Civil Procedure

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CLASS NINETEEN

CHAPTER 12

VERDICTS AND JUDGMENTS

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Analysis of Chapter

* A. DECISIONMAKING 539
* Sec.
* § 12.1 The Verdict: Its Entry and Form
* § 12.2 Findings and Conclusions in Nonjury Cases 545
* B. ATTACKS ON VERDICTS AND JUDGMENTS 549
* § 12.3 Directed Verdicts and Judgments Notwithstanding the Verdict (Judgments as a Matter of Law)
* § 12.4 Motions for New Trial 560
* § 12.5 Juror Misconduct and Impeachment of the Verdict 567
* § 12.6 Motions to Alter the Judgment or for Relief from the Judgment
* 574

Verdicts and Judgments

- Post-Trial Motions
  - Directed Verdict (Jury Trial)
  - Motion for Involuntary Dismissal (Bench Trial)
  - Judgment Notwithstanding the Verdict (JNOV)
  - Motion to Amend the Judgment (Bench Trial)
  - Motion for Judgment Notwithstanding the Failure of the Jury to Agree
  - Motion for New Trial

§ 12.1 The Verdict: Its Entry and Form

* Traditional Form of Verdict

* The traditional and still most common form of verdict in jury trials is the general verdict, by which the jury finds for either plaintiff or defendant but does not disclose the grounds for the decision.
* (539)

Criticisms of General Verdict

* One major criticism is that it is "either all wrong or all right, because it is an inseparable and inscrutable unit."
* (539)

Second Criticism

* A second criticism of the general verdict is that it is virtually impossible to know whether the jury made its decision after careful consideration of the court's instructions, or whether it decided based upon emotion, popular opinion, or some other sentiment.
* (539)

Alternative Verdict Forms

* To ameliorate these problems, the Federal Rules allow two other verdict forms. Rule 49(a) authorizes a special verdict by which the court submits only a list of factual issues to the jury and requests it to make findings. The judge then applies the law to these findings to enter the appropriate judgment.

Alternative Forms - 2

* Rule 49(b) authorizes a general verdict accompanied by written questions by which the court instructs the jury to reach a general verdict, but also requests answers to one or more questions so that the basis for the verdict is disclosed. Similar provisions exist in the states
* (539-540)

Resistance to Special Verdicts

* Despite these advantages, many trial judges resist using these alternative verdict forms, particularly the “special verdict.”
* (540)

Removal of Secrecy – Good or Bad?

* In the words of one commentator, the special verdict throws off the "cloak of secrecy" surrounding the jury process and "enables the public, the parties and the court to see what the jury has really done."

Opposition for These Very Reasons

* Many distinguished scholars oppose the special verdict for exactly these reasons. They argue that the jury system should not be a scientific process. Rather, the jury's greatest value is that it applies the strict and sometimes harsh principles of law with the sense of justice of the "man on the street."
* (541)

Between Extremes

* Between these two extremes are those who believe the special verdict is unnecessary in simple cases, and those who consider it a valuable tool in complicated, multi-issue litigation.
* (541)

Choice of Form

* The choice of verdict form generally is left to the discretion of the trial judge; no party has a right to a particular form of verdict
* (541)

Difficulties of Questions to Juries

* Formulating the questions or issues to be put to the jury is the most difficult part of using the special verdict. Indeed, the time required and the difficulty of formulating the questions for a special verdict, particularly in complex cases, is yet one more reason why the use of this device is not widespread.
* (542)

Example of Difficulties

* For example, in one tort case arising out of an automobile accident the jury rendered a general verdict of $500,000 in favor of the plaintiff, but at the same time specifically found the plaintiff guilty of contributory negligence. The court entered judgment for the defendant based on the specific answer because the substantive law barred recovery if the plaintiff were found contributorily negligent. It was not possible to reconcile the inconsistency
* (544)

§ 12.2 Findings and Conclusions in Nonjury Cases

* (545)

* Whenever an action is tried without a jury, Federal Rule of Civil Procedure 52(a) and similar state rules require the trial judge to make findings of fact and conclusions of law when entering judgment.

