WORKERS’ COMPENSATION LAW: CASES, MATERIALS, AND TEXT

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WORKERS’ COMPENSATION LAW: CASES, MATERIALS, AND TEXT

Fifth Edition

Lex K. Larson
President Employment Law Research, Inc.

Arthur Larson
PREFACE TO THE FIFTH EDITION

This casebook is offered in the conviction that workers’ compensation, as a field of law, is big enough and important enough to deserve a place in the curriculum.

It comes as something of a surprise, to students as well as professors, to learn that workers’ compensation, by any standard of measurement, is one of the largest areas of American law. Based on on-line legal database searches, there were over four thousand reported workers’ compensation court decisions in calendar year 2012. This is more than the number of automobile negligence decisions, for the same period.

And the reported court-generated compensation decisions are only the tip of the iceberg of lawyer involvement. There are many times that number of cases decided at the administrative agency level, not to mention the numerous additional cases that are settled.

A most striking development is the dramatic increase in the volume of benefit payments. In 1972 total benefit payments nationwide totaled about $4 billion, but by 2010 they had reached $57.5 billion. Actual costs to employers are, of course, much higher.

One of the principal reasons the importance of compensation law in law practice has been underestimated is that a large part of it is concerned not with compensation claims at all, but rather with tort litigation. There are two reasons for this. One is the universal provision making compensation the exclusive remedy against the employer. The other is the third party features of the compensation law, governing the rights of the employer and employee as against third parties. Take the following familiar set of facts: an employee is riding as a passenger in a car driven by a co-employee, and there is a collision with a third party’s truck. A personal injury lawyer cannot even begin to analyze the rights of the parties here without a thorough knowledge of compensation law. For a start, the attorney must know whether the employee was within the course of employment, as a prerequisite to determining whether there might be a cause of action against the co-employee or against the employer. And if the accident was covered by the compensation act, the employee’s cause of action against the third party may be assigned at once to the employer. A host of detailed questions must be answered and the answers lie within compensation law.

Compensation law is also notable for the rich variety of legal areas it embraces. One could, for example, teach almost a complete course in conflict of laws without ever leaving the field of workers’ compensation. And many of the liveliest growth areas of the law are deeply entangled with compensation law, such as products liability, automobile no-fault law, social security disability, and employment discrimination including sexual harassment.
PREFACE TO THE FIFTH EDITION

Quite apart from its own particular subject matter, then, compensation law offers unusual opportunities in the law school curriculum. Among other things, it is important to understand the difference between a traditional common law subject, like torts, and a statute-based subject like workers’ compensation, on which a sort of common law is erected. For this purpose there is no better vehicle than workers’ compensation law.

Lex K. Larson
May 2013
ACKNOWLEDGMENTS

In preparing this Fifth Edition and previous editions, I am grateful for the invaluable research and writing contributions of my colleague Thomas A. Robinson: the book has benefited extensively from his talent and from the breadth and depth of his knowledge of workers’ compensation law.

In addition, I would like to acknowledge the considerable contributions to past editions of Professor Lisa M. Hervatin, who brought to this project her experience teaching with the Second Edition at Loyola Law School (Los Angeles); and of Professor Randy H. Lee of the University of North Dakota School of Law and Professor John Levering of Empire College of Law, Santa Rosa, California, for their most helpful comments. And I am indebted to Roger J. Thompson, of Travelers Medical Management Services, for giving permission to make use of and adapt material he has previously authored on the subject of special injury funds.

Finally, no words can adequately express the invaluable contribution of my father, who authored both the first and second editions. Arthur Larson was unquestionably one of the great legal writers and scholars of the twentieth century. While major revision and updating has taken place with the third edition, the book remains fundamentally a work of Arthur Larson’s conception, and much of the writing is still his.

Lex K. Larson
May 2013
LEX K. LARSON

Lex K. Larson is President of Employment Law Research, Inc., a legal research group located in Durham, North Carolina. A graduate of Haverford College (1962) and Harvard Law School (1965), he practiced law in Washington, D.C. for fourteen years. From time to time he has taught courses as a member of the adjunct faculty of Duke University Law School. In 1991 he assumed the authorship of Larson’s Workers’ Compensation Law (12 vols. Matthew Bender & Co.) and Larson’s Workers’ Compensation, Desk Edition (3 vols. Matthew Bender & Co.), and he is author of three other multi-volume treatises on various facets of employment law. In addition, he has served as a member of the North Carolina Industrial Commission Advisory Council. Finally, he has been a certified mediator in the North Carolina court system and past Vice Chairman of the Board of Directors of the Dispute Settlement Center of Durham.

ARTHUR LARSON (1910–1993)

Arthur Larson grew up in Sioux Falls, South Dakota, and received his law degree from Oxford as a Rhodes Scholar. After the Second World War, he became a professor of law at Cornell University, where, in 1952, he authored and published what was then a two-volume treatise on Workers’ Compensation. The recognition he received from that publication led to his appointment to the deanship of the law school of the University of Pittsburgh, and then to three high level governmental positions: Undersecretary of Labor, Director of the U.S. Information Agency and special assistant to and speech writer for President Eisenhower.

Dr. Larson arrived at Duke Law School in 1958, where in addition to teaching, he founded the school’s Rule of Law Research Center. After retiring from teaching in 1980, Dr. Larson continued to work on his publications, including the workers’ compensation treatise, which by the time of his death in 1993 had grown to eleven volumes. His other publications included a treatise on employment discrimination, as well as numerous books and articles on politics, workers’ compensation, and international law.

