



Collaborative Bachelor's Degree Program of Fire Protection and Safety
Engineering Technology between Southwest Jiaotong University and
Oklahoma State University, U.S.A.




FPST 3013 Safety Management


Workers' Compensation
&
The Americans with Disabilities Act
Part 1



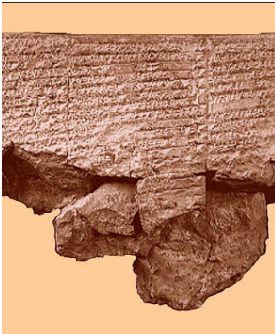
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In the beginning...




- Hammurabi's Code in 1750 B.C.
 - doctrine of "lex talionis," or the laws of retribution
 - "eye for an eye"
- Ancient Sumeria (now Iraq),
 - The law of Ur-Nippur Tablet No. 3191
 - Earliest known written legal code
 - Provided for compensation for injury to a worker's specific body parts.



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In the beginning...



- Ancient Arab law
 - The loss of a thumb was worth one-half the value of a finger.
- Ancient Greek, Roman and Chinese law
- The common denominator in these early schemes was the compensation or "schedules" for specific injuries which determined specific monetary rewards.

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Middle Ages



- Feudal System
 - Kings and Nobles
 - Arbitrary Benevolence
 - Doctrine of "Noblesse Oblige"
 - Lords take care of their injured serfs



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Mid 1600s



English privateer Capt. Henry Morgan

- Ship's constitution
- "recompense and reward each one ought to have that is either wounded or maimed in his body, suffering the loss of any limb, by that voyage."
- The loss of a right arm = 600 pieces of eight;
- left arm = 500 pieces of eight
- right leg = 500 pieces of eight
- left leg = 400 pieces of eight

.... and so forth.



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English Common Law - 1066



- Required the employer to furnish safe workplaces
 - Provide safe tools
 - Knowledge of hazards not immediately apparent
 - Competent fellow employees
 - Rules by which all could work safely



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English Common Law



A Contractual Agreement

- Employee/Employer agree to exchange a specified level of work/service for compensation
- Based on presumption that employee was free to choose employment (Employment at Will)

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19th Century



- Industrial Revolution and Expansion
 - Injured employee had to sue for negligence
 - Costly
 - Time-consuming
 - Corporate deep pockets
 - Courts usually ruled in favor of employer

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Unholy Trinity of Defenses



- Contributory Negligence
 - If worker was responsible for injury – the employer was not at fault
 - 1930 Martin v. the Wabash Railroad, in which a freight conductor fell off his train.
 - Although inspectors subsequently blamed a loose handrail, his injuries did not receive compensation because inspecting the train for faulty equipment was one of his job duties.

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Unholy Trinity of Defenses

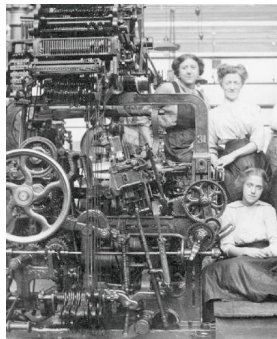
- Fellow Servant Rule
 - Employers are not liable if the worker's injuries resulted in any part from the action or negligence of a fellow employee.
 - 1837 Priestly vs. Fowler
 - Butcher boy crushed by a wagonload of mutton

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Unholy Trinity of Defenses

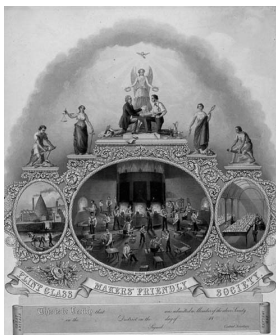
- Assumption of Risk
 - Employees know of the hazards of any particular job when they sign their contracts. Therefore, by agreeing to work in a position they assume any inherent risk it carries.



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Friendly Societies



- Earliest form of WC insurance
- Laborer's could buy disability insurance for themselves
- Left up to civic and religious organizations to fill the gaps.

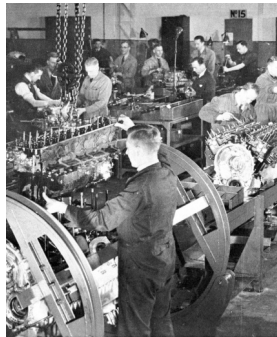
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After an Injury...



- Lawsuit (Tort) was employee's only recourse
 - Proving negligence difficult, costly, time consuming
 - Burden of proof was on the employee
- Fear of retaliation, job loss
- Courts biased toward Employers



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Courts favored the Employer



- Triangle Shirtwaist Fire (1911)
 - \$75 per claimant
 - 2 yrs later

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Courts favored the Employer



- Hawks Nest Tunnel Silicosis (1930-31)
 - 476 - 3000 deaths
 - \$130,000 in total
 - \$20K in secret deal to attorneys
 - \$400-\$1000 per claimant
 - Most families got nothing



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Otto von Bismarck, Chancellor of Prussia



- 1870's
- Socialism and Progressivism (and ultimately, Communism) is sweeping across Europe
- Employers liability law of 1871
- Workers' Accident Insurance of 1887



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Upton Sinclair



- 1906 "The Jungle", a novel
- follows Lithuanian immigrant Jurgis Rudkus
- Chicago Meatpacking Industry
 - "Packingtown"

