

## Cal Code Civ Proc § 625

Deering's California Codes are current through Chapters 1-24, 29-37, 39-45, 47-50, 52, 53, 55-66, 68, 72-78, 80-88, 90, 92, 114, 116-121, 157, 159, and 161 of the 2019 Regular Session, including all legislation effective June 26, 2019 or earlier.

*Deering's California Codes Annotated* > *CODE OF CIVIL PROCEDURE (§§ 1 — 2107)* > *Part 2 Of Civil Actions (Titles 1 — 14)* > *Title 8 Of the Trial and Judgment in Civil Actions (Chs. 1 — 8)* > *Chapter 4 Trial by Jury (Arts. 1 — 3)* > *Article 3 The Verdict (§§ 624 — 630)*

### § 625. Special verdicts; Requirements for award of punitive damages

In all cases the court may direct the jury to find a special verdict in writing, upon all, or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. In all cases in which the issue of punitive damages is presented to the jury the court shall direct the jury to find a special verdict in writing separating punitive damages from compensatory damages. The special verdict or finding must be filed with the clerk and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

### History

Enacted 1872. Amended Stats 1905 ch 62 § 1; Stats 1909 ch 121 § 1; Stats 1957 ch 1443 § 1; Stats 1983 ch 176 § 2.

Annotations

### Notes

#### **Historical Derivation:**

#### **Amendments:**

#### **Historical Derivation:**

(a) Practice Act § 175 (Stats 1851 ch 5 § 175), as amended Stats 1854 ch 54 § 22.

(b) NY Code §§ 261, 262.

#### **Amendments:**

#### **1905 Amendment:**

Amended the first sentence by substituting (1) “unless instructed by the court to render a special verdict, may in their discretion” for “in their discretion, may”; (2) “must, upon the request in writing of any of the parties,” for “may”; (3) “must instruct them upon the request in writing of any of the parties” for “may instruct them”; and (4) “must” for “may” after “in writing, and”.

**1909 Amendment:**

Substituted “, upon all,” for “upon all” after “upon particular writing” in the second sentence.

**1957 Amendment:**

Substituted the first sentence for the former first and second sentences which read: “In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing, upon all, or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon.”

**1983 Amendment:**

Added the second sentence.

**Notes to Decisions**

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**17.Contract Actions****18.Tort Actions****19.Miscellaneous Types of Actions****IV.APPEAL****20.Generally****21.Determination and Disposition of Cause****22.Interference with Exercise of Discretion****I. GENERALLY****1. In General**

When a special verdict or finding is relied on as a basis for judgment, enough must be found by it to show in and of itself a legal conclusion of liability. *Garfield v Knights Ferry & Table Mountain Water Co.* (1861) 1 CU 93.

A general verdict on issues and evidence properly submitted is presumed to have decided every fact or deduction therefrom essential to support it, while a special verdict must be limited and controlled by its specific terms. *Spear v. United R. of S. F.* (Cal. App. July 24, 1911), 16 Cal. App. 637, 117 P. 956, 1911 Cal. App. LEXIS 255.

Where a general verdict for the plaintiff was set aside and judgment was entered for the defendant, reciting that it was based on special findings, and no motion had been made for a directed verdict to bring the case within § 629, the judgment is presumed to have been set aside by virtue of this section. *Hudgins v. Standard Oil Co.* (Cal. App. Dec. 22, 1933), 136 Cal. App. 44, 28 P.2d 433, 1933 Cal. App. LEXIS 18.

The fact specially found need not be reiterated in the judgment in order to give it meaning. *Jacobs v. Norwich Union Fire Ins. Soc.* (Cal. App. Jan. 19, 1935), 4 Cal. App. 2d 1, 40 P.2d 899, 1935 Cal. App. LEXIS 355.

**2. General Verdict**

A general verdict that the plaintiff recovered a certain sum of money may be construed as a finding in favor of the plaintiff on all the issuable facts stated in the complaint. *Merritt v. Wilcox* (1875) 1 CU 884.

A general verdict for the plaintiff and against the defendants imports a finding in favor of the plaintiff on all the averments of the complaint material to his recovery. *Koskela v. Albion Lumber Co.* (Cal. App. June 23, 1914), 25 Cal. App. 12, 142 P. 851, 1914 Cal. App. LEXIS 181.

All inferences and intendments favor a general verdict. *Tremble v. Tuman* (Cal. Aug. 10, 1917), 175 Cal. 696, 167 P. 142, 1917 Cal. LEXIS 745.

A general verdict in favor of a party, unless wholly unsupported by the evidence, is a finding in favor of those facts essential to a recovery as shown by the verdict, but not necessarily a finding that all the allegations are true relative to the recovery which the party sought. *Lady v. Ruppe* (Cal. App. Apr. 24, 1931), 113 Cal. App. 606, 298 P. 859, 1931 Cal. App. LEXIS 1054.