THOMAS A. ROBINSON

Thomas A. Robinson, Durham, N.C., received his B.A., cum laude, for both Economics and History, in 1973 from Wake Forest University, his J.D. in 1976 from Wake Forest University School of Law, where he served as Managing Editor, Wake Forest Law Review, and his M.Div. in 1989 from Duke University Divinity School. From 1976 to 1986, Mr. Robinson was in private practice, where he focused on workers’ compensation defense work. From 1987 to 1993, he was research and writing assistant to Professor Arthur Larson. Since 1993, Mr. Robinson has worked with Lex Larson as primary upkeep writer for Larson’s Workers’ Compensation Law (LexisNexis) and Larson’s Workers’ Compensation, Desk Edition (LexisNexis). He is a contributing writer for California Compensation Cases (LexisNexis) and Benefits Review Board Service—Longshore Reporter (LexisNexis). He is also a contributing author of New York Workers’ Compensation Handbook (LexisNexis) and a contributing editor for Workers’ Compensation: The Survival Guide for Business (LexisNexis). Author of numerous short pieces on workers’ compensation and employment law, Mr. Robinson has lectured widely on workers’ compensation issues. Finally, he is a member of the
BIOGRAPHY

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# TABLE OF CONTENTS

**Part 1**  
THE NATURE AND HISTORY OF WORKERS’ COMPENSATION .......................... 1

**Chapter 1**  
BASIC FEATURES OF COMPENSATION ................. 3

- § 1.01 INTRODUCTION ............................................. 3
- § 1.02 TYPICAL COMPENSATION ACT SUMMARIZED ............ 3
- § 1.03 UNIQUE CHARACTER OF THE AMERICAN SYSTEM .......... 4
- § 1.04 COMPENSATION CONTRASTED WITH TORT ............... 5

  [1] Introduction ............................................. 5
  [4] Significance of Difference in Defenses ..................... 7
  [5] Nature of Injuries and Elements of Damage Compensated .... 7
  [7] Ownership of the Award ................................... 8
  [8] Significance of Insurance .................................. 8

  Problems .................................................. 9

- § 1.05 AMERICAN SYSTEM DISTINGUISHED FROM SOCIAL INSURANCE ....... 9

  [1] Introduction ............................................. 9
  [2] Private Character of the System ............................ 9
  [4] Qualification for and Measure of Benefits ................. 11

  Problems .................................................. 12

**Chapter 2**  
HISTORICAL DEVELOPMENT OF WORKERS’ COMPENSATION ............. 13

- § 2.01 COMMON-LAW BACKGROUND .............................. 13

  [1] Introduction ............................................. 13
  [3] 1000–1837 ................................................. 14
  [6] Precompensation Legislation .............................. 16

- § 2.02 ORIGINS OF WORKERS’ COMPENSATION IN EUROPE .......... 18

- § 2.03 ORIGINS OF WORKERS’ COMPENSATION IN THE UNITED STATES .......... 20
Part 2

"ARISING OUT OF THE EMPLOYMENT" ............ 27

Chapter 3 GENERAL PRINCIPLES AND DOCTRINES ............ 29

§ 3.01 SUMMARY OF STATUTORY PROVISIONS .................... 29

§ 3.02 THE FIVE LINES OF INTERPRETATION OF "ARISING" .......... 30

[1] Introduction .................................................. 30

[2] Peculiar-Risk Doctrine ........................................ 31

[3] Increased-Risk Doctrine ...................................... 31


[5] Positional-Risk Doctrine ..................................... 32

§ 3.03 THE CATEGORIES OF RISK .................................. 32

[1] Introduction .................................................. 32

[2] Risks Distinctly Associated with the Employment ............ 32

[3] Risks Personal to the Claimant ............................... 32

[4] Neutral Risks .................................................. 33


§ 3.04 ACTS OF GOD AND EXPOSURE ............................. 34

[1] Introduction .................................................. 34

[2] Lightning, Tornadoes, Windstorms, Etc. ...................... 34

Whetro v. Awkerman .......................................... 34

Problems .......................................................... 37


Hughes v. Trustees of St. Patrick’s Cathedral .................. 37

COMMENT .......................................................... 37

Hanson v. Reichelt .............................................. 38

§ 3.05 THE STREET-RISK DOCTRINE ............................. 41

Katz v. A. Kadans & Co. ....................................... 41

Problems .......................................................... 43

§ 3.06 POSITIONAL AND NEUTRAL RISKS ....................... 43

[1] Introduction .................................................. 43

[2] Bombs and Terrorist Attacks ................................ 43

Problem .......................................................... 45

[3] Unexplained Accidents ....................................... 46

Coomes v. Robertson Lumber Co. ............................... 46
CHAPTER 4 ASSAULTS

§ 4.01 INTRODUCTION

§ 4.02 WORKPLACE ASSAULTS: PERSONAL MOTIVATION

Martin v. J. Lichtman & Sons
Dodson v. Dubose Steel, Inc.
Dodson v. Dubose Steel, Inc.

§ 4.03 THE AGGRESSOR DEFENSE

Stewart v. Chrysler Corp.

§ 4.04 ASSAULTS BY STRANGERS

White v. Atlantic City Press

§ 4.05 ASSAULTS STEMMING FROM LABOR DISPUTE

Meo v. Commercial Can Corp.

CHAPTER 5 RISKS PERSONAL TO THE EMPLOYEE

§ 5.01 INTRODUCTION

§ 5.02 INTERNAL WEAKNESS CAUSING FALL

George v. Great Eastern Food Products, Inc.

