

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

VIRGINIA PAYNE,

Respondent,

v.

ASHLEY L. MARKESON,

Appellant.

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**DOCKET NUMBER WD77553**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** May 5, 2015

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Jack R. Grate, Jr., Judge

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**JUDGES**

Division One: Welsh, P.J., and Newton and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

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Kansas City, MO

Attorneys for Respondent,

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Kansas City, MO

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

VIRGINIA PAYNE, )  
)  
) **Respondent,** )  
v. ) **OPINION FILED:**  
) **May 5, 2015**  
ASHLEY L. MARKESON, )  
)  
) **Appellant.** )

**WD77553**

**Jackson County**

**Before Division One Judges:** James Edward Welsh, Presiding Judge, and Thomas H. Newton and Karen King Mitchell, Judges

Ashley Markeson appeals the trial court’s denial of her motion to reduce the verdict, which was obtained against her by Virginia Payne in an action for damages arising out of personal injuries Payne suffered in an automobile accident resulting from Markeson driving while intoxicated. Markeson argues that she was entitled to a settlement credit against the verdict as a result of Payne entering a pre-trial settlement with Markeson’s co-defendant, MM Investments, Inc., the dram shop that provided Markeson alcohol on the day of the injury-producing collision. The trial court denied the motion to reduce the verdict, finding that Markeson was barred by both statute and public policy from obtaining a settlement credit.

**AFFIRMED IN PART; REVERSED IN PART.**

**Division One holds:**

1. Dram Shop liability under § 537.053 is liability in tort.
2. To prove that a dram shop is liable under § 537.053, a plaintiff must prove that the dram shop’s actions proximately caused the harm suffered.
3. The fact that a duty giving rise to liability is found in statute, and not in common law, does *not* indicate that the statutory duty is outside the realm of tort law.

4. The Dram Shop Act is a codified limitation on the existing negligence per se action arising under the Liquor Control Act (§ 311.310).
5. The public policy behind the Dram Shop Act is two-fold: (1) to place responsibility solely on an intoxicated individual for his or her own injuries; but (2) to recognize that dram shops bear some responsibility, in addition to intoxicated individuals, for injuries caused to unrelated third parties by intoxicated dram shop patrons and for injuries to the dram shop patrons themselves if they are under the age of 21.
6. Applying the reduction provision of § 537.060 to reduce a verdict against an intoxicated driver because of a prior settlement reached between the injured party and the dram shop does not violate public policy.
7. The purpose of § 537.060's reduction provision is to implement the long-standing and well-entrenched principle in tort law that a plaintiff is entitled to only one satisfaction for the same wrong.
8. The Dram Shop Act was *not* designed to provide a plaintiff with the windfall of a double recovery or to punish intoxicated individuals; its purpose is to ensure that an injured third party is *made whole* by those the statute deems responsible for the injuries.
9. Contribution and reduction, though similar concepts, have decidedly distinct purposes. While both are designed to prevent unjust enrichment, the recipient of the unjust enrichment sought to be avoided differs; contribution precludes the unjust enrichment of a joint tortfeasor, while reduction precludes the unjust enrichment of the plaintiff.
10. It is the existence—not the amount—of a compensatory damage award that opens the door for punitive damages. Thus, even with a reduction of a compensatory damage award to zero, the award itself still serves as proof of compensatory damages, even if the defendant is not required to pay them.

**Opinion by: Karen King Mitchell, Judge**

May 5, 2015

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.