

TABLE OF CONTENTS

PREFACE	v
ACKNOWLEDGMENTS	vii
TABLE OF CASES	xxxix
Ch. 1. Introduction	1
KEY CONCEPTS	1
Lesson 1: The Personal and Social Meaning of Work	1
Objectives and Expected Learning Outcomes	1
1. The Personal Significance of Work	2
Flora Gill, <i>The Meaning of Work: Lessons from Sociology, Psychology,</i> <i>and Political Theory</i>	3
Questions	5
2. The Social and Economic Significance of Work	6
A. Marx's Critique of the Industrial Revolution	6
KARL MARX AND FREDERICK ENGELS, MANIFESTO OF THE COMMUNIST PARTY	6
B. Contemporary Marxist Critiques of Advanced Capitalism	8
C. The Contemporary Labor Economy of the "Fissured Workplace"	9
DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT.	10
Questions	15
3. Putting the Analysis Together: Workers in Their Own Voices	16
STUDS TERKEL, WORKING: PEOPLE TALK ABOUT WHAT THEY DO ALL DAY AND HOW THEY FEEL ABOUT WHAT THEY DO.	16
GIG: AMERICANS TALK ABOUT THEIR JOBS (JOHN BOWE, MARISA BOWE, AND SABIN STREETER, EDS.)	20
Question	27
Conclusion	27
MARTIN LUTHER KING, JR., ALL LABOR HAS DIGNITY (MICHAEL K. HONEY, ED.)	27

Lesson 2: An Overview of Workplace Law: Labor Law and Anti-Discrimination	29
Objectives and Expected Learning Outcomes	29
1. The Union Movement: Private and Public Employees	29
Thomas Kohler, <i>Individualism And Communitarianism At Work</i>	31
Questions	35
2. Title VII of the Civil Rights Act of 1964.	35
Questions	36
3. Contemporary Issues Under Title VII	37
A. Discrimination Because of Sex	37
<i>Oncala v. Sundowner Offshore Svcs., Inc.</i>	38
<i>Zarda v. Altitude Express, Inc.</i>	39
Question	44
Problem 2-1.	44
Problem 2-2.	44
B. Discrimination Because of Color	45
Cynthia E. Nance, <i>Colorable Claims: The Continuing Significance of Color under Title VII Forty Years after Its Passage</i>	45
C. Discrimination Because of Religion	48
<i>Adeyeye v. Heartland Sweeteners, LLC</i>	48
Problem 2-3.	52
D. Discrimination Because of National Origin	52
Question	53
E. Pregnancy Discrimination Act (PDA)	53
<i>Turic v. Holland Hospitality, Inc.</i>	53
Problem 2-4.	56
Problem 2-5.	56
Problem 2-6.	56
MASTERY PROBLEM 2-1.	56
SEXUAL ORIENTATION	57
Jatrine Bentsi-Enchill, <i>Client Communication: Measuring Your Cross-Cultural Competence</i>	59
Conclusion	63
Ch. 2. The Parties	65
KEY CONCEPTS	65
Lesson 3: Who Is an Employee? The “Multi-Factor” Tests	66
Objectives and Expected Learning Outcomes	66

1.	The Multi-Factor “Right of Control” Test	66
	Example 3-1	68
	Example 3-2	68
	Questions	73
2.	The Economic Realities Test: An Earlier Alternative to the Control Test	73
	Matt Bodie, <i>Participation as a Theory of Employment</i>	73
	Example 3-3	75
3.	Contemporary Applications of the Multi-Factor Test: Emphasizing “Entrepreneurial Opportunity for Gain or Loss” Rather than “Control”	76
	<i>FedEx Home Delivery v. NLRB</i>	77
	The NLRB Administrative Response	84
	Questions	86
4.	The Restatement Approach to “Restating” This Complex Doctrine.	86
	Question	87
	Conclusion	87
	Lesson 4: Who Is an Employee? Current Developments.	89
	Objectives and Expected Learning Outcomes	89
1.	An Emerging Alternative to the “Multi-Factor” Tests: The “ABC Test”	89
	<i>Dynamex Operations West, Inc. v. Superior Court</i>	89
	Questions	100
2.	Employees and Independent Contractors in the Gig Economy	100
	Seth D. Harris and Alan B. Krueger, <i>A Proposal for Modernizing Labor Laws for Twenty-First Century Work: The “Independent Worker”</i>	101
	Questions	105
	MASTERY PROBLEM 4-I	105
	Conclusion	107
	Lesson 5: Who Is an Employer?	109
	Objectives and Expected Learning Outcomes	109
1.	Controlling Owner	110
	<i>Clackamas Gastroenterology Assoc., P. C. v. Wells</i>	111
	Problem 5-1	115
	Problem 5-2	116

