Manning Inc.	<p>On June 15, 2016, Wilhelmsen Manning hired petitioner Arguelles as an Ordinary Seaman on behalf of its principal, WSML, and deployed him aboard the M/V Toronto on July 24, 2016. While playing basketball with colleagues during his free time on December 26, 2016, Arguelles suffered a left ankle injury and was medically repatriated to the Philippines on January 18, 2017. Company-designated physicians evaluated his ankle, and an MRI revealed a high-grade partial tear of the Achilles tendon along with a chronic complete ligament tear and bone contusions. Arguelles underwent corrective surgery on February 6, 2017, and subsequently attended 49 physical therapy sessions at a rehabilitation clinic between February and June 2017. Claiming the respondents terminated his treatment because his injury was too severe to resolve within 120 days, Arguelles consulted an independent physician who declared him permanently unfit for sea duty. After his demands for disability benefits were unheeded by the respondents, Arguelles filed a formal complaint before the arbitration branch of the National Labor Relations Commission.</p> <p>Is Arguelles entitled to disability benefits? <u>YES</u></p>	<p>Under the CBA, the seafarer is entitled to recreational facilities. Thus, it is apparent that a seafarer's participation in recreational activities such as sports and games is not an unsanctioned activity as respondents have characterized. Rather, they are part and parcel of a seafarer's life while traversing the Seven Seas, should his or her vessel lead there. Accordingly, the fact that a seafarer suffered an injury while playing sports on board a vessel, during his or her free time, should not be curtly dismissed and brushed aside as one that is not related to that seafarer's occupation.</p> <p>Bunkhouse rule – When the contract of employment contemplates that the employee shall sleep, or have his meals, or do both on the premises of the employer, the employee is considered to be performing services growing out of, and incidental to, or in the course of, such employment during the time he is on the premises of the employer for such purposes before or after the regular working hours (CJS).</p> <p>Personal comfort doctrine – The course of employment is not considered broken by certain acts relating to the personal comfort</p>

of the employee, as such acts are helpful to the employer in that they aid in efficient performance by the employee. On the other hand, acts which are found to be departures effecting a temporary abandonment of employment are not protected.

While the Bunkhouse Rule and Personal Comfort Doctrine may find some application in this case, it must be stressed that the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC), in conjunction with the NSA-AMOSUP/NSU CBA, already serves as the main basis for his claims. Under the standard contract, a work-related injury is an *injury arising out of and in the course of employment*. **Nowhere in this definition is it required that a seafarer must suffer an injury while he or she is actually performing his or her duties.**

In arriving at this conclusion, the Court makes it clear that not all injuries sustained by a seafarer on board a ship shall be compensable. After all, the employer was never intended to be an insurer against all accidental injuries which might happen to an employee while in the course of the employment, but only for such injuries arising from or growing out of the risks peculiar to the nature of work in the scope of the workmen's employment or incidental to such employment, and accidents in which it is possible to trace the injury to some risk or hazard to which the employee is exposed in a special degree by reason of such employment. Thus, a seafarer is disqualified from receiving disability benefits if the employer proves:

1. That the injury, incapacity, or disability is directly attributable to the seafarer
2. That the seafarer committed a crime or willful breach of duties; and
3. The causation between the injury, incapacity, or disability, and the crime or breach of duties

Here, petitioner was merely playing basketball, an employer-sanctioned activity onboard the vessel. It cannot be considered as a reckless or deliberate activity that is unmindful of one's safety. The records are bereft of any evidence, much less the slightest indication, that the injury suffered by petitioner was intentionally or negligently incurred. Thus, his injury is worthy of compensation.

Guideposts that shall govern the claims for total and permanent disability benefits by a seafarer:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him or her;

		<ol style="list-style-type: none">2. If the company-designated physician fails to give his or her assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;3. If the company-designated physician fails to give his or her assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and4. If the company-designated physician still fails to give his or her assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification
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Ateneo de Manila University
Labor Laws I
 Post-Midterm

