

Friday November 12, 2004

Supreme Court Advisory Committee

Report of the Rule 523-734 Sub-committee on HB 4

Judge Tom Lawrence Sub-committee Chair

Legislative Intent

1. If the legislature intended that justice courts and small claims courts have a jury charge in cases involving exemplary damages, does it also intend that the courts give a full jury charge in any civil suit where there is a question of exemplary damages? Or is the jury charge to be partial, with a charge on the exemplary damages question only and no charge on any other aspect of the case?
2. I believe JP courts were not aware of this provision in HB4, or of the older provision in Section 41.012 CPRC, and if they had known would have made a concerted effort to have JP courts exempted from the jury charge provision. JPs will most likely try to get the justice courts exempted from the jury charge provision in the upcoming session. It is informative that Section 41.012 CPRC requiring a jury charge for exemplary damages has been the law since 1995 but as far as I know, JP courts have not followed that requirement, because of Rule 554, and no alarm has been raised.
3. The legislative history of House Bill 4 states that it is meant to address "root problems" of the court system, including non-meritorious lawsuits, a general increase in jury awards, and an increase in awards for non-economic damages. Many of the bill's provisions address the health care crisis. None of these are considered to be major problems in the justice or small claims courts. Damages above \$5000 are almost never going to be awarded. The \$5000 jurisdictional limit includes actual damages, compensatory damages, exemplary damages and attorney fees as part of the amount in controversy. The rationale for the jury charge for exemplary damages is not compelling in justice or small claims courts.

4. The Rules of Procedure prohibit a jury charge in justice court. The legislature, in Government Code Chapter 28, does not address the issue in small claims court. JPs typically follow most of the justice court rules for small claims court. If the legislature meant for there to be a jury charge in small claims court, presumably it would have amended the Government Code to provide for a charge in small claims court. Since the legislature has not amended Chapter 28 of the Government Code since 1995, presumably it did not intend that the Chapter 41 CPRC requirement for a jury charge for exemplary damages apply to small claims court. Nor did the legislature amend Chapter 28 in 2003 to require a jury charge requiring a unanimous verdict on the issue of exemplary damages.

Current Practices in JP Court

5. JP Courts try two different types of civil cases; justice court suits tried under the Rules of Evidence and Civil Procedure, and small claims court cases tried under Chapter 28 of the Government Code where the Rules of Evidence are not in effect.
6. TRCP 554: According to the Justice Court Deskbook, the judge may “instruct” the jury with regard to proper jury conduct, however, Rule 554 prohibits the justice from giving a charge to the jury in a civil case. Chapter 28 of the Government Code does not mention whether or not there is a jury charge in small claims suits. It says the jury is provided “as in other civil cases in justice court.” Although this probably refers to the manner of summoning jurors, the practice in the JP courts is to apply the justice court rules for juries to small claims court. If the court is required to give a jury charge for the exemplary damages issue but is prohibited from giving a charge for any other matters relating to the jury trial isn’t that going to be confusing?

7. Another argument against having a jury charge for exemplary damages in JP court is found when you look at TRCP 278 which provides that the jury charge is based on the written pleadings and the evidence. CPRC 41.012 says the court “shall instruct the jury with regard to Sections 41.001, 41.003, 41.010, and 41.011.” Does Rule 278 apply to 41.012, in other words does a JP court have to provide a jury charge on the issue of exemplary damages if the pleadings do not raise the issue? If Rule 278 applies to 41.012, then a JP will not have to give a charge if the written pleadings and evidence do not raise the issue of exemplary damages. Rule 525 allows oral pleadings, and the Government Code only requires a statement of the claim be filed. Formal pleading rules do not apply. Consequently, in a justice court or small claims jury trial, the first time anyone may know the full basis of the plaintiff’s claim is at the trial.
8. Who prepares the jury charge? The parties may be pro se and the judge may not have a clerk, so does the judge prepare the charge? Are the pro se parties or attorneys given a chance to object to the charge? Typically only about 5% (50 out of 1000) sitting JPs are attorneys.
9. When is the jury charge prepared? In justice court and small claims suits, as mentioned above, it may be during the middle of the trial before one knows if the plaintiff is requesting exemplary damages and if a charge is necessary.
10. Justice and small claims courts are not courts of record. If a case is appealed, the entire case, as well as anything having to do with the jury charge, will be tried on a “trial de novo” basis at the county court. It is the general practice among county courts to allow a jury charge on the de novo trial of JP court appeals, so any problems would be corrected on appeal to county court.

