

WORKERS' COMPENSATION LAW

Carolina Academic Press Context and Practice Series

Michael Hunter Schwartz
Series Editor

Administrative Law, Second Edition

Richard Henry Seamon

Advanced Torts, Second Edition

Alex B. Long and Meredith J. Duncan

Animal Law—New Perspectives on Teaching Traditional Law
Kathy Hessler, Joyce Tischler, Pamela Hart, and Sonia S. Waisman

Antitrust Law

Steven Semeraro

Civil Procedure, Second Edition

Gerald F. Hess, Theresa M. Beiner, and Scott R. Bauries

Civil Procedure for All States

Benjamin V. Madison, III

Complex Litigation

James M. Underwood

Constitutional Law, Third Edition

David Schwartz and Lori Ringhand

**A Context and Practice Global Case File:
An Intersex Athlete's Constitutional Challenge,
*Hastings v. USATF, IAAF, and IOC***

Olivia M. Farrar

A Context and Practice Global Case File:

***Rossi v. Bryce*, An International Embryo and Surrogacy Dispute**

Olivia M. Farrar

A Context and Practice Global Case File:

***Thorpe v. Lightfoot*, A Mother's International Hague Petition
for the Return of Her Child**

Olivia M. Farrar

Contracts, Third Edition

Michael Hunter Schwartz and Adrian J. Walters

Criminal Law, Second Edition

Steven I. Friedland, Catherine L. Carpenter,
Kami N. Chavis, and Catherine Arcabascio

Current Issues in Constitutional Litigation, Third Edition

Sarah E. Ricks and Evelyn M. Tenenbaum

Employment Discrimination, Third Edition

Sandra F. Sperino and Jarod S. Gonzalez

Energy Law, Second Edition

Joshua P. Fershee

Evidence, Second Edition

Pavel Wonsowicz

International Business Transactions

Amy Deen Westbrook

International Women's Rights, Equality, and Justice

Christine M. Venter

The Lawyer's Practice

Kris Franklin

Professional Responsibility

Barbara Glesner Fines

Property Law

Alicia Kelly and Nancy Knauer

Sales, Second Edition

Edith R. Warkentine

Secured Transactions

Edith R. Warkentine and Jerome A. Grossman

Torts

Paula J. Manning

Workers' Compensation Law, Third Edition

Michael C. Duff

Your Brain and Law School

Marybeth Herald

WORKERS'
COMPENSATION LAW
A Context and Practice Casebook

THIRD EDITION

Michael C. Duff
UNIVERSITY OF WYOMING COLLEGE OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2022
Michael C. Duff
All Rights Reserved

ISBN 978-1-5310-2275-4
eISBN 978-1-5310-2276-1
LCCN 2021946176

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

Contents

List of Figures	xiii
Table of Principal Cases	xv
Series Editor's Preface	xvii
Preface and Acknowledgments	xix
Chapter 1 · Introduction to Workers' Compensation	3
Introductory Chapter Problem	3
The Big Picture of Workers' Compensation	3
A. Workers' Compensation Policy	3
1. Doing Nothing	4
2. Using Tort	4
3. Using Insurance	4
B. Overview of the Scope of Workers' Compensation	5
1. Historical Development	6
2. Quid Pro Quo — The Societal “Deal”	7
3. Expansion of “the System”	7
4. Exclusive Remedy	7
<i>O'Rourke v. Long</i>	7
5. Statutory Interpretation	9
<i>Fisher v. Tidewater Building Co.</i>	10
<i>Superior Industries v. Thomaston</i>	12
Chapter Conclusion	14
Chapter 2 · Critical Threshold Considerations: Notice, Statute of Limitations, Attorney's Fees, Date of Injury	15
Introduction	15
A. Return to Ann Smith's Scenario	16
B. Notice	17
<i>General Cable Corporation v. Levins</i>	18
C. Statute of Limitations	21
<i>Bieber v. Keeler Brass Company</i>	23
D. Attorney's Fees	26
<i>Appeal of Metevier</i>	28
<i>Pettinato v. Industrial Com'n of Arizona</i>	30
E. Date of Injury	33
<i>Brown v. Industrial Commission of Ohio</i>	34
<i>DeRice v. S.D. Warren Co.</i>	39
Chapter Conclusion	42

