

**WORKER'S COMPENSATION EXAM**  
**PROFESSOR FRANK WHITELEY**  
**FALL 2012**

There are forty (40) questions on the exam. You have two (2) hours to complete this exam. It is a closed book exam.

1. Please describe the worker's compensation compromise. What was given up by employees? What was given up by employers? What is the primary goal of the worker's compensation system?
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. Employee of ABC Trucking is driving an ABC truck on an employment mission. Employee picks up a prostitute at a gas station on his route. The truck driver is being physically entertained by the lady of the evening when he loses control of the truck. The truck runs into the ditch and he and his lady friend are injured. Did his accident occur in the course and scope of his employment with ABC?
4. 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 compensable? Why or why not?
5. 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 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?
6. After a meeting with his boss, an employee was fired and told to gather his personal affects and leave the premises. The employee did so, but after gathering his box of personal affects, tripped down the stairs and was injured. Is he in the course and scope of his employment?
7. A worker volunteered to drive his boss home after work. He makes a slight detour on the way to his boss's home to make a night deposit for the company. After delivering the boss, he has an automobile accident on the way to his home. Will the injuries sustained by the employee be compensable?

8. Bobby is recovering from back surgery at the L5-S1 level. His doctor releases him to return to employment with a restriction of no lifting over 50 pounds. Bobby applies for a job at ABC Construction and informs his employer of the prior back surgery at L5-S1. Shortly after beginning his employment Bobby knowingly attempts to lift a package with the weight of the package clearly displayed on the side at 150 pounds. When he attempts to lift the package he re-injures his back and is diagnosed with a recurrent disc injury at L5-S1. Are his injuries compensable, what legal theories come into play?
9. An unwitnessed accident can be proven if:
10. Define eggshell employee.
11. Define presumption of causation.
12. Under Louisiana workers law, the "exclusive remedy" bars tort claims by employees against their employer. What is the one exception to the "exclusive remedy"?
13. Barto is a shift manager at Burger King. Barton determines that \$36.00 was missing from the cash register. Barton had seen a co-employee, Fletcher leaving the office the night before the money was missing. Barton 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?
14. What is the name of the disability benefits payable during the period of healing, when an employee cannot work in any capacity?
15. Once an employee is returned to work by his physician, but the injured worker has carried his burden of proving an inability to earn 90% of his pre-accident average weekly wage, he is entitled to what type of disability benefits?
16. Through what means may an employer limit their exposure for these wage loss benefits?
17. If a dispute over medical treatment arises between the treating physician and the workers compensation insurer's second medical opinion doctor, what remedies are available to resolve the dispute?
18. Please state the choice of physician rule.

19. The employee is injured on the job. The employer accepts the claim as compensable. The employee's treating physician diagnoses a lumbar strain. The employer's doctor performs an examination and states that the employee can return to work without restrictions. Six months later, the treating physician concludes that the employee is not improving and recommends an MRI. The employer/workers compensation carrier refuses to authorize the testing. What is the mistake of the employer/worker compensation carrier and is the likely consequence of the refusal to approve the testing?
20. By definition, what is a "third-party"?
21. It has been a year and a half since Susan's accident and her physician has released her to light duty. She is able to return to her same employer with a light duty position that pays \$400.00 per week. Her pre-accident average weekly wage was \$700.00 per week. What type of wage replacement benefit is Susan entitled to?

Extra Credit 21a:

- 21a. What is the weekly rate of her compensation benefits after returning to work, or at least give the formula for calculating the rate?
22. What is the time limit for a worker's compensation insurer to pay travel reimbursement?
23. If a claim is in litigation and there is a dispute between the employee's choice of physician and the employer's choice of physician, what are possible remedies available to the parties?
24. Susan fills out a post-employment medical questionnaire and states that she has never had a back injury. Susan works for six (6) months and claims an unwitnessed accident that injured her back when she tripped down the stairs. Susan answers interrogatories and states that she had not had any prior back injury or back treatment. Susan also gives a deposition stating that she has no prior back injury or back treatment. The employer discovers that eighteen (18) months prior to her employment she had a back injury in an automobile accident. She underwent an MRI. She settled the lawsuit for \$35,000.00. What are the employer's options regarding the payment of worker's compensation benefits and the defense of this matter?
25. If an employee is found to have violated section 1208 by requesting mileage far in excess of the actual travel necessary for medical care, what is the penalty?
26. If an employer is not prejudiced by the violation of section 1208, do the sanctions still apply to the employee, and what are the likely sanctions?
27. A Court determines that an employer acted arbitrarily and capriciously in denying a claim for workers compensation. The Court also determines that after the claim was arbitrarily and capriciously denied, that the employee violated section 1208. Is an award of penalties and attorney's fees to the employee allowed?

28. Exxon enters into a contract with KBR to perform maintenance at Exxon's refinery. If Exxon wants to avoid tort liability for injuries to KBR employees, Exxon must fulfill two requirements to become a statutory employer, what are they?
29. 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 injures an employee of ABC Plumbing.
- What legal remedy does the employee of ABC Plumbing have against ABC Plumbing?
  - What legal remedy does the employee of ABC Plumbing have against 123 Roofing?
  - What legal remedy does the employee of ABC Plumbing have against the general contractor (assume ABC does not have workers compensation insurance)?
30. 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?
31. Pam is involved in a single car accident when her 18 wheeler runs off the road and hits a school building. Fortunately, the accident occurs late at night and the building is vacant, no children are hurt. Pam's neck is broken in the accident. She is taken to the ER, blood work is done and Pam tests positive for alcohol at more than twice the legal limit (0.19). Pam is taken from the ER directly to the intensive care unit, where she stays for 16 days. The hospital bill is \$177,000. Discuss the intoxication defense, and whether the employer will be responsible for any portion of the medical bills.
32. Larry claims that he was injured in an unwitnessed accident. The employer denies his worker's compensation claim. While litigating the worker's compensation claim, Larry receives unemployment benefits for twenty-six (26) weeks. The unemployment benefits are 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 Larry workers compensation benefits at \$400.00 per week. How much worker's compensation does the employer owe for the twenty-six weeks that Larry received unemployment benefits?
33. Dave is out of work for 100 weeks, during which time he is paid temporary total disability. He then returns to work with a wage loss. What is the maximum number of weeks of supplemental earnings benefits he can recover?

34. The employer makes a mistake and miscalculates Tom's average weekly wage. As a result, Tom's employer overpays Tom's workers compensation benefits by \$100 per week. The error is not discovered for 200 weeks. The total overpayment is \$20,000. What remedies are available to the employer?
35. For an employer to recover against the Second Injury Board, the employer must prove what three elements?
36. If an employer voluntarily pays medical expenses, what is the prescriptive period for continued medical care?
37. What are the three elements that must be met before the prescriptive period for an occupation disease claim begins to run? Once all three conditions are met, how long does the employee have to file suit?
38. To calculate the average weekly wage of an hourly employee, what information will the workers compensation insurer need to review?
39. Are "fringe benefits" such as vacation time and sick leave included in the calculation of the average weekly wage?
40. To what type of worker does the "40 hour presumption" apply? For extra credit define the "40 hour presumption".