Requirement of Findings of Fact

* This requirement applies when the court sits with an advisory jury, as well as when the judge grants or refuses a request for an interlocutory injunction, dismisses plaintiff's case on the merits at the close of plaintiff's presentation of evidence, or grants a partial judgment on some of the claims in an action. (545)

Purpose of Requirement

* The purposes of this requirement are threefold. First, it aids the appellate court by providing a better understanding of the basis of the trial court's decision. Second, it clarifies precisely what is being decided, facilitating the application of res judicata and collateral estoppel in subsequent cases. Third, it evokes care on the part of the trial judge in ascertaining the facts.
* (546)

State Practice

* In many states, however, the rules do not require the judge to make special findings unless a request for them is made by one of the parties. Further, the findings may be made orally. Federal Rule 52(a) was amended in 1983 to make clear that the judge may make findings of fact and conclusions of law orally in open court. According to the Advisory Committee Note, the objective of the amendment was to lighten the burden on trial judges
* (546)

Duty of Making Findings of Fact

* Although the duty of making findings of fact and conclusions of law lies with the court, the trial judge may invite counsel to submit proposed findings and conclusions. Indeed, requests for proposed findings may be particularly helpful in complex cases involving scientific or technical issues.
* (547)

Who Should Draft

* If the court asks for the attorneys' aid in preparing its findings, the better practice is to request proposals from counsel for both sides, and to do so prior to the decision of the case. Several courts, however, have adopted the practice of deciding a case and then asking winning counsel to prepare findings and conclusions and this has been held to be a permissible practice.
* (547)

Standard of Review

* As is discussed elsewhere, the standard on review is that findings of fact will not be reversed unless they are clearly erroneous. In the federal courts and some states, this is true whether the evidence that was submitted was oral or documentary.
* (548)

Failure to Make a Finding

* If the trial court fails to make a finding on a material fact, some appellate courts assume that the judge found against the party with the burden of proof on that issue. Others imply that the court made a finding on that fact consistent with its general findings. Most commonly, however, the appellate court will treat the omission as reversible error and remand for further findings on that issue, unless the record on appeal allows only one resolution of the issue.
* (548)

B. ATTACKS ON VERDICTS AND JUDGMENTS

* § 12.3
* Directed Verdicts and Judgments Notwithstanding the Verdict (Judgments as a Matter of Law) (549)

§ 12.3 Directed Verdicts and Judgments Notwithstanding the Verdict (Judgments as a Matter of Law)

* Directed verdicts and judgments notwithstanding the verdict (JNOV) are two mechanisms by which the judge controls the jury, since the granting of either motion essentially takes the case out of the jurors' hands. Directed-verdict motions may be made by either party at the close of their opponent's evidence.
* (549)

Standard for Directed Verdicts, JNOV

* For the motion to be granted the court must find that there is insufficient evidence to go to the jury or that the evidence is so compelling that only one result could follow. In this way the directed verdict acts somewhat like a delayed summary-judgment motion in that it determines that there are no genuine issues of fact that need to be sent to the jury.
* (549)

JNOV as delayed directed-verdict motion

* Similarly, a JNOV motion may be viewed as a delayed directed-verdict motion because it is **made after the verdict is rendered** and seeks a judgment contrary to the verdict on the ground that there was insufficient evidence for the jury to find as it did.

1991 Amendment

* A 1991 amendment to the federal rule renamed the motion for a directed verdict and the motion for a judgment notwithstanding the verdict as motions for judgment as a matter of law and renewed motions for judgment as a matter of law respectively. The change in terminology underscores the common identity of the two motions, which merely are made at different times in the proceeding.
* (549)

US SUPCT on directed verdicts

* As the Supreme Court noted in Herron v. Southern Pacific Company, the power to direct a verdict is part of the essential character of a federal court.

Judge's Role

* "In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law. This discharge of the judicial function as at common law is an essential factor in the process for which the Federal Constitution provides."
* (550)

How Courts Reconcile

* It is important to consider how the courts have reconciled the use of these devices with the right to jury trial. The primary constitutional justification for these procedures is that analogous devices existed at common law. Since the Seventh Amendment to the United States Constitution and comparable provisions in state constitutions preserve the right to jury trial as it existed at common law, the existence of mechanisms allowing similar judicial control at that time is seen as justifying the modern-day procedures.
* (550)

Conflict with Seventh Amendment?