Title	Facts	Holding
Module 6: Health, safety, and social welfare benefits		
Employees' compensation		
Sarmiento v. ECC	<p>Sarmiento was employed by NAPOCOR as an accounting clerk. At the time of her death, she was manager of the budget division. During her employment, she was diagnosed with cancer. She eventually died. Believing that her illness had been contracted by her during employment and was service connected, Jose (husband) filed a claim for death benefits under PD 626. The GSIS denied the claim. The ECC affirmed the GSIS decision and found that Sarmiento's death caused by parotid carcinoma is <i>not compensable</i> because she did not contract nor suffer from it by reason of her work.</p> <p>Is Sarmiento entitled to death benefits? <u>NO</u></p>	<p>PD 626 discarded the concepts of "presumption of compensability" and "aggravation." The new law establishes a state insurance fund built up by the contributions of employers based on the salaries of their employees. The injured worker does not have to litigate his right to compensation. No employer opposes his claim. There is no notice of injury nor requirement of controversion. The sick worker simply files a claim with the ECC, which then determines on the basis of the employee's supporting papers and medical evidence whether or not compensation may be paid. The payment of benefits is more prompt. The cost of administration is low. The amount of death benefits has also been doubled. The employer's duty is only to pay the regular monthly premiums to the scheme. It does not look for insurance companies to meet sudden demands for compensation payments or set up its own funds to meet these contingencies. It does not have to defend itself from spuriously documented or long past claims. The employer does not intervene in the compensation process and it has no control, as in the past, over payment of benefits. The open ended Table of Occupational Diseases requires no proof of causation. A covered claimant suffering from an occupational disease is automatically paid benefits.</p> <p>Compensable illness – Any illness accepted as an occupational disease and listed by the ECC, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions.</p>
Belarmino v. ECC	<p>Belarmino was a teacher at Buracan ES in Dimasalang, Masbate. While performing her duties, Oania, who was in her eighth month of pregnancy, accidentally slipped and fell on the classroom floor. Moments later, she complained of abdominal pain and stomach cramps. For several days, she</p>	<p>For the injury and the resulting disability/death to be compensable, the injury must be the result of an employment accident satisfying <i>all</i> of the following conditions:</p> <ol style="list-style-type: none"> 1. The employee must have been injured at the place where his work requires him to be

	<p>continued to suffer from recurrent abdominal pain and a feeling of heaviness in her stomach, but, heedless of the advice of her female co-teachers to take a leave of absence, she continued to report to the school because there was much work to do. Eleven days after the accident, she went into labor and prematurely delivered a baby girl at home. Her abdominal pains persisted even after the delivery, accompanied by high fever and headache. In the hospital, she was diagnosed with <i>septicemia post partum</i> due to infected lacerations of the vagina. She died three days after being discharged from the hospital. Thus, her husband filed a claim with the GSIS. The GSIS denied the claim because it was not an occupational disease nor was there any showing that it was contracted by reason of her employment. The ECC affirmed the GSIS.</p> <p>Is Belarmino entitled to the claim? <u>YES</u></p>	<ol style="list-style-type: none"> 2. The employee must have been performing his official functions; and 3. If the injury is sustained elsewhere, the employee must have been executing an order for the employer. <p>For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex 'A' of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.</p> <p><u><i>In the case at bar</i></u> Oania's death from that ailment is compensable because an employment accident and the conditions of her employment contributed to its development. The condition of the classroom floor caused Mrs. Belarmino to slip and fall and suffer injury as a result. The fall precipitated the onset of recurrent abdominal pains which culminated in the premature termination of her pregnancy with tragic consequences to her. Her fall on the classroom floor brought about her premature delivery which caused the development of <i>post partum</i> septicemia which resulted in death. Her fall therefore was the proximate or responsible cause that set in motion an unbroken chain of events, leading to her demise.</p>
<p>Hinoguin v. ECC</p>	<p>Hinoguin is a sergeant of the Philippine Army. On Aug. 1, 1985, he and Alibuyog had some gin and beer while on duty. Alibuyog who was walking toward the tricycle cab, accidentally shot Hinoguin with his M-16 rifle. On Aug. 7, 1985, Hinoguin died. The Death Certificate lists "septic shock" as immediate cause of death, and "generalized septicemia of peritonitis" as antecedent cause, following his sustaining a gunshot wound. An investigation ruled that it was purely accidental in nature. Nevertheless, the AFP ruled his death as "in line of duty." Thus, Ciriaco Hinoguin filed a claim for compensation benefits for his son under PD 626, which was denied by the GSIS and the ECC.</p> <p>Is the death of Hinoguin compensable? <u>YES</u></p>	<p>[See requisites above]</p> <p>[1] The concept of a workplace referred to in ground 1 cannot always be literally applied to a soldier on active duty status. Obviously, a soldier must go where his company is stationed.</p> <p>[2] Turning to the question of whether Sgt. Hinoguin was performing official functions at the time he sustained the gunshot wound, it has already been pointed out above that the Line of Duty Board of Officers of the 14th Infantry Battalion Headquarters had already determined that the death of Sgt. Hinoguin had occurred "in line of duty."</p> <ul style="list-style-type: none"> - Sgt. Hinoguin did not effectively cease performing "official functions" because he was granted a pass. While going to a fellow soldier's home for a few hours for a meal and some drinks was not a specific military duty, he was nonetheless in the course of performance of official functions.
<p>GSIS v. CA & Alegre</p>	<p>SPO2 Alegre was driving his tricycle and ferrying passengers. He came across SPO4 Tenorio. Alegre allegedly snubbed</p>	<p>Owing to the similarity of functions, that is, to keep peace and order, and the risks assumed, the Court has treated police</p>

