

Alabama Rules of Civil Procedure

VI. TRIALS

Rule 49.

General verdicts, special verdicts, and interrogatories.

(a) *General verdicts.* Except as otherwise provided in this rule, jury determination shall be by general verdict. The remaining provisions of this rule should not be applied in simple cases where the general verdict will serve the ends of justice.

(b) *Special verdicts.* The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(c) *General verdict accompanied by answer to interrogatories.* The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court

shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(d) *Court to provide attorneys with questions or interrogatories.* In no event shall the procedures of subdivision (b) and (c) of this rule be utilized unless the court, within a reasonable time before final arguments are made to the jury, provides to the attorneys for all parties a copy of the written questions or interrogatories, as the case may be, to be submitted to the jury.

(dc) *District court rule.* Rule 49 does not apply in the district courts.

[Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

The rule is very similar to Federal Rule 49. Note, however, that there is no Federal Counterpart to Rule 49(a). Rule 49(a) has been included in order to expressly set forth the authority for the continuing validity of the general verdict, and further, to discourage use of other than general verdict in routine, simple cases. For general treatment of the views of the supporters and opponents of Federal Rule 49, see 8 Wright & Miller, *Federal Practice and Procedure, Civil* § 2501, et seq. (1971) and 5A Moore's *Federal Practice*, ¶ 49.01, et seq. (2d ed. 1971). No unanimity as to the value of Federal Rule 49 exists. Judge John R. Brown of the Fifth Circuit is quite impressed with Federal Rule 49(a) but sees Federal Rule 49(b) as "nothing but trouble." Brown, *Federal Special Verdicts, The Doubt Eliminator*, 44 F.R.D. 338, 339, 340 (1967). Others prefer Federal Rule 49(b) to Rule 49(a). See, e.g., Guinn, *The Jury System and Special Verdicts*, 2 St. Mary's L.J. 175, 179 (1970). Finally, when amendments to Rule 49 F.R.C.P. were tendered to the U.S. Supreme Court for approval in 1963, Justices Black and Douglas recommended that Federal "Rule 49 be repealed, not amplified." 374 U.S. 861, 868 (1963).

Note that the Rule 49(b) and Rule 49(c) provide for two separate and distinct methods of submitting a case to the jury – special verdicts and general verdicts accompanied by answers to specific questions. Construction of the Rule often ignores this distinction. *Weymouth v. Colorado Interstate Gas Co.*, 367 F.2d 84 (5th Cir.1966).

The rule leaves it completely in the discretion of the court whether to direct the jury to return a general verdict, a general verdict accompanied by answers to interrogatories, or special verdicts. The general verdict accompanied by answers to special interrogatories, provided for by subdivision (c) seems to be entirely unknown in Alabama procedure. And there has been no all-inclusive statute,

comparable to Rule 49(b), authorizing special verdicts; there are a few scattered statutes requiring special verdicts in certain special proceedings. See, for example, Code of Ala., §§ 6-6-256, 6-6-282, 6-6-286, 6-6-291, and 35-11-224, all of which remain untouched by these rules. See also Code 1940, Tit. 7, §§ 271, 358, which the rules supersede. In addition, the jury, as at common law, has formerly had the privilege of returning a general or special verdict and the court may not direct them in that matter. *Little v. Sugg*, 243 Ala. 196, 8 So.2d 866 (1942).

Rule 49(b) provides for a special verdict in the form of written findings by the jury on the specific fact issues submitted to them by the court. The special verdict was of little value at common law because of the doctrine that it must be complete in itself, and that the jury must find all the material facts or else the verdict is defective and will not support a judgment. *Clay v. State*, 43 Ala. 350 (1869); *Penney v. State*, 229 Ala. 36, 155 So. 576 (1934); cf. *City of Birmingham v. Hawkins*, 196 Ala. 127, 72 So. 25 (1916). Rule 49(b) expressly cures the common law difficulty by express provision. The use of a special verdict is within the sound discretion of the trial court. *Miskell v. Southern Food Co.*, 439 F.2d 790, 792 (5th Cir.1971).