* United States Supreme Court has ruled that the use of a directed-verdict motion in the federal courts comports with the Seventh Amendment. According to the Court, the important fact is that at common law there was some mechanism by which the judge could determine that the evidence was insufficient for the jury to consider
* (551)

JNOV only if directed-verdict motion was made and refused?

* Under the Federal Rules and many state provisions, a JNOV motion can be granted only if a directed-verdict motion was made prior to submission of the case to the jury, so that the JNOV results from a renewed motion requesting the court to evaluate the sufficiency of the evidence. If the party fails to make a directed-verdict motion, a JNOV is not available. (551-552)

Post-trial motion only if motion made during trial?

* Further, a post-trial motion for judgment can be granted only on grounds advanced in the earlier motion. Finally, even if a directed-verdict motion was made, a JNOV motion typically cannot be entered sua sponte.
* (552)

Formulated Standards

* Basically, there are two different formulations of the directed-verdict standard: the scintilla test and the substantial-evidence test. Under the scintilla test, the judge will deny the motion and refer the case to the jury if there is any—"a scintilla of"—evidence on which the jury might possibly render a verdict for the nonmovant. At the opposite end of the spectrum, under the substantial-evidence test, the court will grant the motion unless there is sufficient or substantial evidence suggesting that the jury might decide for the nonmovant.
* (552-553)

Scintilla Test

* The scintilla test tilts in favor of allowing cases to go to the jury; the substantial-evidence test allows the judge much greater authority to intrude. The general trend in the courts has been toward the use of the substantial-evidence test and increased court control. (553)

Rules of Construction

* When evaluating the propriety of a directed verdict or JNOV the courts also use various rules of construction that bear on whether the standard has been met. Typically, the judge must view the evidence in the light most favorable to the nonmoving party in order to determine whether there is sufficient evidence to raise a jury issue.
* (555)

Benefit of Inferences

* This means that the nonmovant has the benefit of all the legitimate inferences that may be drawn from the evidence. The case should go to the jury even if the underlying facts are not disputed as long as conflicting inferences may be drawn from those facts.
* (555)

Lavender v. Kurn

- 327 U.S. 645 (1946)
- Lavender sued on behalf of Haney, who had died from head injuries suffered while working as a switch tender for the St Louis-San Francisco Railway and the Illinois Central Railroad, which was represented by Kurn. At trial, Lavender tried to prove that the cause of death was a protruding mail hook on a train that struck Haney on the head as the train passed. Haney would have had to have been standing in a particular place and the hook would have hit Haney 63.5 inches above the ground.

Lavender v. Kurn – Facts

- The defendant claimed that Haney had been murdered. Haney had been working at night and had opened the switch as the train approached but had not closed it after it passed. Haney was found dead face down near the track. He had been killed by a fast moving round small object. His personal belongings had not been taken.
- The jury returned a verdict in favor of Lavender.
- The Missouri Supreme Court reversed on the grounds that it was mere speculation that Haney had been hit by the mail hook.
- Lavender appealed to the Supreme Court.

Lavender v. Kurn – Issues

- What showing is required in order to overturn a jury verdict?

Lavender v. Kurn – Ruling

- A jury verdict may only be overturned if there is a complete absence of probative facts to support the verdict.
- The court held that if there is any evidentiary basis for a verdict, an appellate court may not overturn a jury verdict.
- A jury can disregard or disbelieve facts that may be inconsistent with its conclusion and it may speculate and make conjecture to reach a verdict if the facts are disputed.

Lavender v. Kurn – Ruling 2

- This evidence demonstrates that there was evidence from which it might be inferred that the end of the mail hook struck Haney in the back of the head.
- The court held that the jury had made its inference and the respondents were not free to relitigate the factual dispute on appeal.
- Verdict for Lavender reinstated.

Lavender v. Kurn – Explanation

- Courts of appeals do not assess the credibility of witnesses or the quality of evidence. That is the sole purview of the jury.