§ 5.03 PREEXISTING WEAKNESS AGGRAVATED BY EMPLOYMENT

Fragale v. Armory Maintenance

§ 5.04 IMPORTED DANGER CASES

Kendrick v. Peel, Eddy & Gibbons Law Firm

CHAPTER 6 RANGE OF COMPENSABLE CONSEQUENCES

§ 6.01 INTRODUCTION
## TABLE OF CONTENTS

§ 6.02 ORIGINAL COMPENSABLE INJURY CAUSING SUBSEQUENT INJURY ................................. 87  
*State Compensation Insurance Fund v. Industrial Accident*  
*1 Commission* .................................................. 89  
Problems ......................................................... 91  

§ 6.03 SUBSEQUENT AGGRAVATION OF ORIGINAL INJURY ............................. 93  
*Klosterman v. Industrial Commission of Arizona* .............................. 93  

§ 6.04 REFUSAL OF REASONABLE SURGERY .................................................. 95  
*Couch v. Saginaw Malleable Iron Plant* ............................................. 95  
*Wilcut v. Innovative Warehousing* ................................................ 96  
Problems ......................................................... 99  

Part 3  COURSE OF EMPLOYMENT ................................................. 101

Chapter 7  TIME AND PLACE .................................................. 103

§ 7.01 MEANING OF “COURSE OF EMPLOYMENT” ...................................... 103  
§ 7.02 GOING TO AND FROM WORK .................................................. 104  
[1] Introduction ...................................................... 104  
*Price v. Workers’ Compensation Appeals Board* .................................. 104  
Problems ......................................................... 109  
[3] Leaving Work ...................................................... 110  
*Harris v. Sears, Roebuck & Company* ......................................... 110  
*Illinois Bell Telephone Company v. Industrial Commission* ................. 112  
Problems ......................................................... 115  
[4] Meal Breaks and the Like .................................................. 115  
*Pallotta v. Foxon Packaging Corporation* ....................................... 115  
Problem ......................................................... 116  
*Western Greyhound Lines v. Industrial Accident CJC Commission* .......... 117  
Problem ......................................................... 118  
*Gibberd v. Control Data Corporation* ........................................ 119  
Problems ......................................................... 123  
§ 7.03 JOURNEY ITSELF PART OF SERVICE ............................................ 123  
*Winn-Dixie Stores v. Smallwood* ............................................ 124  
Problems ......................................................... 126  
§ 7.04 EMPLOYER’S CONVEYANCE .................................................. 127  
[1] Introduction ...................................................... 127  
Problems ......................................................... 128  
§ 7.05 DUAL-PURPOSE TRIPS .................................................. 128
## TABLE OF CONTENTS

Marks’ Dependents v. Gray ........................................ 129  
Powers v. Lady’s Funeral Home .................................. 130  
§ 7.06 WORKING AT HOME .................................... 132  
  Joe Ready’s Shell Station & Cafe v. Ready .................. 133  
  Wythe County Community Hospital v. Turpin ............. 136  
  Sandberg v. JC Penney Co. Inc. ............................. 138  
  Problems ...................................................... 143  
§ 7.07 DEVIATIONS .............................................. 144  
  Bush v. Parmenter, Forsythe, Rude & Dethmers .......... 144  
  Problems ...................................................... 148  

Chapter 8 ACTIVITY ............................................. 149  
§ 8.01 GENERAL TEST OF WORK-CONNECTION AS TO ACTIVITY .... 149  
§ 8.02 PERSONAL COMFORT DOCTRINE ........................ 150  
  Clark v. U. S. Plywood ...................................... 150  
  Problems ...................................................... 153  
  B & B Cash Grocery Stores v. Wortman .................. 154  
  Problems ...................................................... 156  
§ 8.03 RECREATIONAL AND SOCIAL ACTIVITIES ................ 157  
  Fidelity & Guaranty Insurance Underwriters, Inc. v. La Rochelle 157  
  Beauchesne v. David London & Co. ......................... 159  
  Problem ......................................................... 161  
§ 8.04 HORSEPLAY ............................................... 162  
  Prows v. Industrial Commission of Utah ................. 162  
  Problems ...................................................... 166  
§ 8.05 RESIDENT EMPLOYEES .................................. 166  
  Doe v. St. Michael’s Medical Center of Newark .......... 167  
  State Compensation Insurance Fund v. Workers’ Compensation Appeal Board (Vargas) .................. 169  
  Problems ...................................................... 176  
§ 8.06 TRAVELING EMPLOYEES ................................ 176  
  Cauble v. Soft-Play, Inc. .................................... 176  
  Silver Engineering Works, Inc. v. Simmons .............. 178  
  Maher v. NYS Division of Budget ......................... 180  
  Problems ...................................................... 181  
§ 8.07 INJURIES AFTER QUITTING OR BEFORE FORMAL HIRING .... 181  
  Nails v. Market Tire Company, Inc. ....................... 181  
§ 8.08 ACTS OUTSIDE REGULAR DUTIES ...................... 185  
  Howell v. Kash & Karry ..................................... 185  
  Problems ...................................................... 186  
§ 8.09 ACTS IN EMERGENCY .................................... 187
## TABLE OF CONTENTS

### Part 4 ACCIDENTAL INJURY AND DISEASE

#### Chapter 9 “PERSONAL INJURY BY ACCIDENT”

- § 9.01 MEANING OF “PERSONAL INJURY” .................................. 209
- § 9.02 MEANING OF “BY ACCIDENT” .................................... 210
  - [1] Introduction .................................................. 210
  - [3] Component Elements of the “By Accident” Concept ....... 211
  - [4] Accident and Disease ....................................... 212
    - Winn v. Hormel & Co. ........................................ 213
- § 9.03 INJURY FROM USUAL EXERTION OR EXPOSURE .......... 218
  - Guidry v. Sline Industrial Painters, Inc. ...................... 219
  - Problems .................................................... 221
- § 9.04 DEFINITE TIME VERSUS GRADUAL INJURY: CUMULATIVE TRAUMA .................................................. 221
  - [1] Introduction ................................................ 221
  - [2] Repeated Exposure to Harmful Substances .................. 222
    - Marquez v. Industrial Commission ............................ 222
  - [3] Carpal Tunnel Syndrome and Other Repetitive Motion Injuries .... 224
    - Peoria County Belwood Nursing Home v. The Industrial Commission of Illinois .......................... 224
    - Problems .................................................. 228

#### Chapter 10 DISEASE ..................................................... 231

- § 10.01 INFECTIOUS DISEASE AS AN “ACCIDENT” ............. 231
  - Connelly v. Hunt Furniture Co. ............................... 232
- § 10.02 OCCUPATIONAL DISEASE ..................................... 234
## TABLE OF CONTENTS