Conclusions and Recommendations

11. TRCP 277, 278, & 279 and case law require that a jury charge track the language of the statute or regulation and/or contain the elements of the cause of action. Under Chapter 41 CPRC, if the court has to give a charge on exemplary damages, does it also have to include a charge on the elements necessary to sustain the grounds for recovery? The jury charge on the elements currently would be prohibited under Rule 554, so wouldn't it be confusing to give the jury a charge on part of the issue but not on another part of the issue?
12. There is a movement in the legislature to raise the civil jurisdictional limit of the JP courts to \$10,000. If that happens, perhaps some sort of a general "modified charge" for JP courts might be necessary, and the SCAC can look at that next fall.
13. Attached is a sample jury charge, which may address the requirements of Sections 41.012 and 41.003, but would solve none of the other problems raised in this memo. Also attached is a sample Jury Verdict Form which could be used in JP court jury trials and which would allow compliance with the HB 4 provision that verdicts awarding exemplary damages be unanimous, and with Rule 554 that the JP not charge the jury.
14. Lastly, I would point out that the question of exemplary damages is not raised very often in the JP courts, and to institute a new and potentially confusing requirement such as this will cause many problems with little benefit. The best recommendation is to make no changes relating to implementing an exemplary damages jury charge and allow it to be addressed in the next legislative session and if it is not resolved then the SCAC can revisit it next fall. Providing the revised Jury Verdict Form will allow compliance with the legislature's requirement that jury verdicts on exemplary damages be unanimous. The form can be quickly distributed by the Justice Court Training Center with appropriate instructions.

RELEVANT EXCERPTS FROM TEXAS RULES OF COURT

TRCP 525 ORAL PLEADINGS

The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket; provided that after a case has been appealed and is docketed in the county (or district) court all pleadings shall be reduced to writing.

Knight v. Department of Pub. Safety, 361 S.W.2d 620,623 (Tex.App.--Amarillo 1962, no writ). An "appeal from the administrative body shall be tried in the same manner as a trial in the county court on an appeal from the justice court. [TRCP 525] provides that in an appeal from the justice court to county court all pleadings in a cause which are not already written shall be reduced to writing."

TRCP 554 JUSTICE SHALL NOT CHARGE JURY

The justice of the peace shall not charge the jury in any cause tried in his court before a jury.

GOVERNMENT CODE

CHAPTER 28. SMALL CLAIMS COURTS

SUBCHAPTER A. GENERAL PROVISIONS

§ 28.001. SMALL CLAIMS COURT. In each county, there is a court of inferior jurisdiction known as the small claims court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.002. JUDGE. Each justice of the peace sits as judge of the small claims court and exercises the jurisdiction provided by this chapter.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.003. JURISDICTION. (a) The small claims court has concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed \$5,000.

(b) An action may not be brought in small claims court by:

(1) an assignee of the claim or other person seeking to bring an action on an assigned claim;

(2) a person primarily engaged in the business of lending money at interest; or

(3) a collection agency or collection agent.

(c) A person may be represented by an attorney in small claims court.

(d) This section does not prevent a legal heir from bringing an action on a claim or account otherwise within the jurisdiction of the court.

(e) A corporation need not be represented by an attorney in small claims court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 745, § 3, eff. June 20, 1987; Acts 1989, 71st Leg., ch. 501, § 1, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 802, § 4, 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 776, § 4, eff. Sept. 1, 1991.

§ 28.004. FEES. Fees in small claims court are, except as provided by Subchapter E, Chapter 118, Local Government Code,

GOVERNMENT CODE CHAPTER 28
the same as those for cases in justice courts.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 974, § 3, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1, § 19(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 2, § 8.26, eff. Aug. 28, 1989.

§ 28.005. SUPPLIES. The commissioners court shall furnish to the justices of the peace a reasonable number of blank forms, docket books, and other supplies necessary for the small claims court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.006. SMALL CLAIMS COURT SEAL. (a) The commissioners court shall furnish to each judge of a small claims court a seal that has a star with five points in the center. The seal must also have "Small Claims Court, _____ County, Texas" and any applicable precinct number on it.

