

January 1986

Survey of Developments in West Virginia Law: 1985

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Legislation Commons](#), and the [Litigation Commons](#)

Recommended Citation

Survey of Developments in West Virginia Law: 1985, 88 W. Va. L. Rev. (1986).

Available at: <https://researchrepository.wvu.edu/wvlr/vol88/iss2/8>

This Survey of Developments in West Virginia Law: 1985 is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

SURVEY OF DEVELOPMENTS IN WEST VIRGINIA LAW: 1985

Page

Administrative Law

- | | | |
|------|--|-----|
| I. | West Virginia Human Rights Commission
<i>Allen v. State, Human Rights Commission</i> , 324 S.E.2d 99 (W. Va. 1984). | 293 |
| II. | Jurisdiction and Venue
<i>Board of Education v. MacQueen</i> , 325 S.E.2d 355 (W. Va. 1984);
<i>UMWA v. Kingdon</i> , 325 S.E.2d 120 (W. Va. 1984). | 297 |
| III. | Discriminatory Discharge
<i>State ex rel. West Virginia Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc.</i> , 329 S.E.2d 77 (W. Va. 1985). | 302 |
| IV. | Contested Cases
<i>Conner v. Civil Service Commission</i> , 331 S.E.2d 858 (W. Va. 1985);
<i>Princeton Community Hospital v. State Health Planning</i> , 328 S.E.2d 164 (W. Va. 1985). | 307 |
| V. | Assignment of Obligations to the State as Reimbursement for Benefits Received
<i>State ex rel. Department of Human Services v. Huffman</i> , 332 S.E.2d 866 (W. Va. 1985). | 309 |
| VI. | Exhaustion of Administrative Remedies
<i>Hechler v. Casey</i> , 333 S.E.2d 799 (W. Va. 1985). | 310 |

Civil Procedure

- | | | |
|------|---|-----|
| I. | Pretrial Procedure
<i>Bell v. Inland Mutual Insurance Co.</i> , 332 S.E.2d 127 (W. Va. 1985). | 313 |
| II. | Attorney Fees
<i>Daily Gazette Co. v. Canady</i> , 332 S.E.2d 262 (W. Va. 1985). | 318 |
| III. | <i>Pro Se</i> Representation
<i>Blair v. Maynard</i> , 324 S.E.2d 391 (W. Va. 1984). | 320 |
| IV. | Juries
<i>Barker v. Benefit Trust Life Insurance Co.</i> , 324 S.E.2d 148 (W. Va. 1984). | 322 |
| V. | Limitation of Actions
<i>Preiser v. MacQueen</i> , No. 16620, slip op. (W. Va. June 12, 1985). | 324 |
| VI. | Discovery
<i>Gebr. Eickhoff Maschinenfabrik v. Starcher</i> , 328 S.E.2d 492 (W. Va. 1985). | 327 |

Commercial Law

- | | | |
|----|--|-----|
| I. | Statute of Limitations: Accounts
<i>Weirton Ice & Coal Co. v. Weirton Shopping Plaza, Inc.</i> ,
334 S.E.2d 611 (W. Va. 1985).
<i>Greer Limestone Co. v. Nestor</i> , 332 S.E.2d 589 (W. Va. 1985). | 330 |
|----|--|-----|

	<i>Page</i>
II. Due Process	
<i>Vanscoy v. Neal</i> , 322 S.E.2d 37 (W. Va. 1984).	
<i>Hartsock-Flesher Candy Co. v. Wheeling Wholesale Grocery Co.</i> , 328 S.E.2d 144 (W. Va. 1984).	333
Constitutional Law	
I. Assistance of Counsel	
<i>Farruggia v. Hedrick</i> , 322 S.E.2d 42 (W. Va. 1984).	339
II. Freedom of Speech	
<i>West Virginia Citizens Action Group v. Daley</i> , 324 S.E.2d 713 (W. Va. 1984).	341
III. Trial by Jury	
<i>Scott v. McGhee</i> , 324 S.E.2d 710 (W. Va. 1984).	343
IV. Equal Protection	
<i>State ex rel. West Virginia Magistrates Association v. Gainer</i> , 332 S.E. 2d 814 (W. Va. 1985).	344
Criminal Law	
I. Supreme Court's Authority To Alter Common Law	
<i>State ex rel. Atkinson v. Wilson</i> , 332 S.E.2d 807 (W. Va. 1985).	348
II. Double Jeopardy	
<i>State ex rel. Lehman v. Strickler</i> , 329 S.E.2d 882 (W. Va. 1985). <i>State v. Trail</i> , 328 S.E.2d 671 (W. Va. 1985).	349
III. Lesser Included Offenses	
<i>State v. Jones</i> , 329 S.E.2d 65 (W. Va. 1985).	352
IV. Sexual Assault	
<i>State v. Hartshorn</i> , 332 S.E.2d 574 (W. Va. 1985).	354
Criminal Procedure	
I. Rights of Persons in Custody	
<i>Craigo v. Marshall</i> , 331 S.E.2d 510 (W. Va. 1985). <i>Cronauer v. State</i> , 322 S.E.2d 862 (W. Va. 1984).	357
II. Bail Revocation	
<i>Marshall v. Casey</i> , 324 S.E.2d 346 (W. Va. 1984).	360
III. Juveniles	
<i>Burdette v. Lobban</i> , 323 S.E.2d 601 (W. Va. 1984). <i>Matter of Mark E.P.</i> , 331 S.E.2d 813 (W. Va. 1985). <i>State v. Ellsworth</i> , 331 S.E.2d 503 (W. Va. 1985). <i>State v. Highland</i> , 327 S.E.2d 703 (W. Va. 1984). <i>State v. Howerton</i> , 329 S.E.2d 874 (W. Va. 1985).	361
IV. Venue	
<i>State v. Ginanni</i> , 328 S.E.2d 187 (W. Va. 1984).	366
V. Construction of the Rules	
<i>State v. Lambert</i> , 331 S.E.2d 873 (W. Va. 1985).	368

