

Workers' Compensation Law Syllabus

Willamette University School of Law

Larry D. Schucht, Trial Counsel
400 High Street SE
Salem, Oregon 97312
P: 503.534.5953 or 800.285.8525 ext. 5953
F: 503.584.9623
larsch@saif.com

Texts

Required Casebook: Larsen, Worker's Compensation Law, 6th Edition, Carolina Academic Press. (2018).

Required Supplementary Materials: Selected Supplemental cases to be provided. Note – Various assignments refer to sections of Oregon Revised Statutes chapter 656 (The Oregon Workers' Compensation Law). Although this course is not specifically on Oregon law, review of these statutes will be useful in understanding the concepts discussed in class.

Guests: Attorneys and Administrative Law Judges who practice in this field of law will attend from time to time to describe the practice of law in this area. There will also be a DVD presentation of a Workers' Compensation mock administrative hearing provided during class.

Grading and Final

The course grade will be determined primarily by a 2 hour final examination (closed book). The format is essay. 90% of score is based on exam and 10% is based upon class participation. Scores may be adjusted up or down by one gradation (i.e. from a C+ to a C or B-) based upon attendance and participation. Class notes may be used during final exam.

Attendance

Classes are Mondays from 5:30 pm to 7:30 pm (with a 10-minute break after the first hour). Any student failing to attend at least 20 of the scheduled 26 hours will not be allowed to take the final exam unless unforeseen circumstances are found to exist.

Assignments

The following schedule is subject to change. However, everyone is expected to be prepared to cover the assigned material on the designated date.

Week 1 – August 23, 2021

I. OVERVIEW OF WORKERS' COMPENSATION

- A. Basic Features and Development of Workers' Compensation System
 - 1. TEXT: pp 3 – 29.
 - 2. SUPPLEMENTAL CASE: *Preistly v. Fowler*, 150 E.R. 1030 [1837].

II. SPECIFIC PROVISIONS

- A. STATUTE: ORS 656.012
- B. Exclusivity of Remedy
 - 1. TEXT: pp 589 – 608.
 - 2. STATUTES: ORS 656.017; 656.018; 656.019; 656.020; 656.156.
 - 3. SUPPLEMENTAL CASE: *Bundy v. Nustar GP, LLC*, 362 Or 282 (2017).

Week 2 – August 30, 2021

II. SPECIFIC PROVISIONS – Continued

- C. Uninsured or Non-electing Employer
 - 1. TEXT: pp 609 – 621.
- D. Misconduct of Employer
 - 1. TEXT: p 521 – 541.
- E. Retaliatory Termination
 - 1. TEXT: p 566 – 585.
STATUTE: ORS 659A.040

III. STATUTORY COVERAGE

- A. Employment Status
 - 1. STATUTES: ORS 656.005(13),(30);656.023.
 - 2. TEXT: 297 – 324.
 - 3. SUPPLEMENTAL CASES: *Whitlock v SIAC*, 233 Or 166 (1962); *Woody v. Waibel*, 276 Or 189 (1976); *Bovet v. Law*, 214 Or App 349 (2007).

Week 3 – September 13, 2021

I. EMPLOYMENT STATUS

- A. Specific Inclusions and Exemptions
 - 1. TEXT: pp 325 – 373.
 - 2. STATUTE: ORS 656.027; 656.029

II. DEFINING COMPENSABILITY - Part 1A

- A. Arising Out of Employment – 5 lines of arising
 - 1. TEXT: pp 33 – 38.
 - 2. STATUTE: ORS 656.005(7)
 - 3. SUPPLEMENTAL CASES: *Buckner v. Kennedy Riding Academy*, 18 Or App 516 (1974); *Redman Industries, Inc. v. Lang*, 326 Or 32 (1997).

Week 4 – September 20, 2021

III. DEFINING COMPENSABILITY - Part 1B

- A. Arising Out of Employment: Categories of Risk
 - 1. TEXT: pp 37 – 55.
- B. Arising Out of Employment: Assaults
 - 1. TEXT: pp 57 – 85.
 - 2. STATUTE: ORS 656.005(7)(b)(A)
- C. Risks Personal To Employee
 - 1. TEXT: pp 87 – 99.
 - 2. SUPPLEMENTAL CASE: *Brooke A. Woodard*, 69 Van Natta 266 (2017).

