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# INFORMING A JURY OF THE LEGAL EFFECT OF ITS ANSWERS

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The concept that the jury should not be informed of the legal effect of its answers is one that is peculiar to those jurisdictions that utilize special issues or special interrogatories.[1] The purpose of the special issue system is twofold. First, it is an attempt to reduce trial error by separating the functions of the judge, as the determinator of the law, and of the jury, as the trier of facts. Secondly, it is a means to isolate any bias or prejudice of the jury by removing from its consideration the ultimate issue in each case—who shall prevail? As a corollary to the proposition that the jury should be concerned only with determining the facts and not with the outcome of the case, the principle has been adopted that the trial court should not inform the jury as to the effect its answers will have upon the judgment to be rendered. It is the purpose of this article to explore the development and application of this rule with special emphasis on its growth and use in Texas.

There are three different methods by which a case may be submitted to a jury: the general verdict, the general verdict with special interrogatories, and the special verdict. When the general verdict is employed, the court submits to the jury a written general charge on the law. By applying the facts as it finds them, to the law, as instructed to them by the court, "the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to

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1 "Special interrogatories," as the term is used in this article, are those fact questions that are submitted in conjunction with a general verdict. "Special issues" are those questions that are submitted when a special verdict is to be returned. "A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court," TEX. R. CIV. P. 290. "In the early Texas procedure the special verdict commonly was in the form of a narrative finding of facts, unlike the question and answer technique of our present special issue procedure and more similar in form to findings of fact made by the court in a non-jury case, . . ." Dooley, *The Use of Special Issues Under the New State and Federal Rules*, 20 TEXAS L. REV. 32 (1941).

it."[2] In many states the jury may also be required to answer special interrogatories along with its general verdict, the purpose being to ascertain the basis of the general verdict and to test its consistency with the special interrogatories.[3] When a case is submitted for a special verdict, the judge submits to the jury a series of fact questions which the jury answers. The trial judge then applies the jury's findings of fact to the law and renders a judgment.

## THE GENERAL VERDICT WITH SPECIAL INTERROGATORIES

When a case is submitted to a jury for a general verdict, with or without special interrogatories, it is the function of the jury to find in favor of one party or the other. The jury is thus aware of the legal effect of its findings because the trial court has instructed the jury concerning the applicable law and has charged them to apply that law to the facts as they have found them. Certainly then, when a cause of action is submitted either for a general verdict or a general verdict with special interrogatories, there is no error in informing the jury of the legal effect of its findings of fact.[4] But any attempt by the court advising the jury how to answer the special interrogatories may possibly defeat the purpose of submitting them, which is to test the general verdict by determining if "the jury misunderstood the instructions, deliberately disregarded them or erred in applying them to the facts found."[5]

If a case is submitted upon special issues, the court is not allowed to instruct the jury as to the applicable law. When a general verdict with special interrogatories is to be returned, the jury is informed as to the law, but the court is prohibited from explaining the relationship between the general verdict and the special interrogatories. Therefore, it is error for a trial judge to instruct the jury that its answers to the special interrogatories must be consistent and harmonize with the general verdict.[6]

> [T]he court has no right to insist in its instructions upon the answers being consistent with the general verdict, or with each other, or to point out to the jury what effect in law the answers, or either of them, will have upon a general verdict, or the right of either party to a judgment in his favor.[7]

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2 TEX. R. CIV. P. 290.

3 Harbison v. Briggs Bros. Paint Mfg. Co., 354 S.W.2d 464, 469 (Tenn. 1962); Wicker, *Special Interrogatories to Juries in Civil Cases*, 35 YALE L.J. 296 (1926).

4 Smith v. Rhode Island Co., 98 A. 1 (R.I. 1916).

5 Wicker, *Special Interrogatories to Juries in Civil Cases*, 35 YALE L.J. 296, 306 (1926).

6 Mathes v. Basso, 244 N.E.2d 362 (Ill. App. Ct. 1968); Collett v. Estate of Schnell, 397 P.2d 402 (Kan. 1964); Beecher v. Galvin, 39 N.W. 469 (Mich. 1888); Lamb v. Ulrich, 221 P. 741 (Okla. 1923).

7 Coats v. Town of Stanton, 62 N.W. 619, 621 (Wis. 1895).

## THE SPECIAL ISSUE SYSTEM

Special issues and special verdicts are used to some extent in most of the states and in Federal courts.[8] It is used frequently in England, in some of the Canadian provinces, and in Wisconsin. In Texas and North Carolina almost all civil cases are submitted on special issues.[9] In England, Canada and North Carolina the special issues are submitted in a simple and understandable fashion.[10] In those jurisdictions the judge instructs the jury as to the "applicable legal rules,"[11] and thus there can be no objection to a court informing the jury as to the effect of its answers.

