

**WORKER'S COMPENSATION EXAM**  
**PROFESSOR FRANK WHITELEY**  
**FALL 2008**

This is a THREE hour exam.

Feel free to write as much as you want.

Some questions only require a short answer.

1. Hillary is a maid at the Days Inn. At the end of her shift, she punches out. There are numerous ways to exit the building. She chooses to go to the front of the hotel where people checking in and unloading luggage are protected from the rain by a covered driveway. Her sister arrives in a car to give Hillary a ride home. After Hillary gets into the car, a section of the overhang (covered drive) falls onto the car, injuring Hillary and her sister. Are Hillary's injuries covered by Worker's Compensation?
2. George is a night watchman at a chemical plant. In violation of his employer's instructions, he leaves his post and walks to a Burger King three blocks from the chemical plant. When he enters the Burger King, a robbery is taking place, and George is shot. Is he entitled to Worker's Compensation? Why or why not?
3. Dick Cheney is working for Halliburton and is provided with a company car. He is instructed by his employer only to use the car for travel to and from work assignments. On a company holiday, he takes his wife and children to church, while driving to church, his car is hit by another car and Mr. Cheney is injured. Are his injuries covered by Worker's Compensation? Why or why not?
4. Bobby goes to a company crawfish boil. When the keg of beer is empty, Bobby volunteers to remove the empty keg and insert a full keg so the party can continue. When he picks up the full keg, Bobby injures his back. Are his injuries compensable? Why or why not?
5. Kathleen drinks a great deal at the company crawfish boil. After the party is over, she gets onto her bicycle and while traveling to her home, swerves off the road and falls into a ditch, injuring her head. Are Kathleen's injuries compensable? Why or why not?
6. Justice Calagero is an employee of the Louisiana Supreme Court. While sitting at his desk during normal working hours and writing an opinion for the Court on separation of church and state, a freak accident occurs and lightning travels through his window and strikes Justice Calagero, causing severe injury. Is he covered by Worker's Compensation? Why or why not?
7. Mike works for General Motors. Due to the poor economy, it is known by the employees

that the plant will close permanently on July 1<sup>st</sup>. On June 26<sup>th</sup>, while working alone in a warehouse, Mike says that he was injured while lifting his toolbox. No one sees the accident. On July 2<sup>nd</sup>, Mike goes to a doctor and is diagnosed with a herniated disc. On July 5<sup>th</sup>, Mike reports the accident to his employer.

- a. Is the accident compensable?
  - b. What is the standard for proving an unwitnessed accident?
8. Sam works as a supervisor in a lumber yard. His job typically consists of working on the computer and telling other employees what work needs to be done. Because of a labor shortage, he is forced to perform heavy manual labor during the Christmas holidays. Sam cannot identify a single traumatic event but seeks worker's compensation benefits. Is he entitled to worker's compensation? Why or why not?
  9. Please define the presumption of causation.
  10. Eli suffers a very serious back injury while in the course and scope of his employment. His employer voluntarily pays worker's compensation benefits. After several years of medical treatment, Eli develops major depression which he claims is related to pain. What is his burden of proof for compensability for his mental injury?
  11. Beth has worked for a bank for a number of years. She has had a very difficult time with her supervisor. Beth has been reprimanded several times. On September 1, 2008, her supervisor fires her for unsatisfactory work. Beth has a nervous breakdown two days later. Is her mental injury compensable under the Worker's Compensation Act and what is the burden of proving mental injury caused by mental stress?
  12. Ben is an attorney. His law firm requires him to bill a high number of hours. While sitting at his desk typing, Ben has a massive heart attack and is unable to continue working. Is his heart attack compensable under the Worker's Compensation Act? Why or why not?
  13. Ray worked as a sandblaster for twenty years at Avondale. In the year 2000, he retired. In 2007, he was diagnosed with silicosis. Has his claim for an occupational disease prescribed? Why or why not?
  14. Please describe the last causative employer rule.
  15. Please state what is meant by "exclusive remedy", and what is the one exception to exclusive remedy?
  16. Sam and Louis are driving in a company car. They are on an employment mission. They are returning to their place of employment. The crossing gate on railroad tracks begins to flash and go into the down position. Louis speeds up the company car and swerves through the crossing gates. Before he can cross the tracks, the company car is hit by the

train. Both Louis and Sam are entitled to worker's compensation. Are either one of them entitled to an additional remedy under Louisiana law?