Chapter 3 · Causal Connection: Injuries by Accident Arising Out of and In the Course of Employment	45
Introduction	45
A. Injury “by Accident”	46
<i>Tomlin v. Densberger Drywall Inc.</i>	48
<i>Lane Co., Inc. v. Saunders</i>	53
<i>Ross v. Oxford Paper Co.</i>	56
<i>Stenrich Group v. Jemmott</i>	59
<i>Smith’s Food and Drug, Inc. v. Labor Commission</i>	65
Exercise 3-1	69
B. “Arising Out of”	69
1. Initial Causation	71
<i>Smith v. Bob Evans Farms</i>	72
<i>Odd Jobs & More v. Reid</i>	78
<i>Egan’s Case</i>	82
<i>Circle K Store No. 1131 v. Industrial Com’n of Arizona</i>	84
Exercise 3-2	90
2. “Successive” Causation	91
<i>Bryant v. Masters Mach. Co.</i>	92
<i>Brackett v. A.C. Lawrence Leather Co.</i>	101
Exercise 3-3	103
C. “In the Course of”	103
<i>Dixon v. U.S. Air Reservation Group</i>	106
<i>Strother v. Morrison Cafeteria</i>	112
<i>American Home Assur. Co. v. De Los Santos</i>	117
<i>Cotton v. Bureau of Workers’ Compensation</i>	124
Exercise 3-4	129
<i>Workers’ Compensation Div. v. Espinoza</i>	130
Exercise 3-5	132
D. Occupational Disease	133
1. The General Problem	133
2. The COVID-19 Experience	134
Chapter 4 · Extent of Incapacity	137
Introduction	137
Determination of the Extent, Duration, and Benefit Level of Work-Related Injuries	138
A. Total versus Partial Incapacity	143
1. Basic Determination of Permanent Total Incapacity	144
<i>Blue Bell, Inc. v. Nichols</i>	145
<i>Southeastern Commercial Printing Corp. v. Sallas</i>	147
2. Temporary Total Incapacity	150
<i>Wood v. Fletcher Allen Health Care</i>	151
3. Fluctuating Levels of Incapacity	156
<i>Matthew Ormonde, Employee; Choice One Communications, Employer; Federal Insurance Company, Insurer</i>	157
<i>Bonnie Kobe, Petitioner v. Montana State Fund, Respondent/Insurer</i>	162
Exercise 4-1	165

