June 1962

Masthead Volume 64, Issue 4

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Permanent Injury: General or Special Damage

With the recent adoption of the West Virginia Rules of Civil Procedure, the function of the pleadings in an action is to give notice. Formulation of the issues for trial is now left largely to deposition and discovery practice under Rules 26 through 37, and pre-trial conferences under Rule 16. An exception to this concept of notice-pleading is Rule 9, which requires that some items be pleaded specially. The scope of this note is to examine one subdivision of the rule: "special damage." In particular, the examination of this subdivision will be directed to the inquiry of whether a permanent injury to the person is a special damage.

Rule 9(g) of the West Virginia Rules of Civil Procedure provides that "when items of special damage are claimed, they shall be specifically stated." Obviously, this subdivision of the rule recognizes a well-established distinction between general and special damage. Items of general damage need not be pleaded with particularity, but items of special damage must be specifically