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Sam J. Ervin Jr.

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POSTSCRIPT

PUNITIVE DAMAGES IN NORTH CAROLINA

SAM J. ERVIN, JR.†

As the recent award of punitive damages in the Carol Burnett-National Enquirer suit demonstrates, the allowance of punitive damages can have a large financial impact on a defendant and a potentially greater deterrent effect on others. In this Postscript to our Survey of North Carolina law, former Senator Ervin provides a detailed summary of the law on punitive damages in North Carolina. It is hoped that this summary will be a valuable research aid, especially to the practitioners and judges of this State.

Punitive damages are totally unlike nominal or compensatory damages. Nominal damages are awarded to a plaintiff by a jury as a matter of right when he shows that the defendant has committed a legal wrong against him, but there is no evidence that actual damages resulted from it. The award of nominal damages vindicates the plaintiff's right.¹ As the name implies, compensatory damages are awarded to the plaintiff by the jury as a matter of right to make good or replace the loss caused him by the defendant's actionable legal wrong.² As its various names disclose, punitive damages, also known as exemplary damages, vindictive damages, or smart money, are vengeful in nature and are allowable by the jury in a proper case for example's sake.

North Carolina decisions consistently elaborate upon this vengeful nature of punitive damages and their deterrent objectives.

Punitive damages are never awarded as compensation. They are awarded above and beyond actual damages, as a punishment for the defendant's intentional wrong. They are given to the plaintiff in a proper case, not because they are due, but because of the opportunity the case affords the court to inflict punishment for conduct intentionally wrongful.³

† Former U.S. Senator. A.B. 1917, University of North Carolina; LL.B. 1922, Harvard, LL.D.; various universities. I would like to thank Laura Cauble, a third-year law student at the University of North Carolina School of Law, for her assistance in preparing this summary.

1. *Chaffin v. Fries Mfg. & Power Co.*, 135 N.C. 95, 47 S.E. 226 (1904).

2. *Newsome v. Western Union Tel. Co.*, 153 N.C. 153, 69 S.E. 10 (1910); *Hinson v. Smith*, 118 N.C. 503, 24 S.E. 541 (1896). See also *Brandis & Trotter, Some Observations on Pleading Damages in North Carolina*, 31 N.C.L. Rev. 249 (1953).

3. *Overnite Transp. Co. v. International Bhd. of Teamsters*, 257 N.C. 18, 30, 125 S.E.2d 277, 286 (1962). Other North Carolina decisions elaborate upon the vengeful nature of punitive damages and their deterrent objectives in these quotations: "North Carolina has consistently allowed punitive damages solely on the basis of its policy to punish intentional wrongdoing and to deter others from similar behavior." *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 113, 229 S.E.2d 297, 302 (1976); "It is generally held that punitive damages are those damages which are given in addition to compensatory damages because of the 'wanton, reckless, malicious, or oppressive char-

Thus a jury has the discretionary power in a proper case to award punitive damages for this two-fold purpose: First, to punish defendant's aggravated or outrageous conduct that characterized his commission of the actionable legal wrong against the plaintiff or his property, and second, to deter others from similar offenses.⁴

North Carolina, however, deems the doctrine of punitive damages an anomaly in law. Though decisions have given punitive damages an established place in North Carolina jurisprudence, the North Carolina Supreme Court has indicated its unwillingness to expand the doctrine beyond the limitations imposed by authoritative decisions of the court.⁵ The North Carolina decisions have established these rules:

1. With the exception of a breach of a contract to marry and the failure of a public service company to perform an obligation imposed upon it by its public franchise, punitive damages can never be awarded for simple breach of

acter of the acts complained of'. . . Such damages generally go beyond compensatory damages, and they are usually allowed to punish defendant and deter others." *Oestreicher v. American Nat'l Stores, Inc.*, 290 N.C. 118, 134, 225 S.E.2d 797, 807 (1976) (quoting 22 AM. JUR. 2d *Damages* § 236 (1965)); "Vindictive or punitive damages are treated as an award by way of punishment to the offender and as a warning to other wrongdoers. . . ." *Smith v. Myers*, 188 N.C. 551, 552, 125 S.E. 178, 179 (1924); "Punitive damages, as the descriptive name clearly implies, are awarded as a punishment. They are never awarded as compensation. They are awarded above and beyond actual damages, as a punishment for the defendant's intentional wrong. They are given to the plaintiff in a proper case, not because they are due, but because of the opportunity the case affords the court to inflict punishment for conduct intentionally wrongful." *Cavin's, Inc. v. Atlantic Mut. Ins. Co.*, 27 N.C. App. 698, 701-02, 220 S.E.2d 403, 406 (1975) (quoting *Overnite Transp. Co. v. International Bhd. of Teamsters*, 257 N.C. 18, 30, 125 S.E.2d 277, 286 (1962)). See also *Nationwide Mut. Ins. Co. v. Knight*, 34 N.C. App. 96, 237 S.E.2d 341, *cert. denied*, 293 N.C. 589, 239 S.E.2d 263 (1977).