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[1]</td>
<td>Introduction</td>
<td>234</td>
</tr>
<tr>
<td>[2]</td>
<td>Summary of Occupational Disease Statutes</td>
<td>235</td>
</tr>
<tr>
<td>[3]</td>
<td>Background of Occupational Disease Legislation</td>
<td>235</td>
</tr>
<tr>
<td>[4]</td>
<td>Definition of “Occupational Disease”</td>
<td>236</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wildermuth v. B. P. O. Elks Club (Lodge 621)</td>
<td>237</td>
</tr>
<tr>
<td></td>
<td>Booker v. Duke Medical Center</td>
<td>238</td>
</tr>
<tr>
<td>[5]</td>
<td>Individual Allergy and Occupational Disease</td>
<td>245</td>
</tr>
<tr>
<td></td>
<td>Farmers Rural Electric Cooperative Corporation of Glasgow v. Cooper</td>
<td>245</td>
</tr>
<tr>
<td></td>
<td>Schober v. Mountain Bell Tel.</td>
<td>247</td>
</tr>
<tr>
<td></td>
<td>Problems</td>
<td>249</td>
</tr>
<tr>
<td>§ 10.03</td>
<td>SPECIAL Problems OF CERTAIN RESPIRATORY DISEASES</td>
<td>249</td>
</tr>
<tr>
<td>[1]</td>
<td>Introduction</td>
<td>249</td>
</tr>
<tr>
<td></td>
<td>Halverson v. Larrivy Plumbing &amp; Heating Co.</td>
<td>250</td>
</tr>
<tr>
<td></td>
<td>Rutledge v. Tultex Corp./Kings Yarn</td>
<td>253</td>
</tr>
<tr>
<td></td>
<td>Problems</td>
<td>258</td>
</tr>
<tr>
<td>Chapter 11</td>
<td>MENTAL AND NERVOUS INJURY</td>
<td>259</td>
</tr>
<tr>
<td>§ 11.01</td>
<td>INTRODUCTION</td>
<td>259</td>
</tr>
<tr>
<td>§ 11.02</td>
<td>THE CALIFORNIA EXPERIENCE</td>
<td>259</td>
</tr>
<tr>
<td>§ 11.03</td>
<td>STATUTORY DEVELOPMENTS IN OTHER STATES</td>
<td>260</td>
</tr>
<tr>
<td>§ 11.04</td>
<td>PHYSICAL TRAUMA PRODUCING MENTAL INJURY</td>
<td>261</td>
</tr>
<tr>
<td></td>
<td>Watson v. Melman, Inc.</td>
<td>261</td>
</tr>
<tr>
<td></td>
<td>Problems</td>
<td>263</td>
</tr>
<tr>
<td>§ 11.05</td>
<td>MENTAL TRAUMA PRODUCING MENTAL INJURY</td>
<td>264</td>
</tr>
<tr>
<td></td>
<td>Seitz v. L &amp; R Industries, Inc.</td>
<td>264</td>
</tr>
<tr>
<td></td>
<td>Candelaria v. General Electric Company</td>
<td>269</td>
</tr>
<tr>
<td></td>
<td>Problems</td>
<td>275</td>
</tr>
<tr>
<td>Part 5</td>
<td>STATUTORY COVERAGE</td>
<td>277</td>
</tr>
<tr>
<td>Chapter 12</td>
<td>EMPLOYMENT STATUS</td>
<td>279</td>
</tr>
<tr>
<td>§ 12.01</td>
<td>“EMPLOYEE” DEFINED</td>
<td>279</td>
</tr>
<tr>
<td></td>
<td>Ceradsky v. Mid-America Dairymen, Inc.</td>
<td>279</td>
</tr>
<tr>
<td>§ 12.02</td>
<td>CONTRACTOR DISTINCTION: RIGHT TO CONTROL DETAILS</td>
<td>286</td>
</tr>
<tr>
<td></td>
<td>Caicco v. Toto Brothers, Inc.</td>
<td>286</td>
</tr>
<tr>
<td></td>
<td>Hanson v. BCB, Inc.</td>
<td>289</td>
</tr>
<tr>
<td></td>
<td>Problem</td>
<td>292</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

§ 12.03 CONTRACTOR DISTINCTION: RELATIVE NATURE OF WORK . . . 292
   S.G. Borello & Sons, Inc. v. Department of Industrial Relations ..... 292
   Re/Max of New Jersey, Inc. v. Wausau Insurance Companies ..... 300
   Problems .............................................. 305

§ 12.04 DELIBERATE AVOIDANCE OF EMPLOYMENT RELATION ...... 306

§ 12.05 NECESSITY FOR “CONTRACT OF HIRE” ..................... 306
   [1] Introduction ........................................ 306
       Polk County v. Steinbach .......................... 307
   [4] Necessity for Payment ................................ 309
       Charlottesville Music Center, Inc. v. McCray .......... 309
       Conveyors’ Corporation v. Industrial Commission ..... 311
   [5] Illegal Employment .................................. 314
       Bowers v. General Guaranty Insurance Company .... 314
       Stovall v. Sally Salmon Seafood ...................... 315
       Farmer Brothers Coffee v. Workers’ Compensation Appeals Board (Ruiz) ................................ 319
       Problems .............................................. 324

§ 12.06 LENT EMPLOYEES AND DUAL EMPLOYMENT .................. 324
   Antheunisse v. Tiffany & Company, Inc. .................... 325
   Ruble v. Arctic General, Inc. ................................ 327
   Problems .............................................. 331

Chapter 13 SPECIFIC INCLUSIONS OR EXEMPTIONS .............. 333

§ 13.01 “STATUTORY EMPLOYEES” ................................. 333
   Problem .............................................. 334

§ 13.02 NONBUSINESS EMPLOYMENTS .............................. 335
   [1] Introduction ........................................ 335
       Fincham v. Wendt .................................. 336
       Griebel v. Industrial Commission of Arizona ........ 340