A general verdict imports findings in favor of the prevailing party on all material issues. *Shields v. Oxnard Harbor Dist.* (Cal. App. Aug. 12, 1941), 46 Cal. App. 2d 477, 116 P.2d 121, 1941 Cal. App. LEXIS 1416.

A general verdict in favor of a party may be sustained on one count of the complaint if the evidence is sufficient. [Shields v. Oxnard Harbor Dist. \(Cal. App. Aug. 12, 1941\), 46 Cal. App. 2d 477, 116 P.2d 121, 1941 Cal. App. LEXIS 1416.](#)

Language voluntarily included by a jury in a general verdict which is not inconsistent with a valid general verdict may be regarded as surplusage. [Keating v. Zumwalt \(Cal. App. May 16, 1949\), 91 Cal. App. 2d 845, 206 P.2d 10, 1949 Cal. App. LEXIS 1312.](#)

It is implicit in general verdict that all material facts in issue as to which substantial evidence was received were determined in manner consistent and in conformance with verdict. [Elliott v. Rodeo Land & Water Co. \(Cal. App. 2d Dist. May 10, 1956\), 141 Cal. App. 2d 404, 297 P.2d 129, 1956 Cal. App. LEXIS 1862.](#)

A general verdict imports finding in winning party's favor on all averments of his pleading material to his recovery. [Behr v. County of Santa Cruz \(Cal. App. 1st Dist. Aug. 10, 1959\), 172 Cal. App. 2d 697, 342 P.2d 987, 1959 Cal. App. LEXIS 2009.](#)

A general verdict supports findings in favor of the prevailing party on all material issues, and if the evidence supports the verdict on any theory of the case, it will be assumed that the jury so found. [Hazelwood v. Gordon \(Cal. App. 2d Dist. Aug. 3, 1967\), 253 Cal. App. 2d 178, 61 Cal. Rptr. 115, 1967 Cal. App. LEXIS 2330.](#)

Where a jury renders a unanimous general verdict, such verdict imports findings in favor of the prevailing party on all material issues. [Gordon v. Strawther Enterprises, Inc. \(Cal. App. 1st Dist. May 29, 1969\), 273 Cal. App. 2d 504, 78 Cal. Rptr. 417, 1969 Cal. App. LEXIS 2194.](#)

### 3. Particular Verdicts

Where in a suit in equity, the court orders a jury, though the party is not entitled thereto, a general verdict is insufficient, and a refusal to instruct a jury in such case to find a general verdict is not error. [Evans v. Ross \(Cal. Sept. 30, 1885\), 8 P. 88, 1885 Cal. LEXIS 860.](#)

In an action of ejectment, a general verdict is sufficient. [Joy v. McKay \(Cal. Aug. 26, 1886\), 70 Cal. 445, 11 P. 763, 1886 Cal. LEXIS 813.](#)

Where in an action against a municipal corporation for damages to abutting property from the raising of the grade of the street in front of it, the defendant relies on the defenses that no damage was done to the plaintiff thereby, and that she was estopped by reason of the dedication of the street from claiming any compensation for damage, a general verdict in favor of the defendant embraces both issues. [Mintzer v. Richmond \(Cal. App. June 8, 1915\), 27 Cal. App. 566, 150 P. 799, 1915 Cal. App. LEXIS 164.](#)

In an action for damages for negligence, wherein the defendant alleged contributory negligence, a verdict for the plaintiff for one dollar implied findings adverse to the defendant on the issue of its own negligence and the plaintiff's alleged contributory negligence. [Donnatin v. Union Hardware & Metal Co. \(Cal. App. July 30, 1918\), 38 Cal. App. 8, 175 P. 26, 1918 Cal. App. LEXIS 126.](#)

In an action to recover a sum which the plaintiff alleged the defendant promised and agreed to pay for legal services, the general verdict of the jury for a lesser amount was, in effect, a finding that services had been rendered, that the plaintiff's allegations relative to the value were untrue, but that some value attached which, from all the evidence, the jury fixed at such lesser amount. [Lady v. Ruppe \(Cal. App. Apr. 24, 1931\), 113 Cal. App. 606, 298 P. 859, 1931 Cal. App. LEXIS 1054.](#)

In an action for damages resulting from a collision between two automobiles, in which a cross-complaint by the defendant claimed damages against the plaintiff, a general verdict for the defendant was sufficient to cover all issues raised by the pleadings and was equivalent to findings of negligence against both plaintiff and defendant. [Murray v. Babb \(Cal. App. Jan. 10, 1939\), 30 Cal. App. 2d 301, 86 P.2d 146, 1939 Cal. App. LEXIS 510.](#)