Problem 5-3	116
Problem 5-4	117
2. Joint Employers	118
<i>Irizarry v. Catsimatidis</i>	119
Problem 5-5	133
Problem 5-6	133
Problem 5-7	134
Problem 5-8	134
Conclusion	134
Lesson 6: Work-Authorized Immigrants	135
Objectives and Expected Learning Outcomes	135
1. The Intersection of Immigration Policy and Employment Law	135
<i>United States v. Brent Beebe</i>	137
Questions	142
2. IRCA's Non-Discrimination Provisions	142
Problem 6-1	142
3. Temporary Work Programs and Work Authorization	143
MASTERY PROBLEM 6-1	144
Conclusion	145
Ch. 3. Defining the Relationship	147
KEY CONCEPTS	147
Lesson 7: The At-Will Rule and Its History	147
Objectives and Expected Learning Outcomes	147
1. The History of the At-Will Rule	148
JAMES GRAY POPE, "A BRIEF HISTORY OF UNITED STATES LABOR AND EMPLOYMENT LAW," IN THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY (STANLEY N. KATZ, ED.)	148
Jay M. Feinman, <i>The Development of the Employment at Will Rule</i>	150
Deborah A. Ballam, <i>The Development of the Employment At Will Rule Revisited: A Challenge to its Origins as Based in the Development of Advanced Capitalism</i>	152
Class Exercise 7-1	153
2. The At-Will Rule	154
Example 7-1	155
Example 7-2	155

Class Exercise 7-2	155
3. Contemporary Challenges to the At-Will Rule	155
<i>Murphy v. American Home Products Corp.</i>	156
Questions	160
<i>Foley v. Interactive Data Corporation</i>	160
Question	175
4. The “Just Cause” Standard Under Collective Bargaining Agreements	175
Conclusion	176
Lesson 8: Contract Law	177
Objectives and Expected Learning Outcomes	177
Example 8-1	177
1. Contracting out of the At-Will Rule	178
<i>Foley v. Interactive Data Corp.</i>	178
<i>Montgomery County Hospital District v. Brown</i>	188
Questions	193
Problem 8-1	194
2. Using Express Contracts to Reinforce the At-Will Rule	194
<i>Broyles v. J.P. Morgan Chase & Co.</i>	195
Questions	198
3. Promissory Estoppel	198
<i>Goff-Hamel v. Obstetricians & Gynecologists, P.C.</i>	198
Question	204
MASTERY PROBLEM 8-I	204
Conclusion	205
Lesson 9: The Handbook	207
Objectives and Expected Learning Outcomes	207
Question	208
1. Employee Handbooks as Contracts	208
<i>Woolley v. Hoffman-La Roche, Inc.</i>	208
Questions	216
Problem 9-1	216
2. The Empire Strikes Back: Disclaimers	217
<i>Anderson v. Douglas & Lomason Co.</i>	217
Questions	223
<i>Dillon v. Champion Jogbra, Inc.</i>	223

Questions	228
3. Should an Employer Have a Rulebook, a Handbook, or Something Else?	228
MASTERY PROBLEM 9-1	228
Bill Taylor, <i>Trust Your Employees, Not Your Rule Book</i>	229
MASTERY PROBLEM 9-2	231
MASTERY PROBLEM 9-3	232
Conclusion	232
Lesson 10: Arbitration Agreements	233
Objectives and Expected Learning Outcomes	233
1. The Development and Growth of Arbitration in the Employment Setting	235
2. Determining the Scope of the Agreement to Arbitrate	237
3. Creating an Enforceable Agreement to Arbitrate	239
<i>Lizalde v. Vista Quality Markets</i>	239
Problem 10-1	242
Problem 10-2	243
Problem 10-3	243
4. Providing Sufficient Notice of the Agreement to Arbitrate	243
<i>Alexander Dubose Jefferson & Townsend LLP v. Vance</i>	244
Question	247
Problem 10-4	247
5. Ensuring That the Arbitration Agreement Is Not Unconscionable.	248
<i>Hooters of America, Inc. v. Phillips</i>	248
<i>Baltazar v. Forever 21, Inc., et al.</i>	254
Questions	259
MASTERY PROBLEM 10-1	260
MASTERY PROBLEM 10-2	260
Conclusion	260
Ch. 4. Third Party Obligations to Employees and Employers	261
KEY CONCEPTS	261
Lesson 11: Tortious Interference with Contract or Prospective Advantage	261
Objectives and Expected Learning Outcomes	261
1. The Nature of the Relationship	263