4. A multitude of North Carolina decisions recognize and enforce the rule that punitive damages are allowable by a jury in the exercise of its discretion to punish the defendant for his aggravated or outrageous conduct and to deter others from similar offenses. See, e.g., *Hardy v. Toler*, 288 N.C. 303, 218 S.E.2d 342 (1975); *Woody v. Catawba Valley Broadcasting Co.*, 272 N.C. 459, 158 S.E.2d 578 (1968); *Allred v. Graves*, 261 N.C. 31, 134 S.E.2d 186 (1964); *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956); *Swinton v. Savoy Realty Co.*, 236 N.C. 723, 73 S.E.2d 785 (1953); *Walters v. Western Union Tel. Co.*, 194 N.C. 188, 138 S.E. 608 (1927); *Cotten v. Fisheries Prod. Co.*, 181 N.C. 188, 106 S.E. 487 (1921); *Carmichael v. Bell Tel. Co.*, 157 N.C. 21, 72 S.E. 619 (1911); *Tuggle v. Haines*, 26 N.C. App. 365, 216 S.E.2d 460 (1975). See also *Brandis & Trotter*, *supra* note 2; Note, *Damages—Fraud and Deceit—Recovery of Punitive Damages for Fraud and Deceit*, 31 N.C.L. REV. 473 (1953).

5. *Hinson v. Dawson*, 244 N.C. 23, 27, 92 S.E.2d 393, 396 (1956). This is one of the authoritative decisions of the North Carolina Supreme Court on punitive damages. Speaking for a unanimous Court, Justice (afterwards Chief Justice) Bobbitt clearly stated North Carolina's policy respecting such damages:

No North Carolina statute defines the bases for the recovery of punitive damages. The soundness of the doctrine has been challenged and defended. . . . It is challenged because it enables the injured party to recover more than full compensatory damages. Hence, such damages are sometimes called vindictive damages. It is defended as a needed deterrent to wrongdoing in addition to that provided by criminal punishment. Hence, such damages are sometimes called exemplary damages or smart money. Stacy, C.J., in *Worthy v. Knight*, (210 N.C. 498, 187 S.E. 771), characterized the doctrine as an anomaly; but the many decisions cited in his opinion as well as later decisions give it an established place in our law. Even so, we are not disposed to expand the doctrine beyond the limits established by authoritative decisions of this Court.

Id. at 26-27, 92 S.E.2d at 396. See also *Survey of North Carolina Case Law—Punitive Damages*, 35 N.C.L. REV. 223 (1957).

contract.⁶ If a breach of contract is the result of tortious conduct, however, punitive damages may be awarded to punish the tortious conduct, but the conduct must be aggravated beyond that necessary to be merely tortious.⁷

2. Punitive damages can be awarded against a corporation for a tort wantonly committed by its agent in the course of his employment.⁸

3. Since punitive damages are not designed to compensate the plaintiff, but are allowable by the jury to punish the defendant and deter others, punitive damages can never be recovered by the plaintiff as a matter of right.⁹

4. The complaint must allege facts or elements that would justify the award of punitive damages, such as actual malice, oppression, gross and willful wrong or negligence, or a reckless and wanton disregard of plaintiff's rights. Though no specific form of allegation is required,¹⁰ whether the facts stated in the complaint are sufficient to bring the case within the rule allowing punitive damages is a question of law for the court.¹¹

5. Whether there is any evidence to be submitted to the jury that would justify assessment of punitive damages, and whether an award of punitive damages is excessive, are questions for the court.¹²