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In a personal injury action, where the jury returned a typewritten form of general verdict for the defendant with the addition written in ink “unavoidable accident ... unanimous,” such addition was not in conflict with the implied finding that the defendant was free from negligence, but such addition was surplusage. [\*Keating v. Zumwalt\* \(Cal. App. May 16, 1949\), 91 Cal. App. 2d 845, 206 P.2d 10, 1949 Cal. App. LEXIS 1312.](#)

In a personal injury action by a woman against a manufacturer of silicone gel breast implants, the court presiding over the first trial had the power to accept special verdicts on some causes of actions, reserve judgment until termination of the entire action, declare a mistrial as to the remaining causes of action, and then order a limited retrial. The court, on learning that the jury could not agree on one question, directed the jury to sign and return the partial verdict on causes of action on which it did reach resolution. That verdict indicated that the jury had determined all conclusions of fact pertaining to the strict liability and fraud causes of action. Nothing remained but for the court to draw the legal conclusion of nonliability as to defendant on those counts (CCP § 624). The court’s power to proceed in this matter was not outside the scope of CCP §§ 625 and 628, permitting direction to find a special verdict on some of the issues, and receiving and entering that verdict. The causes of action subject to the special verdicts were severable such that the negligence cause could be separately retried. Further, an interpretation of CCP § 616 that allows partial retrials advances the policy of the state to promote judicial economy. Where jury efforts on special verdicts can be preserved, rather than lost, and issues thus narrowed upon which evidence must be taken at trial and upon which a second jury must deliberate and decide, the burden on the parties and the courts is reduced. [\*Valentine v. Baxter Healthcare Corp.\* \(Cal. App. 1st Dist. Jan. 7, 1999\), 68 Cal. App. 4th 1467, 81 Cal. Rptr. 2d 252, 1999 Cal. App. LEXIS 14.](#)

In an eminent domain proceeding for part of an owner’s property, the jury implicitly found that the fair market value of the “property taken” was \$445,000 per acre but found, for purposes of severance damages, that the fair market value of the same property at the same point in time was \$850,000 per acre. These inconsistent and irreconcilable implied findings rendered the special verdict against the law. [\*City of San Diego v. D.R. Horton San Diego Holding Co., Inc.\* \(Cal. App. 4th Dist. Feb. 7, 2005\), 126 Cal. App. 4th 668, 24 Cal. Rptr. 3d 338, 2005 Cal. App. LEXIS 193.](#)

## II. SUBMISSION OF SPECIAL ISSUES

### 4. Generally

The former Practice Act conferred express authority on the trial court to direct a special verdict. [\*Burritt v. Gibson & Mayer\* \(Cal. Oct. 1, 1853\), 3 Cal. 396, 1853 Cal. LEXIS 100.](#)

The test as to whether, under the law as it stood at the time of trial, a special interrogatory to the jury required submission, depended on whether or not it was in answer to a material issue involved in the case. [\*Klein v. Atchison, T. & S. F. R. Co.\* \(Cal. App. Dec. 22, 1909\), 12 Cal. App. 285, 107 P. 147, 1909 Cal. App. LEXIS 12.](#)

The purpose of special findings is to test the validity of the general verdict by ascertaining whether or not it may have been the result of a misapplication of the law to actual findings in material conflict with findings which, in their absence, would be implied from the general verdict. [\*Klein v. Atchison, T. & S. F. R. Co.\* \(Cal. App. Dec. 22, 1909\), 12 Cal. App. 285, 107 P. 147, 1909 Cal. App. LEXIS 12.](#)

Purpose of special interrogatories is to test validity of general verdict by determining whether all facts essential to its support were established to jury’s satisfaction. [\*Bernson v. Bowman\* \(Cal. App. 2d Dist. July 15, 1960\), 182 Cal. App. 2d 697, 6 Cal. Rptr. 455, 1960 Cal. App. LEXIS 2167.](#)

Intent of language in this section, authorizing court to direct jury to find special verdict, is to require such special verdicts to be given to jury not later than time general verdicts are given to them. [\*Vivion v. National Cash Register Co.\* \(Cal. App. 2d Dist. Feb. 21, 1962\), 200 Cal. App. 2d 597, 19 Cal. Rptr. 602, 1962 Cal. App. LEXIS 2751.](#)

Purpose of special verdict that is provided in this section is primarily and principally to determine whether general verdict is or is not against law. [\*Bate v. Marsteller\* \(Cal. App. 1st Dist. Mar. 3, 1965\), 232 Cal. App. 2d 605, 43 Cal. Rptr. 149, 1965 Cal. App. LEXIS 1506.](#)

## 5. Discretion of Court

The submission of special questions to the jury is discretionary with the court. [\*Olmstead v. Dauphiny\* \(Cal. Dec. 3, 1894\), 104 Cal. 635, 38 P. 505, 1894 Cal. LEXIS 964.](#)