Questions	263
2. Nature of the Interference	264
Example 11-1	264
Example 11-2	264
3. Defining “Improper Interference”	265
Example 11-3	266
MASTERY PROBLEM 11-1	267
4. Who Is a Third Party?	267
<i>Frierson v. University of Chicago</i>	268
Questions	270
Example 11-4	270
Example 11-5	271
MASTERY PROBLEM 11-2	271
<i>Eserhut v. Heister</i>	272
Questions	275
MASTERY PROBLEM 11-3	276
Conclusion	278
Ch. 5. Obligations Owed by Employers to Third Parties.	279
KEY CONCEPTS	279
Lesson 12: Direct Contract Liability for Acts of Agents	279
Objectives and Expected Learning Outcomes	279
Example 12-1	280
Example 12-2	280
1. The Nature of the Agency Relationship	281
2. Agents with Actual Authority	281
<i>Ruffin v. Temple Church of God in Christ, Inc.</i>	282
Questions	286
3. Agents with Apparent Authority	286
Example 12-3	287
Example 12-4	287
<i>Harkness v. Platten</i>	287
Questions	297
Problem 12-1	297
MASTERY PROBLEM 12-1	297
MASTERY PROBLEM 12-2	298
4. Agents with Inherent Authority	299

<i>Local Joint Exec. Bd. v. Nationwide Downtowner Motor Inns</i>	299
Question	301
5. Ratification	301
Conclusion	301
Lesson 13: Direct Tort Liability for Negligent Hiring, Retention, Supervision and Referral.	303
Objectives and Expected Learning Outcomes	303
1. Negligent Hiring, Retention, and Supervision	303
A. When Employees Pose an Unreasonable Risk of Harm	305
<i>Bryant v. Livigni</i>	305
Class Exercise 13-1	312
B. Employer’s Duty to Prevent an Unreasonable Risk of Harm.	312
<i>Smith v. Orkin Exterminating Co., Inc.</i>	312
Questions	317
Problem 13-1.	317
C. Using Criminal Records to Assess Prospective Employees	318
D. Employer’s Negligence as the Proximate Cause of Injury	319
<i>Anicich v. Home Depot U.S.A., Inc.</i>	320
Questions	328
2. Former Employer Liability for Failure to Warn Prospective Employer	328
Example 13-1	329
MASTERY PROBLEM 13-1	331
Conclusion	332
Lesson 14: Vicarious Liability (<i>Respondeat Superior</i>).	333
Objectives and Expected Learning Outcomes	333
Example 14-1	334
Example 14-2	334
Problem 14-1.	334
1. Vicarious Liability for Acts of an Employee.	334
A. General Rule: The Wrongdoer Must Be an Employee	334
Questions	335
<i>Boissonnault v. Bristol Federated Church</i>	336
Questions	338
B. Exceptions: Vicarious Liability for Acts of Independent Contractors	338
<i>Kleeman v. Rheingold.</i>	339

Questions	344
<i>Rosenberg v. Equitable Life Assurance Society</i>	344
Questions	348
MASTERY PROBLEM 14-1	348
2. Vicarious Liability for Wrongful Acts Within the Course and Scope of Employment.	349
<i>Alma W. v. Oakland Unified School Dist.</i>	349
Questions	355
Problem 14-2	355
Problem 14-3	355
Problem 14-4	356
Conclusion	356
Ch. 6. Obligations Owed by Employers to Employees During the Relationship	357
A. Privacy Interests	357
KEY CONCEPTS	357
Lesson 15: Expectation of Privacy in Public Employment	358
Objectives and Expected Learning Outcomes	358
<i>O'Connor v. Ortega</i>	359
<i>City of Ontario v. Quon</i>	368
Questions	375
Problem 15-1	375
Problem 15-2	376
Problem 15-3	376
Conclusion	376
Lesson 16: Common Law Privacy Protections	377
Objectives and Expected Learning Outcomes	377
1. Intrusion upon Seclusion	378
<i>K-Mart Corp. Store No. 7441 v. Trotti</i>	379
Questions	384
Problem 16-1	384
Problem 16-2	385
Problem 16-3	385
2. Publicizing Private Matters	385
<i>Sharp v. Whitman Council, Inc.</i>	386
Questions	388