Lavender v. Kurn,147

* “Whenever facts are in dispute or the evidence is such that fair-minded men may draw different inferences, a measure of speculation and conjecture is required on the part of those whose duty it is to settle the dispute by choosing what seems to them to be the most reasonable inference. Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear.”
* (555)

Consideration of Less than All Evidence

* In some cases, the moving party's evidence is not considered and whether sufficient evidence is presented is determined only on the basis of the evidence introduced by the opponent. This approach raises an almost impenetrable barrier to directed verdicts.

US SUPCT rule: all evidence

* In 2000, the Supreme Court finally **adopted as the rule for the federal courts** that judges should consider all the evidence that has been presented at the time of the motion, resolving any credibility problems in favor of the nonmovant.
* (555-556)

Credibility Issues

* The application of the directed-verdict or JNOV standard has its greatest difficulty when questions of credibility are raised, because assessing the credibility of witnesses is clearly within the jury's domain. Nonetheless, an assertion that credibility is at issue, resting alone, will not suffice to prevent the court from directing a verdict if all of the objective or indisputable evidence indicates that a particular piece of testimony is incredible. (556)

Diversity Issues

* Given the somewhat different formulations of the standards for testing the legal sufficiency of the evidence, as well as varying approaches to construing the evidence, one question that must be considered is whether federal courts when sitting in diversity of citizenship are bound to apply the directed-verdict standards of the state in which they are sitting. (556)

Diversity: Two Contexts

* Two different contexts. The first is when the state, by statute or constitution, provides that a particular issue is solely within the purview of the jury to decide. Does this state law limit or alter the federal court's ability to direct a verdict in an appropriate case? As already indicated, the answer to this question is clear: state law "cannot alter the essential character or function of a federal court."
* (556)

Second Context

* In the second context, however, federal-court authority is less clear. This occurs when the state standards for granting a directed verdict differ from the federal standard. Some courts have ruled that federal law governs, viewing the power to enter a directed verdict or JNOV as a decision related to the judge-jury relationship and thus inherently federal. Yet other courts find that questions relating to the sufficiency of the evidence are so bound up with the substantive rights at issue that state law must control.
* (557)

JNOV differences from Directed Verdict

* Whether there is any particular function served by the judgment notwithstanding the verdict that is not addressed by the directed verdict? The answer is yes. First, the very availability of a JNOV encourages the judge to ease back on granting a directed verdict; in most cases the verdict will be the same as the judge would have directed because the jury should agree that the evidence does not support a verdict for the opposing party. (557)

Advantages of Waiting

* By waiting, the judge avoids disputes about the propriety of a directed verdict, as well as appeals from its grant, and also defers to the jury. In addition, the judge may not be in as good a position to decide whether the evidence is sufficient to warrant judgment as a matter of law when a directed-verdict motion is made as will be the case by the time the jury verdict is rendered. (557)

Simblest v. Maryland

- 427 F.2d 1 (2d Cir. 1970)

- A fire engine was being driven to a fire by Maynard when it struck a car driven by Simblest. Simblest's testimony was in conflict with all of the other witnesses including his own. The witnesses testified generally that the traffic light was inoperable due to a power outage and that the fire truck's lights and sirens were engaged at the time of the accident.

Simblest v. Maryland – Facts

- At the close of the evidence the court denied Maynard's motion for a directed verdict. The jury returned a verdict in favor of Simblest for $17,125 and the court granted Maynard's motion for judgment notwithstanding the verdict.
- Simblest appealed.

Simblest v. Maryland – Issues

- What is the standard for determining whether a motion for judgment notwithstanding the verdict (JNOV) is appropriate?

Simblest v. Maryland – Ruling

- The standard for determining whether a motion for judgment notwithstanding the verdict (JNOV) is appropriate is whether the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached.

Simblest v. Maryland – Ruling 2

- In this case, the court held that the evidence showed that Simblest had been contributorily negligent under either standard under Vermont law regarding a fire department vehicle approaching an intersection with a red light or siren engaged.
- JNOV affirmed.