B. Calculation of Partial Incapacity Benefits	166
<i>Fecteau v. Rich Vale Const., Inc.</i>	167
<i>Pro-Football, Inc. v. District of Columbia Dept. of Employment Services</i>	173
Exercise 4-2	184
C. Average Weekly Wage	184
<i>St. Mary's Church & Mission v. Industrial Com'n of State of Colo.</i>	185
<i>John Driggs Co., Inc. v. Somers</i>	188
D. Interplay between Permanent Partial Incapacity, Permanent Impairment, and Vocational Rehabilitation	192
<i>Stacy v. Great Lakes Agri Marketing, Inc.</i>	193
Exercise 4-3	205
E. Odd Lot Doctrine and Work Search	205
<i>Moss v. Wyoming Workers' Safety and Compensation Division</i>	207
<i>Avramovic v. R.C. Moore Transp., Inc.</i>	218
Exercise 4-4	225
F. Lump Sum Settlement	225
<i>Moilanen v. Marbles Moving & Storage</i>	227
<i>Valles v. Daniel Const. Co.</i>	228
<i>Ex Parte Ford</i>	230
Exercise 4-5	232
Chapter 5 · What Is Employment? Who Is an Employee? What Is an Employer?	235
Introduction	235
A. What Is Employment?	236
<i>Blache v. Maryland Cas. Co.</i>	237
Exercise 5-1	239
B. Who Is an Employee?	239
1. Preliminary Considerations	239
2. Common Law Right to Control Test	240
The Factors of Control	240
<i>McCown v. Hines</i>	243
Exercise 5-2	247
3. Economic Realities Test	248
Factors Considered in the Economic Realities Test	248
<i>Tata v. Benjamin Muskovitz Plumbing and Heating</i>	249
<i>Powell v. Appeal Bd. of Mich. Employment Sec. Commission</i>	252
<i>N.L.R.B. v. Hearst Publications</i>	257
Exercise 5-3	261
4. Relative Nature of the Work Test	261
Relative Nature of the Work Factors	261
<i>Kertesz v. Korsh</i>	262
Exercise 5-4	268
5. The ABC Test	268
6. Marketplace Platform Laws	269
C. What Is an Employer?	271
<i>JFC Temps, Inc. v. W.C.A.B. (Lindsay)</i>	272
<i>Samaoya v. Gallagher</i>	277
Exercise 5-5	281

Chapter 6 · Evidence	283
Introduction	283
A. Lay Testimony	285
<i>Graves v. W.C.A.B. (Philadelphia Housing Authority)</i>	287
<i>Kloepfer v. Lumbermen's Mut. Cas. Co.</i>	291
<i>Bell's Repair Service v. W.C.A.B. (Murphy Jr.)</i>	294
<i>Broach v. Midland Steel Products Co.</i>	299
Exercise 6-1	302
B. Physicians' Testimony	302
<i>Dunn v. Treasurer of Missouri as Custodian of Second Injury Fund</i>	304
<i>Laskey v. S.D. Warren Co.</i>	312
<i>City of Manassa v. Ruff</i>	319
<i>Claim of Decker v. Wyoming Medical Com'n</i>	326
<i>Michau v. Georgetown County</i>	331
<i>Amos v. Gartner, Inc.</i>	335
Exercise 6-2	339
Exercise 6-3	340
C. Admissibility of Documents	340
<i>Hert v. J.J. Newberry Co.</i>	342
<i>Gunter v. Fischer Scientific American</i>	346
Exercise 6-4	349
Chapter 7 · Death Benefits	351
Introduction	351
A. Classification of Eligible Dependents	352
<i>Houser by Houser v. Dan Dugan Transport Co.</i>	353
<i>Adams v. Texfi Industries</i>	357
B. Definition of Dependency	359
<i>Johnson v. West Virginia Office of Insurance Commissioner</i>	361
Exercise 7-1	366
C. Calculation of Death Benefit	367
<i>Johnson v. Covil Corp.</i>	368
<i>Richards v. St. Bernard Parish Government</i>	373
Exercise 7-2	378
Chapter 8 · Exclusive Remedy, Third Party Actions, Employer/Worker Misconduct	381
Introduction	381
A. Exclusive Remedy Rule	384
<i>Walters v. Flathead Concrete Products, Inc.</i>	385
<i>Fanion v. McNeal</i>	395
<i>Alexander v. Bozeman Motors, Inc.</i>	400
<i>Legault v. Brown</i>	407
Exercise 8-1	409
Exercise 8-2	409
B. Third Party Action	409
<i>Firestone Tire and Rubber Co. v. Brown</i>	412
<i>Piper v. Pettibone Corp.</i>	415

