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STUDY GUIDE LABOR LAW

1. THE EMPLOYER-EMPLOYEE RELATIONSHIP

The existence of an EMPLOYER-EMPLOYEE relationship is the condition sine qua non for the application of the Labor Code, specifically, Book III (Articles 90-98) on Conditions of Employment to apply. Likewise, the jurisdiction of labor tribunals is premised on the relationship. Excluded employees, Government employees, Managerial employees, Other officers or members of the managerial staff, and Domestic servants and persons in the personal service of another.

The term "EMPLOYER" refers to one who engages the services of a worker or employee and pays his wages or salaries. It includes not only the principal employer but any person acting in his interest, directly or indirectly. A labor organization, or any of its officers and agents is not an employer except when acting as such.

An "EMPLOYEE" is one who renders service to another under a contract for hire, express or implied, oral or written, and is compensated for his labor or service by wages.

An individual whose work has ceased as a result of, or in connection with any unfair labor practice or a current labor dispute, including those who participate in a ULP or economic strike is still considered an employee.

The employment relationship is essentially CONTRACTUAL and VOLUNTARY. The relationship cannot be imposed on either the employer or the employee. The worker is free to sell his labor to anybody just as the employer can purchase labor from anyone he chooses. To compel the employee to work against his will is involuntary servitude; it is oppression to force an unwilling employer to give work to a worker.

2. TEST TO DETERMINE EXISTENCE OF RELATIONSHIP

Focus: Will test or "substantial test"

Starting with the case of *Viana v. Al Laguarda* 99 Phil 408 the Supreme Court used the following criteria in determining the existence of employer-employee relationship:

- a) selection and engagement of the employee;

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