	<p>Tenorio. A verbal tussle then ensued between the two which led to the fatal shooting of Alegre. Thus, his wife filed a claim for death benefits with the GSIS. The GSIS denied the claim, which the ECC affirmed. The CA reversed and granted the benefits.</p> <p>May a moonlighting policeman's death be considered compensable? <u>NO</u></p>	<p>officers similar to members of the AFP with regard to the compensability of their deaths.</p> <p>From the foregoing cases, it can be gleaned that the Court did not justify its grant of death benefits merely on account of the rule that soldiers or policemen, as the case may be, are virtually working round-the-clock. The Court likewise attempted in each case to find a reasonable nexus between the absence of the deceased from his assigned place of work and the incident that led to his death.</p> <p>The 24-hour duty doctrine should not be sweepingly applied to all acts and circumstances causing the death of a police officer but only to those which, although not on official line of duty, are nonetheless basically police service in character.</p> <p><u><i>In the case at bar</i></u> Obviously, the matter SPO2 Alegre was attending to at the time he met his death, that of ferrying passengers for a fee, was intrinsically private and unofficial in nature proceeding as it did from no particular directive or permission of his superior officer. In the absence of such prior authority as in the cases of Hinoguin and Nitura, or peacekeeping nature of the act attended to by the policeman at the time he died even without the explicit permission or directive of a superior officer, as in the case of P/Sgt. Alvaran, there is no justification for holding that SPO2 Alegre met the requisites set forth in the ECC guidelines.</p>
<p>Alano v. ECC</p>	<p>De Vera was the principal of Salinap Community School, whose work hours are from 7:30 a.m. to 5:30 p.m. At around 7 a.m., while waiting for a ride to the school, she got hit and run over by a speeding Toyota mini-bus which resulted in her instantaneous death. Her brother filed a claim for benefit with the GSIS, who denied the same. The ECC affirmed the denial.</p> <p>Is Alano entitled to the benefits? <u>YES</u></p>	<p>When an employee is accidentally injured at a point reasonably proximate to the place at work, while he is going to and from his work, such injury is deemed to have arisen out of and in the course of his employment.</p> <p><u><i>In this case</i></u>, it is not disputed that the deceased died while going to her place of work. She was at the place where, as the petitioner puts it, her job necessarily required her to be if she was to reach her place of work on time. There was nothing private or personal about the school principal's being at the place of the accident. She was there because her employment required her to be there.</p>
<p>Menez v. ECC</p>	<p>Menez is a school teacher. She retired at the age of 54 years old under the disability retirement plan due to rheumatoid arthritis and pneumonitis. She was assigned to Raja Soliman High School (near a dirty creek). After her retirement, she filed</p>	<p>Under the Labor Code IRR, for an illness to be compensable, it must either be:</p> <ol style="list-style-type: none"> 1. An illness definitely accepted as an occupational disease; or

