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WORKER'S COMPENSATION LAW AND PRACTICE Second Edition. By Wex S. Malone and H. Alston Johnson, III. West Publishing Co. 1980. Pp. xvi and 654.

*Marcus L. Plant**

Prior to World War II there was relatively little publication of scholarly legal writing in the area of worker's compensation. Legal education neglected the field. If the subject matter was considered at all in a law school curriculum, it was usually as a minor subdivision of the course in Torts or perhaps Agency. In the postwar era, Professor Malone was one of the leaders in remedying those deficiencies with the publication of his treatise on *Louisiana Workmen's Compensation Law and Practice* in 1951. He and Professor Johnson have now presented a two-volume second edition of that work. It is an impressive contribution from several points of view.

Considered solely as a professional tool for the practicing lawyer, the book's value will be enormous. It contains the current text of the Louisiana Workers' Compensation Act; citations to over 3,000 cases; an eleven-page "Table of Statutes" identifying pertinent sections of the Louisiana Constitution, Civil Code, Code of Civil Procedure, Annotated Revised Statutes, Annual Acts of Louisiana from 1884 to 1979, United States Code Annotated, and codes of seven foreign countries, all referenced to sections and footnotes of the treatise; the Rules of Practice and Procedure before the Louisiana Workmen's Compensation Second Injury Board; and fifty-two pages of practice forms drawn from two of the leading law offices in the state.

More important than the collection of legal materials, however, is the organization of the subject matter set forth in the 19 chapters and 413 sections that comprise the book. The geography of problem areas is mapped in an orderly, logical fashion and constitutes an instrument of analysis that will enable any lawyer, even one not intimately familiar with the field, to proceed rapidly and efficiently to the crux of his case. In years past it was not uncommon for lawyers who had little experience in workers' compensation to refer cases to specialists. With access to a work such as this one, no lawyer need feel under any such compulsion.

The binding of each volume carries provision for pocket parts, so its users may anticipate that it will be kept current.

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The merit of the organization of subject matter is matched or exceeded by the excellence of the text content. One aspect of the work that this reviewer finds highly satisfying is its historical approach to both the general subject and to particular segments of it. The authors apparently subscribe to the thought that we cannot fully understand where we are unless we understand how we got there. The authors have explored the deficiencies of the pre-compensation tort system of handling industrial injuries, and they have traced the general history of the compensation movement and of the Louisiana Act. In the treatment of specific areas such as coverage of the Act and the concepts of "in the course of" and "arising out of" the employment, "accident," "occupational disease," and "total disability," the reader is made acutely conscious that the present state of affairs is the result of long and sometimes painful evolution. Such an understanding is especially valuable in teaching law students.

It would prolong this review unduly to attempt to compare this edition with the first one in any detail. A few of the major changes may be mentioned. Chapter 4, distinguishing the employment relationship from other relationships, has been enlarged and the analysis sharpened, particularly regarding independent contractors and when they are and are not entitled to compensation coverage. In Chapter 5, now entitled "Coverage of the Act," the discussion of the "hazardous business" problem has been reduced to three sections in view of the 1975 legislative elimination of the requirement. Examination of other coverage problems has been expanded. Chapter 10 now includes a penetrating exposition of occupational disease coverage, which came into existence in Louisiana after publication of the first edition. A major addition is Chapter 19 on "Conflict of Laws." It includes a discussion of the relationships between state workers' compensation laws and the Longshoremen and Harbor Workers' Compensation Act (a problem that has been of substantial importance in Louisiana), seamen's remedies, and the Federal Employer's Liability Act.

Transcending the value of the Malone-Johnson work as a useful professional tool for lawyers is the significance it will have for the general body politic of Louisiana (and perhaps other states) as a resource for the legislature and courts in formulating wise policies and reaching sound decisions. The authors have done much more than collect, classify, and explicate statutes and court opinions. They have not hesitated to identify what they consider shortcomings in the Louisiana workers' compensation system and present the reasons for their positions. For example, there are frank and pointed discussions relating to the disadvantages of court administration of

worker's compensation¹ and of the continuing failure of the Louisiana legislature to require employers to secure payment of compensation through insurance, state fund, or other appropriate means.² Similarly, the dichotomy in treatment of "injury by accident" and disablement by "occupational disease" is criticized as resting on "no discoverable reason."³ When disapproval seems in order, it is forthcoming.

Court decisions interpreting and applying the statute are not merely summarized or epitomized but are thoroughly dissected and evaluated in light of the basic social purposes underlying the compensation system, wise public policy, and the specific facts and statutory terminology involved in the particular litigation. The appraisals that emerge should provide invaluable assistance to judges confronted with difficult questions that necessitate an understanding of the historical jurisprudence of the issue, probable legislative intentions, and the subtle interplay of competing courses of action. An excellent illustration of the public service this work can render is found in the discussion in Chapter 13 of the development of the concept of total and permanent disability in Louisiana and the 1975 effort of the legislature to effect a change. This review is no place to attempt an explanation of the genesis of the difficulty and its philosophical and economic overtones. Suffice it to say that the authors' succinct history of the sixty-year-old problem and their suggested formula for new disability standards, including judicious use of the so-called "odd lot" doctrine, will not only save a conscientious judge many study hours but also enable him to make an informed decision that will comport with the times and the purposes of the 1975 legislative amendments. If this book had been in existence in 1978, the strained reasoning in the majority opinion in *Ashworth v. Elton Pickering, Inc.*⁴ probably would not have appeared.

To expect the treatise to influence the trend of judicial thought is not just a vague hope; there is precedent for it. For example, in 1972 the supreme court in *Ferguson v. HDE, Inc.*⁵ overruled *Danziger v. Employers Mutual Liability Ins. Co.*,⁶ relying heavily on Professor Malone's reasoning in the first edition.

The beneficent impact of the book will not necessarily be

1. W. MALONE & H. JOHNSON, *Workers' Compensation Law and Practice* § 37, in 13 LOUISIANA CIVIL LAW TREATISE 51-57 (1980).

2. *Id.* at 57-59.

3. *Id.* § 223 at 476.

4. 361 So.2d 940 (La. App. 3d Cir. 1978).

5. 264 La. 204, 270 So.2d 867 (1972).

6. 245 La. 33, 156 So.2d 468 (1963).

limited by the boundary lines of Louisiana, as substantial parts of it are of general application in the United States. These would surely include the general principles of employer tort liability in Chapter 1; Chapter 2 on "The Compensation Principle," particularly Section 33, "Compensation as Social Insurance," which is new in this edition; and much of Chapter 19, "Conflict of Laws." Even in those parts directed specifically to Louisiana, the analysis and commentary by the authors can be (as this reviewer has found with respect to the first edition) extremely helpful in the treatment of the same problems as they arise in other states. The product of broad and careful research is not confined by provincial limitations.

Any lawyer located in a geographical area or engaged in a practice in which he might become involved in a workers' compensation case would be seriously remiss if he did not have ready access to these volumes. Any judge in whose court a workers' compensation case might be tried, or to which it might be appealed, can insure himself economy of time and a sound basis for thought if he has this work at hand. In these pages, those of us who teach and write will find not only assistance, but also stimulation and inspiration.