Problem 16-4	389
Problem 16-5	389
3. Publicity That Places a Person in a False Light.	390
<i>Hogan v. Winder</i>	390
Questions	392
Problem 16-6	392
4. Appropriation of Another’s Likeness	392
<i>Stien v. Marriott Ownership Resorts</i>	393
Question	396
MASTERY PROBLEM 16-1	396
MASTERY PROBLEM 16-2	396
Conclusion	397
Lesson 17: Privacy of Electronic Information and Communications	399
Objectives and Expected Learning Outcomes	399
1. Employee Expectation of Privacy on the Employer’s E-mail System	399
<i>Smyth v. Pillsbury Co.</i>	400
Questions	402
Problem 17-1	402
<i>Stengart v. Loving Care Agency, Inc.</i>	403
Question	419
Problem 17-2	419
2. Intrusion upon an Employee’s Social Media Privacy	419
<i>Ehling v. Monmouth-Ocean Hosp. Srv. Corp.</i>	420
Questions	423
Problem 17-3	423
3. Federal and State Statutes Governing Electronic Communications	424
MASTERY PROBLEM 17-1	426
Conclusion	427
Lesson 18: Privacy and Testing	429
Objectives and Expected Learning Outcomes	429
1. Genetic Testing	429
<i>Williams v. Graphic Packaging Int’l, Inc.</i>	430
Questions	432
Problem 18-1	432
2. Drug Testing	433

	<i>Skinner v. Railway Labor Executives' Ass'n</i>	434
	<i>Kraslawsky v. Upper Deck Co.</i>	442
	Questions	454
	Class Exercise 18-1	454
3.	Data Analytics	455
	Problem 18-2	456
4.	Wellness Programs	456
	Problem 18-3	456
	MASTERY PROBLEM 18-1	457
	Conclusion	457
B.	Employee Expression	459
	KEY CONCEPTS	459
	Lesson 19: Employee Speech in the Public Workplace	459
	Objective and Learning Outcomes	459
1.	Matters of Public Interest	460
	Problem 19-1	461
	Problem 19-2	461
	Problem 19-3	461
	<i>Coomes v. Edmonds Sch. Dist. No. 15</i>	462
	<i>Matthews v. City of New York</i>	465
	Questions	469
2.	Protection for Speech That Is Unrelated to Employment	469
	<i>San Diego v. Roe</i>	470
	MASTERY PROBLEM 19-1	473
	MASTERY PROBLEM 19-2	474
	Conclusion	474
	Lesson 20: Protected Concerted Activity in the Nonunion Workplace	475
	Objectives and Expected Learning Outcomes	475
1.	The Statute	476
	Example 20-1	476
	Example 20-2	477
2.	Section 7 and Concerted Activity	477
	<i>N.L.R.B. v. Washington Aluminum Co.</i>	477
	Questions	481
	<i>MikLin Enterprises, Inc. v. NLRB</i>	481
	Problem 20-1	492

Problem 20-2	492
MASTERY PROBLEM 20-1	493
3. Workplace Rules as Violations of Section 7	494
<i>T-Mobile USA, Inc. v. NLRB</i>	494
Questions	502
Problem 20-3	502
MASTERY PROBLEM 20-2	503
Conclusion	504
C. Employee Dignity	505
KEY CONCEPTS	505
Lesson 21: Emotional Distress	505
Objectives and Expected Learning Outcomes	505
1. Extreme and Outrageous Conduct	506
Example 21-1	506
Example 21-2	507
<i>Bodewig v. K-Mart, Inc.</i>	507
Questions	512
Problem 21-1	513
2. Severe Emotional Distress	513
<i>GTE Southwest, Inc. v. Bruce</i>	513
3. Defenses Based on Statutory Preclusion	519
<i>Hoffman-LaRoche, Inc. v. Zeltwanger</i>	519
Questions	530
Problem 21-2	530
MASTERY PROBLEM 21-1	531
Ethan Baron, <i>'Bro-culture' at Google Led to Sexual Harassment and Violence, Lawsuit Alleges.</i>	531
Conclusion	533
Lesson 22: Autonomy and Dignity	535
Objectives and Expected Learning Outcomes	535
Question	537
Problem 22-1	537
1. Protecting Off-Site Legal Activity	537
Problem 22-2	538
Problem 22-3	538
2. Protecting Political Activity and Association	539

	<i>Smedley v. Capps, Staples, Ward, Hastings and Dodson</i>	540
	Questions	543
3.	Legitimate Business Interests	544
	<i>Marsh v. Delta Air Lines, Inc.</i>	544
	Questions	551
	Problem 22-4	552
	Problem 22-5	552
	Problem 22-6	552
	Conclusion	552
Ch. 7.	Regulatory Structures	555
A.	Compensation	555
	KEY CONCEPTS	555
	Lesson 23: The Fair Labor Standards Act	556
	Objectives and Expected Learning Outcomes	556
1.	The FLSA as a Foundational Statute	556
	<i>West Coast Hotel Co. v. Parrish</i>	557
	Questions	559
	Example 23-1	560
	Example 23-2	560
2.	Who Is Protected by the FLSA?	561
	<i>Glatt v. Fox Searchlight Pictures, Inc.</i>	561
	Questions	566
	Class Exercise 23-1	567
	<i>Reich v. Circle C Investments, Inc.</i>	568
3.	Who Is an “Employer” Liable Under the FLSA?	571
	<i>Reich v. Circle C Investments, Inc.</i>	572
	<i>Gray v. Powers</i>	572
	Problem 23-1	575
	Problem 23-2	575
4.	Compensable Time: The Problem of “On Call” Time	576
	<i>Pabst v. Oklahoma</i>	576
	Question	579
5.	Liquidated Damages and the Statute of Limitations	580
	<i>Reyes v. Aqua Life Corp.</i>	580
	Questions	581
	MASTERY PROBLEM 23-I	582

