What Can We Do?
Jonathan D. Karmel

in Dying to Work: Death and Injury in the American Workplace
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Chapter Six asks whether we have done everything possible to keep Americans safe at work. The answers to that question are a discussion of common sense reforms that if implemented will make Americans safer at work. But, anticipating the anti-regulatory arguments from self-described free marketers, Chapter Six first rebuts these arguments championed by conservative think tanks like the Cato Institute and the Mercatus Center, and funded by Charles and David Koch, among others. Thereafter, Chapter Six discusses how reforming the workers compensation system, enhancing the penalties and criminal provisions in the OSHAct, criminally prosecuting employers like Don Blankenship, regulatory reform and more local worker safety laws will help keep Americans safer at work.

Legal Contexts and Law Related to Psychological Injuries
William J. Koch, Kevin S. Douglas, Tonia L. Nicholls, and Melanie L. O'Neill

in Psychological Injuries: Forensic Assessment, Treatment, and Law
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This chapter discusses the primary areas of law in which psychological injury is likely to be material and relevant, and in which mental health professionals are likely to find themselves practicing. In particular, it covers tort law (both intentional and negligent), workers' compensation law, antidiscrimination law (sexual harassment, employment discrimination, housing discrimination), and laws governing airline accidents. These areas cover the majority of incidents that might give rise to litigation about psychological injuries, such as motor vehicle
Asbestos Exposure and the Law in the United States
Kevin Leahy

This chapter discusses the historical development of asbestos litigation and the current state of relevant legal affairs in the United States. Depending on one's vantage point, the history of asbestos-related lawsuits reveals either a series of unwitting failures to understand the gravity of the problem, or a knowing disregard and avoidance of the health concerns faced by workers and their families. Whether it is lack of knowledge or reckless disregard, responsibility for fault has become the paramount issue for assigning blame during American trials involving asbestos exposure and disease.

Ana: Caught in Circumstances Beyond Her Control
Jill Duerr Berrick

This chapter details the experience of a woman called Ana who is living on a tight budget. She is not on welfare anymore, although she was for a short time. Over the past year she has received income from three different sources, one at a time. First she was working; then she received welfare; and finally she obtained worker's compensation. Now she is working again, and all her income comes from her job. In the process, she slipped from working-class status to the bottom.
Asbestos Injury Compensation
Jeb Barnes and Thomas F. Burke

in How Policy Shapes Politics: Rights, Courts, Litigation, and the Struggle Over Injury Compensation

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Publisher: Oxford University Press DOI: 10.1093/acprof:oso/9780199756117.003.0004

This chapter explores the evolving politics of asbestos injury compensation in the United States, which has revolved around tort litigation, a classic example of adversarial legalism. Asbestos policy, however, has taken shape through a complex process which produced a layered mix of adversarial and bureaucratic legalism that today co-exist side-by-side. Overall, the adversarial legal elements of asbestos have a political trajectory that inverts the trajectory of SSDI (Social Security Disability Allowance). Where SSDI had intense conflict over the program’s creation that tapered off, conflict over asbestos litigation started quietly but increased over time. (Meanwhile, the politics of workers’ compensation programs, a more bureaucratic alternative to asbestos injury compensation than tort litigation, seemed to parallel the politics of SSDI). Taken together, these cases underscore how the distinct patterns of distributional effects and blame assignment characteristic of adversarial and bureaucratic legalism shape politics over time.

The Statutorification of Common-Law Fields
G. Edward White


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This chapter describes the process, over an interval between the years after World War I and the 1960s, in which most of the fields considered “basic” common-law subjects in legal education and the legal profession were dramatically affected by statutory developments that sought to modify common-law rules and doctrines in the fields. By the 1960s the “statutorification” of torts, contracts, commercial law, and criminal law was partially in place, and new rules for federal civil procedure had been promulgated.
This chapter focuses on the time when approximately 150 members of the Women's City Club met to discuss bills pending in the New York State legislature that would provide domestic workers with a sixty-hour week, minimum wage, and inclusion in workers' compensation laws. First, the would-be reformers made their pitch. Emily Sims Marconnier, chair of the Women's City Club's own Committee on Labor and Industry and associate general secretary of the National Consumers' League; Blanche Freedman, a New York Women's Trade Union League lobbyist; and Dora Jones, president of the newly formed American Federation of Labor-affiliated Domestic Workers Union, each rose to make a case for the legislation. The organizers could not have expected what came next. The room exploded in outrage. A journalist in the audience reported that the Women's City Club members “appeared unable to distinguish between legislation and unionization.”