(b) The seal may be attached to all process other than subpoenas issued out of the small claims court and may be used to authenticate the official acts of the clerk and the judge of the small claims court.

(c) The seal may be affixed by a seal press or stamp that embosses or prints the seal.

Added by Acts 1991, 72nd Leg., ch. 747, § 2, eff. Sept. 1, 1991.

SUBCHAPTER B. INSTITUTION OF CLAIM

§ 28.011. VENUE. An action in small claims court must be brought in the county and precinct in which the defendant resides, except that:

(1) an action on an obligation that the defendant has contracted to perform in a certain county may be brought in that county; and

(2) an action for which venue is proper under Section 15.099, Civil Practice and Remedies Code, may be brought as provided by that section.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1985, 69th Leg., ch. 480, § 25, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 148, § 2.31, eff. Sept. 1, 1987.

§ 28.012. INSTITUTION OF ACTION. (a) To institute an action in small claims court, the claimant, attorney for the

claimant, or authorized agent of the claimant must:

(1) appear before the judge or the clerk of the court and file a statement of the claim under oath; or

(2) file a sworn statement of the claim with the judge or clerk of the court.

(b) The statement must be in substantially the following form:

In the Small Claims Court of _____ County, Texas

A. B., Plaintiff

vs.

C. D., Defendant

State of Texas

County of _____

A. B., whose post office address is

_____ (Street and Number), _____ (City),

_____ County, Texas, being duly sworn, on his oath deposes

and says that C. D., whose post office address is

_____ (Street and Number), _____ (City),

_____ County, Texas, is justly indebted to him in the sum of _____ Dollars and _____ Cents (\$_____), for

(here the nature of the claim should be stated in concise form and without technicality, including all pertinent dates), and that there are no counterclaims existing in favor of the defendant and against the plaintiff, except _____

Plaintiff

Subscribed and sworn to before me this ____ day of ____, 19__.

Judge

By: _____
Clerk

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 745, § 4, eff. June 20, 1987; Acts 1989, 71st Leg., ch. 802, § 6, eff. Sept. 1, 1989.

§ 28.013. CITATION. (a) On filing the statement and payment of the filing fee, the judge or clerk shall issue process in the manner provided for a case in justice court.

(b) Citation is served by an officer of the state authorized to serve other citations.

(c) Citation may be served in any manner authorized for service of citation in a district court, county court, or justice

court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 7, eff. Sept. 1, 1989.

§ 28.014. MOTION TO TRANSFER VENUE. The defendant may file a written motion to transfer venue as provided by the rules governing justice courts. The final ruling of the judge on the plea is interlocutory and may be appealed only with an appeal of the final judgment.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 8, eff. Sept. 1, 1989.

SUBCHAPTER C. HEARING

§ 28.031. FAILURE TO APPEAR. (a) If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge shall enter a default judgment for the plaintiff in the amount proved to be due. The judge may set aside the default judgment if, not later than the 10th day after the default judgment is signed, the defendant files with the court a written motion showing good cause for setting aside the judgment.

(b) If the plaintiff does not appear, the judge may enter an order dismissing the action without prejudice. The judge may set the case for trial if, not later than the 10th day after the judge dismisses the action, the plaintiff files with the court a written motion showing good cause to set aside the dismissal.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 9, eff. Sept. 1, 1989.

§ 28.032. POSTPONEMENT. The judge may grant a postponement or continuance only for good cause shown.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.033. HEARING. (a) If both parties appear, the judge shall proceed to hear the case.

(b) Formal pleading other than the statement is not required.

(c) The judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered.

(d) The hearing is informal, with the sole objective being to dispense speedy justice between the parties.

(e) Reasonable discovery in small claims court shall be permitted. Discovery is limited to that considered appropriate and permitted by the judge.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 802, § 10, eff. Sept. 1, 1989.

§ 28.034. DUTY OF JUDGE TO DEVELOP CASE. The judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.035. JURY TRIAL. (a) A party is entitled to a jury trial if the requesting party files a request with the court not later than one day before the date on which the hearing is to be held and at the same time pays the jury fee to the judge.

