

## Research Memorandum #84: Remarriage

### **Stuart v. Clark, 260 Maj. 3d 111 (20XX-6):**

“*Stuart* is an action to recover for the wrongful death of a telephone utility employee who was electrocuted. The Major Superior Court allowed evidence of the surviving spouse’s remarriage or prospective remarriage. We find that such admissibility was error. We agree with *Wakefield v. Wakefield*, 1 Maj. 4 (20XX-71), which enunciated the rule:

The exclusion of such evidence leaves to the understanding and experience of the jury the possibility of remarriage and avoids *excursions into collateral investigations* which, even if allowed, would leave a jury in no better than a speculative position. If we should enter upon an inquiry as to the relative merits of the new husband as a provider, coupled with his age and employment, unavoidably we should embark upon a realm of *speculation*. Adherence to the rule is consistent with the holding that, upon the death of the first husband, there is an *immediate, final, and absolute vesting* in his widow of a claim on that account. (Id. at 14.)”

*Dissent.* Fargut and Sleaver, JJ.: “Since formulation of the rule, times have changed. We are in an era of looking at costs, mitigating damages, and allowing recovery for compensation. We no longer, in this era of litigiousness, can afford windfall plaintiff recoveries. Evidence of remarriage is relevant to the measure of damages and more probative than prejudicial, and this evidence should be admissible because it is a change in the conditions on which the suit is based. Such information should be available to the jury to mitigate damages.”