Delivering Health Care
Tee L. Guidotti

Occupational health services in industry provide health care and preventive services in order to maintain the health of all employees, not just to provide medical care for the injured or those who have been made ill by a hazard. Thus, occupational health services may be divided into curative, or treatment-oriented, and preventive services. Occupational health services may be located in the plant, or off site. A corporate medical department usually coordinates occupational health throughout the enterprise. There should be a written occupational health policy that spells out the responsibility of employers for the health of workers and the responsibility of workers to report problems. Enterprises with more
than 1000 workers usually need a full-time, in-house corporate medical
department. This department should have a close working relationship
with safety and occupational hygiene departments and they are often
combined. It is generally better that the occupational health service not
be managed under the department of human resources or personnel,
where hiring and termination decisions are made and insurance claims
are managed. Occupational health and safety must ultimately be the
responsibility of supervisors and managers in production and they must
be held accountable for injuries and avoidable hazards in the work areas
they manage, with support from the occupational health service. The
occupational health service has to be seen by the workers as neutral
and working for their interests, not as looking for ways to fire them
or to deny their claims. Occupational health services should maintain
detailed records on the personal health of workers and should keep them
strictly confidential. Workers’ compensation is a form of insurance that is
compulsory for employers in many countries.

The Progressive Era
Price Fishback

in Government & The American Economy: A New History

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February 2013 DOI: 10.7208/
chicago/9780226251295.003.0010

In the United States, the period between the mid-1890s and the early
1920s is known as the Progressive Era. Many general studies of the
period and biographies of leading reformers emphasize the economic
and political reform movements. The economic reforms included
expanded regulation, increased antitrust activity, establishment of an
income tax, and the development of social insurance programs. This
chapter examines the changes that took place during the Progressive Era
as a kaleidoscope of interest groups pushed to establish new forms of
government activity. Most of the changes were small steps that set the
stage for larger expansions of government in response to three major
crises. This chapter first provides an overview of the American economy
during the Progressive Era and then discusses major policy changes
of the period. It also describes the Progressives and looks at workers'
compensation laws, protective legislation codifying preexisting trends,
tariff reform, antitrust laws, and workplace safety regulation. The chapter
concludes by discussing the legacy of the Progressive Era.
Retirement Income Security and Workers’ Residuals
Sylvester J. Schieber

in The Predictable Surprise: Unraveling the U.S. Retirement System
Published in print: 2012 Published Online: April 2015
Publisher: Oxford University Press DOI: 10.1093/acprof:osobl/9780199890958.003.0021
Item type: chapter

This chapter examines the implications of retirement income security for workers’ take-home pay. Money flows into various components of the retirement system from different sources. Social Security payroll taxes are generally evenly split between employees and employers. Most private defined benefit plans are financed purely by employer contributions, whereas defined contribution plans now rely on workers’ contributions for the largest share of their financing. This chapter considers why retirement costs have been rising over the past half century and the implications for workers’ take-home pay, along with the concern about whether the existing rewards structure disproportionately benefits highly compensated workers. It also presents data showing the extent to which employer contributions to the three major categories of non-cash compensation (payroll taxes, employer contributions to employer-sponsored retirement plans, and employer contributions to health benefit plans) have absorbed workers’ compensation increases over the three decades from 1980 through 2009.