Conclusion	582
Lesson 24: FLSA Exemptions	583
Objectives and Expected Learning Outcomes	583
1. The Executive Exemption	584
Questions	585
<i>Mims v. Starbucks Corp.</i>	586
Question	591
Problem 24-1	592
2. The Administrative Exemption	592
Questions	595
<i>Dewan v. M-I, L.L.C., doing business as M-I SWACO.</i>	596
3. The Professional Exemption	602
<i>Lola v. Skadden, Arps, Slate, Meagher & Flom LLP.</i>	607
Problem 24-2	611
Conclusion	612
Lesson 25: FLSA Protection Against Retaliation	613
Objectives and Expected Learning Outcomes	613
Questions	614
Example 25-1	614
Example 25-2	614
Example 25-3	615
<i>Greathouse v. JHS Security Inc.</i>	615
Question	628
Problem 25-1	628
Problem 25-2	628
<i>Colvin v. Volusion, Inc.</i>	629
Question	632
Problem 25-3	632
MASTERY PROBLEM 25-1	633
MASTERY PROBLEM 25-2	633
Conclusion	634
B. Safety	635
KEY CONCEPTS	635
Lesson 26: Workers' Compensation	635
Objectives and Expected Learning Outcomes	635
1. The History of Workers' Compensation Statutes	636

2.	Elements of a Workers' Compensation Claim	637
A.	In the Course of Employment	637
	Example 26-1	637
	Example 26-2	638
	Example 26-3	638
	<i>Stroka v. United Airlines</i>	638
	Questions	641
	<i>Richardson v. Fiedler Roofing, Inc.</i>	642
	Problem 26-1.	648
	Problem 26-2.	648
B.	Arising out of the Employment Relationship	649
	Example 26-4	649
	<i>Ezzy v. Workers' Comp. Appeals Bd.</i>	649
	<i>McKeever v. N.J. Bell Telephone Co.</i>	653
	Question	656
	Problem 26-3.	656
3.	Workers' Compensation as the Employee's Exclusive Remedy.	656
	<i>Weiss v. City of Milwaukee</i>	657
	Question	660
	Problem 26-4	660
	Conclusion	661
	Lesson 27: The Occupational Safety and Health Act (OSHA)	663
	Objectives and Expected Learning Outcomes	663
1.	The History of the OSHA and OSHA	663
	Questions	665
2.	Enforcing the General Duty Clause	665
	<i>National Realty and Construction Co., Inc. v. Occupational Safety and</i> <i>Health Review Commission.</i>	665
	Question	669
	<i>Safeway, Inc. v. Occupational Safety & Health Review Commission</i>	669
	Questions	671
	<i>Dana Container, Inc. v. Secretary of Labor</i>	672
	Questions	676
	Problem 27-1	677
3.	Workplace Safety: Challenges and Solutions	677
	Sarah Trotto, <i>Fatigue and worker safety: Experts say employers play a</i> <i>role in tackling the issue</i>	677

Jia Tolentino, <i>The Gig Economy Celebrates Working Yourself to Death</i>	684
Questions	687
Class Exercise 27-1	688
MASTERY PROBLEM 27-1	688
Conclusion	689
Lesson 28: OSHA Regulation	691
Objectives and Expected Learning Outcomes	691
1. OSHA Enforcement and the Fourth Amendment	694
<i>Marshall v. Barlow's, Inc.</i>	694
Question	699
Problem 28-1	699
2. Federal Preemption of State Law	700
<i>Sabine Consolidated, Inc. v. Texas</i>	700
Eric J. Conn and Kate M. McMahon, <i>OSHA Criminal Cases on the Rise</i>	706
3. A Case Study in Criminal Charges for Employee Deaths	709
Mark Garfinkel, <i>My Photos & Thoughts on the Deadly Boston Trench Collapse</i>	710
Questions	716
4. OSHAct 11(c) and Retaliation	716
Questions	717
<i>Schweiss v. Chrysler Motors Corp.</i>	718
MASTERY PROBLEM 28-1	721
MASTERY PROBLEM 28-2	721
Conclusion	722
C. Benefits	725
KEY CONCEPTS	725
Lesson 29: Employee Retirement Income Security Act (ERISA)	725
Objectives and Expected Learning Outcomes	725
1. The Scope of ERISA Protections	725
<i>Difelice v. Aetna U.S. Healthcare</i>	727
2. The Standard of Review in an Appeal from a Denial of Plan Benefits	729
Example 29-1	731
Questions	731