(b) The jury is provided as in other civil cases in justice court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

SUBCHAPTER D. JUDGMENT; APPEAL; EXECUTION

§ 28.051. JUDGMENT. (a) On conclusion of the hearing, the judge shall render judgment as the justice of the case requires.

(b) If the judgment is against the defendant, the defendant shall pay the judgment immediately.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.052. RIGHT TO APPEAL. (a) If the amount in controversy, exclusive of costs, exceeds \$20, a dissatisfied party may appeal the final judgment to the county court or county court at law.

(b) Appeal is in the manner provided by law for appeal from justice court to county court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.053. HEARING ON APPEAL. (a) The county court or county court at law shall dispose of small claims appeals with all convenient speed.

(b) Trial on appeal is de novo. No further pleadings are required and the procedure is the same as in small claims court.

(c) All costs not previously paid by the parties accrue until judgment is rendered on the appeal.

(d) Judgment of the county court or county court at law on the appeal is final.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

§ 28.054. ENFORCEMENT OF JUDGMENT. If the defendant fails to make immediate payment on the judgment, the judgment may be enforced as in justice court.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 745, § 5, eff. June 20, 1987.

§ 28.055. JUDGMENT NOT CLAIMED BY PLAINTIFF. (a) If a defendant has not paid a judgment in favor of the plaintiff and the plaintiff's whereabouts are unknown, the defendant shall use due diligence to locate the plaintiff. The defendant must send a letter by registered or certified mail, return receipt requested, to the plaintiff's last known address and to the address appearing in the plaintiff's statement of his claim or other court record.

(b) If the plaintiff is not located after the use of due diligence, the defendant may pay to the court the amount owed under the judgment. The judge shall immediately execute a release of the judgment on behalf of the plaintiff and deliver the release to the defendant.

(c) The amount paid to the court is held in trust for the plaintiff, and at least once a month the court shall pay those trust funds to the county clerk. The clerk shall deposit the trust funds in the county clerk's trust fund account in the county treasury. The funds shall be deposited, and may be withdrawn, in the same manner as trust funds deposited in district or county court to abide the result of a legal proceeding.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

- ☐ In either case, the movant has the burden of proof on the motion.

- ☐ 5. A party may move for, or the court on its own motion may grant, a directed verdict after the opposing party rests or closes or after all the evidence has been presented.
- ☐ 6. If a motion for directed verdict is not granted at one stage, another such motion may still be considered and granted at the court's discretion, at a succeeding stage.

D. Submitting Case to Jury

- ☐ 1. In justice court, the judge may "instruct" the jury with regard to proper jury conduct; however, a rule of procedure prohibits the justice from giving a charge to the jury in a civil case. [Rule 554, T.R.C.P.]

of action is insufficient to raise an issue of fact. [*ITT Consumer Financial Corp. v. Tovar*, 932 S.W. 2d 147, 159 (Tex. App. – El Paso, 1996, writ denied).]

Courts have frequently held that to succeed on a "no evidence" motion the movant must show there was not even a mere scintilla or glimmer of evidence. In the "established as a matter of law" motion, the movant must meet the burden of proof on the elements of the claim. [*Wicker, Texas Practice: Civil Trial and Appellate Procedure*, Vol. 30 § 52]

The court would be safe to decline a motion for direct verdict against a party until that party has had a chance to present its evidence.

The movant does not waive the right to put on evidence, if the motion fails. [*Wicker, Texas Practice Civil Trial and Appellate Procedure*, Vol. 30 § 53; *Eberstadt v. State*, 45 S.W. 1007, 1008 (Tex. 1898).]

In district court and county court, after the parties have completed the presentation of evidence and before argument to the jury, the court prepares and delivers to the jury a charge which instructs the jury on the law applicable to the