Submission of special issues as mandatory while 1905 amendment in force, see [\*Plyer v. Pacific Portland Cement Co.\* \(Cal. Oct. 2, 1907\), 152 Cal. 125, 92 P. 56, 1907 Cal. LEXIS 319.](#)

Failure to submit a special question immaterial to any issue is not error. [\*Pigeon v. W. P. Fuller & Co.\* \(Cal. Dec. 8, 1909\), 156 Cal. 691, 105 P. 976, 1909 Cal. LEXIS 378.](#)

Trial court's discretion in refusing to submit proposed special issues to the jury is not abused where the general verdict sufficiently covers the issues and answers the pleadings. [\*Ellet v. Los Altos Country Club Properties, Inc.\* \(Cal. App. Jan. 31, 1928\), 88 Cal. App. 740, 264 P. 270, 1928 Cal. App. LEXIS 283.](#)

Refusal of special questions is not an abuse of discretion where the evidence sustains a general verdict and the jury was fully instructed. [\*De Martini v. Wheatley\* \(Cal. App. Sept. 23, 1932\), 126 Cal. App. 230, 14 P.2d 869, 1932 Cal. App. LEXIS 468.](#)

Refusal of special interrogatory which propounds question of law to jurors is not error. [\*Sloan v. Stearns\* \(Cal. App. 2d Dist. Nov. 28, 1955\), 137 Cal. App. 2d 289, 290 P.2d 382, 1955 Cal. App. LEXIS 1188.](#)

Whether special interrogatories should be submitted to jury is matter within trial court's discretion. [\*Gettemy v. Star House Movers, Inc.\* \(Cal. App. 2d Dist. Mar. 17, 1964\), 225 Cal. App. 2d 636, 37 Cal. Rptr. 441, 1964 Cal. App. LEXIS 1413,](#) overruled in part, [\*Camargo v. Tjaarda Dairy\* \(Cal. July 5, 2001\), 25 Cal. 4th 1235, 108 Cal. Rptr. 2d 617, 25 P.3d 1096, 2001 Cal. LEXIS 3799.](#)

Submission of interrogatories by court is discretionary as is time of submission, if not later than rendition of general verdict, and where counsel had copy of proposed interrogatories at beginning of his closing argument during which he discussed them, as well as instructions to be given, there was no abuse of discretion in submitting interrogatories after each counsel had made his final argument. [\*Tangora v. Matanky\* \(Cal. App. 2d Dist. Dec. 24, 1964\), 231 Cal. App. 2d 468, 42 Cal. Rptr. 348, 1964 Cal. App. LEXIS 828.](#)

It is the province of the court to determine as to what particular facts a jury shall find specially; neither party has the right to dictate the terms of any particular question to the jury; and error cannot properly be assigned for refusal to comply with such a request. [\*Bank of Santa Ana v. Molina\* \(Cal. App. 4th Dist. Nov. 7, 1969\), 1 Cal. App. 3d 607, 81 Cal. Rptr. 885, 1969 Cal. App. LEXIS 1308.](#)

## 6. Requests for Submission

Special verdicts and special findings are identical in every thing except the name, and it is immaterial if the request of a party happens to have an incorrect label. [\*Plyer v. Pacific Portland Cement Co.\* \(Cal. Oct. 2, 1907\), 152 Cal. 125, 92 P. 56, 1907 Cal. LEXIS 319.](#)

This section as it stood in 1907 did not require that a request for special findings be expressly conditioned upon the finding of a general verdict, nor that the request be accompanied with a proper direction to the jury in submitting the question. [\*Plyer v. Pacific Portland Cement Co.\* \(Cal. Oct. 2, 1907\), 152 Cal. 125, 92 P. 56, 1907 Cal. LEXIS 319.](#)

This section does not require that requests be submitted to the opposing party before argument, or that they be submitted at all to opposing counsel. [\*Plyer v. Pacific Portland Cement Co.\* \(Cal. Oct. 2, 1907\), 152 Cal. 125, 92 P. 56, 1907 Cal. LEXIS 319.](#)

## 7. Form of Interrogatories

Where special issues are submitted to a jury, they should include all questions of fact raised by the pleadings and necessary to determine the case, and should be separately and distinctly stated, so that each question should relate to only one fact. [Phoenix Water Co. v. Fletcher \(Cal. Oct. 1, 1863\), 23 Cal. 481, 23 Cal. 482, 1863 Cal. LEXIS 304.](#)

An interrogatory need not be addressed to any specific issue, so that a special verdict may respond to that issue, as the purpose of a special finding is only to test the general verdict. [Plyer v. Pacific Portland Cement Co. \(Cal. Oct. 2, 1907\), 152 Cal. 125, 92 P. 56, 1907 Cal. LEXIS 319.](#)