	<p>a claim for disability benefits under PD 626 with the GSIS. The GSIS denied the claim, which the ECC affirmed.</p> <p>Is Menez entitled to the disability benefits? <u>YES</u></p>	<p>2. An illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions.</p> <p>An occupational disease is one which results from the nature of the employment, and by nature is meant conditions to which all employees of a class are subject and which produce the disease as a natural incident of a particular occupation, and attach to that occupation a hazard which distinguishes it from the usual run of occupations and is in excess of the hazard attending the employment in general.</p> <ul style="list-style-type: none"> - From the foregoing definitions of occupational diseases or ailments, rheumatoid arthritis and pneumonitis can be considered as such occupational diseases. All public high school teachers, like herein petitioner, admittedly the most underpaid but overworked employees of the government, are subject to emotional strains and stresses, dealing as they do with intractable teenagers, especially young boys, and harassed as they are by various extra-curricular or non-academic assignments, aside from preparing lesson plans until late at night, if they are not badgered by very demanding superiors
<p>Nazaro v. ECC</p>	<p>Nazaro was employed for 38 years as budget examiner in Negros Occidental-Office of the Governor. He died in 1984, at the age of 57. His medical records reveal that he was confined for urinary retention, abdominal pain and anemia (uremia). The widow thus filed a claim with the GSIS for death benefits. The claim was denied, which the ECC affirmed.</p> <p>Is Nazaro entitled to the claim? <u>YES</u></p>	<p>Rule III, section 1, paragraph 3(b) of PD 626, defines a "compensable sickness" as any illness definitely accepted as:</p> <ol style="list-style-type: none"> 1. an occupational disease listed by the ECC or 2. any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions. <p>Thus, a sickness or death caused by said sickness is compensable if the same is listed as an occupational disease. If it is not so listed, compensation may still be recovered if the illness was aggravated by employment. However, it is incumbent upon the claimant to show proof that the risk of contracting the illness was increased by his working conditions.</p> <p>To establish compensability under the increased risk theory, the claimant must show proof of reasonable work-connection, not necessarily direct causal relation.</p> <p><i>In this case</i></p> <p>Nazaro had to sit for hours, and more often than not, delay and even forgo urination in order not to interrupt the flow of concentration. In addition, tension and pressure must have</p>

		aggravated the situation.
Verzonilla v. ECC	<p>Reynaldo was a special operations officer (SOO) III at the Quezon City Department of Public Order and Safety (DPOS). Pursuant to a memorandum, Reynaldo attended training in Tagaytay City. During the training, he died due to a heart attack. Records show that Reynaldo was previously diagnosed with hypertension. Thereafter, the widow filed a claim for compensation before the GSIS. The GSIS, ECC and CA denied her claim.</p> <p>Is Julieta entitled to the benefits? <u>YES</u></p>	<p>to be entitled to compensation, a claimant must show that the sickness is either: (1) a result of an occupational disease listed under Annex "A" of the Amended Rules on EC under the conditions Annex A sets forth; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions. For the sickness and resulting disability or death to be compensable, the claimant has the burden of proof to show, by substantial evidence, that the conditions for compensability is met.</p> <p><u>Hence, in the present case</u>, the fact that cardiovascular disease is listed as an occupational disease does not mean automatic compensability. Julieta must show, by substantial evidence, that any of the conditions in item number 18 of the Amended Rules on EC was satisfied or that the risk of Reynaldo in contracting his disease was increased by his working conditions.</p> <p>In arriving at this conclusion, the Court stresses that in determining the compensability of an illness, it is not necessary that the employment be the sole factor in the growth, development, or acceleration of a claimant's illness to entitle him to compensation benefits. It is enough that his employment contributed, even in a small degree, to the development of the disease. It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection.</p>
Ortega v. Social Security Commission (SSC)	<p>Ortega is a member of the SSS who filed claims for partial permanent disability benefits on account of his condition of generalized arthritis and partial ankylosis. The SSS granted this for a total monthly pension of 23 months. After the expiration of this, he filed a claim for <i>total</i> permanent disability benefits. His application was denied on the ground that he was already granted disability benefits for the same illness and physical examination showed no progression of illness. Aggrieved, he filed an appeal before the SSC, alleging that he was further diagnosed of trigger finger 4th (L) and thumb (L), bronchial asthma, hypertension, and GERD. The SSS denied his claim.</p> <p>Is Ortega entitled to the total permanent disability benefits?</p>	<p>Petitioner's reliance on jurisprudence on work-connected disability claims insofar as it relates to a demonstration of disability to perform his trade and profession is misplaced.</p> <p>Claims under the Labor Code for compensation and under the Social Security Law for benefits are not the same as to their nature and purpose. On the one hand, the pertinent provisions of the Labor Code govern compensability of work-related disabilities or when there is loss of income due to work-connected or work-aggravated injury or illness. On the other hand, the benefits under the Social Security Law are intended to provide insurance or protection against the hazards or risks of disability, sickness, old age or death, <i>inter alia</i>, irrespective of whether they arose from or in the course</p>