6. If the pleadings and evidence so warrant, an issue over punitive damages should be submitted to the jury. The jury is then to determine whether punitive damages in any amount should be awarded, and if so, the amount of the award. These matters are determinable by the jury in its discretion.¹³

6. *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 229 S.E.2d 297 (1976); *King v. Insurance Co. of N. Am.*, 273 N.C. 396, 159 S.E.2d 891 (1968); *Swinton v. Savoy Realty Co.*, 236 N.C. 723, 73 S.E.2d 785 (1953); *Mesimer v. Stancil*, 45 N.C. App. 533, 263 S.E.2d 32 (1980). *See also Survey of Developments in North Carolina Law, 1976—Torts*, 55 N.C.L. REV. 895, 1088, 1090-1091 (1977); Comment, "Extra-Contractual" Remedies for Breach of Contract in North Carolina, 55 N.C.L. REV. 1125 (1977); *Brandis & Trotter*, *supra* note 2, at 268; Note, *supra* note 4; Note, *Damages—Punitive Damages for Breach of Contract*, 11 N.C.L. REV. 160 (1933).

7. *Stanback v. Stanback*, 297 N.C. 181, 254 S.E.2d 611 (1979); *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 229 S.E.2d 297 (1976); *Mesimer v. Stancil*, 45 N.C. App. 533, 263 S.E.2d 32 (1980); *East Coast Dev. Corp. v. Alderman—250 Corp.*, 30 N.C. App. 598, 606, 228 S.E.2d 72, 79 (1976). *See also Survey of Developments in North Carolina Law, 1976—Torts*, *supra* note 6; Comment, *supra* note 6; Note, *supra* note 4.

8. *Clemmons v. Life Ins. Co.*, 274 N.C. 416, 424, 163 S.E.2d 761, 767 (1968); *Binder v. General Motors Acceptance Corp.*, 222 N.C. 512, 23 S.E.2d 894 (1943).

9. *Oestreicher v. American Nat'l Stores, Inc.*, 290 N.C. 118, 134, 225 S.E.2d 797, 807-08 (1976); *King v. Insurance Co. of N. Am.*, 273 N.C. 396, 159 S.E.2d 891 (1968); *Woody v. Catawba Valley Broadcasting Co.*, 272 N.C. 459, 158 S.E.2d 578 (1968); *Allred v. Graves*, 261 N.C. 31, 134 S.E.2d 186 (1964); *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956); *Swinton v. Savoy Realty Co.*, 236 N.C. 723, 73 S.E.2d 785 (1953); *Worthy v. Knight*, 210 N.C. 498, 187 S.E. 771 (1936); *East Coast Dev. Corp. v. Alderman—250 Corp.*, 30 N.C. App. 598, 228 S.E.2d 72 (1976).

10. *Cook v. Lanier*, 267 N.C. 166, 172, 147 S.E.2d 910, 915 (1966). *Accord*, *Clemmons v. Life Ins. Co.*, 274 N.C. 416, 423-25, 163 S.E.2d 761, 766-67 (1968); *Hinson v. Dawson*, 244 N.C. 23, 93 S.E.2d 393 (1956); *Lutz Indus., Inc. v. Dixie Home Stores*, 242 N.C. 332, 88 S.E.2d 333 (1955); *Girard Trust Bank v. Easton*, 3 N.C. App. 414, 165 S.E.2d 252 (1969). *See also Brandis & Trotter*, *supra* note 2, at 250.

11. *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 111, 229 S.E.2d 297, 300 (1976).

12. *Worthy v. Knight*, 210 N.C. 498, 187 S.E. 771 (1936).

13. *Allred v. Graves*, 261 N.C. 31, 35, 134 S.E.2d 186, 190 (1963); *Hinson v. Dawson*, 244 N.C. 23, 26, 92 S.E.2d 393, 395 (1956). *Accord*, *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 229 S.E.2d 297 (1976); *Oestreicher v. American Nat'l Stores, Inc.*, 290 N.C. 118, 225 S.E.2d 797 (1976); *Harris v. Queen City Coach Co.*, 220 N.C. 67, 16 S.E.2d 464 (1941); *Tripp v. American Tobacco Co.*, 193 N.C. 614, 137 S.E. 871 (1927); *Cotten v. Fisheries Prod. Co.*, 181 N.C. 106