Submitted interrogatories need not be so framed that the jury may answer a simple “yes” or “no,” and it is sometimes proper to frame them so that a qualified affirmative or negative answer may be given. [Plyer v. Pacific Portland Cement Co. \(Cal. Oct. 2, 1907\), 152 Cal. 125, 92 P. 56, 1907 Cal. LEXIS 319.](#)

Questions should not be so phrased as to invite answers irresponsive to the issues or upon facts not in issue or conceded and congruous with a general verdict. [Williams v. San Francisco & N. W. R. Co. \(Cal. App. Nov. 1, 1907\), 6 Cal. App. 715, 93 P. 122, 1907 Cal. App. LEXIS 188.](#)

A requested special question whether a driver changed his direction so as to swerve upon a street car track, where he was struck and killed, is not too general and unlimited in place, where the evidence is that he swerved only a few feet ahead of the street car at the place of collision. [Ruppel v. United R. of S. F. \(Cal. App. Mar. 24, 1909\), 10 Cal. App. 319, 101 P. 803, 1909 Cal. App. LEXIS 239.](#)

Special questions in a series should be so framed as to admit of plain and direct answers which taken together would control a general verdict, though some of them taken alone might be immaterial. [Fujise v. Los Angeles R. Co. \(Cal. App. Dec. 16, 1909\), 12 Cal. App. 207, 107 P. 317, 1909 Cal. App. LEXIS 23.](#)

Where interrogatories are virtually paraphrased from plaintiff’s opening argument, plaintiff could not effectively complain that they were inaccurate, unfair, and unplain, or that they, in effect, direct verdict for defendant. [Tangora v. Matanky \(Cal. App. 2d Dist. Dec. 24, 1964\), 231 Cal. App. 2d 468, 42 Cal. Rptr. 348, 1964 Cal. App. LEXIS 828.](#)

## 8. Particular Actions and Proceedings

Where special issues are submitted to a jury, and they announce that they cannot agree on the special issues, but can agree on a general verdict, and by consent of counsel on both sides the special issues are withdrawn and a general verdict received by the court, no error is committed. [Mitchell v. Hockett \(Cal. July 1, 1864\), 25 Cal. 538, 1864 Cal. LEXIS 66.](#)

The acceptance by the plaintiff of a special verdict which gives defendant part of the property in dispute without a finding on the other issues, is a withdrawal from the consideration of the court of all that property in relation to which there is no finding. [Gonzales v. Leon \(Cal. Oct. 1, 1866\), 31 Cal. 98, 1866 Cal. LEXIS 167.](#)

Where a plaintiff alleges that it is a corporation, which is denied by answer, that issue may properly be submitted specially. [Fresno Canal & Irrigation Co. v. Warner \(Cal. May 28, 1887\), 72 Cal. 379, 14 P. 37, 1887 Cal. LEXIS 541.](#)

Former section did not require special findings in action to recover money only. [Hunt v. Elliott \(Cal. Dec. 26, 1888\), 77 Cal. 588, 20 P. 132, 1888 Cal. LEXIS 751.](#)

A question involving a question of law should not be submitted, and should be disregarded. [Petersen v. California Cotton Mills Co. \(Cal. App. Dec. 30, 1912\), 20 Cal. App. 751, 130 P. 169, 1912 Cal. App. LEXIS 205.](#)

It was not error to submit interrogatory to jury containing question of law where reason for submitting interrogatory was so that court could be sure that basis of jury’s general verdict was not against law. [Bate v. Marsteller \(Cal. App. 1st Dist. Mar. 3, 1965\), 232 Cal. App. 2d 605, 43 Cal. Rptr. 149, 1965 Cal. App. LEXIS 1506.](#)

## 9. Contract Actions

In an action on a contract of insurance, the court properly refused to submit special issues to the jury regarding the exact date of the death of the insured where the jury was instructed that no recovery by the plaintiff was possible unless they found that the insured died prior to the suspension of his certificate of membership. *Benjamin v. District Grand Lodge No. 4, I. O. B. B.* (Cal. Oct. 27, 1915), 171 Cal. 260, 152 P. 731, 1915 Cal. LEXIS 619.

In an action on promissory notes, where the plaintiff did not demand a jury, the plaintiff was not prejudiced by the trial court's action in submitting special issues to the jury without requiring the return of a general verdict, where the special issues covered all matters in controversy. *H. W. Smith, Inc. v. Swenson* (Cal. App. Apr. 2, 1930), 105 Cal. App. 60, 286 P. 1050, 1930 Cal. App. LEXIS 655.

