

Workers' Compensation Syllabus

Law 607 – Spring 2019

Professor Jason R. Caraway

I. Class Time & Room

Room 206
Tuesdays 6:30-9:00

II. Contact Information

Prof. Jason R. Caraway
SIU LAW/Caraway, Fisher & Broombaugh, P.C.
School of Law Office: Room 254
carawaylaw@hotmail.com

I will attempt to keep office hours approximately 30 minutes to 1 hour prior to the beginning of each class. Please feel free to e-mail me with any questions you may have. E-mail is the best way to reach me. I will also be amenable to setting up specific meeting times if need be.

III. Purpose & Scope of the Course

Workers' Compensation law was, and continues to be, an integral part of American jurisprudence. It is uniquely a statutory creation and thus varies in different proportions in each state. Often times, the statutory schemes developed are tied to the political realities of the state for which they apply. As such, this course will utilize a number of sources ranging from the text to specific statutes and cases I will provide for your review. While certainly some of you will no doubt leave Illinois to practice law, this Course will focus heavily on the Illinois Workers' Compensation Act and its recent changes. Regardless of whether you practice in Illinois or elsewhere, the core concepts we will discuss together will be a transferable knowledge base.

I will be teaching the class, as you will learn, from a practitioner's viewpoint. I hope this method which will utilize some "nuts & bolts" type instruction, will not only aid you in this course, but start a thought process of the mechanics of practicing law. Due to its statutory nature, Workers' Compensation law lends itself to this form of instruction. I also hope my practical approach will peak your interest in the course material by taking the broad concepts and applying those concepts to specific sets of facts and issues of law.

III. Attendance & Work Load Expectations

As you already know the Law School has a mandated attendance policy. That policy is detailed in §III.5(f-g) of the School of Law Rules. Pursuant to that policy you will only be allowed to miss 3 classes throughout the semester. I strongly encourage you to attend each and every class session as we will be building on fact patterns and lectures in a cumulative fashion throughout the semester. Failure to comply with the School of Law attendance policy shall result in the sanctions detailed in the afore cited rules.

There will also be occasions where class will be extended to allow for the practical exercises to occur. Each student will be assigned a task while their peers perform the practical exercises and specific times will be given to students for the practical exercises well in advance of the specific class period.

The law school will be implementing a set of rules to monitor and comply with the new section 310 ABA Rule. The Rule states as follows:

“Standard 310. DETERMINATION OF CREDIT HOURS FOR COURSEWORK
(a) A law school shall adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework. (b) A “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or (2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.”

Interpretation 310-1 For purposes of this Standard, fifty minutes suffices for one hour of classroom or direct faculty instruction. An “hour” for out-of-class student work is sixty minutes. The fifteen-week period may include one week for a final examination.

Interpretation 310-2 A school may award credit hours for coursework that extends over any period of time, if the coursework entails no less than the minimum total amounts of classroom or direct faculty instruction and of out-of-class student work specified in Standard 310(b).

This is a 3 credit hour class, meaning that we will spend 150 minutes of time together each week. The amount of assigned reading and out of class preparation should take you about 6 hours per week. In total, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week, on course related work.

In addition we will be taking a practice MPT test later in the semester. The School of Law faculty passed a rule in December 2016 requiring bar type assessment as a part of most classes. I fully support this idea and have incorporated a MPT into our time together.

IV. Required Text & Statutory Sources

1. Illinois Workers' Compensation Guidebook
Presbrey & Werts, 2016 ed.

(If not available, any year's edition will suffice)

2. The Illinois Workers' Compensation Act
820 ILCS 305/et seq.
3. Various Cases which will be posted on TWEN/Syllabus

V. Recommended Sources

1. Workers' Compensation & Employee Protection Laws Nutshell
ISBN# 978-0-314-27532-5 (West 2011)
2. Rules of Practice Before the Illinois Workers' Compensation Commission
<http://www.iwcc.illinois.gov/pdfs/rules.pdf>
3. Illinois Institute of Continuing Legal Education – Workers' Compensation
(Online and in Library)

VI. Emergency Procedures

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide

assistance to your instructor in evacuating the building or sheltering within the facility.