	<u>NO</u>	of the employment. And unlike under the Social Security Law, a disability is total and permanent under the Labor Code if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days regardless of whether he loses the use of any of his body parts.
Ysmael Maritime v. Avelino	<p>Lim was onboard MS Rajah when it ran aground and sank near Batanes. Lim died as a result, who was only 25. Thus, his parents sued Ysmael Maritime Corp., the owner of the vessel, in the CFI for damages. Ysmael Maritime filed a motion to dismiss, which the CFI denied.</p> <p>Did the CFI err in denying the motion to dismiss? <u>YES</u></p>	<p>The action is selective and the employee or his heirs have a choice of availing themselves of the benefits under the WCA or of suing in the regular courts under the Civil Code for higher damages from the employer by reason of his negligence. But once the election has been exercised, the employee or his heirs are no longer free to opt for the other remedy.</p> <p><i>In this case</i> Sps. Lim cannot be allowed to maintain their present action to recover additional damages against petitioner under the Civil Code. In open court, they admitted that they had previously filed a claim for death benefits with the WCC and had received the compensation payable to them under the WCA. It is therefore clear that respondents had not only opted to recover under the Act but they had also been duly paid. At the very least, a sense of fair play would demand that if a person entitled to a choice of remedies made a first election and accepted the benefits thereof, he should no longer be allowed to exercise the second option.</p>
Social security		
Social Security Commission (SSC) v. Azote	<p>Since 1992, Edgardo Azote was married to respondent Edna Azote. Edgardo indicated in his SSS Form E-4 that Edna and their children were his beneficiaries. In 2005, Edgardo died. And so, Edna filed a claim for SSS death benefits. However, it was revealed that in 1982, Edgardo submitted an E-4 Form containing Rosemarie Azote as his beneficiaries. As such, Edna's claim was denied. The SSC ruled that Edna's marriage to Edgardo wasn't valid, adding that a judicial determination of nullity of a previous marriage was required. On Certiorari, the CA reversed the SSC, holding that the SSC couldn't make a determination of Edgardo's marriage to Edna.</p> <p>Is Edna qualified as Edgardo's "legal spouse" insofar as the Social Security Law is concerned? <u>NO</u></p>	<p>§8(e) and (k) of RA 8282 provides that only the legal spouse of the deceased-member is qualified to be the beneficiary of the latter's SS benefits. In this case, there was concrete proof that Edgardo contracted an earlier marriage with another individual, as evidenced by their marriage contract. Edgardo's 1982 E-4 form even designated Rosemarie as his spouse. The Court does not subscribe to the disquisition of the CA that the updated Form E-4 of Edgardo was determinative of Edna's status and eligibility to claim the death benefits of deceased-member. Although an SSS member is free to designate a beneficiary, the designation must always conform to the statute. To blindly rely on the form submitted by the deceased-member would subject the entire social security system to the whims and caprices of its members and would render the SS Law inutile.</p>