But since one objective of the special issue system is to insure that the jury will answer the questions without bias or prejudice and irrespective of the legal consequences, most states that employ the special issue system have held that the trial judge may not inform the jury as to the effect its answers may have on the judgment.[12]

In applying this concept, it has been held that a trial judge may not give to the jury a general charge or any instruction as to the applicable law.[13] It is also error for a court to inform a jury indirectly, such as instructing the jury that if they answer a particular issue in a certain manner, they need not answer any of the other issues.[14] There is, however, no prejudicial error in a charge or instruction that informs the jury of something that they, as ordinarily intelligent men, already know.[15]

## DEVELOPMENT OF THE RULE IN TEXAS

The growth and adoption of the principle that the court should not inform the jury as to the legal effect of its answers parallels the growth of the special issue practice in Texas. Although there is little case law in Texas prior to 1913 concerning special issues, the use of special issues has been a part of Texas jurisprudence since the early days of

8 FED. R. CIV. P. 49(a); 6 AM. JUR. TRIALS *Special Verdicts* § 1 (1967).

9 McCormick, *Jury Verdicts Upon Special Questions in Civil Cases*, 2 F.R.D. 176, 178 (1943); Green, *Blindfolding the Jury*, 33 TEXAS L. REV. 273, 274-276 (1955); BARRON AND HOLTZOFF, 2B FEDERAL PRACTICE AND PROCEDURE § 1051 (1961).

10 McCormick, *Jury Verdicts Upon Special Questions in Civil Cases*, 2 F.R.D. 176, 178 (1943).

11 *Id.*

12 Annot., 90 A.L.R.2d 1040 (1963).

13 Morrison v. Lee, 102 N.W. 223 (N.D. 1904); McClure v. Neuman, 178 N.E.2d 621 (Ohio Ct. App. 1961); Banderob v. Wisconsin Cent. Ry. Co., 113 N.W. 738 (Wis. 1907); McCourtie v. United States Steel Corp., 93 N.W.2d 552 (Minn. 1958); *see* Comment, *Informing the Jury of the Legal Effect of Its Answers to Special Verdicts*, 43 MINN. L. REV. 823 (1959).

14 *See* Harbinson v. Briggs Bros. Paint Mfg. Co., 354 S.W.2d 464 (Tenn. 1962).

15 Wright v. Covey, 349 S.W.2d 344 (Ark. 1961); Welsh v. Fleming, 173 N.W. 836 (S.D. 1919).

the Republic.[16] In setting up the district court system in Texas, the First Legislature provided that:

> In civil suits the jury may find and return a special verdict in writing, in issues made up under the direction of the court, declaring the facts proved to them; any verdict so found shall be conclusive between the parties as to the facts proved.[17]

Until 1913 the submission of special issues was discretionary with the judge. Before then the general charge was used almost to the exclusion of special issues. Until 1897 the use of special issues was "a dangerous practice"[18] as the jury was required to find in its special verdict every fact essential to recovery.[19] As a result, the use of special issues was sparse and little case law developed therefrom. Even when special issues were employed, "the formulation of charges, definitions, and instructions was much more free and unrestrained by limiting rules than under the present system."[20]

Often a court would inform the jury of the effect of its answers by submitting a general charge along with the special issues. Although the submission of both was objectionable,[21] it was probably not reversible error.[22] Also, during this period it was apparently proper to inform the jury as to the effect of its answers by giving with each issue an instruction as to the law. In 1887, the Texas Supreme Court noted that when a case is submitted on special issues, "[a]n instruction upon the law applicable to such issue is all that can be required."[23] Even an

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16 TEX. LAWS 1836, An Act Establishing the Jurisdiction and Powers of the District Courts § 46, at 211, 1 GAMMEL, LAWS OF TEXAS 1271 (1898) (This statute probably provided for a special verdict as described by Dooley in note 1, *supra.*); Tex. Laws 1841, An Act to Regulate the Granting and Trial of Injunctions, and to empower the Judges of the District Courts to submit issues of fact to a Jury in Chancery cases §7, at 83, 2 GAMMEL, LAWS OF TEXAS 547-548 (1898); Tex. Laws 1846, An Act to Regulate Proceedings in the District Courts § 108, at 392, 2 GAMMEL, LAWS OF TEXAS 1698 (1898); Tex. Laws 1879, ch. 111, at 119, 8 GAMMEL, LAWS OF TEXAS 1419 (1898); Tex. Laws, Spec. Sess. 1879, ch. 42, at 38, 9 GAMMEL, LAWS OF TEXAS 70 (1898); Tex. Laws, Spec. Sess. 1897, ch. 7, at 15, 10 GAMMEL, LAWS OF TEXAS 1455 (1898); Tex. Laws 1899, ch. 111, at 190; Tex. Laws 1913, ch. 59, at 113; Tex. Laws 1931, ch. 78, at 120.

