

WORKER'S COMPENSATION EXAM
PROFESSOR FRANK WHITELEY
FALL, 2016

This is a closed book exam. There are 40 questions. You will be given 2 HOURS to complete the exam. The test consist of five (5) pages. Please be sure you have all five pages and answer all 40 questions.

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. For an injury to be compensable under the Louisiana Workers' Compensation Act, the injury must be the result of an accident "arising out of" and "in the course of" employment. Explain the difference between "arising out of" and "in the course of" employment.
3. 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? Why or why not?
4. 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? Why or why not?
5. 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 Compenation? Why or why not?
6. The owner of El Chico's has a camp in Reggio. Juan works for a El Chico's Mexican restaurant as a cook. A hurricane is in the gulf. The restaurant closes early due to bad weather. Before Jaun punches out, Jaun's boss (the owner) tells Juan to stay on the clock, and drive to the owner's camp in Reggio and board up the windows. Jaun's boss explains that he will get his regular pay plus gas money from El Chico's. This is not Jaun's usual job duties of cooking, but his boss insists Juan do the work. Jaun drives his own car to Reggio. On the way he loses control of the car and hits a tree. Juan is injured. Is he covered for workers compensation? Why or why not?

7. Matt is a longtime employee of a construction company. He is fifty-six years old and reports the onset of low back pain at work. He states that he cannot recall an activity which caused the onset of his pain. He is diagnosed with arthritis and degenerative disc disease. Does he a valid worker's compensation claim? Why or why not?
8. Define eggshell employee.
9. Define presumption of causation.
10. Keith is working in a saw mill. Keith is acting extremely carelessly while running the saw. When he hears a 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.
11. Joe works as a maintenance man for John Deere & Company. He is injured mowing grass at John Deere & Company's offices when the John Deere riding mower that he is using tips over. The accident is caused by a design defect in the John Deere mower.
 - (a) Is Joe entitled to workers' compensation benefits from John Deere & Company as a result of his accident and injury? Why or why not?
 - (b) Does Joe have any other remedy against John Deere & Company as a result of his accident and injury. Why or why not?
12. Name and define the four categories of disability benefits under the Louisiana Workers' Compensation Act.
13. Joey was injured on the job with ABC Company. Joey's choice of orthopedic surgeon is recommending a three level fusion. ABC Company's choice of orthopedic surgeon states that surgery is not reasonable and necessary. Is there any procedure for resolving this type of dispute under the Louisiana Worker's Compensation Act? If so, identify that procedure.
14. Mary Ann's boss is extremely unreasonable. He routinely berates her for poor performance. Additionally, Mary Ann's boss makes degrading comments about her clothing and the way she wears her hair. Mary Ann's boss often calls Mary Ann at home to complain about deficiencies in her work performance over which she has no control. After two years of employment, Mary Ann refuses to return to work and goes to a psychiatrist. She is diagnosed with depression. Assuming that work conditions either caused or contributed to her depression, is Mary Ann's injury compensable under the Louisiana Worker's Compensation Act? Why or why not?
15. Sally is injured on the job and immediately is treated by an orthopedic surgeon. After treating with the orthopedic surgeon, she undergoes surgery. The surgery is unsuccessful. Sally's orthopedic surgeon recommends that she be seen by a neurosurgeon. Is Sally required to obtain her employer's consent to see the neurosurgeon?