Simblest v. Maryland – Explanation

- In making such determination, in general the court may consider either: 1) all of the evidence, or 2) only the evidence favorable to the nonmovant and the uncontradicted unimpeached evidence unfavorable to the nonmovant.

Availability of New Trial Option

* The availability of a new trial acts to undercut the potential severity of the trial judge's decision regarding the sufficiency of the evidence and further avoids any undue intrusion into the jury process because the parties may have a jury trial in the second suit. Thus, it generally is held that the court may order a new trial, even if the party seeking a JNOV has not requested a new trial in the alternative. (558)

Availability and Scope of Review

* The last matter that must be considered is the availability and scope of appellate review of directed-verdict and JNOV rulings. In a final-judgment-rule jurisdiction, such as the federal courts, the grant of either motion results in the entry of a judgment and may be appealed immediately. (558)

Vs. Interlocutory Decision

* When a directed verdict is denied, however, that decision is interlocutory and appeal must wait until a judgment on the merits is reached.
* (558)

Encouraged to file simultaneous JNOV and New-Trial Motions

* Parties are encouraged to file simultaneous JNOV and new-trial motions so that the appellate court will have the benefit of the trial judge's insights on both and can avoid piecemeal review. (560)

§ 12.4 Motions for New Trial

All American judicial systems provide some means by which a party who is dissatisfied with the first trial in a civil case may request a new trial. Although errors that occurred during the trial may be asserted on appeal, they also may present the basis for obtaining a new trial in the trial court. The new-trial motion gives the judge the opportunity to correct any errors that occurred, avoiding appellate reversal. (560)

Discretion of Trial Court

* Given the important corrective role of new-trial motions, the discretion granted to the court is exceedingly broad. The only clear limitation is one of time; most procedural rules have rigid timing restrictions in which new-trial motions must be made and counsel should consult them carefully. Failure to move within the period is fatal. (560)

Example Standards

* Minnesota Procedural Rule 59.01 lists jury misconduct, newly discovered material evidence and errors of law as reasons for ordering a new trial. Other rules simply authorize the judge to grant a new trial for any reason for which a new trial has "heretofore been granted," thereby allowing the court to consider any error that may have prejudiced the losing party.

Examples 2

* Using this authority, courts have granted new trials because of prejudicial errors in evidentiary rulings or in the jury instructions; for attorney or juror misconduct; because of 562 newly discovered evidence; or because the verdict appears against the weight of the evidence or is legally excessive or inadequate in amount. (561-562)

Sufficiency of Evidence

* New-trial rulings involving the sufficiency of the evidence require some special consideration because of the overlap with motions for directed verdicts and for judgments notwithstanding the verdict, both of which also are based on the legal insufficiency of the evidence. The difference is really one of degree because a new trial may be granted even though the insufficiency falls short of that required to support a directed verdict or JNOV motion. (562)

Remittitur

* Remittitur clearly existed at common law and thus, insofar as the right to jury trial is tied to history, it is permissible. However, the Supreme Court has ruled that the use of remittitur must be coupled with the option of a new trial in order to comply with the Seventh Amendment. To impose remittitur without that option would violate the Amendment's re-examination clause.

Additur

* In contrast, there was no common-law version of additur. Consequently, the United States Supreme Court in the early case of Dimick v. Schiedt ruled, five-to-four, that the use of it in the federal courts violates the Seventh Amendment. (564)

Judicial Discretion

* The preceding discussion illustrates the broad discretion given the trial judge when confronting a new-trial motion. In fact, if the judge's decision is to grant a new trial, that determination is virtually unassailable. In most judicial systems, including the federal courts, an order granting a new trial is interlocutory and cannot be appealed until after a final judgment is entered at the conclusion of the second trial. (565)

Appellate Courts on New-Trial Rulings

* Appellate courts will reverse a new-trial ruling only for an abuse of discretion. Enormous deference is given to the trial judge, at least when the basis for a new trial is some form of prejudicial misconduct or error of law, on the theory that the judge was present during the proceedings and thus is in the best position to evaluate the prejudicial effect of what occurred. (566)

Gasperini (US SUPCT)