17 Tex. Laws 1846, An Act to Regulate Proceedings in the District Courts § 108, at 392, 2 GAMMEL, LAWS OF TEXAS 547 (1898).

18 Silliman v. Gano, 90 Tex. 637, 646, 39 S.W. 559, 562 (1897).

19 Claiborne v. Tanner, 18 Tex. 68 (1856) (This case was based on a special verdict as described by Dooley in note 1, *supra.*).

20 HODGES, SPECIAL ISSUES § 9, at 26 (1959).

21 Dwyer v. Kalteyer, 68 Tex. 554, 5 S.W. 75 (1887) (In this case the jury returned both a general and a special verdict. Although the court noted that such a procedure was "irregular," it did not rule on the objection to it.).

22 Phoenix Assur. Co. v. Munger Improved Cotton-Mach. Mfg. Co., 49 S.W. 271 (Tex. Civ. App.—Dallas 1898), *aff'd*, 92 Tex. 297, 49 S.W. 222.

23 Cole v. Crawford, 69 Tex. 124, 127, 5 S.W. 646, 647 (1887).

instruction that the plaintiff's contributory negligence would bar his recovery was proper.[24] As late as 1912 it was held that:

> . . . even though a case is submitted on special issues, the court should, if requested, give to the jury the rules of the law applicable to the various issues and necessary for them to understand in order to render their verdict *understandingly*.[25] (emphasis added.)

In 1913, the Legislature enacted a statute which was the predecessor to Rule 277, Texas Rules of Civil Procedure. It provided that "upon request of either party, (the court) shall submit the cause upon special issues. . . ."[26] With the submission of special issues mandatory at the request of either party, the special issue system began a development that resulted in a system that was "highly elaborated"[27] and "crystallized into rules which were applied almost as rigidly and technically as the common law rules of special pleading."[28]

In its growth the special issue practice either conceived of, or adopted from other jurisdictions, the concept that the court should not charge the jury as to the effect of its answers. One of the earlier, if not the first, Texas cases that dealt with the problem of the jury's knowledge of the effect of its answers was *Fain v. Nelms*.[29] At issue in *Fain*, however, was a question of jury argument by counsel, and not the court's charge. The appellant had made an objection to a statement in appellee's closing argument to the jury, which the trial judge had overruled. The Galveston Court of Civil Appeals agreed that the argument was improper in that as the trier of fact, the jury "had nothing to do with the legal effect of their findings."[30] Nevertheless, the court held that the error would not be grounds for reversal as "counsel only told the jury what they already knew."[31] "[I]t must be assumed that during the course of this trial, amid the strenuous conflict between counsel as to the time appellee's adverse possession began, and the amount of evidence on that issue, it must have been a remarkably stupid juror who

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24 *See* Mitchell v. Western Union Tel. Co., 33 S.W. 1016 (Tex. Civ. App.—Austin 1896), *writ ref'd*, 89 Tex. 441, 35 S.W. 4 (1896).

25 Texas Baptist University v. Patton, 145 S.W. 1063, 1067 (Tex. Civ. App.—Dallas 1912, no writ); Southern Cotton-Oil Co. v. Wallace, 54 S.W. 638 (Tex. Civ. App.—Galveston 1899, no writ).

26 Tex. Laws 1913, ch. 59, at 113.

27 McCormick, *Jury Verdicts upon Special Questions in Civil Cases*, 2 F.R.D. 176, 179 (1943).

28 *Id.* at 180.

29 156 S.W. 281 (Tex. Civ. App.—Galveston 1913, writ ref'd).

30 *Id.* at 284.

