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## Attorney and Client

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## ATTORNEY AND CLIENT

**Wilful Failure to Pay Income Taxes as Grounds for Disbarment.** The court in *In re Seijas*, 151 Wash. Dec. 350, 318 P.2d 961 (1957), held that an attorney convicted under section 145(b) of the Internal Revenue Code of 1939 could be disbarred by the summary procedure provided for in Rule 18, Washington Supreme Court Rules for Discipline of Attorneys, 34A Wn.2d.

Section 145(b) of the Internal Revenue Code provides that "Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or default any tax imposed by this chapter or the payment thereof, shall...be guilty of a felony..." Rule 18 of Rules for Discipline of Attorneys, 34A Wn.2d, provides that "...where a final conviction involves moral turpitude, the board of governors may, by a summary proceeding...recommend to the supreme court the disbarment of the member so convicted."

The Washington court did not attempt to make an independent determination of whether a "wilful" failure to pay income taxes was an offense involving moral turpitude, but considered the federal cases as controlling on this issue. In addition, following the lead of the federal courts, the Washington court confined its inquiry to the record of conviction, consisting of the indictment, plea, verdict and sentence. The court felt that *Tsueng Chu v. Cornell*, 247 F.2d 929 (9th Cir. 1957), fairly stated the federal rule. In the *Tsueng Chu* case the court held that a violation of section 145(b) of the revenue code is an offense involving moral turpitude, and a conviction under 145(b) necessitates a finding that the accused has fraudulently attempted to evade the payment of income tax.

Since the defendant in the present case was charged and convicted of wilfully filing a fraudulent return, the *Tsueng Chu* case is precisely in point. Thus the Washington court, by accepting the *Tsueng Chu v. Cornell* decision, held that a conviction under 145(b) of the Internal Revenue Code of 1939 involved moral turpitude and the use of the summary procedure by the board of governors was proper.

## COMMUNITY PROPERTY

**Mutual Observance by Spouses of Separate Property Agreements.** In *Kolmorgan v. Schaller*,<sup>1</sup> the Washington supreme court set up two distinct tests to prove the validity of a separate property agreement between a husband and wife making the earnings of one spouse his or her separate property. The court said "...the proponents of such agreements must establish by *clear and convincing evidence*: (1) the existence of the agreement...and (2) that the agreement has been *mutually observed* by the spouses..."<sup>2</sup>

Mr. Scholler was unemployed from August, 1953 to March, 1956. During this period Mrs. Scholler's income was used to pay the community expenses and obligations. On January 13, 1954, Mr. and Mrs. Scholler filed a written separate property agreement with the

<sup>1</sup> 151 Wash. Dec. 79, 316 P.2d 111 (1957).

<sup>2</sup> 151 Wash. Dec. at 82, 316 P.2d at 113.