The Torch That Lighted Up the Industrial Scene
Jonathan D. Karmel

in Dying to Work: Death and Injury in the American Workplace
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Chapter Two recounts the story of the Triangle Shirtwaist Fire as the seminal event that ushered in the changes and reforms to workplace safety that were realized in the Progressive Era. Workers compensation, state industrial commissions and the study of occupational diseases were all born from the ashes of the Triangle Fire.
Migrant farmworkers’ exclusion from many labor protections and forms of social assistance forces them to rely on informal and illicit subsistence strategies. One such strategy is “identity loan,” in which a migrant with legal status loans an undocumented migrant the work authorization documents that the latter needs to work. Unlike “identity theft,” then, “identity loan” is the voluntary and mutually beneficial exchange of work authorization documents. This chapter explores why document exchange flourishes in migrant communities, even as labor supervisors take advantage of such loans to reduce their labor costs. Labor supervisors often threaten to falsely position identity “loans” as “thefts,” denying “identity recipients” their right to workers’ compensation insurance when they are injured. Thus the recent trend towards governing immigration through crime—that is, federal and local officials’ reliance on criminal prosecution to deter undocumented migration—hands labor supervisors yet one more tool to create a docile labor force.

The Growth of the Law
Lawrence M. Friedman

This chapter discusses changes in American law in the twentieth century, covering welfare, workers’ compensation, tort law, civil rights, First Nations, Asian Americans, Hispanics, freedom of speech, and religion. One of the most striking developments in the twentieth century was the so-called liability explosion: the vast increase in liability in tort, mostly for personal injuries. The nineteenth century—particularly the early part—had built up the law of torts, almost from nothing; courts created a huge, complicated structure, a system with many rooms, chambers, corridors, but with an overall ethos of limited liability, and something of a tilt toward enterprise. The structure was wobbling a bit, by the end of the
nineteenth century, and the twentieth century worked fairly diligently to tear the whole thing down. One of the first doctrines to go was the fellow-servant rule.

Embarking: The Pittsburgh Survey, Workers’ Compensation, and the First Blush of Fame
Amy Aronson

in Crystal Eastman: A Revolutionary Life
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In 1907, Crystal Eastman began a temporary job investigating industrial accidents with the Pittsburgh Survey, a comprehensive study of urban industrial life organized by Paul Kellogg and Edward Devine, financed by the newly formed Russell Sage Foundation. The project involved established leaders, such as Florence Kelley and John R. Commons, as well as young visual artists, including Lewis Hine and Joseph Stella, and brought a new generation of educated women into professional work in social welfare. Eastman’s study, later published as Work Accidents and the Law (1910), resulted in her appointment by Governor Charles Evans Hughes to chair New York’s new commission on employer liability in 1909. There, she proposed to overhaul common law standards, shifting to a no-fault distribution of risk and loss shared by workers, businesses, and consumers. The resulting legislation failed a constitutional challenge in 1911 but laid the groundwork for successful workers’ compensation laws in New York State and elsewhere.

Mapping the territory: a brief historical overview
Michael O’Brien

in Poverty, policy and the state: The changing face of social security
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Item type: chapter

This chapter provides a brief historical overview of the development and changes in social security in New Zealand. It begins by identifying the social-security dimensions in the early period of colonial settlement and proceeds briefly through the initial legislation of the late nineteenth century, such as the Workers Compensation Act and the 1898 Old Age Pensions Act, before proceeding to trace the key elements of
provision throughout the twentieth, highlighting both the legislative and political elements. The chapter touches on the ways in which New Zealand's developments sometimes reflect and sometimes contrast with international changes. It concludes with a description of the current structure and framework and the planned changes to social security.

“Child Neglect:”
Sarah Bronwen Horton

in They Leave Their Kidneys in the Fields: Illness, Injury, and Illegality Among U.S. Farmworkers

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Item type: chapter

Besides “identity loan,” another important illicit subsistence strategy crucial to farmworkers’ survival is relying upon child labor. While many sources have documented the perils of children working in agriculture, few have examined the fact that children must assume others’ identities in order to be hired. Because child labor laws make it illegal for teens to work more than 60 hours a week, no employer will hire a teen “on the books.” Teens, then, routinely disguise themselves as adults in order to work the summer harvest to supplement their parents’ limited incomes. Yet teens’ working loaned identities propels them into a “space of nonexistence” when they are injured, preventing them from receiving the care they need. Indeed, teens’ work in the fields in fact incriminates both their employers and their parents, leading to their or their parents’ denounce-ability, untreated illness, and sometimes death.