	<i>Page</i>
VI. Waiver of Counsel	
<i>State v. Armstrong</i> , 332 S.E.2d 837 (W. Va. 1985).	368
VII. Arrest, Search, and Seizure	
<i>State v. Cook</i> , 332 S.E.2d 147 (W. Va. 1985).	
<i>State v. Schofield</i> , 331 S.E.2d 829 (W. Va. 1985).	
<i>State v. Perry</i> , 324 S.E.2d 354 (W. Va. 1984).	
<i>State v. Joseph T.</i> , 336 S.E.2d 728 (W. Va. 1985).	370
VIII. Public Participation in Trials	
<i>State v. Franklin</i> , 327 S.E.2d 449 (W. Va. 1985).	377
IX. Right to Counsel	
<i>State v. Samples</i> , 328 S.E.2d 191 (W. Va. 1985).	378
X. Sentence Enhancement	
<i>Turner v. Holland</i> , 332 S.E.2d 164 (W. Va. 1985).	379
XI. Jury Instructions	
<i>State v. Cook</i> , 332 S.E.2d 147 (W. Va. 1985).	
<i>State v. Schofield</i> , 331 S.E.2d 829 (W. Va. 1985).	380
Domestic Relations	
I. Property Distribution	
<i>Gant v. Gant</i> , 329 S.E.2d 106 (W. Va. 1985).	
<i>Conner v. Conner</i> , 334 S.E.2d 650 (W. Va. 1985).	382
II. Child Custody	
<i>McAtee v. McAtee</i> , 323 S.E.2d 611 (W. Va. 1984).	
<i>Stacy v. Stacy</i> , 332 S.E.2d 260 (W. Va. 1985).	387
III. Termination of Parental Rights	
<i>In re Darla B.</i> , 331 S.E.2d 868 (W. Va. 1985).	
<i>West Virginia Department of Human Services v. La Rea Ann C.L.</i> ,	
332 S.E.2d 632 (W. Va. 1985).	391
Elected Officials	
I. Election Mandamus	
A. Judicial Eligibility	
<i>State ex rel. Haught v. Donnahoe</i> , 321 S.E.2d 677 (W. Va. 1984).	396
B. Gubernatorial Succession	
<i>State ex rel. McGraw v. Willis</i> , 323 S.E.2d 600 (W. Va. 1984).	398
C. Financial Disclosure	
<i>State ex rel. Cohen v. Manchin</i> , 336 S.E.2d 171 (W. Va. 1984).	399
II. Judicial Immunity	
<i>Pritchard v. Crouser</i> , 332 S.E.2d 611 (W. Va. 1985).	405
III. The Proper Role of the Circuit Court Clerk	
<i>Rutledge v. Workman</i> , 332 S.E.2d 831 (W. Va. 1985).	408

Employment**I. Workers' Compensation****A. Medical Examinations**

Brogan v. Workers' Compensation Commissioner, 327 S.E.2d 694 (W. Va. 1984). 410

B. Dismissal of Claims

Adkins v. Workers' Compensation Commissioner, 330 S.E.2d 329 (W. Va. 1985). 413

C. Dependent Benefits

Parker v. Workers' Compensation Commissioner, 324 S.E.2d 142 (W. Va. 1984). 415

D. Coverage of Employees Injured Out of State

Fausnet v. State Workers' Compensation Commissioner, 327 S.E.2d 470 (W. Va. 1985). 416

E. Third Party Negligence

National Fruit Product Co. v. Baltimore and Ohio Railroad Co., 329 S.E.2d 125 (W. Va. 1985). 417

F. Collective Bargaining Agreements

Yoho v. Triangle PWC, Inc., 336 S.E.2d 204 (W. Va. 1985). 418

II. Unemployment Compensation

Butler v. Rutledge, 329 S.E.2d 118 (W. Va. 1985).