Exercise 8-3	419
Exercise 8-4	419
C. Employer Misconduct	419
<i>Bigge Crane & Rigging Co. v. Workers' Comp. Appeals Bd.</i>	421
<i>Hawkeye Const. Co. v. Little ex rel. Little</i>	428
<i>Michael Lynch, Employee; Oak Roofing and Sheet Metal Works Co., Inc., Employer; Continental Casualty Insurance Company, Insurer</i>	433
Exercise 8-5	436
D. Worker Misconduct	437
<i>Barron v. Labor Commission</i>	438
<i>Garcia v. Naylor Concrete Co.</i>	444
<i>Pearson v. Johnson Controls, Northern N.M., LLC</i>	448
<i>Franks v. Workers' Compensation Appeals Board</i>	455
Exercise 8-6	457
Chapter 9 · Administration	459
Introduction	459
A. Administration: Generally	459
B. Administration: Massachusetts	461
1. Before Injury	461
2. Pre-Dispute Process	461
3. Post-Dispute Process	463
<i>Nolan v. Commissioner of Department of Industrial Accidents</i>	464
<i>Mark Cerasoli, Employee; Hale Development, Employer; Liberty Mutual Insurance Co., Insurer</i>	468
4. Notice and Statute of Limitations	472
<i>Berthiaume's Case</i>	474
<i>Thibeault's Case</i>	478
Exercise 9-1	481
C. Administration and Judicial Review: Massachusetts	481
1. Judicial Review of Agency Fact Finding	483
<i>Griffin's Case</i>	483
<i>Case of Lettich</i>	486
2. Judicial Review of Agency Statutory and Regulatory Interpretations	490
<i>Case of Gonzalez</i>	490
<i>Case of Gateley</i>	493
Exercise 9-2	495
Chapter 10 · Workers' Compensation and Other Statutes	505
Introduction	505
A. Social Security Act	505
1. Disability Determinations	505
2. SSDI Benefit Coordination	509
3. Retirement Presumption	510
B. Family and Medical Leave Act	511
1. Description	511
2. Potential Interaction with Workers' Compensation	512

C. Americans with Disabilities Act	513
1. Description	513
2. Potential Interaction with Workers' Compensation	514
D. Immigration Statutes	519
<i>Hoffman Plastic Compounds, Inc. v. N.L.R.B.</i>	519
<i>Amoah v. Mallah Management, LLC</i>	522
E. Employee Retirement and Income Security Act of 1974 (ERISA)	525
<i>Ciampi v. Hannaford Bros. Co.</i>	526
F. Federal Workplace Injury Programs	530
1. Energy Employees Occupational Illness Compensation Program	530
2. Federal Employees' Compensation Program	530
3. Longshore and Harbor Workers' Compensation Program	530
4. Black Lung Benefits Program	531
Chapter 11 · Emerging Tensions in the Workers' Compensation Model: Benefit Adequacy, Opt-Out & ERISA Conflict	533
A. Benefit Adequacy	533
1. Introduction	533
2. 1972 Report of the National Commission on Workers' Compensation Laws and Subsequent Analyses of "Adequacy"	534
3. Developing Case Law	536
<i>Westphal v. City of St. Petersburg</i>	537
B. The Opt-Out Phenomenon	543
<i>Coates v. Fallin</i>	545
C. Opt-Out (or Other Alternatives to Workers' Compensation) and ERISA	553
Chapter 12 · In the Law Office	555
Exercise 12-1 Exercise Case Materials	556
Exercise 12-2 Exercise Case Materials	557
Exercise 12-3 Exercise Case Materials	593
Exercise 12-4 Exercise Case Materials	642
Index	647

List of Figures

Figure 2.1 • Critical Threshold Considerations for Workers' Compensation Claims	43
Figure 3.1 • Causal Connection in Workers' Compensation	136
Figure 4.1 • Extent of Incapacity in Workers' Compensation	234