VIII. Assignments & Grades

During the course of the semester you will have three graded applications. Your grade will consist of a score on your mid-term exam, our writing assignment, and the final exam. The breakdown is as follows:

Mid-Term Exam	25%
Writing Assignment	25%
Final Exam	50%

Also, during the semester we will be doing a Bar type assessment pursuant to the current SIU Law School rules. This will be a non-graded assignment, but required for credit in the class.

Further, any form of plagiarism and/or collaboration will not be tolerated in any form, pursuant to current SIU Law School rules. Evidence of such activity will be referred to the proper law school employee for potential and serious discipline, as they see fit, pursuant to current SIU Law School rules.

IX. Recording of Classes

The SIU Law School policy is to record all classes at the law school to allow easier access for students with disabilities or other issues. The school however will not release these recordings to students without express permission from myself or of course the student has an approved accommodation due to disability. My class is recorded pursuant to this policy. If you wish to record the lectures in any medium on your own, please get approval from me ahead of recording. It is an Honor Code violation to create or distribute such recordings if the instructor has prohibited either action.

X. Saluki Cares

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress – physical, emotional, financial or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of our community. For information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is (618) 454-3135.

XI. Disability Policy

As you may know, the School of Law no longer makes determinations about appropriate accommodations for disabilities. Those decisions are now made by the University Disability Support Services Office. Disability Support Services provides the required and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreement. <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

X. Reading & Case Assignments

January 15, 2019 – “The Genesis & Theory of Workers’ Compensation”

ACT: §1(b)(2), 5(a)

Additional Sources: Triangle Shirt Waist Fire Article (TWEN)

Cowger v. Ind. Comm’n. (TWEN)

Topics: Why do we have Workers’ Compensation Schemes? What are the benefits/drawbacks of a statutory compensation scheme compared to civil jury claims? Do we even need a statutory compensation scheme for injured workers? When does a claim fall under the Act’s Jurisdiction?

Illinois Basics: Overview of Administrative Framework & Basics Benefits Under the Act.

January 22, 2019 – “The Employer-Employee Relationship & Notice of Claim”

Text: 4.01 & 3.01-3.08

ACT: §§1(a)-1(b)(1) & 6(c) & 6(d)

Additional Sources:

Sankey Brothers, Inc. v. Ind. Comm’n., 167 Ill. App. 3d 910 (3rd Dist. 1988)

Tooley v. Ind. Comm’n., 236 Ill.App.3d 1054 (5th Dist. 1992)

Ristow v. Ind. Comm’n., 39 Ill.2d 410 (1968)

Sohio Pipe Line Co. v. Ind. Comm’n., 63 Ill.2d 147 (1976)

Crow's Hybrid Corn Co. v. Ind. Comm'n., 72 Ill.2d 168 (1978)

Topics: Who is an Employee? Who is an Employer? What is the difference between an "Employee" and an "Independent Contractor"? What is the difference between "Borrowing" or "Loaning" Employers? What must an injured worker do or say to satisfy the Notice of Claim requirement under the Act? What is the Statute of Limitations on filing a claim?

January 29, 2019 – "Arising Out of AND in the Course of Employment"

Text: Chapter 4

Additional Sources:

E. Baggot Co. v. Ind. Comm'n., 290 Ill. 530 (1919)

Riteway Plumbing v. Ind. Comm'n., 380 Ill. 47 (1942)

Quaker Oats Co. v. Ind. Comm'n., 414 Ill. 326 (1953)

Belwood Nursing Home v. Ind. Comm'n., 115 Ill.2d 524 (1987)

First Cash Financial Services v. Ind. Comm'n., 367 Ill.App.3d 102 (1st Dist. 2006)

Commonwealth Edison Co. v. Ind. Comm'n., 86 Ill.2d 534 (1981)

Wal-Mart Stores, Inc. v. Ind. Comm'n., 326 Ill. App. 3d 438 (4th Dist. 2001)

Topics: When does an accident arise out of employment? When is an accident in the course of employment? What is the difference? How are pre-existing conditions handled in Illinois? The Factor Test & Controversy in Illinois.