Since they may be awarded in proper cases "in the sound discretion of the jury and within reasonable limits,"¹⁴ the amount of punitive damages awarded "may not be excessively proportionate to the circumstances of contumely and indignity in the particular case."¹⁵ The approved practice is to submit to the jury the compensatory damages and punitive damages issues separately.¹⁶

7. The jury has the discretionary power to refrain from awarding punitive damages even if the evidence indicates aggravating or outrageous conduct by the defendant.¹⁷

8. Punitive damages cannot be recovered by the plaintiff unless the jury finds that the defendant committed an actionable legal wrong against the plaintiff or his property and awards the plaintiff either compensatory or nominal damages.¹⁸

9. The jury has no right to allow punitive damages unless they conclude from the evidence that the wrongful act was accomplished by fraud, malice, recklessness, or other unlawful and wanton aggravation by the defendant.¹⁹

As noted above, punitive damages cannot be awarded unless a cause of action otherwise exists and at least nominal damages are recovered by the plaintiff.²⁰ These circumstances alone, however, do not justify an award of punitive damages.²¹ Since the Supreme Court of North Carolina first considered the question of punitive damages in 1797,²² it has been established conclusively that the discretionary power of the jury to assess punitive damages against the defendant does not exist in any action unless the legal wrong was

S.E. 487 (1921); *Hodges v. Hall*, 172 N.C. 29, 89 S.E. 802 (1916); *Hayes v. Southern R.R. Co.*, 141 N.C. 195, 53 S.E. 847 (1906); *Wylie v. Smitherman*, 30 N.C. (8 Ired.) 236 (1848).

14. *Blackwood v. Cates*, 297 N.C. 163, 167, 254 S.E.2d 7, 10 (1979).

15. *Tripp v. American Tobacco Co.*, 193 N.C. 614, 137 S.E. 871 (1927); *Ford v. McAnally*, 182 N.C. 419, 109 S.E. 91 (1921). See also *Brandis & Trotter*, *supra* note 2, at 250, 254.

16. *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956). Punitive damages issues are set forth in these cases: *Ford v. McAnally*, 182 N.C. 419, 109 S.E. 91 (1921); *Cobb v. Atlantic Coast Line R.R. Co.*, 175 N.C. 130, 95 S.E. 92 (1918); *Arthur v. Henry*, 157 N.C. 393, 73 S.E. 206 (1911); *Hayes v. Southern R.R. Co.*, 141 N.C. 195, 53 S.E. 847 (1906).

17. *Robinson v. McAlhaney*, 214 N.C. 180, 198 S.E. 647 (1938).

18. *Clemmons v. Life Ins. Co.*, 274 N.C. 416, 163 S.E.2d 761 (1968); *Parris v. H.G. Fischer Co.*, 221 N.C. 110, 19 S.E.2d 128 (1942); *Worthy v. Knight*, 210 N.C. 498, 187 S.E. 771 (1936); *Webb v. Western Union Tel. Co.*, 167 N.C. 483, 83 S.E. 568 (1914); *Phillips v. Universal Underwriters Ins. Co.*, 43 N.C. App. 56, 257 S.E.2d 671 (1979). See also Comment, *Punitive Damages and The Drunken Driver*, 8 PEPPERDINE L. REV. 117, 123-26 (1980).

19. *Hayes v. Southern R.R. Co.*, 141 N.C. 195, 53 S.E. 847 (1906). *Accord*, *Hairston v. Atlantic Greyhound Corp.*, 220 N.C. 642, 18 S.E.2d 166 (1942); *Harris v. Queen City Coach Co.*, 220 N.C. 67, 16 S.E.2d 464 (1941); *Robinson v. McAlhaney*, 214 N.C. 180, 198 S.E. 647 (1938); *Smith v. Morganton Ice Co.*, 159 N.C. 151, 74 S.E. 961 (1912). See also *Brandis & Trotter*, *supra* note 2, at 250.

20. *Worthy v. Knight*, 210 N.C. 498, 187 S.E. 771 (1936).

21. *Swinton v. Savoy Realty Co.*, 236 N.C. 723, 73 S.E.2d 785 (1953). The court observed: Smart money may not be included in the assessment of damages as a matter of course simply because of an actionable wrong, but "only when there are some features of aggravation, as when the wrong is done wilfully or under circumstances of rudeness or oppression, or in a manner which evinces a reckless and wanton disregard of plaintiff's rights!" *Id.* at 725, 73 S.E.2d at 787. See also Note, *supra* note 4.

