

RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

(a) 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.

(b) 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 court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or 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, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

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This rule is the same as Federal Rule 49. It is recognized in the Maine decisions that a special verdict or a general verdict accompanied by answers to

interrogatories may be compelled. *Salter v. Greenwood*, 112 Me. 548, 92 A. 786 (1915); *Russell v. Brown*, 56 Me. 94 (1868). In the latter case the court said, "It may, perhaps, be doubted whether they do not as often tend to embarrass as to elucidate a case, and the right should be carefully and sparingly exercised." This advice has been heeded, and very few such cases are found in the reports.

The advice may have been based upon certain common law weaknesses, particularly the requirement that the special verdict must include a finding on every material issue of fact. Many special verdicts were vitiated because material findings were omitted. Rule 49(a) seeks to correct this weakness by providing that if the court omits an issue in submitting the case to the jury, each party waives his jury right as to such issue unless he objects before the jury retires. The court may make its own finding on such an issue and thus complete the necessary factual basis for a judgment. Furthermore, if it fails to do so, the appellate court will treat it as though the finding had been made which would support the judgment entered.

Rule 49(b) offers a means of checking the jury's application of the law to the facts and may in some cases render immaterial an error in instructions which would nullify a general verdict. For instance, if there are two issues in the case and the jury's answer to each is fatal to the plaintiff's claim, an error in instructions as to one of the issues would not compel a reversal.

It seems desirable to make both of these devices available for such use as the court deems it wise to make of them.