31 *Id.*

would not have gathered what would be the legal result of a finding on this issue."[32]

The following year in *Texarkana & Ft. S. Ry. Co. v. Casey*,[33] the Texarkana Court of Civil Appeals indicated that it was probably improper for the court to inform the jury under what set of facts the plaintiff would recover. The Texarkana Court held that such an instruction by the court was not reversible error, but its holding of harmless error was based on grounds different from that taken by the Galveston Court in *Fain*:

> To gratuitously assume that a jury which has been properly tested and selected yielded to such sympathy, or was probably controlled by such emotions under such conditions, is to impeach the system of trial by jury for being fundamentally unreliable. Where a general verdict is to be rendered, the jury are necessarily informed of what is required to be found in order to entitle either party to a judgment. Evidently the law does not contemplate that such information should be concealed from juries in order to insure absolute impartiality.[34]

Although the courts in *Casey* and *Fain* held that the alleged errors were harmless, these cases laid the foundation in Texas for holding that it is error to inform the jury as to the effect of its answers. *Fain* and *Casey* also enunciated the two principal criticisms of this rule. First, jurors generally know the effect of their answers either from their own knowledge or as a result of the trial counsel's conduct and arguments. Secondly, the fear that a jury may alter an answer if it knew the legal effect of that answer is inconsistent with the concept of the jury as a body of fair and impartial citizens.

Although the San Antonio Court of Civil Appeals at first rejected the rule,[35] the other courts of civil appeals began to hold that informing the jury as to the effect of its answers would be reversible error.[36] During the twenties the growth of the special issue practice helped establish this principle and pave the way for the landmark case of *McFaddin v. Hebert*.[37]

The *McFaddin* case was a complicated trespass to try title dispute

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32 *Id.*

33 172 S.W. 729 (Tex. Civ. App.—Texarkana 1914, writ ref'd).

34 *Id.* at 734.

35 Southwestern Telegraph & Telephone Co. v. Sheppard, 189 S.W. 799 (Tex. Civ. App. —San Antonio 1916, writ ref'd); Faville v. Robinson, 201 S.W. 1061 (Tex. Civ. App. —San Antonio 1918, no writ).

36 Hovey v. See, 191 S.W. 606 (Tex. Civ. App.—Austin 1917, no writ); Fort Worth & D.C. Ry. Co. v. Amason, 239 S.W. 359 (Tex. Civ. App.—Amarillo 1922, no writ).

37 118 Tex. 314, 15 S.W.2d 213 (1929).

that was submitted to the jury on thirteen special issues. Special Issue No. 1 was determinative of the controversy, while the remaining twelve issues were purely evidentiary and would not have controlled or affected the trial court's judgment. In his closing argument to the jury, plaintiff's counsel told the jury that if they desired to find for plaintiff they must answer Special Issue No. 1 in the affirmative. The counsel for the defendant objected thereto. In an opinion adopted by the Texas Supreme Court, the commission of appeals held that it is reversible error for counsel or the court to inform the jury of the legal effect of their answers ". . . when the issues are such that ordinary men are not presumed to know the legal effect of the answers; . . ."[38]

> Clearly, the prime object, purpose, and intent of the law for submitting cases on special issues is to remove the jury from any bias in favor of, or prejudice against, either party to the suit, to relieve them from the duty of directly passing on who shall prevail in the suit, and to make it the duty of the jury to answer each question truly as they find the facts to be from the evidence, without regard to what the result of their answers may be. If the court or the attorney, or any one else, is allowed to tell the jury the legal result of the answers, and to appeal to them in argument to so frame their answers to accomplish a result rather than to answer the issues truly as they find the facts to be from the evidence, or if the jury is permitted to agree on the result, and then designedly form the answers to accomplish such result, the law providing for special issue verdicts would be an idle and vain thing.[39]

During the thirties the concept of informing the jury as to the effect of its answers was expanded by two important cases. The first was *Grasso v. Cannon Ball Motor Freight Lines.*[40] In *Grasso* the damage issue was conditioned on findings that the defendant was negligent and that the plaintiff was not contributorily negligent. In a decision adopted by the Texas Supreme Court, the commission of appeals held that a charge which conditioned the damage issue in such a manner was a general charge. This charge was held to be erroneous as it informed the jury under what findings the plaintiff would be allowed to recover.

The second case was *Continental Oil Co. v. Barnes.*[41] In this case the damage issue was submitted conditionally on an affirmative finding to any one of five special issues. The court there held that by submitting the damage issue conditionally, the trial court, in effect, informed the

38 *Id.* at 324, 15 S.W. at 217.
39 *Id.* at 323, 15 S.W. at 216-217.
40 125 Tex. 154, 81 S.W.2d 482 (1935).
41 97 S.W.2d 494 (Tex. Civ. App.—Fort Worth 1936, writ ref'd).

jury that an affirmative finding to one of the five grounds of negligence was essential in order for the plaintiff to recover and thus would be reversible error.

With the adoption of the Rules of Civil Procedure in 1941, the Texas courts adopted a more liberal approach toward special issues. Although an action by the trial court that informed the jury as to the effect of its answers remained reversible error, the courts became less inclined to reverse a case on those grounds alone.