February 5, 2019- "Benefits due to Injured Workers Before Resolution of Claim"

Text: Chapter 6

ACT: §§10, 8(b), 8(a), 8(d)(1),12,

Additional Sources:

Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010)

Sylvester v. Ind. Comm'n., 197 Ill.2d 225 (2001)

Freesen Inc. v. Ind. Comm'n., 348 Ill.App.3d 1035 (4th Dist. 2004)

Archer Daniels Midland Co. v. Ind. Comm'n., 138 Ill.2d 623 (1990)

National Tea Co. v. Ind. Comm'n., 97 Ill. 2d 424 (1983)

Topics: When is an injured worker entitled to TTD/TPD/Maintenance benefits? How do you calculate the Average Weekly Wage? What medical bills is an injured worker entitled to have paid? What doctors can an injured worker see in relation to his case? Can the Employer force an injured worker to see a doctor of their own choosing? When is an injured worker entitled to Vocational Rehabilitation? What qualifications must the Vocational Expert have? Why is a Vocational Rehabilitation expert even needed?

February 12, 2019 – “Unique Claims”

Additional Sources:

Skidis v. Ind. Comm'n., 309 Ill.App.3d 720 (5th Dist. 1999)

Eisner Foods v. Ind. Comm'n., 33 Ill.2d 474 (1965)

Campbell 66 v. Ind. Comm'n., 83 Il..2d 353 (1980)

Sears, Roebuck & Co. v. Ind. Comm'n., 79 Ill.2d 59 (1980)

Pickett v. Ind. Comm'n., 252 Ill.App.3d 355 (1st. Dist. 1993)

Schooley v. Ind. Comm'n., 151 Ill. App.3d 1069 (5th Dist. 1987)

Urban v. Ind. Comm'n., 34 Ill.2d 159 (1966)

Robinson v. Ind. Comm'n., 96 ill.2d 87 (1983)

Topics: Recreational Activities, Assaults, Horseplay, Heart Attacks, Weather injures and Mental Injuries, are they compensable? When and Why? What is the “going to and coming from rule”? When are employees exempt from the rule?

February 19, 2019 – “Determining the Nature and Extent of an Injury”

Text: Chapter 7

Act: §§ 8(b), 8(c),8(d),8(e),8(f)

PPD Schedule (TWEN)

Additional Sources:

Roper Contracting v. Ind. Comm'n., 349 Ill.App. 3d (5th Dist. 2004)

Albrecht v. Ind. Comm'n., 271 Ill.App.3d 756 (1st Dist. 1995)

Edward Gray Corp. v. Ind. Comm'n., 316 Ill.App.3d 1217 (1st Dist. 2000)

Smith v. Ind. Comm'n., 308 Ill.App.3d 260 (3rd Dist. 1999)

Accord Forest City Erectors v. Ind. Comm'n., 264 Ill.App.3d 436 (1st Dist. 1994)

Topics: What makes a case a PPD case? Wage-Differential case? Permanent Total Disability case? What are the relative values of these categories of cases? How is value determined in each? Calculating value using Average Weekly Wage.

February 26, 2019 – MID-TERM REVIEW AND CATCH UP

MARCH 4-8 MID-TERM TBA

March 5, 2019 – “Pre-Existing Conditions & Repetitive Trauma Claims”

Text: 4.35 & 4.40

Additional Sources:

Rock Road Construction Co. v. Ind. Comm'n., 37 Ill.2d 123 (1967)

Gilster Mary Lee Co. v. Ind. Comm'n., 326 Ill.App.3d (5th Dist. 2001)

Sisbro, Inc. v. Ind. Comm'n., 207 Ill.2d 193 (2003)

Cassens Transport v. Ind. Comm'n., 262 Ill.App.3d 324 (2nd Dist. 1994)

Durand v. Ind. Comm'n., 224 Ill.2d 53 (2006)

Topics: What is the factor test? Is this a fair standard for employers? Should the standard of causation be changed for pre-existing conditions? To what? Is a claim compensable when there is no singular traumatic event? What is the date of accident for such a repetitive claim?