In an action on promissory notes, where the plaintiff did not demand a jury, and at the beginning of the trial the court announced that only special issues would be submitted to the jury, and neither party objected thereto, the plaintiff by acquiescence waived any claim of error based on the fact that special issues were submitted to the jury, but no general verdict was returned. *H. W. Smith, Inc. v. Swenson* (Cal. App. Apr. 2, 1930), 105 Cal. App. 60, 286 P. 1050, 1930 Cal. App. LEXIS 655.

In an action to recover for attorney's services rendered on open account, and also to recover on account stated, trial court did not abuse its discretion in submitting to jury special interrogatory inquiring whether account was stated at given date in certain amount where jury's findings thereon were in accord with the sustained general verdict. *Perry v. Schwartz* (Cal. App. 2d Dist. Sept. 6, 1963), 219 Cal. App. 2d 825, 33 Cal. Rptr. 511, 1963 Cal. App. LEXIS 2443.

The provision voiding a fire insurance policy in the event of fraud or false swearing by an insured before or after loss required by statute (Ins C § 2071) to be included in the policy does not apply to false testimony in an action to recover under the policy; in an action on a fire insurance policy to recover for the loss of plaintiff's building and equipment, the court correctly granted plaintiff's motion to strike defendant's special interrogatory as to false testimony during the trial and the amendment to defendant's answer alleging that plaintiff through its authorized agents knowingly and intentionally gave false testimony during the trial as to the extent and amount of damages sustained by plaintiff. *Ichthys, Inc. v. Guarantee Ins. Co.* (Cal. App. 4th Dist. Mar. 17, 1967), 249 Cal. App. 2d 555, 57 Cal. Rptr. 734, 1967 Cal. App. LEXIS 2259.

In an action by a bank on a continuing guaranty of the obligations of a corporation, the trial court did not abuse its discretion in submitting a special interrogatory to the jury as to whether the signature on the guaranty was genuine or forged, where the jury was instructed that plaintiff had the burden of proving due execution of the guaranty, that the guaranty was delivered to it, and that it was supported by consideration; where there was also an instruction that delivery was the physical transfer of an instrument with the intent of its signer to be bound thereby; where it would have been useful in the event of a verdict adverse to plaintiff to know whether the jury found in defendant's favor on the only issue as to which there was a conflict in the direct evidence; and where defendant did not object to submission of the interrogatory. *Bank of Santa Ana v. Molina* (Cal. App. 4th Dist. Nov. 7, 1969), 1 Cal. App. 3d 607, 81 Cal. Rptr. 885, 1969 Cal. App. LEXIS 1308.

**CCP § 625** supports the conclusion that a trial court is not required to submit special verdicts to the jury when construction of a written instrument turns on the credibility of extrinsic evidence. *City of Hope National Medical Center v. Genentech, Inc.* (Cal. Apr. 24, 2008), 43 Cal. 4th 375, 75 Cal. Rptr. 3d 333, 181 P.3d 142, 2008 Cal. LEXIS 4435.

## 10. Equity Proceedings

In equity cases, special issues, framed by the court according to the established rules of chancery practice, may be tried by a jury. *Brewster v. Bours* (Cal. Oct. 1, 1857), 8 Cal. 501, 1857 Cal. LEXIS 369.



In an equitable suit for partition, it was optional with the court to submit or not the issues of fact to a jury, and its refusal to submit them could not be reviewed. [\*Lorenz v. Jacobs\* \(Cal. July 1, 1881\), 59 Cal. 262, 1881 Cal. LEXIS 337.](#)

Where the court in a suit in equity orders a jury, its verdict on the issues submitted by the court is advisory only. [\*Evans v. Ross\* \(Cal. Sept. 30, 1885\), 8 P. 88, 1885 Cal. LEXIS 860.](#)

In a case where there are questions of a purely equitable cognizance, if the jury has been directed to find upon them as special questions their answers are not binding on the court. [\*Churchill v. Louie\* \(Cal. Feb. 25, 1902\), 135 Cal. 608, 67 P. 1052, 1902 Cal. LEXIS 853.](#)

## 11. Tort Actions

Where, in an action against a steamer for setting fire to a fence, the jury was instructed to find specially as to the negligence of the captain or crew of the steamer, and they found generally for the plaintiff damages in a specified number of dollars, and also the steamer's spark catcher was not sufficient to prevent the sparks from endangering property, the verdict was held good in the absence of an objection at the time of its rendition that it was not responsive to the special direction. [\*Algier v. The Steamer Maria\* \(Cal. Oct. 1, 1859\), 14 Cal. 167, 1859 Cal. LEXIS 273.](#)

Action against railroad company for damages for wrongful death of its conductor was within the former section, leaving it discretionary with jury to make special findings or general verdict. [\*Brown v. Central P. R. Co.\* \(Cal. Jan. 3, 1887\), 12 P. 512, 1887 Cal. LEXIS 854, rev'd, \(Cal. June 13, 1887\), 72 Cal. 523, 14 P. 138, 1887 Cal. LEXIS 566.](#)