In *Corbell v. Koog*,[42] the court found no reversible error in a charge of the trial court instructing the jury as to the burden of proof. There the court had submitted the special issue: "Do you find that testator revoked the will?" With this issue the court instructed the jury: "The burden of proof is on proponent to show that the will was not revoked." The court held that "the error, if any, was harmless for the reason that the effect of their answer was apparent and must have been known by the jury."[43]

This realistic approach toward special issues was reflected in the Texas Supreme Court case of *Grieger v. Vega*.[44] This was a suit for damages by Matilda Vega against Fred Grieger for the alleged wrongful killing of Matilda's son, Arthur Vega. The case was submitted on just two special issues. The first special issue was:

> Do you find from a preponderance of the evidence that the action of Fred Grieger in shooting and killing the deceased, Arthur Vega, was wrongful?[45]

The second issue, which was the damage issue, was conditioned on an affirmative finding to Special Issue No. 1. The jury answered the first special issue "No," and thus did not answer the damage issue. The Austin Court of Civil Appeals reversed the judgment of the trial court on the ground that the conditional submission of the damage issue informed the jury of the legal result of their answer to the first issue and was reversible error.[46] On appeal that holding was reversed by the Supreme Court of Texas in a decision which is today the authority on this point of law:

> The rule is well grounded in our practice that it is error to submit a special issue conditionally when the effect of such submission is

42 188 S.W.2d 905 (Tex. Civ. App.—Austin 1945, writ ref'd).
43 *Id.* at 909.
44 153 Tex. 498, 271 S.W.2d 85 (1954).
45 *Id.* at 500, 271 S.W.2d at 86.
46 Vega v. Grieger, 264 S.W.2d 498 (Tex. Civ. App.—Austin 1954).

> to inform the jury as to the judgment which will be rendered as a result of the verdict. In order for a conditional submission to be erroneous it must 'inform' the jury of that which it would not know but for such conditional submission. The spirit of our practice of submitting cases on special issues would be violated if jurors were informed either by the court or by counsel of the effect of their answers, but where the effect is so obvious that any juror with ordinary intelligence would know its effect, neither the letter nor the spirit of the rule is violated by a charge which assumes such knowledge. The sole question for decision was whether or not petitioner wrongfully killed respondent's son. No juror would have been of the opinion that petitioner was liable in damages to respondent if his act was not wrongful. Any juror of ordinary intelligence would have known the legal effect of the answer to Special Issue No. 1. The conditional submission of Special Issue No. 2 did not inform the jury of its legal effect, and, therefore, should not cause a reversal of the trial court's judgment.[47] It would be the better practice to submit the damage issue unconditionally, but when, in a case like the instant one, the conditional submission conveys no information to the jury, the case should not be reversed on that account.[48]

## CONCLUSION

Several writers have advocated that the jury should be informed of the legal effect of its answers.[49] First, the assumption prevails that the jury is a body of fair and impartial citizens who will answer the issues as they find them without regard to the effect to those findings. Secondly, as a practical matter, the jurors probably already know the legal effect of their findings, either as a result of the counsel's argument to the jury, or the manner in which the special issues are submitted, or from their own common knowledge.

> In the overwhelming number of cases juries, without being told, know the legal effect of their verdict. If the issues are simply and clearly put it would be rare for the jury to misunderstand the significance of their answers. Moreover counsel are permitted to argue how the issues should be answered under the evidence and how counsel want them answered. Thus it seems that a jury would have to be unusually thick-witted if they did not know what their answers meant.[50]

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47 153 Tex. at 502, 271 S.W.2d at 87.

48 *Id.* at 503, 271 S.W.2d at 87.

49 Green, *Blindfolding the Jury*, 33 TEXAS L. REV. 273 (1955); 6 AM. JUR. TRIALS *Special Verdicts* § 8 (1967); Comment, *Informing the Jury of the Legal Effect of Its Answers to Special Verdicts*, 43 MINN. L. REV. 823 (1959).

50 Green, *Blindfolding the Jury*, 33 TEXAS L. REV. 273, 282 (1955).

Conversely, if the jury were aware of the effect of its answers, the jury might alter its answers to fit the judgment which it desires. Moreover, there is no need to inform the jury of the legal effect of its answers, as the jury should be concerned only with determining the facts.

Although the arguments in favor of informing the jury as to the effect of its answers are very persuasive, it is suggested that the purposes of the special issue system would best be served by limiting the jury's consideration to the facts, and not their consequences.