	<i>Orzechowski v. Boeing Co. Non-Union Long-Term Disability Plan.</i> . . .	733
	Question	740
3.	Anti-Retaliation Under ERISA	740
	<i>McGann v. H&H Music Co.</i>	740
	Questions	746
	Problem 29-1	746
	Problem 29-2	746
	<i>Edwards v. A.H. Cornell and Son, Inc.</i>	747
	Problem 29-3	753
	MASTERY PROBLEM 29-1	754
	Conclusion	754
	Lesson 30: The Family and Medical Leave Act	757
	Objectives and Expected Learning Outcomes	757
1.	The FMLA: Origins, Mechanics, Results.	758
	Question	760
2.	The Purpose of the FMLA	761
	Questions	762
3.	Scope of “Employee” Under the FMLA	762
	Problem 30-1	765
	Problem 30-2	765
	Problem 30-3	766
4.	Qualifying Events Under the FMLA.	766
	Problem 30-4	767
	Question	767
	Problem 30-5	769
	Problem 30-6	770
	Problem 30-7	771
	Problem 30-8	772
	Problem 30-9	772
5.	Leave Under the FMLA	772
	Problem 30-10	773
6.	Protected Right to Reinstatement	774
	Questions	776
7.	Protecting Employees from Retaliation or Interference	776
	Questions	778
8.	Employee Obligations.	778

Questions	783
Conclusion	783
Ch. 8. Terminating the Relationship	785
KEY CONCEPTS	785
A. Common Law Remedies for Discharge	785
KEY CONCEPTS	785
Lesson 31: Wrongful Discharge in Violation of Public Policy	786
Objectives and Expected Learning Outcomes	786
1. The Emergence of the Tort of Wrongful Discharge	787
A. <i>Monge v. Beebe Rubber Company</i> : The Public Policy Against Unfair Dismissal	788
<i>Monge v. Beebe Rubber Company</i>	788
Questions	790
<i>Howard v. Dorr Woolen Co.</i>	791
B. <i>Murphy and Weider</i> : The Case Against a Judicially Created Cause of Action for Wrongful Discharge	791
Questions	793
<i>Weider v. Skala</i>	794
Questions	799
2. Contemporary Issues in Wrongful Discharge Litigation	799
A. Prohibited Actions by the Employer	800
MASTERY PROBLEM 31-I	800
B. Protected Activities by the Employee	801
<i>Rothrock v. Rothrock Motor Sales, Inc.</i>	803
Problem 31-1	808
Problem 31-2	808
Problem 31-3	808
Conclusion	808
Lesson 32: Sources of Public Policy	809
Objectives and Expected Learning Outcomes	809
1. The Public Interest and the De Minimus Exception	810
Example 32-1	810
Example 32-2	811
Problem 32-1	811
Problem 32-2	811

2.	The Authority of the Courts to Declare Public Policy Outside of Constitutional, Statutory, and Regulatory Provisions	812
	<i>Gantt v. Sentry Insurance</i>	812
	Questions	822
	Problem 32-3	822
3.	Special Considerations When the Employee Is Acting as an Attorney	822
	<i>General Dynamics Corp. v. Superior Court</i>	823
	Questions	841
	Problem 32-4	841
	Conclusion	842
	Lesson 33: Good Faith and Fair Dealing	843
	Objectives and Expected Learning Outcomes	843
	Example 33-1—The Insurance Context	843
	Example 33-2—Lender Liability	844
	Questions	846
1.	The Classic Application: Precluding the Vesting of a Benefit	846
	<i>Fortune v. National Cash Register Co.</i>	847
	MASTERY PROBLEM 33-1	850
2.	Using Good Faith to Limit the Employer’s At-Will Right to Discharge	851
	Problem 33-1	852
	Problem 33-2	852
A.	Bad Faith as Deceit and Misrepresentation	853
	<i>E.I. DuPont de Nemours & Co. v. Pressman</i>	853
	Questions	859
B.	Bad Faith as Unreasonableness: The Most Expansive Approach	859
	<i>Leudtke v. Nabors Alaska Drilling, Inc.</i>	859
	MASTERY PROBLEM 33-2	863
	Conclusion	864
	Lesson 34: Employer Liability for Defamation	865
	Objectives and Expected Learning Outcomes	865
1.	Defamation of a Former Employee	866
A.	The “Employer” Must Make the Statement	866
	Example 34-1	866
	Example 34-2	867