- ☐ 2. The jury in justice court is the judge of the law and the facts. [*Hedrick v. McLaughlin*, 214 S.W. 985, 986 (Tex. Civ. App. – Amarillo 1919, no writ).]
- ☐ 3. The jury may decide the case in the courtroom or retire to some other place for deliberation.
 - ☐ The court may permit the jurors to separate temporarily for the night and at meals and for other purposes. [Rule 282, T.R.C.P.]
 - ☐ The jury may take with them any written evidence admitted during the trial, except any depositions of witnesses. [Rule 281, T.R.C.P.]
- ☐ 4. The jurors shall appoint one of their number to serve as presiding juror. [Rule 282, T.R.C.P.]
- ☐ 5. The jury may communicate with the judge through the officer in charge of them.
- ☐ 6. If the jury has a question or needs further instructions, the officer must inform the court; the jury may then, in open court and through the presiding juror, communicate with the court either orally or in writing. [Rule 285, T.R.C.P.]
 - ☐ During their deliberations, the jury must not communicate with anyone else about the case and shall be so instructed by the court. [Rules 283, 284, T.R.C.P.]
- ☐ 7. A jury shall be discharged if it fails to agree to a verdict after being kept together for a reasonable time.
 - ☐ If there is time left on the same day, the judge may impanel another jury to try the

case and which may submit the issues of fact in the case for the jury to answer. [Rules 217, 272, 275, T.R.C.P.]

If the jury retires from the courtroom, they must be kept together in some convenient place under the charge of an officer until they agree on a verdict or are discharged by the court.

to matters or issues that are undisputed,⁸² immaterial,⁸³ or unsupported by evidence.⁸⁴ On the contrary, an instruction is erroneous if it ignores or excludes pleaded issues or defenses that are supported by evidence.⁸⁵ Rights in this respect must be determined

from court as to what acts would constitute valid and binding ratification. *Chapman v Guaranty State Bank* (1927, CA) 297 SW 545, writ ref.

82. *Pecos & N. T. R. Co. v Meyer* (1913, CA) 155 SW 309, writ ref.

83. *Kansas C., M. & O. R. Co. v Starr* (1917, CA) 194 SW 637, writ ref.

84. *Ward v Wheeler* (1857) 18 Tex 249.

Where fact is shown so conclusively that court can assume it as matter of law, it is not error to refuse to submit it. *Kansas City S. R. Co. v Rosebrook-Josey Grain Co.* (1908) 52 CA 156, 114 SW 436 (fact that appellant was common carrier).

Court was not justified in submitting issue as to condition of shipment on its arrival where evidence clearly showed that shipment was in good condition when received by carrier and in damaged condition on its arrival at destination. *Galveston, H. & S. A. R. Co. v Tullis* (1928, CA) 8 SW2d 247, writ dismiss w o j.

85. *Horn v Western Union Tel. Co.* (1917) 109 Tex 229, 194 SW 386, on reh 109 Tex 234, 205 SW 831; *Panhandle & S. F. R. Co. v Kornegay* (1921, Com) 227 SW 1100; *Texas & N. O. R. Co. v Harrington* (1921, Com) 235 SW 188; *Pearson v Texas & N. O. R. Co.* (1922, Com) 238 SW 1108; *Texas E. R. Co. v Jones* (1922, Com) 243 SW 980; *El Paso & S. W. R. Co. v Lovick* (1919, CA) 210 SW 283, affd 110 Tex 244, 218 SW 489, error dismissed 254 US 659, 65 L Ed 462,

41 S Ct 6; *Thomas v Corbett* (1919, CA) 211 SW 806; *Schaff v Hollin* (1919, CA) 213 SW 279, writ ref; *Chicago, R. I. & G. R. Co. v Wentzel* (1919, CA) 214 SW 710; *Chicago, R. I. & G. R. Co. v Shockley* (1919, CA) 214 SW 716; *Long v Calloway* (1920, CA) 220 SW 414; *Thornhill v Kansas C., M. & O. R. Co.* (1920, CA) 223 SW 490, writ ref; *Jefferson & N. W. R. Co. v Blair* (1920, CA) 224 SW 546, writ dismiss w o j; *Cass v Green* (1920, CA) 224 SW 938; *American Nat. Ins. Co. v Allen* (1920, CA) 226 SW 823; *Haverbekken v Johnson* (1921, CA) 228 SW 256; *Eastern Texas Electric Co. v Kappe* (1921, CA) 235 SW 253, writ ref; *Wichita Falls, R. & F. W. R. Co. v Mendoza* (1922, CA) 240 SW 570; *Robins v Connolly* (1922, CA) 241 SW 244; *Thomason v Hawley* (1922, CA) 242 SW 521, writ ref; *Thomason v Powers* (1922, CA) 242 SW 525, writ ref; *Wichita V. R. Co. v Meyers* (1922, CA) 248 SW 444; *Texas E. Ry. v Worthy* (1923, CA) 250 SW 710, writ dismiss w o j; *St. Louis S. R. Co. v Austin* (1923, CA) 254 SW 519; *Farmers' State Bank & Trust Co. v Gorman Home Refinery* (1925, CA) 273 SW 694, affd (Com) 3 SW2d 65; *Rutland v St. Louis, S. F. & T. R. Co.* (1925, CA) 274 SW 284, affd (Com) 292 SW 182; *Barton v Lary* (1926, CA) 283 SW 920; *Dismukes v Gilmer* (1926, CA) 286 SW 495; *Burson v First Nat. Bank* (1927, CA) 299 SW 927; *Texas Electric Service Co. v Kinkad* (1931, CA) 36 SW2d 1052, writ ref; *McCrea v Underwood* (1934, CA) 73 SW2d 593.

