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Criminal Law — Circumstantial Evidence Of Corpus Delicti Held Sufficient For Murder Conviction. *People v. Scott, 1 Cal. Reptr. 600 (1959).* The California District Court of Appeal, in affirming a first degree murder conviction, *held* that, despite the lack of a corpse or any part thereof, the circumstantial evidence introduced in the trial was sufficient to supply proof of guilt so convincing as to preclude every reasonable hypothesis of innocence. This is apparently the first United States decision where a murder conviction has been upheld without a body, or any part thereof, having been found. The defendant, by his behavior following the disappearance of his wife, indicated that her absence had not been voluntary and that he had knowledge of her death after her disappearance. The Court noted that murder convictions, under similar circumstances, have been upheld in the English cases of *The King v. Horry,* [1952] N.Z.L.R. 111, 68 L.Q. Rev. 391 (1952), and *The King v. Onufrejczk,* 1 Q.B. 388, 33 Can. B. Rev. 603 (1955).

In order to sustain a murder conviction, there must be proof of the corpus delicti of the crime, which includes proof that a human life has been taken. This is usually satisfied by direct evidence of the fact of death, but there is no bar in theory to circumstantial proof. Such proof is in fact sometimes the only kind likely to be available. See *St. Clair v. United States,* 154 U. S. 134 (1894) (Throwing victim overboard on the high seas), and 159 A.L.R. 524 (Infanticide). See also 26 AM. JUR. 475, Sec. 461, for general discussion of necessity of proof of corpus delicti. The circumstantial evidence of death must, of course, be clear and satisfactory.

Maryland courts have never been confronted with the problem. In *Watson v. State,* 208 Md. 210, 177 A. 2d 549 (1955), and *Jones v. State,* 188 Md. 263, 52 A. 2d 484 (1946), the Court of Appeals indicated that proof of corpus delicti is sufficient if it is established that the person for whose death the prosecution was instituted is dead, and that the death occurred under circumstances which would indicate that it was caused criminally. However, both of these cases involved the identity of the corpse rather than the lack of one.

Evidence — Admissibility, In A Rape Trial, Of Testimony Of Defendant's Prior Rape Victims. *State v. Finley, 85 Ariz. 327, 338 P. 2d 790 (1959).* Based on admission of testimony of a 17-year-old girl that the defendant had

raped her five days before raping the prosecutrix, the defendant was convicted of raping the 44-year-old prosecutrix, where in both instances the defendant had bluntly declared his intentions, proceeded to accomplish same with brute force in parked automobiles at night and had exhibited a personality transformation of the "Dr. Jekyll-Mr. Hyde" variety. The Supreme Court of Arizona in a 3-2 decision affirmed the conviction, finding the facts sufficient to establish a scheme or design and in addition, reinforced their holding by indicating that rape is the type of sexual offense where, for the purpose of showing "criminal desires" and "lustful propensities", evidence of prior rapes may be admissible. The dissent, relying heavily on *Lovely v. United States,* 169 F. 2d 386 (4th Cir., 1948), refused to include rape among the sex offenses where greater liberality is exercised, and required that for the "common scheme" exception to apply, evidence of the prior offense must establish a preconceived plan which resulted in the commission of *that crime,* reasoning that a prior rape merely having certain elements in common with the rape for which the accused was on trial has no tendency to establish a plan or design such as would render the evidence admissible.

Although Maryland has no decision on this precise point, dictum in *Wentz v. State,* 159 Md. 161, 164, 150 A. 278 (1930), indicates that in "sexual offenses", especially adultery, bigamy, criminal conversation, sodomy, indecent liberties, and incest there is a well recognized exception to the general rule, but limits this exception to prior offenses *against prosecutrix.* In the *Wentz* case since the previous incestuous act was against the prosecutrix's sister, such testimony was excluded. In *Berger v. State,* 179 Md. 410, 20 A. 2d 146 (1941) evidence of a prior act of sodomy, and in *Blake v. State,* 210 Md. 459, 124 A. 2d 273 (1956) testimony of previous unnatural sex acts were excluded because they were committed against persons other than the prosecutrix. See also, 2 WIGMORE ON EVIDENCE (3rd ed. 1940), § 357; 167 A.L.R. 594; MCCORMICK, EVIDENCE (1954), § 157.

Maryland Industrial Finance Law — What Constitutes Error Of Computation. *Fisher v. Bethesda Discount Corporation, 221 Md. 271, 157 A. 2d 265 (1960).* Plaintiff's loan payment became due on Friday, but was not paid until the following Wednesday. Defendant loan company, unaware of the Time Statute, 7 MD. CODE (1957) Art. 94, § 2, which excludes Sunday in computing a period of seven days or

less, collected a $2.68 delinquency charge from plaintiff. Collection of a delinquency charge is authorized by the Maryland Industrial Finance Law, 1 MD. CODE (1957) Art. 11, § 196 (A) (3), for any default continuing for five or more days. The defendant contended that the collection of the delinquency charge, while admittedly *erroneous,* was done as "the result of an accidental or *bona fide* error of computation." Unless the defendant's error met this test, the defendant would lose his right to collect the entire loan under Sec. 196(c) of the Finance Law. In reversing the lower court's judgment for the defendant, the Court of Appeals *held* that the collection of the overcharge was not an "error of computation" and consequently the entire loan of $800 was void and uncollectible. The Court pointed out that the Finance Law plainly excuses errors as to the honest miscalculation of interest, as the result of a computation, but does not excuse a mistake of law as to what, legally, may be collected. Although the Court felt that the situation at hand did not, technically, involve usury, it nevertheless applied usury principles in arriving at its final decision.

