

IRAC: Jolly Trolley
Danielle A. Adams
Feb. 11, 2015

- Issue:** Is Benjamin's employer, the Jolly Trolley Co., liable for Benjamin's injuries? Is the Jolly Trolley Co. liable for Benjamin's 4 months unpaid wages?
- Facts:** Benjamin was a driver and tour guide with Jolly Trolley Co. His salary was \$1200 a month. Benjamin took his friends on a tour during off-duty hours last July. During the tour, Benjamin lost control of the trolley, and it smashed into a building. The trolley was destroyed, and Benjamin was injured. Jolly Trolley fired him and then sued Benjamin for destruction of the trolley. Benjamin believes the trolley malfunctioned and wants to sue Jolly Trolley for his injuries as well as for his last four months' wages, which were not paid.
- Rule of Law:** 1.) Code, § 114-102: In order for an injury to be compensable under the terms of the Workmen's Compensation Act, it must have been occasioned "by accident arising out of and in the course of the employment."
2.) OCGA § 34-9-17 is as follows: "Workmen's compensation shall not be allowed for an injury or death due to the employee's willful misconduct..."
- Analysis:** In the instant case, Benjamin was in commission of a traffic violation when he destroyed property at the time of the accident and his injury a direct result therein. Benjamin was not performing duties pursuant to his employment at the time of the accident. In New Amsterdam Cas. Co. v. Summrell, an injury arises "in the course of employment," within the meaning of the Workmen's Compensation Act, when it occurs within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An accident arises "out of" the employment, when it arises because of it, as when the employment is a contributing proximate cause. This and the condition stated above must concur before the act can apply. New Amsterdam Cas. Co. v. Summrell, 30 Ga. App. 682, 118 S.E. 786 (1923). In Aetna Cas. & Sur. Co. v. Horne, the court upheld a denial of benefits from the claimant because "in this kind of a case the burden is on the claimant to prove that the injury for which compensation is sought arose out of and in the course of the employment before compensation can be awarded legally to the claimant. Aetna Cas. & Sur. Co. v. Horne, 71 Ga. App. 569, 31 S.E.2d 421, 422 (1944). Benjamin willfully violated

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Table of Contents Sample Irac Paper

1. Understanding the eBook Sample Irac Paper
 - The Rise of Digital Reading Sample Irac Paper
 - Advantages of eBooks Over Traditional Books
2. Identifying Sample Irac Paper
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Sample Irac Paper
 - User-Friendly Interface
4. Exploring eBook Recommendations from Sample Irac Paper
 - Personalized Recommendations
 - Sample Irac Paper User Reviews and Ratings
 - Sample Irac Paper and Bestseller Lists
5. Accessing Sample Irac Paper Free and Paid eBooks
 - Sample Irac Paper Public Domain eBooks
 - Sample Irac Paper eBook Subscription Services
 - Sample Irac Paper Budget-Friendly Options
6. Navigating Sample Irac Paper eBook Formats
 - ePub, PDF, MOBI, and More
 - Sample Irac Paper Compatibility with Devices
 - Sample Irac Paper Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Sample Irac Paper
 - Highlighting and Note-Taking Sample Irac Paper
 - Interactive Elements Sample Irac Paper
8. Staying Engaged with Sample Irac Paper

- Joining Online Reading Communities
- Participating in Virtual Book Clubs
- Following Authors and Publishers Sample Irac Paper
- 9. Balancing eBooks and Physical Books Sample Irac Paper
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Sample Irac Paper
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Sample Irac Paper
 - Setting Reading Goals Sample Irac Paper
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Sample Irac Paper
 - Fact-Checking eBook Content of Sample Irac Paper
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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