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86. *Burnett v R. Amarillo* 284 SW n r e; *Pacific Financ* (1955, CA Beaumon

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Co. v Acosta (1968,
Dist)) 435 SW2d 535

87. *State v Schlic*
410, 179 SW2d 246
(1945, CA) 189 SW
w o m; *Southwest*
Lines, Inc. v Dickso
SW2d 592; *Coffey v*
R. Co. (1955, CA Ea
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SW 279, writ ref;
G. R. Co. v Wentzel
W 710; Chicago, R.
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; Thornhill v Kansas
Co. (1920, CA) 223
; Jefferson & N. W.
(1920, CA) 224 SW
wo j; Cass v Green
SW 938; American
Allen (1920, CA) 226
rbelken v Johnson
SW 256; Eastern
Co. v Kappe (1921,
53, writ ref; Wichita
V. R. Co. v Mendoza
SW 570; Robins v
CA) 241 SW 244;
wley (1922, CA) 242
; Thomason v Powers
SW 525, writ ref;
Co. v Meyers (1922,
144; Texas E. Ry. v
CA) 250 SW 710, writ
Louis S. R. Co. v
A) 254 SW 519; Farm-
& Trust Co. v Gorman
(1925, CA) 273 SW
3 SW2d 65; Rutland v
& T. R. Co. (1925,
14, affd (Com) 292 SW
Lary (1926, CA) 283
ukes v Gilmer (1926,
15; Burson v First Nat.
A) 299 SW 927; Texas
Co. v Kinkead (1931,
1052, writ ref; McCrea
(1934, CA) 73 SW2d

in the light of conditions as they exist when the charge is given,⁸⁶
not after the verdict has been returned.⁸⁷

A justice of the peace, on the other hand, is prohibited from
charging the jury.⁸⁸ This prohibition does not embrace cases in the
county court, so that the county court is not precluded from
giving a charge in a case appealed from a justice's court.⁸⁹

§ 107. —Right to submission of questions

The court must, under the Rules of Civil Procedure, submit the
cause on broad form questions whenever feasible. Under the
former version of this rule, the court was required to submit a
case on special issues on the request of a party, unless the nature
of the suit was such that it could not be determined in this way,
or unless good cause was shown for submission on a general
charge.⁹⁰ But where no request had been interposed, the court
could exercise discretion regarding submission of a cause on
special issues.⁹¹

86. Burnett v Rutledge (1955, CA
Amarillo) 284 SW2d 944, writ ref
n r e; Pacific Finance Corp. v Donald
(1955, CA Beaumont) 286 SW2d 260.

Charge must be viewed as of time it
was prepared. Atchison, T. & S. F. R.
Co. v Acosta (1968, CA Houston (1st
Dist)) 435 SW2d 539, writ ref n r e.

87. State v Schlick (1944) 142 Tex
410, 179 SW2d 246; Sam v Sullivan
(1945, CA) 189 SW2d 69, writ ref
wo m; Southwestern Greyhound
Lines, Inc. v Dickson (1949, CA) 219
SW2d 592; Coffey v Ft. Worth & D.
R. Co. (1955, CA Eastland) 285 SW2d
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Right of plaintiff, under former law,
to submission of issue of discovered
peril was not affected by finding of
jury that plaintiff's injury was result of
unavoidable accident. Rogers v Cotton
(1931, CA) 42 SW2d 173, writ dism
wo j.