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Workmen's Compensation Laws



- Great Britain in 1880, 1893
- Early US laws
- 1902 – Maryland – unconstitutional
- 1908 – Massachusetts – dead letter with no significance
- 1908 – Federal employees – T. Roosevelt
 - Federal Employees' Compensation Act (FECA)
 - The burden of the accident fell on the helpless and his family... "an outrage"
- 1909 – Montana – miners – unconstitutional
- 1910 – New York – unconstitutional
 - Wainwright Law
 - Declared unconstitutional the same day as the Triangle Shirtwaist fire – March 25th, 1911
- 1911 – Wisconsin – passed but later was declared unconstitutional
- 1915 – Oklahoma law enacted
- 1916 – US Supreme Court declared constitutional
- Last were passed in 1948
 - Mississippi
- Only state where it is optional is Texas

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Objectives



- Benefits regardless of fault
 - "no-fault"
- Single remedy
 - AKA "sole" or "exclusive" remedy
- Relieve public funding
- Eliminate time consuming litigation
- Stimulate employer interest in safety
- Promote study of causes vs. fault

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Exclusive Remedy



- Early on, burden of proving negligence was on employee
- Under Comp law, employers are responsible for injuries "arising out of and in the course of employment" regardless of fault
- In exchange, employees give up right to sue for unlimited damage in civil court
- Two concepts broaden exclusive remedy
 - **Dual capacity doctrine**
 - Injury caused by employer product or service available to the public
 - Intentional tort exception
 - Willful and wanton negligence

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Covered Injuries



- "Arising out of and in the course of employment"
- Four doctrines of determination
 - Peculiar-risk
 - Specific to the employment
 - Different from every other worker
 - Increased-risk
 - More risk than the general public
 - Actual-risk
 - Specific to the job regardless of exposure to the public
 - Positional-risk
 - The "but for" test
 - "but for" the employment, the injury would not have occurred

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Limitations on Coverage



- Covered Employment
 - Limited coverage – not everyone is covered
 - Farming
 - Domestic service
 - Occasional employment
 - Federal Workers - (FECA)
 - Federal Employer's Liability Act (FELA)
 - Not a workers' comp law
 - Allows employees to charge employer with negligence and employer can not use common law defenses (fellow servant, assumption of risk or contributory negligence)
 - Other groups not covered
 - Self-employed
 - Un-paid family workers
 - volunteers

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General Characteristics



- Necessary "evil"
- Worker's could sue under common law
- Awards were left to juries
 - Employer view
 - Awards are too high
 - Employee view
 - No awards = litigation debt
- Comp law specifies benefits regardless of fault
- Litigation happens for two reasons
 - Did injury "arise out of and in the course of employment"
 - Doing thy master's bidding?
 - Degree of injury
 - Soft tissue injuries
 - Sometimes subjective complaint is only evidence

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Workers' Comp Benefits



- Income replacement
 - Waiting period before you receive benefits
 - Benefits are retroactive
 - Oklahoma - If you are off work due to your injuries for more than 7 calendar days after your injury, you may be entitled to weekly **TTD** benefits. No TTD benefits are authorized for the first 7 days after the injury unless the Court determines you were temporarily totally disabled for more than 21 days.
- Medical benefits
 - Employer can direct care in about 50% of the states., often chosen by the insurance carrier
 - Employees may feel that the company has its own interests at heart
- Rehabilitation
 - Medical
 - Vocational
 - Training to do another job so an injured employee can earn a living
 - Medical care, counseling, training, job placement

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Income Replacement



- Adequate, equitable, prompt, sure
- Worker pays portion – incentive to return to work
- Most states use 2/3 replacement
- Oklahoma is full wages up to 70% of the average weekly wage in the state
 - Income is not taxable
 - Low wage workers viewed as being at an advantage
- Unsafe industries pay more

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http://www.owcc.state.ok.us/site_index.htm

Compare a few States



State	Waiting Period	Comp Rate % base salary	Max weekly \$\$	TTD Max	PPD max
Oklahoma	3 days	70%	\$550	156 weeks	500 weeks
California	3 days	66.67%	\$600	Duration	Unlimited
Texas	7 days	70-79%	\$550	104 weeks	401 weeks
Colorado	3 days	66.67%	\$650	Duration	Duration
Kansas	3 days	66.67	\$425	Duration	415 weeks
Iowa	3 day	80%	\$1,103	Duration	500 weeks
North Carolina	7 day	66.67%	\$991	Duration	500 weeks

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Types of Disability



- TPD – Temporarily Partially Disabled
 - Light Duty
 - May work a half day then go home the other half
 - Employee entitled up to 80% of their pay
- TTD - Temporarily Totally Disabled
 - Lost Time
 - Employee entitled to full pay up to the average weekly wage for the state
 - Currently \$528 per week (going to \$577 on 11/1)
 - No compensation for the first 3 calendar days missed

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Types of Disability



- PPD - Permanently Partially Disabled
 - "Benefit" given through the court after an employee has reached MMI (Maximum Medical Improvement) and has been rated according to the American Medical Association (AMA) guidelines
 - 70% of the employee's average weekly wage up to a maximum of 50% of the State's average weekly wage (currently \$264 going up to 289 on 11/1)
- PTD - Permanently Totally Disabled
 - Unable to do any work...ever

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Typical Case Flow



- Injury
- TTD and treatment (lost time) – Max 300 weeks
- TPD and treatment (light duty)
- MMI and return to regular work
 - Could have permanent restrictions
- PPD – Max 500 weeks
 - AMA (American Medical Association) rating
 - Usually given to some extent for surgery and permanent restrictions
 - Depends on AMA rating
 - Paid in "number of weeks" not lump sum, except if some of the total number of weeks have passed
 - https://ok.gov/wcc/Alerts/Benefit_Charts/index.html
 - Determining the degree of disability is responsible for more litigation than any other Work Comp issue
- Close

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