* 1996 Supreme Court decision,
* **Gasperini v. Center for Humanities, Inc.**
*
* The Court, in an opinion by Justice Ginsburg, ruled that the trial court could apply state-law standards to determine what was excessive, but that the appellate court when reviewing its denial of a new trial was confined to an abuse-of-discretion standard. …. (567)

Gasperini - continued

* Most importantly, the Court held that appellate review, limited to abuse of discretion, was consistent with the Seventh Amendment's re-examination clause "as a control necessary and proper to the fair administration of justice * * *"

§ 12.5 Juror Misconduct and Impeachment of the Verdict

* Various errors committed by the jury can be the basis for a challenge to the verdict either by motion for new trial or by appeal. The problem must be considered on two levels. First, what constitutes juror misconduct? And, second, what evidence may be used to show misconduct? (567)

Specific Instances of Misconduct

* Some instances of juror misconduct are clear, as when a juror fails to answer truthfully one of the questions asked during voir dire. In those circumstances, the main issue is whether the juror's response is viewed as so prejudicial that the verdict should be overturned.

Other Forms

* Other forms of misconduct that occur during the deliberation process raise difficult questions concerning what the jury may consider when determining the verdict, as well as problems of whether it is proper to inquire into their deliberations at all. (567)

Unauthorized Conversations

* Thus, one easily identifiable form of misconduct occurs when jury members engage in unauthorized conversations about the case with others, or when 568 they consider evidence obtained outside the courtroom, such as by visiting the scene of the accident. (567-568)

Information Exchanges

* What if alleged misconduct involves information exchanged by the jurors during their deliberations? A major strength of the jury system is that it brings together a cross-section of community standards and human experiences. It is expected that the jurors will bring their combined general knowledge to bear on the facts of the case. At the same time, it clearly is improper for the jurors to decide the case on the basis of any personal knowledge they might have about it. (568)

Between the extremes

* Between these extremes, however, is the question whether it is proper for the jury to consider some specialized knowledge of one of the jurors that bears on the case. The difficulty is that the parties may be unaware of that knowledge so that they would have no way to rebut it once the jury begins deliberating. (568)

Other Misconduct: Reaching the Verdict

* Another form of juror misconduct about which there is greater agreement involves the method of reaching the verdict itself. The classic example occurs when the jury decides on the basis of a flip of the coin or by lot. More commonly, despite careful and adequate instructions by the judge, the jury errs by entering a compromise verdict or a quotient verdict. (569)

Compromise Example

* To illustrate, consider a negligence action arising out of a car collision in a unanimous-verdict jurisdiction. If one or more of the jury members feels that the plaintiff has not proved liability, while other jurors feel that not only was liability shown, but damages should be $100,000, the jury may decide to break the deadlock....

Example Continued

* by returning a verdict for plaintiff, but only in the amount of $25,000 for actual medical expenses. This compromise ignores the law because the failure of all the jurors to find defendant liable entitles the defendant to win the case.
* (569)

Quotient Verdict

* A quotient verdict is one in which the jurors enter the jury room and, without deliberating on liability, they agree that they each will write down the amount that each believes the plaintiff should receive, that the amounts will then be totaled and divided by the number of jurors, and that the result will constitute their verdict. (569)

Problem of Quotient Verdict

* What this process ignores is any discussion of liability. It may be that in reaching the end result, some jurors wrote “no damages” since they felt that liability was not proven, and yet a verdict would be rendered for the plaintiff. If evidence can be introduced to show that this has occurred, then the verdict cannot stand and a new trial is necessary.
* (569)

Misconduct on the Face of the Verdict

* In a small number of the situations just described, jury misconduct will appear on the face of the verdict. When this occurs, the judge must consider whether a new trial should be ordered or whether there is some way to cure the defect, thereby avoiding the cost and delay of a new trial. The judge may question the jury as to its meaning and adjust the verdict accordingly, or enter a verdict that seems consistent with the 570 jury's intent.
* (569-570)

