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mechanistic a standard as that of whether the weapon was partially or fully concealed.

Narcotics

In *State v. Barnes*,[18] Justice Barham rendered a dissent pointing out that all of the cases which had read in the requirement of guilty knowledge or intent in connection with narcotics statute violations "did so as a basis for allowing the State to introduce evidence of the defendant's prior or subsequent convictions or other similar acts or offenses from which could be inferred his guilty knowledge. . . ."[19] He then complained strongly about the refusal of the court to hold that a special instruction should have been given, as requested, to unequivocally inform the jury that guilty knowledge is an essential element for the crime of possession of narcotics. On rehearing, which again affirmed the conviction, Justice Tate dissented, strongly complaining about this failure to afford the defendant the benefit of state of mind rules.[20] This dissent reinforces the view that "evidence" decisions have unduly modified substantive criminal law and effectively caused the definitions of crimes and defenses to be different for the prosecution and defense.[21]

MODERN SOCIAL LEGISLATION

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UNEMPLOYMENT COMPENSATION

The Louisiana Employment Security Law is designed "to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance."[1] The provisions of the statute are liberally interpreted to give the greatest effect to the intent of this social legislation.[2]

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18. 257 La. 1017, 245 So.2d 159 (1971).
19. *Id.* at 1034, 245 So.2d at 165.
20. *Id.* at 1048, 245 So.2d at 171.
21. *See* text accompanying notes 3-11 *supra* for a discussion concerning the history of the jurisprudence, recently followed in *State v. Bolden*, showing that the Louisiana Supreme Court holdings on state of mind evidence must be taken in the context of whether this evidence benefits the prosecution or the defense. *State v. Barnes* also makes this point.

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1. LA. R.S. 23:1471 (1950).
2. Smith v. Brown, 147 So.2d 452 (La. App. 2d Cir. 1962).

This liberal construction continues with *American Sugar Co. v. Doyal*,[3] where the claimant was held entitled to unemployment compensation benefits although he was also entitled to a lump sum payment under a guaranteed annual income clause in his employment contract. The employment contract, which guaranteed payment of the difference between what the worker actually earned and the wages which the employer guaranteed him was in effect during the period when the claimant was temporarily laid off. The payment was made approximately one month after the end of the contract year. The court found the delay determinative, since to consider this payment as wages would defeat the intent of maintaining "the stability of the state and the family by assuring through weekly benefits the continued purchasing power of a worker during periods of unemployment."[4]

The court had to examine the definition of "unemployment" which contains a dual test: there must be no services performed during the week, "and with respect to which no wages are payable."[5] Although claimants had to hold themselves available to return to work, they were free to seek other employment, so this availability was not considered "services." The lump sum payment was not paid "with respect to a particular week," and therefore was not "wages."[6]

Wages have been variously defined. Commissions, less business expenses which the employee pays, are wages,[7] while tips are not.[8] The distinction between these two is determined by whether the employer pays the unemployment compensation tax on the remuneration.[9] Vacation or retirement pay can be the equivalent of wages.[10] Termination pay is not wages,[11] al-

3. 237 So.2d 415 (La. App. 4th Cir. 1970).
4. *Id.* at 417.
5. LA. R.S. 23:1472 (19) (1950).
6. "[A]ll remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. . . ." *Id.* § 1472(2)(A)20. The lump sum payment could come within this definition, although the claimant is "unemployed."
7. Motion Pictures Advertising Serv. Co. v. Sharp, 101 So.2d 455 (La. App. 1st Cir. 1958).
8. Doyal v. Roosevelt Hotel, 234 So.2d 510 (La. App. 4th Cir. 1970).
9. *Id.* at 514.
10. American Sugar Co. v. Brown, 193 So.2d 326 (La. App. 4th Cir. 1966). This case is discussed at 28 LA. L. REV. 378 (1968).
11. George v. Brown, 144 So.2d 140 (La. App. 4th Cir. 1962). *Accord*, Indus. Comm. of Colorado v. Sirokman, 134 Colo. 481, 306 P.2d 669 (1957). The payments were called "termination pay" in the former case, "separation

though severance payments may be so construed if the employer is legally obligated to make them.[12] However, in the latter case, severance payments do not disqualify a claimant for benefits unless they are paid "with respect to" a particular week, thus meeting the dual test for unemployment.

The employer who believes that a labor contract which provides for a guaranteed annual wage, payable in spite of a layoff, will be his only "compensation" to employees will find that he is mistaken. Unemployment compensation benefits may also be payable, and these are debited to the employer's experience rating and can increase his contribution rate or, at least inhibit its reduction. Although this seems to be a double payment, " 'double payment could only exist where the payments are for the same thing, same period of time, same consideration, same scope and nature.' "[13] The employer, along with the consumer to whom these added costs are passed, subsidizes this protection against one of the risks common to all workers.

STATE AND LOCAL GOVERNMENT

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ZONING

In *Moncla v. City of Lafayette*,[1] a property owner successfully attacked the validity of a zoning ordinance. Although within the appeal time the city might have adopted a regular ordinance to replace the one invalidated, its response instead was to enact a new temporary emergency ordinance and thereafter to adopt a permanent one pursuant to regular delays provided in the city charter. The property owner made an application for a building permit varying from the emergency zoning ordinance and upon denial, obtained a court order invalidating the ordinance on the ground that no emergency existed; a court of appeal affirmed. A dissenting judge urged the need to protect citizens against zoning violations during the adoption of a permanent ordinance

allowances," in the latter; but both were a form of remuneration for services rendered prior to separation from employment. The courts look at the nature of the payment and when it is made.

12. Swift & Co. v. Brown, 132 So.2d 508 (La. App. 3d Cir. 1961). These were dismissal payments which the employing unit *was* legally required to make. *See* LA. R.S. 23:1472(20)(C)(III) (1970).

13. Swift & Co. v. Brown, 132 So.2d 508, 513 (La. App. 3d Cir. 1961).

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1. 241 So.2d 307 (La. App. 3d Cir. 1970).