§ 13.03 CASUAL EMPLOYMENT NOT IN COURSE OF USUAL BUSINESS .......... 344
   Problems .............................................. 344

§ 13.04 MINIMUM NUMBER OF EMPLOYEES .......................... 344

§ 13.05 FARM LABOR ........................................ 345
   Hinson v. Creech .................................... 346
   Problems .............................................. 350
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>§ 13.06 EXECUTIVES AND PARTNERS</th>
<th>350</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraternal Order of Eagles v. Kirby</td>
<td>351</td>
</tr>
<tr>
<td>Hays v. Workers’ Compensation Division</td>
<td>352</td>
</tr>
<tr>
<td>§ 13.07 PUBLIC EMPLOYMENT</td>
<td>355</td>
</tr>
<tr>
<td>Bolin v. Kitsap County</td>
<td>355</td>
</tr>
</tbody>
</table>

Part 6 BENEFITS ................................................. 359

Chapter 14 DISABILITY: WAGE LOSS VERSUS MEDICAL INCAPACITY ................................................. 361

| § 14.01 INTRODUCTION | 361 |
| § 14.02 KINDS AND ELEMENTS OF DISABILITY | 362 |
| [1] Basic Principles | 362 |
| [3] The Competing Theories of Disability Defined | 363 |
| [7] Express Adoption of Physical-Impairment Theory by Minority of States | 369 |
| [8] Practical Problems Attending Physical Impairment Theory | 369 |
| [a] Introduction | 369 |
| [b] Fallacy of Basing Amount of a Non-Earning-Capacity Award on Prior Earnings | 369 |
| [c] Impossibility of Rationally or Fairly Rating “Disability” When the Tie With Earning Capacity Is Severed | 370 |
| [d] Physical-Impairment Awards Carried to Their “Logical” Conclusions | 371 |
| § 14.03 EARNINGS AS CREATING PRESUMPTION OF EARNING CAPACITY | 374 |
| Olson v. Manion’s Inc. | 374 |
| § 14.04 REBUTTING PRESUMPTION BASED ON EARNINGS | 376 |
| Maxey v. Major Mechanical Contractors | 376 |
| § 14.05 THE “ODD-LOT” DOCTRINE | 379 |
| Guyton v. Irving Jensen Company | 379 |
| § 14.06 INABILITY TO GET WORK BECAUSE OF INJURY AS DISABILITY | 384 |
| Powers v. District of Columbia Department of Employment Services | 384 |
# TABLE OF CONTENTS

Problems .......................................................... 385

Chapter 15  SCHEDULE BENEFITS  .......................... 387

§ 15.01 INTRODUCTION ........................................... 387
§ 15.02 NATURE OF SCHEDULE BENEFITS ......................... 387
§ 15.03 EXCLUSIVENESS OF SCHEDULE ALLOWANCES .............. 388
  * Van Dorpel v. Haven-Busch Company  ........... 388
  * General Electric Co. v. Industrial Commission  .... 395
§ 15.04 ATTACHABILITY OR GARNISHABILITY OF BENEFITS ........ 396
  * General Motors Acceptance Corp. v. Falcone  ...... 396
  Problems .................................................. 398

Chapter 16  SUCCESSIVE DISABILITIES  .................... 399

§ 16.01 INTRODUCTION ......................................... 399
§ 16.02 FULL-RESPONSIBILITY RULE ............................ 399
  * Ford Motor Company v. Hunt  ......................... 400
§ 16.03 SECOND INJURY FUNDS .................................. 403
  [1] Summary and Background  ............................ 403
  [2] Claims on Special Injury Funds  ..................... 404
      * Norris v. Iowa Beef Processors, Inc. ................. 404
§ 16.04 EFFECT OF SUCCESSIVE INJURIES ON MAXIMUM AMOUNT ALLOWABLE ........... 411
  * Dennis v. Brown ........................................ 411

Chapter 17  CALCULATION OF BENEFIT AMOUNTS ............. 417

§ 17.01 INTRODUCTION ........................................... 417
§ 17.02 THE CONCEPT OF “AVERAGE WEEKLY WAGE” ................. 417
  Problems .................................................. 419
§ 17.03 WAGE BASIS IN CONCURRENT EMPLOYMENT ................. 419
  * American Uniform & Rental Service v. Trainer  ....... 419
  Problem .................................................. 422
§ 17.04 MAXIMUM AND MINIMUM LIMITS ON WEEKLY BENEFITS ...... 423
§ 17.05 TIME AS OF WHICH LEGISLATIVE OR AUTOMATIC BENEFIT INCREASES APPLY .......... 423
§ 17.06 COST OF LIVING ADJUSTMENTS IN EXISTING BENEFITS ...... 424
## TABLE OF CONTENTS

### Chapter 18 MEDICAL BENEFITS AND REHABILITATION ...... 425

| § 18.01 INTRODUCTION ............................................. 425 |
| § 18.02 HOSPITAL AND MEDICAL BENEFITS ....................... 425 |
| [1] In General ..................................................... 425 |
| Kushay v. Sexton Dairy Company ................................ 426 |
| Problems ......................................................... 428 |
| [3] Choice of Medical Provider ................................ 429 |
| Problem ........................................................... 429 |
| § 18.03 REHABILITATION ........................................... 430 |
| [1] Introduction ................................................... 430 |
| Grantham v. Cherry Hospital .................................... 430 |
| Problem ........................................................... 434 |
| Strickland v. Bowater, Inc. ...................................... 435 |