Most Often, Not apparent

* Most often, jury misconduct is not apparent when the verdict is announced. This particularly is true when a general verdict is used and the only information given to the parties and the judge when the verdict is rendered is who is liable and for how much. Under these circumstances the issue of whether the verdict may be impeached turns on the question of what evidence may be introduced to show jury misconduct requiring a new trial. (570)

Mansfield Rule

* Mansfield Rule. That rule provides that no juror may testify as to what occurred during jury deliberations. It is based on the belief that to allow any inquiry into what transpired during the deliberation process would threaten the entire jury system, which depends on the jurors feeling secure from investigation and free to decide the case as they see fit. Therefore, juror affidavits as to what occurred during the deliberations may not be used to attack their verdict. (570)

Fed R Evidence 606(b)

* In the federal courts, Federal Evidence Rule 606(b) governs what juror testimony may be introduced to impeach a jury verdict. It provides that no testimony may be used that relates to any matter or statement made during the deliberations, to the effect of anything on any juror's mind or emotions, or concerning the juror's mental processes. (572)

§ 12.6 Motions to Alter the Judgment or for Relief from the Judgment

* The entry of the judgment marks the final act in the trial-court adjudication of a dispute. Errors in the judgment that are the result of clerical mistakes or some omission or oversight309 when the judgment was entered may be corrected by a motion to correct or alter the judgment. (574)

Correcting Errors in Judgment

* In fact, in most systems the ability to correct a judgment for clerical mistakes exists at any time; the alteration of a judgment because of the omission of some element is limited in the federal courts to 28 days, in recognition that this change may be more substantial.
* (574)

Strictly Limited to Clerical Errors

* But the use of a motion to alter the judgment is strictly limited to clerical errors or matters of clear oversight, not questions involving the right to additional recovery or a reduction in an award. Attempts to reopen the judgment or to alter it for some nontechnical reason or outside the time period provided must be made by a motion for a new trial or by appeal. (574)

Relief from Judgment in the Trial Court

* In addition to these methods, all judicial systems provide some means, typically a motion for relief from judgment, by which an aggrieved party can seek relief in the trial court. The availability of this relief is particularly important because the right to move for a new trial or to appeal also is limited to defined time periods, ….

Relief, continued

* …. and many errors will not be discovered in time to make use of those methods of challenge. Consequently, a motion for relief from the judgment often presents the only possible means of avoiding what is alleged to be an erroneous judgment.
* (575)

When to Allow Relief

* The question of when to allow relief from a judgment is difficult because it requires the delicate balancing of two opposing principles: the important goal of finality requiring that there be an end to litigation, and the desire to render justice in individual cases.
* (575)

Four Methods

* There are essentially four different methods that may be available for seeking relief from a judgment in the trial court. First, special statutes may authorize specific procedures for seeking relief from certain types of judgments. Second, contemporary rules of procedure usually provide that a party may make a motion in the original trial court for relief based on certain listed grounds.

Four Methods - 2

* Third, a party may be allowed to bring an independent action challenging a judgment on grounds recognized historically in equity, or, fourth, a party may file an application to set a judgment aside for fraud, appealing to the court's inherent equity powers.
* (575)

Application to set aside judgment for fraud

* An application to set aside the judgment for fraud generally can be used only when there has been a “fraud upon the court,” not merely fraud between the parties. The distinction between these two forms of fraud is somewhat elusive, but the former generally involves showing something designed to corrupt or taint the judicial process, not merely to prevent the opposing party from prevailing. Thus, simple perjury generally does not constitute fraud upon the court (576) although attempts to bribe the judge do.

Most Common Means. Fed R Civ P 60(b)

* As a result, the most common and preferred means of seeking relief remains a motion for relief made in the court that entered the judgment being challenged. Federal Rule 60(b), which governs relief from judgments in the federal courts, provides an excellent example of a common approach taken in deciding when and why relief is authorized.

Six Grounds for Relief

* The six grounds for relief under that provision may be divided into three categories. First, there are those grounds that cannot be raised more than one year after judgment has been entered. Within one year a party can seek relief on the ground that judgment was entered on the basis of some mistake, inadvertence or excusable neglect, or that there is newly discovered evidence, or on the basis of fraud.