22. *Carruthers v. Tillman*, 2 N.C. (1 Hayw.) 501 (1797).

also characterized by aggravating or outrageous conduct by the defendant.²³

More recent decisions hold that a defendant is guilty of aggravating or outrageous conduct within the meaning of the rules governing the award of punitive damages if he commits the wrong "willfully or under circumstances of rudeness or oppression, or in a manner which evinces a reckless and wanton disregard of the plaintiff's rights."²⁴ Earlier decisions use varying phraseology to define what constitutes aggravating or outrageous conduct by a wrongdoer. When he wrote his illuminating opinion in *Hinson v. Dawson*,²⁵ Justice (afterwards Chief Justice) Bobbitt reconciled and clarified these decisions by stating that the defendant's conduct is aggravating or outrageous within the purview of the law of punitive damages when he commits the actionable legal wrong against the plaintiff or his property wilfully, wantonly or maliciously.²⁶

23. See, e.g., *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 229 S.E.2d 297 (1976) (fraud); *Oestreicher v. American Nat'l Stores, Inc.*, 290 N.C. 118, 225 S.E.2d 797 (1976) (fraud); *Hardy v. Toler*, 288 N.C. 303, 218 S.E.2d 342 (1975) (fraud); *Woody v. Catawba Valley Broadcasting Co.*, 272 N.C. 459, 158 S.E.2d 578 (1968) (defamation); *Van Leuven v. Akers Motor Lines, Inc.*, 261 N.C. 539, 135 S.E.2d 640 (1964) (appropriating land); *General Tire and Rubber Co. v. Distributors, Inc.*, 253 N.C. 459, 117 S.E.2d 479 (1960) (seizing goods); *Binder v. General Motors Acceptance Corp.*, 222 N.C. 512, 23 S.E.2d 894 (1943) (conversion of automobile); *Hairston v. Atlantic Greyhound Corp.*, 220 N.C. 642, 18 S.E.2d 166 (1942) (assault and battery); *Harris v. Queen City Coach Co.*, 220 N.C. 67, 16 S.E.2d 464 (1941) (public service company refusing to transport plaintiff); *Horton v. Carolina Coach Co.*, 216 N.C. 567, 5 S.E.2d 828 (1939) (public service company causing a woman passenger and her child to alight in a lonely place short of her destination); *Robinson v. McAlhane*, 214 N.C. 180, 198 S.E. 647 (1938) (assault and battery); *Worthy v. Knight*, 210 N.C. 498, 187 S.E. 771 (1936) (assault and battery); *Lay v. Gazette Publishing Co.*, 209 N.C. 134, 183 S.E. 416 (1936) (defamation); *Smith v. Myers*, 188 N.C. 551, 125 S.E. 178 (1924) (assault and battery); *Ford v. McAnally*, 182 N.C. 419, 109 S.E. 91 (1921) (conductor rudely refusing to help aged and infirm passenger to alight); *Cotten v. Fisheries Prod. Co.*, 181 N.C. 188, 106 S.E. 487 (1921) (defamation); *Cobb v. Atlantic Coast Line R.R.*, 175 N.C. 130, 95 S.E. 92 (1918) (nuisance by blasting); *Hodges v. Hall*, 172 N.C. 29, 89 S.E. 802 (1916) (assault and battery); *Smith v. Morganton Ice Co.*, 159 N.C. 151, 74 S.E. 961 (1912) (restraint of trade contrary to state antitrust law); *Arthur v. Henry*, 157 N.C. 393, 73 S.E. 206 (1911) (nuisance by blasting); *Carmichael v. Bell Tel. Co.*, 157 N.C. 21, 72 S.E. 619 (1911) (public service company refusing service); *Hayes v. Southern R.R. Co.*, 141 N.C. 195, 53 S.E. 847 (1906) (railroad using excessive force to eject hobo); *Holmes v. Carolina Central R.R.*, 94 N.C. 318 (1886) (railroad using excessive force to eject a man); *Louder v. Hinson*, 49 N.C. (4 Jones) 369 (1857) (assault and battery on a woman); *Wylie v. Smitherman*, 30 N.C. (8 Ired.) 236 (1848) (burning county courthouse); *Duncan v. Stalcup*, 18 N.C. (1 Dev. & Bat.) 440 (1836) (shooting livestock); *Russel v. Taylor*, 37 N.C. App. 520, 246 S.E.2d 569 (1978) (conversion of a mobile home); *Robinson v. Duszynski*, 36 N.C. App. 103, 243 S.E.2d 148 (1978) (medical malpractice); *East Coast Dev. Corp. v. Alderman-250 Corp.*, 30 N.C. App. 598, 228 S.E.2d 72 (1976) (breach of contract). See also Comment, *supra* note 6.