The Clitheroe By-election
in The Lancashire Giant: David Shackleton, Labour Leader and Civil Servant

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liverpool/9780853239444.003.0004
Item type: chapter

This chapter examines the preparation of David Shackleton for the Clitheroe by-election to replace Ughtred Kay-Shuttleworth who was elevated to the House of Lords. It suggests that the selection of Shackleton was motivated by the Independent Labour Party (ILP) in Parliament and discusses his election address where he expressed his intention to address Taff Vale and anti-picketing judgments and work on workers' compensation, old-age pensions, and eight-hour legislation.
This chapter also describes the preparation made for the election by the Liberal and Socialist parties.

**Damage Awards**

Dov Fox

in Birth Rights and Wrongs: How Medicine and Technology are Remaking Reproduction and the Law

Two questions should guide award determinations for procreation deprived, imposed, and confounded: First, how serious is a plaintiff’s reproductive loss? The answer goes to the nature and duration of that loss’s practical consequences for the plaintiff’s life. The second question asks how likely any future loss is to come about, and the extent to which its cause can be traced to a defendant’s misconduct, as opposed to some other factor for which the defendant isn’t to blame. The severity of reproductive injuries calls for objective inquiry into how a reasonable person in the plaintiff’s shoes would be affected. Permanent injuries tend to be more severe than temporary ones because they can be expected to cause greater disruption to major life activities like education, work, marriage, friendships, and emotional well-being. The question isn’t what plaintiffs would have done if they’d known that negligence would dash their efforts—it’s how much those injuries can be expected to impair their lives, from the perspective of their own ideals and circumstances. The causation element of this damages inquiry asks: What are the odds that plaintiffs would have suffered the complained-of reproductive outcome if it hadn’t been for the professional misconduct? Preexisting infertility, contraceptive user error, and genetic uncertainty can deprive, impose, or confound procreation just the same in the absence of any wrongdoing. Probabilistic recovery starts with the award total corresponding to the absolute loss in question, and reduces it by the extent to which the loss was caused by outside forces.

**Twenty-Nine Helmets**

Kevin Boyle

in To Promote the General Welfare: The Case for Big Government
This chapter discusses the history of industrialization policy in twentieth-century America. The transformation of public policy came in three stages, each building on the previous. The first stage ran from the turn of the century to about 1920, when progressives attempted to reform child labor laws, set limits on women's working hours, and establish workers' compensation programs. The second stage began with the election of Franklin Roosevelt in March 1933. Roosevelt's New Deal pulled long-standing progressive proposals off the shelf, mixed in new ideas, and gave the combination a catchy title that made it sound much more coherent than it actually was. The third great burst of reform was sparked by the civil rights revolution then surging across the South, which thrust into public life fundamental questions of justice and equality.

Missing Protections
Dov Fox

in Birth Rights and Wrongs: How Medicine and Technology are Remaking Reproduction and the Law

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No governmental agency or authority seriously polices reproductive negligence. The best practices set forth by industry organizations are completely voluntary and routinely ignored, and there isn't even any reliable or comprehensive system to track the wrongful thwarting of family planning. The breakneck pace of reproductive advances isn't the only reason that test tubes and tube ties have eluded meaningful oversight: Four factors explain this regulatory vacuum. First, many are wary of ceding the state control on any matter involving procreation—red tape would raise prices on valuable services, making it harder for poor people to pay for them. Second is the political economy of reproductive technology in the United States: The free-market origins of infertility treatment let it develop unimpeded by government oversight, in the private sphere of for-profit clinics that function less as medical practices than trade businesses. A third factor that cuts against regulation is its murky electoral implications, even in reliably red or blue districts—fear of fracturing their political bases leads prudent officials to avoid wading into the morass. Fourth and finally is the limited public outcry to address reproductive negligence. Besides, steep costs and selective treatment coverage leaves many patients unable even to fund a legal challenge if things go wrong. State legislatures place damage caps and other barriers
in the way of bringing suit. And trials can be a spectacle for plaintiffs wary of exposing personal matters to the public glare of open court.