Mizell v. Rutledge, 328 S.E.2d 514 (W. Va. 1985).

Federoff v. Rutledge, 332 S.E.2d 855 (W. Va. 1985). 421

III. Public Employment

American Federation of State, County and Municipal Employees v. Civil Service Commission, 324 S.E.2d 363 (W. Va. 1984).

Mullins v. Kiser, 331 S.E.2d 494 (W. Va. 1985).

West Virginia University Association of Concerned Employees v. Saunders, No. 161-85, slip op. (W. Va. July 1, 1985). 425

Evidence**I. Hearsay Testimony****A. Transfer Hearings Under West Virginia Code Section 25-4-6**

State v. Stuckey, 324 S.E.2d 379 (W. Va. 1984). 430

B. The Dead Man's Statute

Miami Coal Co. v. Hudson, 332 S.E.2d 114 (W. Va. 1985). 432

Keller v. Hartman, 333 S.E.2d 89 (W. Va. 1985). 432

II. Videotaped Depositions

State ex rel. Bennett v. Keadle, 334 S.E.2d 643 (W. Va. 1985). 436

III. Criminal Prosecution

State v. Clements, 334 S.E.2d 600 (W. Va. 1985). 439

Municipal Law**I. Police Conduct**

McAtee v. Mentzer, 321 S.E.2d 699 (W. Va. 1984). 443 4

	<i>Page</i>
II. Hazardous Waste	
<i>Sharon Steel Corp. v. City of Fairmont</i> , 334 S.E.2d 616 (W. Va. 1985).	444
III. Overtime Pay Ordinance	
<i>Local 313, International Association of Firefighters v. The City of Morgantown</i> , 323 S.E.2d 604 (W. Va. 1984).	446
IV. Reissuing School Bonds	
<i>Board of Education v. Slack</i> , 327 S.E.2d 416 (W. Va. 1985).	448
V. Civil Service Employment	
<i>Martin v. Pugh</i> , 334 S.E.2d 633 (W. Va. 1985).	451
Property	
I. The Statute of Frauds and Real Estate Brokerage Contracts	
<i>Everett v. Brown</i> , 321 S.E.2d 685 (W. Va. 1984).	457
II. The Right of a Private Landlord to Choose His Tenants: The Permissible Criteria	
<i>Collins v. AAA Homebuilders, Inc.</i> , 333 S.E.2d 792 (W. Va. 1985).	459
III. Property Valuation Assessments	
<i>Kline v. McCloud</i> , 326 S.E.2d 715 (W. Va. 1984).	461
IV. Coal, Oil, and Gas	
A. Abandonment	
<i>Berry Energy Consultants v. Bennett</i> , 331 S.E.2d 823 (W. Va. 1985).	463
B. Forfeiture	
<i>Warner v. Haught, Inc.</i> , 329 S.E.2d 88 (W. Va. 1985).	464
V. Joint Tenancy	
<i>Harris v. Crowder</i> , 322 S.E.2d 854 (W. Va. 1984).	467
Public Utilities	
<i>West Virginia Citizen-Action Group v. Public Service Commission</i> , 330 S.E.2d 849 (W. Va. 1985).	
<i>Pennzoil Co. v. Public Service Commission</i> , 327 S.E.2d 444 (W. Va. 1985).	470
Torts	
I. Wrongful Birth, Wrongful Life, and Wrongful Pregnancy Causes of Action	
<i>James G. v. Caserta</i> , 332 S.E.2d 872 (W. Va. 1985).	476
II. <i>Mandolidas</i> -Type Actions	
<i>Mooney v. Eastern Associated Coal Corp.</i> , 326 S.E.2d 427 (W. Va. 1984).	478
III. Insurance	
<i>Davis v. Robertson</i> , 332 S.E.2d 819 (W. Va. 1985).	
<i>Shamblin v. Nationwide Mutual Insurance Co.</i> , 332 S.E.2d 639 (W. Va. 1985).	481
IV. Defamation	
<i>Mutafis v. Erie Insurance Exchange</i> , 328 S.E.2d 675 (W. Va. 1985).	486

	<i>Page</i>
V. Causes of Action as They Relate to Corpses <i>Whitehair v. Highland Memory Gardens, Inc.</i> , 327 S.E.2d 438 (W. Va. 1985).	488
Tax Legislation	
I. Business Taxes	491
II. Inheritance Taxes	498
Legislation	
I. Introduction	502
II. Chapter 5B: The Economic Development Act of 1985	502
III. Chapter 5C: Basic Assistance for Industry and Trade	506
IV. Chapter 5D: Public Energy Authority Act	507
V. Chapter 12: Public Moneys and Securities	507
VI. Chapter 19: Agriculture	507
VII. Conclusion	508