24. *Swinton v. Savoy Realty Co.*, 236 N.C. 723, 725, 73 S.E.2d 785, 787 (1953) (fraud) (quoting *Baker v. Winslow*, 184 N.C. 1, 5, 113 S.E. 570, 572 (1922)). See also Comment, *supra* note 6, at 1136-43; Note, *supra* note 4.

25. 244 N.C. 23, 92 S.E.2d 393 (1956).

26. *Id.* at 27-28, 92 S.E.2d at 396. What Justice Bobbitt said on this subject in that case is worthy of quotation:

Emphasis is frequently given to the presence or absence of evidence of 'insult, indignity, malice, oppression or bad motive' in determining the applicability of the doctrine to a particular factual situation. . . . No decision of this Court dealing directly with the doctrine of punitive damages as applied to an automobile collision case has come to our attention. . . .

There is no allegation in the amended complaint under consideration that the conduct of the driver of the Dawson car was either malicious or wilful. No inference can be drawn that such driver intentionally caused the collision. . . .

In general, exemplary damages may not be recovered in a case involving an ordinary collision caused by negligence on a highway in the absence of any intentional,

North Carolina decisions have interpreted each of these possibilities. A person acts willfully when he acts knowingly, intentionally and voluntarily.²⁷ A person acts wantonly when he acts "in conscious and intentional disregard of and indifference to the rights and safety of others."²⁸ Malice, however, is a more difficult concept. The sometimes confusing nature of legal terminology is illustrated by the use of the term "malice" to express two different concepts: actual malice (malice in fact) and legal malice (malice in law). Actual malice exists as a matter of fact and describes the state of mind of a person who actually entertains personal hatred or ill will or spite towards another.²⁹ Legal malice does not necessarily involve hatred or ill will or spite, and is not a fact to be proved specifically. On the contrary, the law infers its existence from the intentional doing of a wrongful act without just cause or excuse.³⁰ Legal malice has no place in the doctrine of punitive damages because a person never acts maliciously within the purview of that doctrine unless he commits an intentional wrong motivated by his actual malice towards the party injured.³¹

Thus, as *Hinson v. Dawson*³² clearly reveals, a jury has the discretionary power to award punitive damages in proper cases only in these instances:

1. When the defendant knowingly, intentionally and voluntarily commits an actionable legal wrong upon the person or property of the plaintiff.
2. When the defendant acts in conscious and intentional disregard of

malicious or wilful act. . . . In the absence of allegation that the conduct was malicious or wilful, there is no basis for submission of an issue as to punitive damages unless the facts alleged justify the allegation (by way of conclusion) that the conduct was wanton.

References to *gross negligence* as a basis for recovery of punitive damages may be found in our decisions. . . . When an injury is caused by negligence, any attempt to differentiate variations from slight to gross is fraught with maximum difficulty. . . . Moreover, the words "reckless" and "heedless" would seem to import an uncertain degree of negligence somewhat short of wantonness.

An analysis of our decisions impels the conclusion that this Court, in references to gross negligence, has used that term in the sense of wanton conduct. Negligence, a failure to use due care, be it slight or extreme, connotes inadvertence. Wantonness, on the other hand, connotes intentional wrongdoing. Where malicious or wilful injury is not involved, wanton conduct must be alleged and shown to warrant the recovery of punitive damages. Conduct is wanton when in conscious and intentional disregard of, and indifference to, the rights and safety of others.

Id. (citations omitted).

27. *Brewer v. Harris*, 279 N.C. 288, 296, 182 S.E.2d 345, 350 (1971); *Givens v. Seller*, 273 N.C. 44, 49, 159 S.E.2d 530, 535 (1968); *West v. West*, 199 N.C. 12, 15, 153 S.E. 600, 602 (1930); *Foster v. Hyman*, 197 N.C. 189, 148 S.E. 36 (1929); *Bailey v. North Carolina R.R.*, 149 N.C. 169, 174, 62 S.E. 912, 913-14 (1908); *Brown v. Brown*, 124 N.C. 19, 21, 32 S.E. 320, 321 (1899).