The scope, form and contents of the questions rests within the court's discretion (*Scott v. Isbrandtsen Co.*, 327 F.2d 113, 119 (4th Cir.1964)) but all material factual issues should be covered (*Angelina Cas. Co. v. Bluitt*, 235 F.2d 764 (5th Cir.1956)). The questions submitted should present the case fairly, *Norfolk Southern Ry. Co. v. Davis Frozen Foods, Inc.*, 195 F.2d 662 (4th Cir.1952); they should be simple and clear with only one issue in each question as opposed to double questions or questions in the alternative, *Great American Ins. Co. v. Horab*, 309 F.2d 262, 266 (8th Cir.1962); *Scarborough v. Atlantic Coast Line R. Co.*, 190 F.2d 935 (4th Cir.1951); they should contain ultimate fact issues and not evidentiary fact issues, *A.M. Webb & Co., Inc. v. Robert P. Miller Co.*, 78 F.Supp. 24 (E.D.Pa.1948), rev'd on other grounds, 176 F.2d 678 (3d Cir.1949); and they should be fairly few in number, *Maryland Casualty Co. v. Broadway*, 110 F.2d 357 (5th Cir.1940). Where special verdicts are used, there is no requirement to instruct the jury on the legal principles which the court will apply to their decision of the facts. *Cate v. Good Brothers, Inc.*, 181 F.2d 146 (3d Cir.1950), cert. denied 340 U.S. 826, 71 S.Ct. 62, 95 L.Ed. 607. However, strong argument can be adduced to support some explanation of the effect of the law on the interrogatories to the jury. See Brown, *Federal Special Verdicts; The Doubt Eliminator*, 44 F.R.D. 338 (1967). Contra: *McCourtie v. U.S. Steel Corp.*, 253 Minn. 501, 93 N.W.2d 552 (1958), construing a rule identical to Rule 49(b).

Rule 49(b) reaches problems arising from omission of any issue of fact. The Rule provides that the prejudiced party waives his right to a jury trial as to that issue unless he demands its submission before the jury retires. *U.S. v. H.M.*

Branson Distrib. Co., 398 F.2d 929 (6th Cir.1968); *Columbia Horse & Mule Comm'n Co. v. American Ins. Co.*, 173 F.2d 773 (6th Cir.1949). When waiver has occurred, the trial judge makes his own finding of fact on that issue (*Ingersoll v. Mason*, 254 F.2d 899 (8th Cir.1958); *Diffenderfer v. Heublein*, 285 F.Supp. 9 (D.C.Minn.1968), affirmed 412 F.2d 184 (8th Cir.1969)), and if the court does not do so, the appellate court will presume that the trial court made whatever finding necessary to support the judgment he entered (*General Ins. Co. of America v. Fleeger*, 389 F.2d 159 (5th Cir.1968); *Kammert Bros. Enterprises v. Tanguie Verde Plaza Co.*, 4 Ariz.App. 349, 420 P.2d 592, 612 (1966), vacated on other grounds, 102 Ariz. 301, 428 P.2d 678 (1967)).

Rule 49(c) provides for a general verdict accompanied by the jury's answers to interrogatories. This affords the court a halfway house between the traditional general verdict and the special verdict procedure of Rule 49(a). The procedure of subdivision (c) is intended to be an improvement on the general verdict, by directing the attention of the jury to the important fact issues, and exposing errors in the deliberative process. *Moore-McCormack Lines, Inc. v. Maryland Ship Ceiling Co.*, 311 F.2d 663, 669 (4th Cir.1962). Wicher, *Special Interrogatories to Juries in Civil Cases*, 35 Yale L.J. 296 (1926). If some error requires setting aside the general verdict and the answers to some of the interrogatories, there is no need to relitigate issues already decided under properly submitted interrogatories. 8 Wright & Miller, *Federal Practice and Procedure, Civil* § 2511, *Green v. American Tobacco Co.*, 325 F.2d 673 (5th Cir.1963), cert. denied 377 U.S. 943, 84 S.Ct. 1349, 12 L.Ed.2d 306 and 377 U.S. 943, 84 S.Ct. 1351, 12 L.Ed.2d 306.

The only procedural problem about this device is the action to be taken where the general verdict is inconsistent with the answers to interrogatories, or where some of the latter are inconsistent with others. The rule sets out the procedure to be followed in such event. When such inconsistency occurs, the court can order further deliberations, (*Nordmann v. National Hotel Co.*, 425 F.2d 1103 (5th Cir.1970)), a new trial (*Phillips Chem. Co. v. Hulbert*, 301 F.2d 747 (5th Cir.1962)), or enter judgment based on the answers to interrogatories, thereby disregarding the inconsistent general verdict (*Elston v. Morgan*, 440 F.2d 47 (7th Cir.1971)).

Finally, Rule 49(d) has no federal counterpart but it gives the parties the opportunity to examine the questions or interrogatories prior to closing arguments.

**Committee Comments to October 1, 1995,
Amendment to Rule 49**

The amendment is technical. No substantive change is intended.