B.	The Statement Must Be “False and Defamatory”	867
	<i>Phelan v. May Dept. Stores Co.</i>	868
	Questions	873
	Problem 34-1.	873
C.	The Statement Must Be “Published”	874
	Problem 34-2.	874
	Problem 34-3.	875
	Problem 34-4.	875
	Problem 34-5.	875
	<i>Arthaud v. Mutual of Omaha Ins. Co.</i>	875
D.	The Statement Must Not Be “Privileged”	877
	Problem 34-6.	878
	Problem 34-7.	878
	Problem 34-8.	879
	MASTERY PROBLEM 34-I	879
2.	Service Letter Statutes	879
	Question	881
3.	Anti-Blacklisting Statutes	881
	MASTERY PROBLEM 34-2	882
	Conclusion	882
	Lesson 35: Other Common Law Protections	883
	Objectives and Expected Learning Outcomes	883
1.	Negligent Misrepresentation	884
	<i>D’Ulisse-Cupo v. Bd. of Dir. of Notre Dame High School.</i>	884
	Questions	887
	MASTERY PROBLEM 35-I	887
2.	False Imprisonment	888
	Example 35-1	888
	Example 35-2	888
	<i>Fermino v. Fedco, Inc.</i>	889
	MASTERY PROBLEM 35-2	894
3.	Assault and Battery	895
	Example 35-3	895
4.	Intentional Infliction of Emotional Distress	896
	<i>Archer v. Farmer Bros. Co.</i>	897
	Questions	903
	<i>Moniodis v. Cook</i>	903

Question	908
Conclusion	908
B. Statutory Remedies for Discharge	911
KEY CONCEPTS	911
Lesson 36: Whistleblowing	911
Objectives and Expected Learning Outcomes	911
1. Overview of Statutes Protecting Whistleblowers	912
Problem 36-1	912
2. Interpreting Whistleblower Statutes	916
<i>Linkletter v. Western & Southern Financial Group, Inc.</i>	916
Questions	923
Problem 36-2	923
3. Elements of a Whistleblowing Claim	924
<i>Thibodeau v. ADT Security Service</i>	924
Questions	929
Problem 36-3	930
4. Lawyers as Whistleblowers	930
<i>Trzaska v. L'Oréal USA, Inc.</i>	930
Question	939
5. The Cost of Being a Whistleblower	939
Patricia A. Patrick, <i>Be Prepared Before You Blow the Whistle:</i> <i>Protection Under State Whistle-blowing Laws</i>	940
MASTERY PROBLEM 36-1	942
MASTERY PROBLEM 36-2	942
Conclusion	942
Lesson 37: Protection Against Retaliation	945
Objectives and Expected Learning Outcomes	945
1. Defining an Employee's "Reasonable Belief"	946
Example 37-1	946
Example 37-2	946
<i>Payne v. McLemore's Wholesale & Retail Stores</i>	947
Questions	949
Problem 37-1	950
<i>Clark County Sch. Dist. v. Breeden</i>	951
Question	952
<i>EEOC v. Rite Way Serv.</i>	953

Questions	962
Problem 37-2	962
Problem 37-3	963
<i>DeMasters v. Carilion Clinic</i>	963
Questions	965
MASTERY PROBLEM 37-1	965
MASTERY PROBLEM 37-2	965
Conclusion	966
C. Remedies for Immigrant Workers	967
KEY CONCEPT	967
Lesson 38: Immigration Law and Worker Protection	967
Objectives and Expected Learning Outcomes	967
1. The <i>Hoffman Plastic Case</i>	968
<i>Hoffman Plastic Compounds, Inc. v. National Labor Relations</i> <i>Board</i>	968
Questions	973
2. Navigating the Post- <i>Hoffman</i> World	973
<i>Salas v. Sierra Chemical Co.</i>	974
3. Worker Advocacy by States at the Intersection of Immigration and Employment Law	986
Leticia M. Saucedo, <i>States of Desire: How Immigration Law Allows</i> <i>States to Attract Desired Immigrants</i>	986
Questions	991
MASTERY PROBLEM 38-1	991
MASTERY PROBLEM 38-2	992
Conclusion	994
Lesson 39: Unemployment Compensation	995
Objectives and Expected Learning Outcomes	995
1. Overview of Unemployment Compensation Systems	995
2. The Employee Must Be Involuntarily Terminated	996
<i>Wood v. Louisiana Dept. of Employment Security</i>	996
Class Exercise 39-1	1000
Problem 39-1	1000
3. Employee Must Not Be Fired for Misconduct	1000
<i>Braska v. Challenge Manufacturing Co.</i>	1001
Questions	1014