28. *Hinson v. Dawson*, 244 N.C. 23, 28, 92 S.E.2d 393, 396 (1956); *Robinson v. Duszynski*, 36 N.C. App. 103, 106, 243 S.E.2d 148, 150 (1978).

29. *Swain v. Oakey*, 190 N.C. 113, 129 S.E. 151 (1925).

30. *Pittsburg, Johnstown, Edensburg and E. R.R. Co. v. Wakefield Hardware Co.*, 138 N.C. 174, 180, 50 S.E. 571, 573 (1905).

31. *Cook v. Lanier*, 267 N.C. 166, 171, 147 S.E.2d 910, 914 (1966); *Swain v. Oakey*, 190 N.C. 113, 129 S.E. 151 (1925); *Brown v. Martin*, 176 N.C. 31, 33, 96 S.E. 642, 643 (1918). *Accord*, *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 229 S.E.2d 297 (1976); *Clemmons v. Life Ins. Co.*, 274 N.C. 416, 163 S.E.2d 761 (1968); *Lutz Indus. v. Dixie Home Stores*, 242 N.C. 332, 344, 88 S.E.2d 333, 342 (1955); *East Coast Dev. Corp. v. Alderman-250 Corp.*, 30 N.C. App. 598, 228 S.E.2d 72 (1976). *See also* *Brandis & Trotter*, *supra* note 2, at 250.

32. 244 N.C. 23, 92 S.E.2d 393 (1956).

and indifference to the rights and safety of the plaintiff, and by so doing inflicts an actionable legal wrong upon the person or property of the plaintiff.

3. When the defendant commits an actionable legal wrong upon the person or property of the plaintiff and is motivated to do so by the actual malice (the personal hatred, ill will or spite) he entertains for the plaintiff.

Inasmuch as they are allowable only in cases of wilful, malicious, or wanton wrongs, punitive damages can never be awarded to a plaintiff when his injury results from the defendant's simple negligence.³³ Similarly, punitive damages are not allowable in an action for a nuisance arising out of the mere unreasonable use of the defendant's property.³⁴

When a plaintiff seeks an award of punitive damages, the intention and the motives with which the defendant acted are material and constitute proper subjects of inquiry.³⁵ Punitive damages are not allowable when the defendant commits an intentional act in *good faith* and in the *honest belief* that he has the right to do so even though the act causes actual damage to the plaintiff.³⁶

33. *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956); *Lutz Indus. v. Dixie Home Stores*, 242 N.C. 332, 88 S.E.2d 333 (1955); *Horton v. Carolina Coach Co.*, 216 N.C. 567, 55 S.E.2d 28 (1939); *Smith v. Myers*, 188 N.C. 551, 125 S.E. 178 (1924); *Ballew v. Asheville & E.T.R. Co.*, 186 N.C. 704, 120 S.E. 334 (1923); *Ford v. McAnally*, 182 N.C. 419, 109 S.E. 91 (1921); *Cobb v. Atlantic Coast Line R.R.*, 175 N.C. 130, 95 S.E. 92 (1918).

34. *Cobb v. Atlantic Coast Line R.R.*, 175 N.C. 130, 95 S.E. 92 (1918).

35. *Hansley v. Jamesville & W. R.R.*, 115 N.C. 602, 20 S.E. 528 (1894).

36. *Lay v. Gazette Publishing Co.*, 209 N.C. 134, 183 S.E. 416 (1936); *Hays v. Askew*, 52 N.C. (7 Jones) 272 (1859). In *Lay*, the supreme court held that punitive damages cannot be assessed against a newspaper for publishing a false report of plaintiff's arrest if "the publication was in good faith, and was the result of an honest mistake." 209 N.C. 134, 139, 183 S.E. 416, 419 (1936).

In *Hays*, the defendant conveyed land, reserving a right of way through a certain avenue, and subsequently built a house on that avenue so close to the house of the grantee as to darken it and otherwise diminish its value. The defendant built the house under the belief that he had the right to do so. The supreme court adjudged that punitive damages could not be recovered by the plaintiff. 52 N.C. (7 Jones) 272, 273-74 (1859).