Table of Principal Cases

- Adams v. Texfi Industries, 357
Alexander v. Bozeman Motors, 400
American Home v. De Los Santos, 117
Amoah v. Mallah Management, 522
Amos v. Gartner, Inc., 335
Avramovic v. R.C. Moore Transp., 218
Barron v. Labor Commission, 438
Bell's Repair Service v. W.C.A.B. (Murphy Jr.), 294
Berthiaume's Case, 474
Bieber v. Keeler Brass Company, 23
Bigge Crane & Rigging Co. v. Workers' Comp. Appeals Bd., 421
Blache v. Maryland Cas. Co., 237
Blue Bell, Inc. v. Nichols, 145
Brackett v. A.C. Lawrence Leather Co., 101
Broach v. Midland Steel Products Co., 299
Brown v. Industrial Commission of Ohio, 34
Bryant v. Masters Mach. Co., 92
Mark Cerasoli, Hale Development, Liberty Mutual Insurance Co., 468
Ciampi v. Hannaford Bros. Co., 526
Circle K Store No. 1131 v. Industrial Com'n of Arizona, 84
Claim of Decker v. Wyoming Medical Com'n, 326
Coates v. Fallin, 545
Cotton v. Bureau of Workers' Compensation, 124
DeRice v. S.D. Warren Co., 39
Dixon v. U.S. Air Reservation Group, 106
John Driggs Co., Inc. v. Somers, 188
Dunn v. Treasurer of Missouri, 304
Dynamex Operations v. Superior Court, 269
Egan's Case, 82
Fanion v. McNeal, 395
Fecteau v. Rich Vale Const., 167
Firestone Tire and Rubber Co. v. Brown, 412
Fisher v. Tidewater Building Co., 10
Ex Parte Ford, 230
Franks v. Workers' Compensation Appeals Board, 455
Garcia v. Naylor Concrete Co., 444
Case of Gateley, 493
General Cable Corporation v. Levins, 18
Case of Gonzalez, 490
Graves v. W.C.A.B. (Philadelphia Housing Authority), 287
Griffin's Case, 483
Gunter v. Fischer Scientific American, 346
Hawkeye Const. Co. v. Little, 428
Hert v. J. J. Newberry Co., 342
Hoffman Plastic Compounds, Inc. v. N.L.R.B., 519
Houser by Houser v. Dan Dugan Transport Co., 353
JFC Temps, Inc. v. W.C.A.B. (Lindsay), 272
Johnson v. Covil Corp., 368
Johnson v. West Virginia Office of Insurance Commissioner, 361
Kertesz v. Korsh, 262
Kloepfer v. Lumbermen's Mut. Cas. Co., 291
Bonnie Kobe v. Montana State Fund, Respondent/Insurer, 162
Lane Co., Inc. v. Saunders, 53
Laskey v. S.D. Warren Co., 312
Legault v. Brown, 407
Case of Lettich, 486

- City of Manassa v. Ruff, 319
McCown v. Hines, 243
Appeal of Metevier, 28
Michael Lynch, Oak Roofing, Continental Casualty, 433
Michau v. Georgetown County, 331
Moilanen v. Marbles Moving & Storage, 227
Moss v. Wyoming Workers' Safety and Compensation Division, 207
N.L.R.B. v. Hearst Publications, 257
Nolan v. Commissioner of Department of Industrial Accidents, 464
Odd Jobs & More v. Reid, 78
Matthew Ormonde, Choice One Communications, Federal Insurance Company, 157
O'Rourke v. Long, 7
Pearson v. Johnson Controls, Northern N.M., LLC, 448
Pettinato v. Industrial Commission of Arizona, 30
Piper v. Pettibone Corp., 415
Powell v. Appeal Bd. of Mich. Employment Sec. Commission, 252
Pro-Football, Inc. v. District Of Columbia Dept. Of Employment Services, 173
Richards v. St. Bernard Parish Government, 373
Ross v. Oxford Paper Co., 56
Samaoya v. Gallagher, 277
Smith v. Bob Evans Farms, 72
Smith's Food and Drug, Inc. v. Labor Com'n, 65
Southeastern Commercial Printing Corp. v. Sallas, 147
St. Mary's Church & Mission v. Industrial Com'n of State of Colo., 185
Stacy v. Great Lakes Agri Marketing, Inc., 193
Stenrich Group v. Jemmott, 59
Strother v. Morrison Cafeteria, 112
Superior Industries v. Thomaston, 12
Tata v. Benjamin Muskovitz Plumbing and Heating, 249
Thibeault's Case, 478
Tomlin v. Densberger Drywall Inc., 48
Valles v. Daniel Const. Co., 228
Walters v. Flathead Concrete Products, Inc., 385
Westphal v. City of St. Petersburg, 537
Wood v. Fletcher Allen Health Care, 151
Workers' Compensation Div. v. Espinoza, 130

Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. Student learning and preparation for law practice are the guiding ethics of these books.

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is mschwartz@pacific.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning.

In fact, students, if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Michael Hunter Schwartz, Series Designer and Editor
Consultant, Institute for Law Teaching and Learning
Dean and Professor of Law, McGeorge School of Law,
University of the Pacific

Preface and Acknowledgments

Unlike the situation existing in many law school courses, there are very few workers' compensation casebooks on the market. Most of the existing "workers' comp" books have been around, in more or less their present form, for some time — for long enough that I was familiar with them when I was a law student more than 15 years ago. When I first engaged in the practice of workers' compensation law, immediately after law school, I was struck by how sharply my work as a practitioner departed from my law school textbook exposure to the subject. Then, when I was privileged to become a law teacher, I began thinking more explicitly about the differences between a body of law as it is taught and the same body of law as it is practiced. This explicit reflection led to deeper ruminations about law school teaching and learning, and about the vague suspicion I had harbored for several years that law student instruction was not all it could be.

I was therefore extremely fortunate, while squarely in the midst of these deliberations, to encounter Professor Michael Hunter Schwartz, a gifted law school teacher and learning theorist, whom I was able to lure to the University of Wyoming College of Law to do an orientation presentation for our entering first year class. Professor Schwartz suggested that I read, without delay, the Carnegie Foundation's *Educating Lawyers: Preparation for the Practice of Law*¹ and Roy Stuckey's *Best Practices for Legal Education*.² I did so, and reading these works validated completely the unease I had been feeling respecting traditional law school teaching. Of particular significance to me were the works' criticisms of the absence of law practice and professional identity formation in legal education, criticisms which I endorse.

Later, I was honored to be asked by Professor Schwartz to join a casebook series that he was organizing that would strive to respond to the teaching and learning research and criticisms underscored by the Carnegie and Stuckey studies. The book you are now reading represents my humble acceptance of that kind invitation.

1. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

2. ROY STUCKEY & OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION* (2007).

Workers' Compensation Course Main Objectives

By the end of this course, you will at a minimum be able to:

1. Determine whether a potential workers compensation claim is either barred by or made financially infeasible by preliminary procedural considerations.
2. Determine whether an injury arguably arises out of and in the course of employment.
3. Determine if a worker whose injury *has* been caused by work is entitled to permanent, temporary, total, or partial benefits and calculate the amount of benefits due to the worker.
4. Determine where and how a workers' compensation claim should be filed.
5. Separate credibility from medical case issues, and determine what medical evidence will be required to make out or oppose a claim.
6. Identify, in the case of a deceased worker, dependents of the worker and determine whether they are eligible for death benefits.
7. Determine whether any third party actions are at issue in a case.