17. Barto is a shift manager at Burger King. Arthur determined that \$36.00 was missing from the cash register. Barto had seen a co-employee, Fletcher, leaving the office at night before the money was noticed missing. Barto asked Fletcher to empty his pockets. Fletcher pulled out a knife and began stabbing and beating Barto.
  - a. If Barto sues Burger King in compensation, will he be successful?
  - b. Barto also sues Fletcher for intentional tort. Is Burger King vicariously liable for the actions of Fletcher? Why or why not?
18. There are four types of disability benefits under Louisiana Worker's Compensation law. Please name three and define each.
19. Victor was injured on the job in the course and scope of his employment while working as a heavy manual laborer. After having back surgery, he is released to light duty employment and the doctor states that his at maximum medical improvement.
  - a. Is he entitled to any weekly indemnity benefits? If so, what kind?
  - b. What can the employer do to limit its liability for future weekly (indemnity) benefits?
20. Please state the choice of physician rule.
21. When can an employer request that the employee submit to an examination by a doctor of the employer's choosing?
22. Once both the employee and employer have selected their choice of physician, is there an additional procedure to resolve medical disputes?
23. Keith is working in a sawmill. Keith is acting extremely carelessly while running the saw. When he hears the door open, he turns and negligently puts his hand into the saw blade, injuring his hand. Is Keith entitled to worker's compensation benefits? Why or why not?
24. If an employer voluntarily pays medical expenses, what is the prescriptive period for continued medical care?
25. XYZ employer paid the wrong compensation rate due to a math error. When the attorney for the employee pointed out the error to XYZ Company, they refused to change the worker's compensation rate. What remedies are available to the employee?
26. Two days prior to beginning his job with Pat O'Brien's, Micky received treatment with a

chiropractor for low back and right leg pain. He told the chiropractor that his symptoms began several weeks before when he fell down a flight of stairs at home. Six weeks after beginning his employment with Pat O'Brien's, Micky alleges an injury to his low back resulting in right leg pain. Micky denies the previous symptoms, accident and treatment in his recorded statement, his interrogatories, his deposition and medical histories to four doctors. What defense should be raised by Pat O'Brien's, and will they be successful?

27. Is it possible to have civil and criminal penalties against an employer, if the employer is found to have violated Section 1208?
28. Tom is injured on the job. He chooses Dr. Lackey as his physician. Dr. Lackey performs surgery on his back. Dr. Lackey commits malpractice when he leaves a surgical instrument inside of Tom prior to sewing him up. Weeks later, Tom develops a serious infection due to the malpractice of Dr. Lackey.
  - a. Is the treatment of the infection compensable under the Louisiana Worker's Compensation Act?
  - b. Can Tom sue Dr. Lackey for malpractice?
  - c. If so, does Tom's employer have any legal remedy?
29. Scott and Roger are hired to do construction work by KBR Construction. Neither has any experience in the construction field. Scott is injured when scaffolding collapses. It is proven that Roger was negligent in setting up the scaffolding.
  - a. Can Scott sue Roger in tort?
  - b. What are Scott's remedies against KBR Construction?
30. When only one contract exists, there are two requirements for a statutory employment relationship to exist. What are they?
31. A property owner enters into a contract with a general contractor to build a law office. The general contractor enters into subcontracts with ABC Plumbing and 123 Roofing. While building the law office, an employee of 123 Roofing drops a large stack of shingles which fall from the roof and severely injure an employee of ABC plumbing.
  - a. What legal remedy does the employee of ABC Plumbing have against ABC Plumbing?
  - b. What legal remedy does the employee of ABC Plumbing have against 123 Roofing?
  - c. What legal remedy does the employee of ABC Plumbing have against the general contractor?

32. Sidney is driving for the Coca-Cola Company. She loses control over her eighteen wheeler and drives into a ditch. She is transported to the hospital where she tests positive for alcohol intoxication at a level of .17. Is Sidney entitled to worker's compensation benefits from the Coca-Cola Company? Why or why not?
33. Sammy is working in a shipyard. He is welding. Unbeknownst to Sam, a crane is moving a heavy load of material in his area. The crane is improperly loaded and the materials fall, killing Sam. Sam tests positive for cocaine. Does Sam have a worker's compensation claim against his employer? Why or why not?
34. Larry claims that he was injured in an unwitnessed accident. His employer denies his worker's compensation claim. While litigating the worker's compensation claim, Larry receives unemployment benefits for 26 weeks. His unemployment benefits were paid at \$75.00 per week. One year after leaving his employment, Larry is successful in proving a compensable worker's compensation accident. The judge awards him worker's compensation benefits at \$400 per week. How much worker's compensation does the employer owe for the 26 weeks that Larry received unemployment benefits'?
35. Dennis has a compensable accident in the course and scope of his employment. For two years (102 weeks), he receives temporary total disability benefits. At the end of two years, he returns to work with wage loss. How many weeks will Dennis be eligible for supplemental earnings benefits?
36. Please state the prescriptive period for a developmental injury.