The authorities on the subject indicate that where there is an exaction of more than legal interest resulting from an honest mistake of fact, there is no usury; but that a mistake as to the law will not ordinarily relieve a transaction from being usurious, 55 AM. JUR. 349, 350, Usury, Sec. 35; 6 WILLISTON, CONTRACTS (Rev. ed. 1938) § 1698. It appears harsh to hold, on the one hand that a mistake of fact, such as an error in the calculation of interest or a clerical error, does not constitute usury, and on the other, that a similar error, as in this instance a mistake of law, though admittedly an "honest error" is in effect usurious. For a comprehensive historical sketch of usury and the problems involved, see *Plitt v. Kaufman,* 188 Md. 606, 53 A. 2d 673 (1946), and *Finance Company, Inc. v. Catterton,* 161 Md. 650, 653, 158 A. 17 (1931).

Negligence — Assumption Of Risk By Golf Course Employee. *Meding v. Robinson, 157 A. 2d 254 (Del. 1959).* Plaintiff, a greenskeeper who was standing on the edge of the green approximately seven feet from the pin, was injured when defendant's approach shot from ninety yards out hit him. The Court, finding that defendant did not give the normal admonitory warning *held* that a greenskeeper did not assume the risk of the golfer's act. A golfer has the duty of giving timely and adequate warning to those in the general intended line of play.

Because of the known dangers incident to the game of golf, players, spectators and employees assume the risk of injury due to accident or inadvertence, unaccompanied by negligence, *Benjamin v. Nernberg,* 102 Pa. Super. 471, 157 A. 10 (1931). However, before driving, a player must warn persons who are in the general line of play and who are unaware of his intention to play. The word "fore" is recognized by golfers the world over as the appropriate and adequate warning cry, *Alexander v. Wren,* 158 Va. 486, 164 S.E. 715 (1932). But such a warning need not be made if the subsequent injured party was in a safe place or knew of the intended play, *Boynton v. Ryan,* 257 F. 2d 70 (3rd Cir., 1958), *Walsh v. Machlin,* 128 Conn. 412, 23 A. 2d 156, 138 A.L.R. 538 (1941).

The Maryland Court of Appeals apparently has not been presented with any similar type situations. For a thorough review of decisions from other jurisdictions, see 138 A.L.R. 541, 7 A.L.R. 2d 704.

Practice — Length Of Time During Which Jury Is Kept Together Is Within The Discretion Of The Trial Judge. *Commonwealth v. Moore, 157 A. 2d 65 (Pa. 1959).* Defendant, appealing from a conviction of voluntary manslaughter, bases her appeal on the grounds that the decision of the jury reached under undue strain and duress imposed upon the jurors by the failure of the trial judge to make provisions for them to rest and sleep during an extensive deliberation period. After having received instructions, the jury retired at 7:08 P.M. During the next eleven hours they recessed from deliberating only twice, the first time at 11:15 when they asked for and received further instructions from the judge, and the second at 5:00 A.M. in the morning when the judge called them back into the court room for the purpose of answering any questions which the jurors might have so as to enable them to reach a verdict. The forelady at this time expressed the opinion that the jury was deadlocked, but the judge sent the jurors back into deliberation and urged them to make every effort to reach a unanimous decision. At 6:08 A.M., a little more than an hour later, the jury returned with the verdict. In affirming the conviction the Supreme Court of Pennsylvania *held* the extent of time during which a jury shall be kept together is entirely within the sound discretion of the trial judge, and his action will be reversed only for an abuse of discretion. In light of the facts stated above and due to the fact that the jury at no time made any requests for the suspension of the

deliberations, the Court felt that there was no abuse of judiciary discretion in this case.

Maryland, in addition to many other states, is in accord with the rule laid down by the Pennsylvania Court. In *Brigmon v. Warden,* 213 Md. 628, 131 A. 2d 245 (1957), the Court of Appeals, in denying an application for a writ of habeas corpus stated that the length of time that a jury should be required to deliberate upon a defendant's guilt or innocence lies within the sound discretion of the trial court.

For an interesting annotation on this point, see 8 A.L.R. 1420 et seq.

Real Property — Taking Of Air Easements By Landings And Take-Offs Of Aircraft. *Ackerman v. Port of Seattle, 348 P. 2d 664 (Wash. 1960).* In an action by landowners adjacent to a large commercial airport to recover for diminution in market value of their land due to repeated low flights of aircraft in take-offs and landings, the Supreme Court of Washington *held* that such flights were not within public domain of navigable airspace as set out by Congress in Civil Air Regulations, and thus amounted to a taking of air easements, for which landowners are compensable.

The Court relied on *United States v. Causby,* 328 U. S. 256 (1946), in differentiating between the police power of the government and the right of eminent domain. Both Courts said that state governments cannot simply arbitrarily declare that all airspace over a private land is public domain, and thereby avoid paying damages to property owners for use of such airspace by the state. Only air above minimum navigable airspace altitudes is part of the public domain, and repeated invasions of airspace below this minimum is a "taking" of an air easement, compensable under the Washington State Constitution as the taking of private property for public use under the power of eminent domain.

Maryland has followed this rule in *Mutual Chemical Co. v. Mayor and City Council of Baltimore,* Circuit Court of Baltimore City, Daily Record, Jan. 27, 1939, the only case of this type in this state to date. In this case, a prior Maryland statute was held invalid. In 1949, a new statute was enacted (1 Md. Code (1957) Art. 1A, Sec. 13(d)) requiring air rights necessary for a public airport to be acquired by condemnation proceedings under the right of eminent domain. For a further analysis of this area, see *Aviators Right in Airspace,* 8 Md. L. Rev. 300 (1944).