Problem 39-2	1014
4. The Employee Must Be Available for Work and Seeking Employment.	1014
<i>Glick v. Unemployment Insurance Appeals Bd.</i>	1015
Question	1023
Problem 39-3	1023
Conclusion	1024
D. Employee Obligations After Termination of the Relationship	1025
KEY CONCEPTS	1025
Lesson 40: Promises Not to Compete	1025
Objectives and Expected Learning Outcomes	1025
1. An Overview of Promises Not to Compete	1025
2. The Employer's Legitimate Business Interest	1027
Example 40-1	1027
Example 40-2	1028
3. The Reasonableness Requirement: Scope, Duration, and Geographic Limits	1028
<i>Earthweb v. Schlack</i>	1029
Problem 40-1	1042
4. The Requirement of Consideration	1043
5. Remedies: Modification and the Blue-Pencil Rule	1043
<i>Dean Van Horn Consulting Assocs., Inc., v. Wold</i>	1043
Questions	1046
Problem 40-2	1047
6. Remedies for Breach of a Promise Not to Compete	1047
<i>Clark v. Liberty Nat'l Life Ins. Co.</i>	1047
MASTERY PROBLEM 40-I	1053
Conclusion	1054
Lesson 41: Duty of Loyalty	1055
Objectives and Expected Learning Outcomes	1055
Questions	1056
Problem 41-1	1056
1. Competing with One's Current Employer as a Breach of the Duty of Loyalty	1057
<i>Cameco, Inc. v. Geddicke</i>	1058

2.	Competing with One’s Previous Employer	1068
	<i>Augat, Inc. v. Aegis, Inc.</i>	1069
	Questions	1077
	Problem 41-2	1077
	Problem 41-3	1078
	MASTERY PROBLEM 41-I	1078
	Conclusion	1079
	Lesson 42: Trade Secrets	1081
	Objectives and Expected Learning Outcomes	1081
1.	Defining the Term “Trade Secret”	1081
A.	Economically Valuable Information	1083
	Example 42-1	1083
	Example 42-2	1084
B.	Reasonable Measures Undertaken to Keep the Information Secret.	1084
C.	Not Generally Known and Readily Obtainable Through Proper Means.	1085
	Example 42-3	1085
D.	What Type of Information Is Not a Trade Secret?.	1085
	Problem 42-1.	1086
	Problem 42-2.	1086
	Problem 42-3.	1086
	Problem 42-4.	1086
2.	The Duty of Loyalty Includes a Duty Not to Misappropriate or Reveal a Trade Secret.	1087
A.	Scope of the Duty of Loyalty to Preserve Trade Secrets.	1087
B.	Permissible Reasons to Disclose Trade Secrets	1088
	Problem 42-5.	1088
	Problem 42-6.	1088
C.	Liability for Misappropriation of Trade Secrets	1089
	<i>Saturn Sys. v. Militare</i>	1090
	<i>PepsiCo v. Redmond</i>	1095
	MASTERY PROBLEM 42-I	1106
	Conclusion	1108
	Lesson 43: Professional Responsibility and Litigation Ethics	1109
	Objectives and Expected Learning Outcomes	1109
1.	Ethical Dilemmas Arising with Multiple Representation.	1110

Problem 43-1	1114
Problem 43-2	1114
2. Ethical Dilemmas Involving Former Clients	1114
Problem 43-3	1116
3. Ethical Obligations in the Internet Era	1117
Problem 43-4	1117
4. Reconciling Zealous Advocacy with the Rules of Professionalism	1118
Problem 43-5	1120
5. The Foundational Rule: Confidentiality	1120
Problem 43-6	1122
6. The Tension Between Loyalty to the Client and Loyalty to the Legal System	1122
Problem 43-7	1123
MASTERY PROBLEM 43-I	1123
Conclusion	1124
E. Overview of Wrongful Discharge Law	1127
KEY CONCEPTS	1127
Lesson 44: The Montana Wrongful Discharge from Employment Act	1127
Objectives and Expected Learning Outcomes	1127
<i>Meech v. Hillhaven West, Inc.</i>	1131
Questions	1142
MASTERY PROBLEM 44-I	1142
Francis J. Mootz III, <i>A Summary of the Eightfold Path Guide for Policy Analysis Originally Developed by Eugene Bardach</i>	1143
Conclusion	1145