Well-Recognized Before 1938

* Each of these bases was a well-recognized ground for relief even before the 1938 adoption of the federal rules. Each also is quite concrete and generally has been interpreted narrowly so as not to encourage sloppy practices during the first trial.
* (577-578)

Mistake, Inadvertence, or Neglect

* Relief is allowed on the basis of mistake, inadvertence, or neglect only when it appears to be reasonable under the circumstances349 and is not the result of gross negligence on the part of the moving party or the party's lawyer. In practice, this means that the rule most frequently is invoked successfully in the default setting or when the plaintiff's suit was dismissed for failure to prosecute and judgment was entered by mistake since the party fully intended actively to litigate the dispute.

Outside of Default

* Outside the default setting, negligent errors of counsel are treated less sympathetically and relief frequently is denied on the ground that the negligent act was inexcusable.
* (578)

Fed R Civ P 50(b)(2)

* Federal Rule 60(b)(2), authorizing relief on grounds of newly discovered evidence, requires something more than simply the development of a new theory or newly discovered facts. A party seeking to rely on this provision must show that the evidence and the fact to which it relates were in existence at the time of the trial, ….

Fed R Civ P 60(b)(2) continued

* …. and that the party was unable to discover them at that time despite the exercise of due diligence in preparing the case. Further, the evidence must be of such a nature that it is likely to produce a different result if the judgment is reopened and a new trial ordered.
* (578-579)

Press the Parties to Prepare Fully

* These limitations press parties to prepare fully for their first trial because equitable considerations demand that the winning party should be able to rely on the judgment, except in very exceptional circumstances. In addition, the requirement that the evidence have been in existence at the time of trial recognizes that to allow relief for evidence that was not in existence until after trial would result in the perpetual continuation of lawsuits.
* (579)

Relief Due to Fraud

* To make a successful motion for relief because of fraud, the movant must establish the existence of the fraud by clear and convincing evidence; a mere suspicion or allegation of fraud is not sufficient.
* (579)

Void Judgments

* The second category of relief motions in Federal Rule 60(b) also presents very specific grounds, but a party seeking relief under these provisions must do so only within a "reasonable time." The bases for relief are that the judgment is void, or that it has been satisfied, or that the law on which the court relied has been reversed, or, if an injunction is involved, that a change in circumstances makes it no longer equitable to enforce it.
* (580)

Void Judgments, continued

* Indeed, motions under Rule 60(b)(4) alleging that the judgment is void often are said to have no real time limits because a void judgment cannot obtain validity through the laches of the moving party. In general, under all of these provisions the showing required is that the moving party acted diligently once the basis for relief became available, and that the delay in seeking relief did not cause undue hardship to the opposing party. (580)

Limited in Scope

* These grounds for relief are limited strictly in their scope, however. A judgment can be challenged as void only on grounds of lack of jurisdiction or for some failure of due process in the original proceeding. Erroneous judgments are not void, even when based on unconstitutional statutes. Further, relief will be allowed because of a change in the law only when the trial court clearly and specifically relied on some precedent that was overturned. (580)

Most Common Situations

* The most common situation in which relief has been granted under this provision is when a default judgment is involved, because the courts generally favor adjudications after an adversarial presentation. Relief from a default judgment will be denied only when it is clear the defendant has no defense to the action or when the defendant has delayed so long that the plaintiff would be prejudiced by being required to go to trial.
* (581)

Extraordinary Circumstances

* Although the standard of extraordinary circumstances is somewhat vague and subject to some varying, if not conflicting, court interpretations, it does suggest at least the broad contours of a test. The standard begins with a presumption that the judgment is not to be opened easily, but only when undue hardship would occur and the demands of equity and justice require it.
* (582)

Mon: Appeals – Writs - Error

CLASS 20 Monday, March 19	Appeals Writs Harmless Error
Reading	Friedenthal – Chapter 13
Case/Law/Rule	*Alexander v. Kramer Bros Freight Lines, Inc.*, 273 F.2d 373 (2d Cir. 1959) *Will v. United States*, 389 U.S. 90 (1967) *Pullman-Standard v. Swint*, 456 U.S. 273 (1982)
Assignment	None
Exam	None