		<p>Under Art. 41 of the Family Code, Edna failed to establish that there was no impediment or that the impediment was already removed at the time of the celebration of her marriage to Edgardo. Edna could not adduce evidence to prove that the earlier marriage of Edgardo was either annulled or dissolved or whether there was a declaration of Rosemarie's presumptive death before her marriage to Edgardo.</p> <p>Although the SSC is not intrinsically empowered to determine the validity of marriages, it is required by §4(b)(7) of RA 8282 to examine available statistical and economic data to ensure that the benefits fall into the rightful beneficiaries.</p>
<p>Ambassador Hotel Inc. v. SSS</p>	<p>The Social Security System filed a complaint against Ambassador Hotel for failing to remit contributions and penalties from June 1999 to March 2001. An Information was filed charging the hotel's president, Yolanda Chan, and its treasurer with violations of the Social Security Law. Pertinently, the Social Security Law ascribes criminal liability to corporate officers: "If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable for the penalties provided in this Act for the offense." In her defense, Chan argued she was not performing the functions of president during the delinquency period due to an internal corporate dispute. The Regional Trial Court (RTC) acquitted Chan of criminal liability, but ordered Ambassador Hotel to pay the unpaid SSS contributions amounting to P584,804 with 3% penalty. Aggrieved, Ambassador Hotel filed an appeal insofar as the civil liability is concerned, raising the defense of lack of jurisdiction as the corporation was not a party to the criminal case.</p> <p>Is Ambassador Hotel liable to the unremitted SSS contributions? <u>YES</u></p>	<p>Prompt remittance of SSS contributions is mandatory. Any divergence from this rule subjects the employer not only to monetary sanctions (penalty of 3%/mo.), but also to criminal prosecution if the employer fails to: (a) register its employees with the SSS; (b) deduct monthly contributions from the salaries/wages of its employees; or (c) remit to the SSS its employees' SSS contributions and/or loan payments after deducting the same from their respective salaries/wages.</p>
<p>Migrante International v. SSS</p>	<p>The Social Security Act of 2018 introduced the compulsory coverage by the SSS of all sea-based and land-based OFWs. For this purpose, land-based OFWs are treated in the same manner as self-employed persons. Petitioners assail the constitutionality of the said provision and its corresponding IRR, contending that land-based OFWs are not similarly situated as local employees on account of the nature of their employment. Since their employers are outside Philippine jurisdiction, the land-based OFWs must pay both employee and employer shares.</p>	<p>There is reasonable basis to warrant differential treatment among local employees, self-employed persons, land-based OFWs, and sea-based OFWs.</p> <ul style="list-style-type: none"> - The law aims to extend social security protection to Filipino workers, both local and overseas, and their beneficiaries. Irrespective of employment type, all employees have the right to access essential social security benefits. Social security serves as a safeguard against various life-cycle risks, including old age, unemployment, sickness, injury, maternity,

Are the assailed provisions unconstitutional for violating the equal protection clause? PARTIALLY

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iii. For land-based OFWs in countries without any SSA or BLA with the Republic of the Philippines, the measures for enforcement of compulsory coverage shall include, among others, the collection of contribution payments by the Philippine Overseas Employment Administration (POEA) and/or the concerned attached DOLE agencies, through its applicable documentation and deployment processes such as the issuance of Overseas Employment Certificate (OEC), as follows:

- a) For new hires, direct/name hires and government-to-government hires - one (1) monthly contribution; and
- b) For re-hires/returning workers/Balik-Manggagawa - three (3) monthly contributions.

disability, and loss of income. Without such protection, employees and their beneficiaries could face insurmountable financial hardships due to unforeseen events.

However, as correctly pointed out by the respondents, the absence of social security agreements or bilateral labor agreements leaves the Philippine government without a means to compel foreign employers to contribute the employer's share of SSS premiums. Consequently, land-based OFWs find themselves compelled to bear the supposed employer's share, akin to self-employed individuals. This arrangement arises not from discrimination, but from practical necessity.

As to land-based vs. sea-based OFWs

There can be no dispute about the dissimilarities between land-based and sea-based Filipino overseas workers in terms of, among other things, work environment, safety, dangers and risks to life and limb, and accessibility to social, civic, and spiritual activities. Accordingly, it is an indisputable fact that there is a substantial distinction between sea-based OFWs and land-based OFWs.

As to rule 14, § 7 (iii) of the IRR; police power; invalid exercise

RA 11199 placed the primary burden on the DFA and the DOLE to ensure the compulsory collection of the SSS contributions of land-based OFWs. Consequently, it can be reasonably concluded that intrusive measures, such as subjecting the issuance of the OECs to this pre-condition, were not intended as "other measures for enforcement" for the collection of SSS contributions.

Additionally, the POEA and the concerned attached DOLE agencies are not authorized by RA 11199 to collect SSS contributions nor is the SSS allowed to delegate collection of SSS contributions to these agencies. While the SSS is given the authority to formulate, adopt, amend and/or rescind such rules and regulations as may be necessary to carry out the provisions and purposes of RA 11199, its exercise must be within the confines of the law it seeks to implement. It has been settled that the rules and regulations that administrative agencies promulgate should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in

		<p>contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid.</p> <p><u>Violation of the right to travel</u></p> <p>The restriction on the land-based OFWs' right to travel is merely provided in an IRR. As mentioned, the existence of a law is a requirement for the curtailment of the right to travel. It is essential to note that the IRR is not a law; it is merely an administrative issuance designed to implement the provisions of RA 11199.</p>
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