### Chapter 19 DEPENDENCY AND DEATH BENEFITS ............ 439

| § 19.01 STATUTORY CATEGORIES OF RELATIONSHIP .............. 439 |
| [1] Introduction ................................................... 439 |
| [3] Establishment of Statutory Relationship to Deceased ...... 440 |
| Heather v. Delta Drilling Company ................................ 440 |
| [4] Conclusive Presumption of Spouse’s or Child’s Dependency 446 |
| Wengler v. Druggists Mutual Insurance Co. ...................... 446 |
| Problems ........................................................... 450 |
| McDonald v. Chrysler Corporation ................................ 451 |
| Problem ........................................................... 451 |
| § 19.02 DEPENDENCY IN FACT ...................................... 452 |
| Williams v. Cypress Creek Drainage ............................. 452 |
| State Compensation Insurance Fund v. Workers’ Compensation Appeal Board (Asher) ....... 453 |
| § 19.03 DEATH BENEFITS ........................................... 456 |

### Part 7 EFFECT OF MISCONDUCT ................................. 459

### Chapter 20 MISCONDUCT OF EMPLOYEE ....................... 461

| § 20.01 GENERAL IRRELEVANCE OF EMPLOYEE FAULT .......... 461 |
| Hawk v. Jim Hawk Chevrolet-Buick, Inc. ......................... 462 |
TABLE OF CONTENTS

§ 20.02 MISCONDUCT APART FROM STATUTORY DEFENSES .............. 466
Hoyle v. Isenhour Brick & Tile Co. ........................................... 466
§ 20.03 STATUTORY DEFENSE OF WILFUL MISCONDUCT .............. 472
Problems ................................................................. 472
§ 20.04 STATUTORY DEFENSE OF FAILURE TO OBEY SAFETY RULES . 473
Problem ................................................................. 473
§ 20.05 INTOXICATION .......................................................... 474
Flavorland Industries, Inc. v. Schumacker ................................. 474
Haynes v. R. B. Rice, Division of Sara Lee ............................... 477
Thomas v. Helen’s Roofing Company, Inc. .................................. 479
Problems ................................................................. 481
§ 20.06 VIOLATION OF STATUTE OR COMMISSION OF CRIME .......... 481
[1] Introduction .......................................................... 481
[4] Violation of Statute as Wilful Misconduct ............................. 482
Richardson v. Fiedler Roofing, Inc. ........................................ 483
§ 20.07 SUICIDE OR INTENTIONAL SELF-INJURY ....................... 487
Kahle v. Plochman, Inc. ..................................................... 488
Problems ................................................................. 492
§ 20.08 EMPLOYEE FRAUD ....................................................... 492

Chapter 21  
MISCONDUCT OF EMPLOYER ............................................. 495

§ 21.01 INTENTIONAL INJURY BY EMPLOYER OR EMPLOYER’S AGENT ......................................................... 495
Kittell v. Vermont Weatherboard, Inc. ..................................... 495
Woodson v. Rowland .......................................................... 497
Problems ................................................................. 509
Sitzman v. Schumaker .......................................................... 509
Jett v. Dunlap ................................................................. 511
§ 21.02 NONPHYSICAL-INJURY TORTS ........................................ 513
[1] Introduction .......................................................... 513
[2] Fraud and Conspiracy ...................................................... 513
Johns-Manville Products Corporation v. Contra Costa Superior Court (Rudkin) ......................................................... 513
Problems ................................................................. 519
[3] Sexual Harassment .......................................................... 520
Accardi v. Superior Court of California ................................... 520
Problem ................................................................. 524
[4] Intentional and Negligent Infliction of Emotional Distress ........ 525

xx
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Livitsanos v. Superior Court</td>
<td>525</td>
</tr>
<tr>
<td>Nordstrom v. Gab Robins North America, Inc.</td>
<td>532</td>
</tr>
<tr>
<td>Retaliatory Termination of Employment</td>
<td>534</td>
</tr>
<tr>
<td>Kelsay v. Motorola, Inc.</td>
<td>534</td>
</tr>
<tr>
<td>Problems</td>
<td>538</td>
</tr>
<tr>
<td>§ 21.03 STATUTORY PROVISIONS ON EMPLOYER’S MISCONDUCT</td>
<td>538</td>
</tr>
</tbody>
</table>

#### Part 8  EXCLUSIVENESS OF COMPENSATION REMEDY . . . 539

<table>
<thead>
<tr>
<th>Chapter 22 NONCOMPENSABLE INJURIES OR ELEMENTS OF DAMAGE</th>
<th>541</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 22.01 INTRODUCTION</td>
<td>541</td>
</tr>
<tr>
<td>§ 22.02 COVERAGE OF INJURY VERSUS COMPENSABILITY OF DAMAGE</td>
<td>541</td>
</tr>
<tr>
<td>§ 22.03 DISFIGUREMENT</td>
<td>543</td>
</tr>
<tr>
<td>§ 22.04 DEGREE OF DISABILITY NOT COMPENSATED</td>
<td>543</td>
</tr>
<tr>
<td>§ 22.05 ANTIDISCRIMINATION LAWS AND THE EXCLUSIVITY DEFENSE</td>
<td>544</td>
</tr>
<tr>
<td>[1] Sexual Harassment and Other Sex Discrimination Claims</td>
<td>544</td>
</tr>
<tr>
<td>Problem</td>
<td>545</td>
</tr>
<tr>
<td>Problem</td>
<td>546</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 23 EXCLUSIVENESS AS TO PERSONS OTHER THAN EMPLOYEE</th>
<th>547</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 23.01 INTRODUCTION</td>
<td>547</td>
</tr>
<tr>
<td>§ 23.02 EXCLUSIVE-REMEDY PROVISIONS CLASSIFIED</td>
<td>547</td>
</tr>
<tr>
<td>§ 23.03 ACTIONS BY SPOUSES, PARENTS, OR CHILDREN</td>
<td>547</td>
</tr>
<tr>
<td>Snyder v. Michael’s Stores, Inc.</td>
<td>548</td>
</tr>
<tr>
<td>Problems</td>
<td>558</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 24 UNINSURED OR NONELECTING EMPLOYERS</th>
<th>559</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 24.01 INTRODUCTION</td>
<td>559</td>
</tr>
<tr>
<td>§ 24.02 ACTION AGAINST NONELECTING EMPLOYER</td>
<td>559</td>
</tr>
<tr>
<td>§ 24.03 ACTION AGAINST UNINSURED EMPLOYER</td>
<td>560</td>
</tr>
<tr>
<td>§ 24.04 ELECTION OF REMEDIES BY EMPLOYEE</td>
<td>560</td>
</tr>
<tr>
<td>§ 24.05 UNINSURED EMPLOYER FUNDS</td>
<td>561</td>
</tr>
<tr>
<td>§ 24.06 PERCENTAGE INCREASE IN COMPENSATION AS PENALTY FOR NONINSURANCE</td>
<td>562</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