In an action to recover damages for injury to a building as a result of a gas explosion, it was not error to refuse to submit, at the request of the defendant, a special issue to the jury as to whether a hole in the meter, as it then appeared, was or was not caused by gas, when the plaintiff conceded that it was not so caused, or to refuse to submit a special issue which was fully covered by other special issues actually propounded. [\*Linforth v. San Francisco Gas & Electric Co.\* \(Cal. July 6, 1909\), 156 Cal. 58, 103 P. 320, 1909 Cal. LEXIS 281.](#)

Refusal to submit a special question as to whether a driver swerved upon a street car track, where he was killed by a car coming from his rear, is not error, where an affirmative answer would not have established contributory negligence in view of evidence from which the jury may have found by a general verdict for the plaintiff that the defendant's street car was being run at an immoderate speed and without proper alarms and control. [\*Ruppel v. United R. of S. F.\* \(Cal. App. Mar. 24, 1909\), 10 Cal. App. 319, 101 P. 803, 1909 Cal. App. LEXIS 239.](#)

The court properly refused to submit an interrogatory to the jury as to whether the seat in the car in which the plaintiff was riding struck him in the abdomen, where it appeared that the particular thing which caused the injury, as alleged, was not contact with the seat, but the fact that the plaintiff was thrown against the opposite seat and on the floor. [\*Klein v. Atchison, T. & S. F. R. Co.\* \(Cal. App. Dec. 22, 1909\), 12 Cal. App. 285, 107 P. 147, 1909 Cal. App. LEXIS 12.](#)

In an action against a gas company to recover damages caused by an explosion of gas, it is not error to refuse to submit to the jury a special interrogatory as to whether or not a particular cause was the sole proximate cause of the explosion, where the interrogatory "What was the proximate cause of the explosion?" was submitted to them, and they answered it, "Escaping gas through negligence of the defendant." [\*Merrill v. Los Angeles Gas & Electric Co.\* \(Cal. Oct. 19, 1910\), 158 Cal. 499, 111 P. 534, 1910 Cal. LEXIS 410.](#)

In an action by a third party to recover damages resulting from an alleged negligent collision of an express wagon with the car of a street railroad company, the street railroad has no cause of complaint because special issues were submitted by the express company bearing on the question of negligence as between them, rather than on the request of the plaintiff. [\*Spear v. United R. of S. F.\* \(Cal. App. July 24, 1911\), 16 Cal. App. 637, 117 P. 956, 1911 Cal. App. LEXIS 255.](#)

In an action for slander in calling the plaintiff "a bitch," it is not improper to submit special questions as to whether the defendant meant to imply unchastity or merely to use a coarse epithet, and whether he used the word with an evil purpose of

slandering the plaintiff, though no claim of punitive or exemplary damages was made; the questions are pertinent to fact issues. [Martin v. Sutter \(Cal. App. Nov. 28, 1922\), 60 Cal. App. 8, 212 P. 60, 1922 Cal. App. LEXIS 57.](#)

In an action for damages for wrongful death, there was no abuse of discretion in refusing to submit a special interrogatory as to whether the defendant was under the influence of intoxicating liquor, and if so, whether that was the proximate cause of the accident, where there was no claim that he was heavily intoxicated, and his drinking was but one of several ingredients that the jury may have believed affected his judgment and observation, and said element did not stand out so prominently as necessarily to require the emphasis of a special interrogatory. [Jolley v. Clemens \(Cal. App. Aug. 8, 1938\), 28 Cal. App. 2d 55, 82 P.2d 51, 1938 Cal. App. LEXIS 487.](#)

In an action for injuries sustained by an occupant of an automobile as a result of a collision with another automobile, though witnesses testified that the plaintiff was found on the left side under the steering wheel and that the alleged driver was dead on the right-hand side of the seat, it was not an abuse of discretion in the circumstances to refuse to submit a special interrogatory to the jury to ascertain if the plaintiff was or was not driving the car. [Bennett v. Chandler \(Cal. App. May 25, 1942\), 52 Cal. App. 2d 255, 126 P.2d 173, 1942 Cal. App. LEXIS 269.](#)

In personal injury case, special interrogatory on question of workmen's compensation coverage may be necessary in order to determine basis of decision but is mere incident of procedure which can be handled in trial court. [Scott v. Industrial Acci. Com. \(Cal. Feb. 3, 1956\), 46 Cal. 2d 76, 293 P.2d 18, 1956 Cal. LEXIS 155.](#)