Essential Plan of This Text

I have deliberately endeavored to, wherever possible, treat legal issues in the manner and order practitioners — especially small law office practitioners accustomed to representing claimants — would most likely encounter them. Thus, the book does not dwell at length on issues that the practitioner is unlikely to encounter with significant frequency. In this respect the book differs from the scope and treatment of material encountered in other, more traditional workers' compensation casebooks and treatises. I do not, for example, begin the book with unnecessarily arcane questions of who is or is not an employer or an employee. In most cases you are likely to encounter, it will be perfectly clear that injured workers are statutory employees and that their employers are “employers” within the meaning of a relevant workers compensation statute. That is not to say that I omit discussion of the subject and, as I will discuss in the text, we may be reaching a tipping point in which a more thorough preliminary assessment of employee status by practitioners may become increasingly necessary. Still, even where the Gig economy has been most ferociously contested, California, traditional employee analysis has remained the norm under workers' compensation law. On the other hand, in a handful of states, “marketplace contractor” laws have been implemented that allow for independent contractor-classification of workers who would almost certainly have been determined to be employees under traditional employment (or tort) law. Despite all of this volatility, I continue to defer extended discussion of employment status until after material I deem to be of more pressing practical concern to the “average” practitioner has been covered.

For instance, of more immediate concern to most practitioners is whether a worker has provided prompt notice of a work-related injury to his or her employer, or whether the statutory period for filing a workers' compensation claim has elapsed. Also of critical preliminary importance to practitioners—especially to practitioners representing injured workers—is whether attorney's fees sufficient to support attorney involvement in a prospective claim, are available. If a worker has not provided notice of injury to his or her employer; if the time for filing a worker's claim has expired; or if attorney's fees are unavailable, a practitioner will not, as a practical matter, be able to reach the “substantive” issues of a workers' compensation claim.

For this reason, Chapter 2 of the book quickly takes up the preliminary “procedural” matters of Notice, Statute of Limitations Claim Periods, Attorney's Fees, and determination of the date of a worker's injury. Chapter 3 considers the critical substantive issues of whether an injury is an “accident” that has “arisen out of” and “in the course of” a worker's employment. Analysis of these similar but distinct questions establishes whether a worker's injury is sufficiently connected to employment to be “compensable,” or eligible for compensation under an applicable workers' compensation statute. Chapter 4 discusses how the extent of a worker's incapacity is determined and explains how benefits are calculated. The text does not address problems associated with determining whether an injured worker is a “statutory employee” or whether an employer is a “statutory employer” within the meaning of a relevant workers' compensation law until Chapter 5. Chapter 6 explains whether and how the law of evidence applies in workers' compensation proceedings. Chapter 7 takes up the question of workers' compensation death benefits in contexts in which a worker has died as a result of a work-related injury. Chapter 8 explores the exclusive remedy rule and how that rule interacts with third party actions and employer or worker fault in bringing about work-related injuries. Chapter 9 then discusses workers' compensation procedure and administration—some of the nuts and bolts of how claims are filed and processed. In Chapter 10, I discuss the interaction between workers' compensation and a few other statutory regimes governing many workplaces: the ADA, Social Security Disability, and ERISA. In Chapter 11, the text considers cutting edge workers' compensation issues like whether benefits are adequate and the lawfulness of proposed new structures for benefit delivery. In the final chapter I expose students to actual practitioners' materials—some depositions and a client intake letter—and pose case problems revealed by the materials.

Because Workers' Compensation is most often encountered by practitioners as state statutory law, as various issues are explored you should always attempt to locate the law of the state in which you are currently planning to practice law.

Acknowledgments

My wife, Victoria, for her seemingly superhuman patience (especially with me).

My children, for being the unparalleled light of my life.

My parents, who never, ever gave up on me. (My late Dad did not live to see me finish the book, but his exhortatory voice never left my head.)

My coal miner grandfather, George Parker, whose death from black lung disease at age 52 introduced me as a child to the solemnity of workplace justice.

My first academic mentor, the late, great Professor George Claghorn, longtime chair of the West Chester University Philosophy Department, who firmly reinforced in this blue-collar writer a love of formal philosophy and the desire to continue pursuit of academic study.

My first legal mentors, Susan Maze-Rothstein and James J. MacAdam, who saw things in me I could not yet see.

Michael Hunter Schwartz, and all the supportive people I have met in connection with this wonderful Carolina Academic Press project.