Week 5 – September 27, 2021

I. DEFINING COMPENSABILITY - Part 2A

- A. Course of Employment: Time and Place Issues
 - 1. TEXT: pp 119 – 170.
 - 2. STATUTE: ORS 656.005(7)
 - 3. SUPPLEMENTAL CASE: *Jordan v. Western Electric*, 1 Or App 441 (1970).
- B. Course of Employment: Misconduct of Employee
 - 1. TEXT: pp 481 – 511, 517 – 519.

Week 6 – October 4, 2021

I. DEFINING COMPENSABILITY - Part 2B

- 1. Course of Employment: Activity
 - 2. TEXT: pp 171 – 216.
 - 3. SUPPLEMENTAL CASES: *Marshall v. Bob Kimmel Trucking*, 109 Or App 101 (1991); *Andrew v. Tektronix*, 323 Or 154 (1996).

Week 7 – October 11, 2021

I. ACCIDENTAL INJURY v. OCCUPATIONAL DISEASE

- A. Personal Injury by Accident
 - 1. TEXT: pp 219 – 242.
 - 2. STATUTES: ORS 656.802; 656.807
Disease
 - 1. TEXT: pp 243 – 261.
- B. Mental and Nervous Injury/Disease
 - 1. TEXT: pp 273 – 293.
 - 1. SUPPLEMENTAL CASES: *O'Neal v. Sisters of Providence*, 22 Or App 9 (1975); *Valtinson v. SAIF*, 56 Or App 184 (1982); *Weller v. Union Carbide*, 288 OR 27 (1979)

Week 8 – October 18, 2021 (To be Rescheduled)

II. PANEL OF EXPERTS - No reading required.

Week 9 – October 25, 2021

III. OCCUPATIONAL DISEASE

- A. Special Proof Problems
 - 1. TEXT: pp 262 – 272.
 - 2. STATUTE: ORS 656.266
 - 3. SUPPLEMENTAL CASE: *Uris v. State Compensation Department*, 247 Or 420 (1967).

IV. SUBSEQUENT "INDEPENDENT" INJURIES

- A. Range of Compensable Consequences
 - 1. TEXT: pp 210 - 216
- B. Successive Disabilities
 - 1. TEXT: pp 415 - 420, 710 – 712.
 - 2. STATUTES: ORS 656.273; 656.308
 - 3. SUPPLEMENTAL CASES: *Calder v. Hughes & Ladd*, 23 Or App 66 (1975); *Smith v. Ed's Pancake House*, 27 Or App 361 (1976).
- C. Second Injury Funds
 - 1. TEXT: pp 420 - 422
- D. Suicide
 - 1. TEXT: pp 511 – 517 (problems)
 - 2. STATUTE: ORS 656.156

Week 10 – November 1, 2021

V. PROCEDURE

- A. Notice of Claim
 - 1. TEXT: pp 675 - 679

VI. TYPES OF BENEFITS

- A. Medical and Rehabilitation Services
 - 1. TEXT: pp 437 – 456.
 - 2. STATUTES: ORS 656.245; 656.010
- B. Benefits paid to injured worker
 - 1. TEXT: pp 377 – 414.
 - 2. STATUTES: ORS 656.262; 656.268; 656.210; 656.206

I. DEPENDENCY & DEATH BENEFITS

- A. Dependency
 - 1. TEXT: pp 457 – 471.
 - 2. STATUTES: ORS 656.005(2), (5), (10)
- B. Death Benefits
 - 1. TEXT: pp 472 – 478.
 - 2. STATUTES: ORS 656.204; 656.208, 656.218, 656.226

Week 11 – November 8, 2021

II. THIRD PARTY ACTIONS

- A. Theory of Third Party Recovery and Definitions
 - 1. TEXT: pp 625 – 635.
 - 2. STATUTE: ORS 656.154.
- B. Subrogation
 - 1. TEXT: pp 637 - 642
 - 2. STATUTES: ORS 656.593; 656.595; 656.596

III. OTHER TOPICS

- A. Conflict of Laws
 - 1. TEXT: pp 681 - 695
- B. Agreements and Settlements
 - 1. STATUTES: ORS 656.289; ORS 656.236.

Week 12 – November 15, 2021

VII. REVIEW of CLE Video – How to Try a WC Case.

Week 13 - November 29, 2021

REVIEW FOR FINAL

FINAL EXAM – December 6 – 10, 2021