88. RCP Rule 554 (providing that
justice of peace may not charge jury in
any cause tried in his or her court
before jury).

It is apparent from several statutes
that it was intention of legislature that
in justice court jury should be judge of
law as well as of facts. Hedrick v
McLaughlin (1919, CA) 214 SW 985.

89. Hedrick v McLaughlin (1919,
CA) 214 SW 985.

90. See § 103.

91. Padgett v Hines (1917, CA) 192
SW 1122, writ dism wo j; Penelope
Real Estate Co. v Dawson (1918, CA)
206 SW 702; Ellis v Haynes (1919,
CA) 216 SW 249; Oliver v Forney
Cotton Oil & Ginning Co. (1921, CA)
226 SW 1094.

Federal practice, including Fed RCP
Rule 49 does not require federal court,
as matter of law, to submit special
issues of fact to jury, and court may,

Cause No. _____

JURY CHARGE

EXEMPLARY DAMAGES

Plaintiff

vs.

Defendant

IN THE JUSTICE COURT

HARRIS COUNTY, TEXAS

PRECINCT 4, POSITION 2

MEMBERS OF THE JURY:

YOU, THE JURY, AS THE TRIER OF FACT, MUST MAKE THE DETERMINATION WHETHER TO AWARD EXEMPLARY DAMAGES, AND THE AMOUNT OF EXEMPLARY DAMAGES TO AWARD.

BEFORE YOU MAKE AN AWARD OF EXEMPLARY DAMAGES, YOU SHALL CONSIDER THE FOLLOWING DEFINITIONS AND PURPOSES OF EXEMPLARY DAMAGES.

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross- claimant, or third-party plaintiff, seeking recovery of damages. In a cause of action in which a party seeks recovery of damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages.

(2) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief.

(4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or pecuniary loss; the term does not include exemplary damages or noneconomic damages.

(5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages. "Exemplary damages" includes punitive damages.

(6) "Fraud" means fraud other than constructive fraud.

(7) "Malice" means a specific intent by the defendant to cause substantial injury or harm to the claimant.

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity; and

(B) loss of inheritance.

(11) "Gross negligence" means an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

(12) "Noneconomic damages" means damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

Exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from any of the following:

(1) fraud; (2) malice; or (3) gross negligence.

The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by law. This burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence, bad faith, or a deceptive trade practice.

Exemplary damages may also be awarded if the claimant relies on a statute establishing a cause of action authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state. In this situation, exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the damages result from the specified circumstances or culpable mental state.

In determining the amount of exemplary damages, you, the Jury, shall consider evidence, if any, relating to:

- (1) the nature of the wrong;
- (2) the character of the conduct involved;
- (3) the degree of culpability of the wrongdoer;
- (4) the situation and sensibilities of the parties concerned;
- (5) the extent to which such conduct offends a public sense of justice and propriety; and
- (6) the net worth of the defendant.

YOU ARE INSTRUCTED THAT, IN ORDER FOR YOU TO FIND EXEMPLARY DAMAGES, YOUR ANSWER TO THE QUESTION REGARDING THE AMOUNT OF SUCH DAMAGES MUST BE UNANIMOUS.

JUDGE TOM LAWRENCE

Case Number: _____

Plaintiff

vs.

Defendant

§
§
§
§
§

In the Justice Court

Harris County, Texas

Precinct __, Place __

VERDICT FOR THE PLAINTIFF

We, the Jury, find the Plaintiff, _____, do have and recover of the Defendant,
_____ the sum of \$_____ Dollars in compensatory damages, \$_____
Dollars in exemplary damages, attorney's fees of \$_____ Dollars, together with court costs of
\$_____ Dollars.

(Presiding Juror)

****AT LEAST 5 OUT OF 6 JURORS MUST AGREE
ON THE VERDICT FOR COMPENSATORY
DAMAGES, ATTORNEY'S FEES, AND COURT
COSTS. THE JURORS MUST SIGN BELOW:**

****ALL 6 JURORS MUST AGREE TO AWARD
EXEMPLARY DAMAGES, AND THE AMOUNT
OF DAMAGES TO AWARD. THE JURORS
MUST SIGN BELOW:**