## Part 9

THIRD-PARTY ACTIONS ................................. 563

## Chapter 25

THEORY OF THIRD-PARTY ACTIONS .................... 565

§ 25.01  INTRODUCTION .................................. 565

§ 25.02  REACHING THE ULTIMATE WRONGDOER ........ 565

§ 25.03  AVOIDING DOUBLE RECOVERY ................. 566

[1]  Introduction ....................................... 566

[2]  Specific Double-Recovery Situations .............. 566

[3]  Coordination of Uninsured Motorist Insurance and Workers’ Compensation .......... 567


[a]  In General ....................................... 567

[b]  Third-Party Suit Beyond No-Fault Limits: Rights of Carrier .......... 569

§ 25.04  DOUBLE RECOVERY APART FROM SUBROGATION STATUTE ........ 569

## Chapter 26

WHO ARE “THIRD PERSONS”? ....................... 571

§ 26.01  INTRODUCTION .................................. 571

§ 26.02  EMPLOYER ALONE IMMUNE ...................... 572

§ 26.03  EMPLOYER AND COEMPLOYEES IMMUNE .......... 573

[1]  Summary of Coemployee Immunity Statutes and Decisions ........ 573

[2]  Necessity that Coemployee Be Acting in Course of Employment ..... 573


  Crees v. Chiles ....................................... 574


  O’Connell v. Chasdi .................................... 580

§ 26.04  EVERYONE IN “COMMON EMPLOYMENT” IMMUNE .......... 583

[1]  “Statutory Employer” as Third Party ............... 583

  Washington Metropolitan Area Transit Authority v. Johnson et al. ........ 584

[2]  Subcontractor on Same Project ....................... 593


§ 26.05  IMMUNITY OF AFFILIATED CORPORATIONS .......... 594

§ 26.06  PHYSICIANS AS THIRD PARTIES .................. 595


[2]  Immunity of Physician as Coemployee ................. 595

[3]  Immunity of Employers of Physicians ................. 595


§ 26.07  THE DUAL-PERSONA DOCTRINE .................. 597

TABLE OF CONTENTS

[2] Owner or Occupier of Land ........................................ 598
[3] Products Liability ................................................. 598
[4] Departments or Divisions of a Single Employer ............... 599
  [a] Private Employers ............................................... 599
  [b] State and Local Governments .................................. 599
  [c] Federal Government ............................................ 599
[5] Automobile Owner’s Liability .................................... 600
§ 26.08 INSURER AS THIRD PARTY .................................. 600
  [1] Summary of Case and Statute Law on Insurers as Third Parties .......... 600

Chapter 27 SUBROGATION ........................................... 605

§ 27.01 INTRODUCTION .............................................. 605
§ 27.02 THE FIVE TYPES OF SUBROGATION STATUTE ............... 605
  [1] The Five Types of Statute Summarized .......................... 605
  [3] Conflict of Interest of Carrier ................................ 606
  [4] Necessity for Employer’s Consent to Employee’s Settlement .......... 607
§ 27.03 ACTS EFFECTING ASSIGNMENT .............................. 607
§ 27.04 DISTRIBUTION OF PROCEEDS OF THIRD-PARTY ACTION .... 608
  [1] Summary of Reimbursement Statutes ............................ 608
  [3] Whether Lien Attaches to Recovery for Medical Expenses, Pain and
      Suffering, and Punitive Damages ................................ 609
§ 27.05 SHARING ATTORNEYS’ FEES IN EMPLOYEE’S THIRD-PARTY
      RECOVERY .......................................................... 609

Chapter 28 THIRD PARTY’S DEFENSES .............................. 611

§ 28.01 INTRODUCTION .............................................. 611
§ 28.02 IDENTIFICATION OF SUBROGEE’S WITH EMPLOYEE’S CAUSE
      OF ACTION ......................................................... 611
§ 28.03 CONTRIBUTORY NEGLIGENCE .................................. 612
§ 28.04 STATUTE OF LIMITATIONS ................................... 613
§ 28.05 SUBROGATION AS DEFENSE TO THIRD-PARTY SUIT BY
      EMPLOYEE .......................................................... 613
§ 28.06 EFFECT OF CARRIER OR EMPLOYER CONFLICT OF INTEREST
      ON EMPLOYEE’S RETENTION OF CAUSE OF ACTION .............. 614
### TABLE OF CONTENTS

**Chapter 29**  
THIRD PARTY’S BREACH OF SEPARATE DUTY TOWARD EMPLOYER .......................... 615

§ 29.01  INTRODUCTION .......................... 615

§ 29.02  QUESTION OF EXCLUSIVENESS OF EMPLOYER’S STATUTORY THIRD-PARTY REMEDY .......................... 615

§ 29.03  THE BURNSIDE RULE: STATUTORY REMEDY NOT EXCLUSIVE . 615

**Chapter 30**  
ACTIONS BY THIRD PARTIES AGAINST EMPLOYER .......................... 617

§ 30.01  NATURE OF RECOVERY-OVER Problem .......................... 618

[1] Introduction .......................... 618


§ 30.02  CONTRIBUTION .......................... 620

[1] Introduction .......................... 620


[3] Limiting Employer Contribution to Amount of Compensation .......................... 621


§ 30.03  EXPRESS INDEMNITY .......................... 624

[1] Introduction .......................... 624


[4] Specific Statutory Treatment of Express Indemnity .......................... 625

