

# Damages--Inadequacy of Verdict

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1966), must include all crimes punishable by death or life imprisonment.

This question has previously arisen in the area of bail. Capital offenses are not bailable, but it has been held that the abolition of capital punishment makes all persons charged with a crime bailable. 8 AM. JUR. 2d *Bail and Recognizance* §§ 30-31 (1963). What this seems to be saying is that by abolishing capital punishment, the difference between capital offenses and other crimes is also abolished. By statutory interpretation the West Virginia court was able to reach an opposite result in the principal case.

### Damages—Inadequacy of Verdict

*P* brought action to recover for property damage to her automobile and for personal injuries sustained in a rear end collision negligently caused by *D* while *P* was waiting to turn at an intersection. *P*'s husband, *H*, sought to recover for medical expenses and loss of consortium occasioned by *P*'s injuries. The jury returned a verdict in favor of *P* but against *H* in disregard of instruction, and judgment was entered thereon. A motion by *P* and *H* to set aside the verdict and judgment on the grounds of inadequacy and as showing, passion, prejudice, bias, or misconception of the law was overruled. *Held*, affirmed as to *P*, reversed and remanded as to *H*. Evidence of liability must be uncontroverted in order to set aside a verdict. Furthermore, the jury having found in favor of *P*, *H* became entitled as a matter of law to recover on his derivative claim. *Coakley v. Marple*, 156 S.E.2d 11 (W. Va. 1967).

One of the issues which arose in this case concerned circumstances under which a jury verdict for plaintiff may be set aside on grounds of inadequacy. The court looked to *Shipley v. Virginian Railway Co.*, 87 W. Va. 139, 104 S.E. 297 (1920), which established the rule that the court may not set aside a verdict because of inadequacy if the evidence is such that had the verdict been for *D* the court could not set it aside. Since *P*'s right to recovery was a jury question in the principal case, the court did not have the right to decide on its adequacy.

Another issue arising was the jury's apparent disregard for an instruction. The trial court instructed that if they found for *P*, they must also find for *H* and consider his damages. The court found that the denial of recovery constituted a reversible error

citing its recent decision in *Richmond v. Campbell*, 148 W. Va. 595, 136 S.E.2d 877 (1964).

#### Disbarment—Evasion of Federal Income Tax

Defendant was previously convicted of a felony for willful violation of the Internal Revenue Code. He was then brought before the court in a disciplinary proceeding based on the By-laws of the West Virginia State Bar which require that an attorney's license to practice law "shall" be revoked should he be convicted of a crime involving moral turpitude. *Held*, willful evasion of payment of income tax is a crime involving moral turpitude and the by-laws make license revocation mandatory precluding the court from considering extenuating circumstances. *In Re Mann*, 154 S.E.2d 860 (W. Va. 1967).

Refusing to consider extenuating circumstances would appear to place West Virginia in a minority position. *Annot.*, 59 A.L.R.2d 1398 (1958). The court states the weight of authority is that a conviction involving the element of fraud is one involving moral turpitude. However, such conviction does not necessarily dictate disbarment because the majority will give the defendant an opportunity to show himself free of moral turpitude by considering extenuating circumstances. This is true even in situations where the statutory language is similar to West Virginia's. *Baker v. Miller*, 236 Ind. 20, 138 N.E.2d 145 (1956); *Re Hallinan*, 43 Cal. 2d 243, 272 P.2d 768 (1954).

#### Procedure—Unincorporated Associations

*D*, a county circuit court, issued a preliminary injunction against *P-relator*, an unincorporated labor union, enjoining *P* from engaging in unlawful picketing. *P* then sought a writ of prohibition to prohibit *D* from perpetuating the preliminary injunction on the grounds that *P*, an unincorporated association, is not subject to suit in its name or as a separate entity. *Held*, an unincorporated association may not sue or be sued in its name or as a separate entity in absence of a statute authorizing such suits. But, an unincorporated association may still protect its rights against third persons by maintaining an action in the name of the State, which acts in a representative capacity. Therefore, *P-relator* has properly maintained this action in the name of the State. Both *P* and the State have a bona fide interest in this proceeding, *P's* interest