March 12, 2019 NO CLASS – SPRING BREAK

March 19, 2019 – “Exclusivity of Claims Under the Act”

WRITING ASSIGNMENT DUE

Text: 4.19

Act: §§ 1(a)(4), 5(a), 11

Additional Sources:

Equistar Chemicals, L.P. v. BMW Constructors, Inc.,
353 Ill.App.3d 593 (3rd Dist. 2004)

Ramsey v. Morrison, 175 Ill.2d 218 (1997)

Meerbrey v. Marshall Field & Co., 139 Ill.2d 455 (1990)

Ocasek v. Krass, 153 Ill.App.3d 215 (1st Dist. 1987)

McCormick v. Caterpillar Tractor Co., 85 Ill.2d 352 (1981)

Topics: Is the Act really that “exclusive” as to recovery? What are some exceptions?
What is the Dual Capacity Doctrine?

March 26, 2019 – “Third Party Claims”

Act: §§5(b), 11

Additional Sources: §214 2nd Restatement of Torts

Moorehead v. Mustang Construction Co., 354 Ill.App.3d 456 (3rd
Dist. 2005)

Martens v. MCL Construction Co., 347 Ill.App.3d 303 (1st Dist.
2004)

Bokodi v. Foster Wheeler Robbins, et. al., 312 Ill.App.3d (1st Dist.
2000)

Moss v. Rowe Construction Co., 344 Ill.App.3d 772 (4th Dist.
2003)

Harberer v. The Village of Sauget, 158 Ill.App.3d 313 (5th Dist.
1987)

Topics: How as the 2nd Restatement of Torts affected Workers' Compensation claims?
What are the factors in determining whether third party liability exists that arises out of a negligent act or omission?

April 2, 2019 – “Subrogation & Other Lien issues in Third Party Claims”

Text: Chapter 16

Act: §§5(b), 11

Additional Sources: §214 2nd Restatement of Torts

Kotecki v. Cyclops Welding Co., 146 Ill.2d 155 (1991)

Silva v. Electrical Systems Inc., 183 Ill.2d 356 (1998)

Sands v. J.J. Case Co., 239 Ill.App.3d 19 (4th Dist. 1992)

Insurance Co. of North America v. Andrew, 206 Ill.App.3d 515
(2nd Dist. 1990)

Chubb Group Insurance Cos. V. Carrizalez, 375 Ill.App.3d 537
(1st Dist. 2007)

Braye v. ADM, 175 Ill.2d 201 (1997)

Topics: In a third party action, what are the rights and responsibilities of the employer?
Can an employer be sued in the third party civil action? Can an employer seek recovery directly from the third party tortfeasor? How?

April 9, 2019 -“The Effects of other Laws on Claims”

Act: §§21,23

Additional Sources: See TWEN

Can any party to a claim waive their rights under the Act? How do private liens affect claims? How has enforcement of the Medicare Secondary Payor Act affected the litigation and settlement of claims?

April 16, 2019- PRACTICE MPT

Additional Sources: See TWEN

April 23, 2019 – “Wrap up and Comprehensive Review”

See TWEN

XI. Exams and Writing Assignment

A. Mid-Term Exam

The Mid-Term examination will take place between March 4 and March 8, 2019. The exam will consist of a number of short essay questions. The exam is worth 25% of your overall grade.

B. Writing Assignment

The writing assignment will be a demand letter sent from Petitioner's counsel (you) to opposing counsel. More information regarding this assignment will be available on TWEN. The writing assignment is due March 19, 2019 and is worth 25% of your overall grade.

C. Final Examination

The final examination will be May 4 at 8:15 am. The exam will consist of essay questions. The exam will be comprehensive in nature and is worth 50% of your overall grade.