§ 30.04  IMPLIED INDEMNITY .......................... 626

[1] Introduction .......................... 626

[2] Indemnity Growing Out of Separate Duty Based on Relationship .......................... 626

[3] Implied Contractual Indemnity Under the Longshore Act .......................... 626

[a] Introduction .......................... 626

[b] The Ryan Doctrine .......................... 627

[c] Abolition of the Ryan Doctrine by the 1972 Amendments .......................... 627

[d] Remaining Grounds of Vessel’s Liability to Employee .......................... 627


[a] No Contract Whatever Between Parties .......................... 629

[b] No Contractual Relation Along Which Implied Obligation Can Travel .......................... 629

_Myco, Inc. v. Super Concrete Co., Inc._ .......................... 630
## TABLE OF CONTENTS

Problems .............................................................................. 659

§ 31.04 RES JUDICATA AND JUDICIAL ESTOPPEL ..................... 659

§ 31.05 JUDICIAL ESTOPPEL AND THE AMERICANS WITH DISABILITIES ACT .................................................. 660

  *Sumner v. Michelin North America, Inc.* ........................................... 661

§ 31.06 REVIEW OF AWARDS ..................................................... 670

  [1] Introduction ........................................................................ 670
  [3] Court’s Inability to Weigh Evidence ..................................... 672
  [4] Speculation and Conjecture Rule .......................................... 673

§ 31.07 REOPENING AWARDS .................................................. 674

  [1] Summary of Reopening Problem ........................................... 674
  [2] Time Limits on Reopening .................................................... 675
  [3] Reopening for Change in Condition ....................................... 676
  [4] Reopening of Agreement Awards .......................................... 676
  [5] Reopening Apart From Change in Condition ........................... 677

§ 31.08 AGREEMENTS AND SETTLEMENTS ............................. 678

  [1] Introduction ........................................................................ 678
  [2] Volume of Claims Disposed of Without Contest ................... 678
  [3] Fairness and Adequacy of Settlements .................................. 678
  [4] Legality of Compensation Compromises .............................. 679
  [5] Pros and Cons of Permitting Compromise ............................ 679

  *Hernandez v. Jensen* ............................................................. 682

§ 31.09 FEES, EXPENSES, AND PENALTIES .......................... 687

  [1] Introduction ........................................................................ 687
  [2] Attorneys’ Fees ................................................................... 687
  [3] Medical Witness Fees and Other Expenses .......................... 689
  [4] Penalties and Interest .......................................................... 690

Chapter 32 CONFLICT OF LAWS ........................................... 693

§ 32.01 NATURE OF COMPENSATION CONFLICTS Problem .......... 694

  [1] Introduction ........................................................................ 694
  [3] Statutory Application Versus Jurisdiction ............................... 695

  *Mills v. Tri-State Motor Transit Company* .................................. 695

§ 32.02 SUCCESSIVE AWARDS IN DIFFERENT STATES .......... 697

  [1] Introduction ........................................................................ 697
  [2] The “Magnolia” Doctrine ...................................................... 698
TABLE OF CONTENTS

[3] The *McCartin* Doctrine ............................................. 698
[6] Prior Voluntary Payment or Prior Denial ......................... 699
[8] Double Recovery .................................................. 700

§ 32.03 LIMITS ON APPLICABILITY IMPOSED BY FEDERAL CONSTITUTION ............................................. 700
[1] Introduction ...................................................... 700

§ 32.04 LIMITS ON APPLICABILITY IMPOSED BY STATE LAW ............. 701
[1] Summary of State Statutes .......................................... 701
[a] States in Compliance With National Commission Standard ....... 701
[b] Coverage of Out-of-State Injuries ................................ 702
[c] Coverage or Exclusion of In-State Injuries ....................... 702
[2] Place of Injury .................................................... 702
[3] Place of Contract .................................................. 703
[4] Place of Employment Relation ...................................... 703
[5] Localization of Employer’s Business .............................. 704
[6] Place of Employee’s Residence ..................................... 704

§ 32.05 CONFLICTS INVOLVING DAMAGE SUITS .......................... 705
[1] Introduction ...................................................... 705
[a] Importance of Conflicts in Third-Party Cases .................. 706
[b] Conflicts as to Immunity of Particular Third Parties ........... 706
   *Osborn v. Kinnington* ............................................. 707
   [c] Conflicts as to Assignment or Subrogation in Foreign State .... 709

§ 32.06 STATE ACTS VERSUS LONGSHORE ACT ........................... 710
[1] Introduction ...................................................... 710
[3] Evolution of the Present Rule ..................................... 711
[a] Pre-1972 Development ............................................. 711
[b] The 1972 “Status” and Expanded “Situs” Tests .................. 711
[c] Reasons for the 1972 Changes .................................... 712
[a] Introduction ...................................................... 712
[c] Constitutionality of Landward Extension of Coverage ........... 714
Table of Contents

Chapter 34 RELATION TO OTHER KINDS OF WAGE-LOSS PROTECTION

§ 34.01 COMPENSATION AS PART OF GENERAL WAGE-LOSS SYSTEM
[1] Comprehensiveness of American System
[2] Death and Dependency Coverage
[3] Injury and Illness Coverage
[4] Unemployment Coverage
[5] Old-Age Coverage
[6] Hospital, Medical, and Funeral Expenses

§ 34.02 IMPROPRIETY OF DUPLICATE WAGE-LOSS BENEFITS

§ 34.03 COORDINATION WITH UNEMPLOYMENT COMPENSATION

§ 34.04 COORDINATING WITH FEDERAL PENSION AND DISABILITY SYSTEMS
[3] Other Federal Benefits Not Generally Subject to Offset

§ 34.05 COORDINATION WITH STATE PENSION AND DISABILITY SYSTEMS

§ 34.06 COORDINATION WITH PRIVATE PLANS Varnell v. Union Carbide

Table of Cases TC-1

Index I-1