16. Please state the choice of physician rule.
17. If an employer arbitrarily and capriciously refuses to pay Tommy weekly and medical benefits, Tommy would be entitled to penalties and attorneys fee for the denial of the claim. If during litigation the employer proves Tommy violated section 1208, would Tommy still get the penalties and attorney's fees?
18. If Tom submits ten claims for travel reimbursement, all of which the insurer refuses to pay, what is the maximum penalty he can receive under the Worker's Compensation Act?
19. 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?
20. 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?
21. 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?
22. Kim had a very serious worker's compensation accident. She has been on worker's compensation for a number of years. During the handling of the claim the insurance company realizes that she is submitted mileage reimbursement in excess of 7,000 miles. In actuality the amount of travel is under 700 miles. If Kim is found to have violated §1208 how does it affect her right to worker's compensation benefits.
23. Joe is driving a Coca-Cola delivery truck. Robert is working as a traveling salesman for ABC Copying and is using an ABC Copying vehicle in the course and scope of his employment. While driving the Coca-Cola truck, Joe runs a red light and crashes into the ABC Copying car being driven by Robert. Joe is 100% at fault in causing the accident.
 - (a) Is Joe entitled to workers' compensation benefits for the injuries that he sustained in the accident? Explain why or why not.
 - (b) Is Robert entitled to workers' compensation benefits for the injuries that he sustained in the accident? Explain why or why not.
 - (c) Does Joe have any remedy against ABC Copying? Explain why or why not.
 - (d) Does Robert have any remedy against Coca-Cola? Explain why or why not.

24. There is only one situation where an employee can sue his direct employer in Tort. Please describe.
25. 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?
26. 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?
27. By definition, what is a "third-party"?
28. Tommy and Larry are both employees of a moving company. After moving furniture up and down a flight of stairs all day, Tommy thought it would be funny to pour cold water down Larry's back as he went down the stairs ahead of Tommy. As a result, Larry slipped and fell and injured his low back. Is Larry's injury compensable? Please discuss why or why not.
29. In the example above, instead of Larry being injured, when Tommy attempted to throw the cold water on Larry, Tommy tripped down the stairs and was injured. Is Tommy's injury compensable? Please discuss why or why not.

30. The supervisor tells an employee to move boxes. The employee complains that it is someone else's job duty. The supervisor insists that he move the boxes. The employee again refuses. During the course of their argument over moving the boxes, the supervisor makes a disparaging comment about the employee's mother. A fight ensues and the supervisor severely injures the employee. Is the employee entitled to worker's compensation? If so, why or why not.
31. In the example above, does the employee have a viable tort claim against the supervisor and, if so, is the employer vicariously liable for any tort damages that the employee sustained as a result of the fight with the supervisor? If so, why or why not.
32. If 100 weeks of temporary total disability has been paid, what is the maximum remaining exposure for supplemental earnings benefits?
33. Tom was working as a greeter at Wal-Mart. At the time of his injury he was 61 years old. After receiving worker's compensation benefits for four years, Tom began to receive old age retirement benefits. Is Wal-Mart entitled to a credit against the payment of Social Security old age benefits? Why or why not.
34. 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?
35. Please describe how a worker's compensation insurer can benefit if the injured worker successfully sues a third party and receives a large judgment.
36. Is an injured worker entitled to any indemnity benefits in a week in which an injured worker also receives unemployment benefits? If not what is the theory behind the law? Is the credit week for week or dollar for dollar?
37. Leah is injured in a job accident. Her average weekly wage is \$750.00. As a result of the injury that she sustained in her job accident, she is unable to work for six months. During those six months, she receives unemployment benefits at the rate of \$150.00 per week. Is Leah entitled to workers' compensation disability benefits during the six months that she is unable to work as result of her job accident, and, if so, how much is she entitled to receive for each week during those six months?
38. Please state the prescriptive period for an occupational disease claim. Also list the three conditions which must be met before prescription begins to run on an occupational disease claim.

39. Joey was injured and was paid indemnity benefits until he returned to work. Joey also received medical treatment paid for by his employer. Four years after returning to work, Joey returned to the doctor to seek medical care. What do you need to know to determine if Joey is entitled to continued medical care under the Louisiana Workers' Compensation Act?

40. John works for TnT Services. John claims an injury at work. TnT Services does not believe John was injured on the job and the claim is denied. No medical is paid, and no indemnity is paid. How long does John have to file a suit before his claim for indemnity prescribes?