It was not abuse of discretion to deny plaintiff's request for specific findings of fact in personal injury case where affirmative to any of interrogatories requested would not be inconsistent with verdict for defendant nor show that plaintiff was entitled to verdict notwithstanding general verdict against him. [Cembrook v. Sterling Drug, Inc. \(Cal. App. 1st Dist. Dec. 7, 1964\), 231 Cal. App. 2d 52, 41 Cal. Rptr. 492, 1964 Cal. App. LEXIS 777.](#)

To argue that special interrogatories and colloquy between court and juror did away with doctrine of res ipsa loquitur, on which instruction had been given was pure speculation, where court instructed that no single instruction was to be singled out, and where jury may never have found necessary foundational facts to apply rule of res ipsa loquitur. [Tangora v. Matanky \(Cal. App. 2d Dist. Dec. 24, 1964\), 231 Cal. App. 2d 468, 42 Cal. Rptr. 348, 1964 Cal. App. LEXIS 828.](#)

In action under Federal Employers' Liability Act, by interrogatories submitted to jury (CCP § [625](#)), jury may be asked directly if they found contributory negligence by plaintiff, if their verdict was in plaintiff's favor, its total amount, and amount by which they diminished award for plaintiff's contributory negligence. [Farnsworth v. Western P. R. Co. \(Cal. App. 1st Dist. Apr. 13, 1966\), 241 Cal. App. 2d 476, 50 Cal. Rptr. 646, 1966 Cal. App. LEXIS 1263.](#)

In an action for damages resulting from earth movement under plaintiffs' lot and home bought as original purchasers in a subdivision, against the real estate tract developer based on negligence and fraud, it was not an abuse of discretion to deny defendant developer's request for special jury findings where the trial court submitted special interrogatories of its own to the jury considered adequate by the judge to ascertain the basis for the general verdicts, and where some of the requested interrogatories were immaterial to a determination of the case, and answers to the others were manifest by the general verdict. [Oakes v. McCarthy Co. \(Cal. App. 2d Dist. Nov. 7, 1968\), 267 Cal. App. 2d 231, 73 Cal. Rptr. 127, 1968 Cal. App. LEXIS 1381.](#)

If nine identical jurors agree that a party is negligent and that such negligence is the proximate cause of the other party's injuries, special verdicts apportioning damages are valid so long as they command the votes of any nine jurors. To hold otherwise would be to prohibit jurors who dissent on the question of a party's liability from participating in the important remaining issue of allocating responsibility among the parties, a result that would deny all parties the right to a jury of twelve persons deliberating on all issues. Thus, in a personal injury action by a plaintiff who was injured while operating a lathe supplied to his employer by defendant, seeking damages on a negligence theory, the trial court erred in declaring a mistrial, notwithstanding the matter had been submitted to the jury on special verdicts, as authorized by CCP § [625](#), and, out of the nine jurors concurring in the special verdict apportioning the combined negligence, one juror did not join in the verdict determining the amount of plaintiff's damages and also found against defendant's negligence and proximate causation, and another juror found against plaintiff's negligence and proximate causation. [Juarez v. Superior Court \(Cal. July 1, 1982\), 31 Cal. 3d 759, 183 Cal. Rptr. 852, 647 P.2d 128, 1982 Cal. LEXIS 195.](#)

## 12. Miscellaneous Types of Actions

In a condemnation proceeding, the defendant was entitled to a special verdict or finding, there being no general verdict, on the affirmative averment in his answer stating that “It is the intention of the plaintiff and his associates to use the water of said ditch in mining their own land, and for no other purpose, and that said use is a private use.” Cummings v. Peters (Cal. Nov. 1, 1880), 56 Cal. 593, 1880 Cal. LEXIS 456.

In a condemnation proceeding, it was not an abuse of discretion for the court to refuse to recall the jury, after they had retired for deliberation, for the purpose of submitting to them a special issue embraced within another issue already submitted to them. California C. R. Co. v. Hooper (Cal. June 6, 1888), 76 Cal. 404, 18 P. 599, 1888 Cal. LEXIS 903.

In an action of unlawful detainer and for damages, with a counterclaim for damages, submission of special questions as to whether either plaintiff or defendant had been damaged by the other’s alleged acts is not improper. Wiencke v. Bibby (Cal. App. Dec. 15, 1910), 15 Cal. App. 50, 113 P. 876, 1910 Cal. App. LEXIS 17.

In action for damages for fraud, it was not error to submit to jury interrogatory as to fraud or malice of defendants. Bate v. Marsteller (Cal. App. 1st Dist. Mar. 3, 1965), 232 Cal. App. 2d 605, 43 Cal. Rptr. 149, 1965 Cal. App. LEXIS 1506.

## III. SPECIAL FINDINGS INCONSISTENT WITH GENERAL VERDICT

### 13. Generally

When a jury renders a general verdict and also special findings, the latter will control the former, if there is any inconsistency between them; and the court will direct judgment to be entered in accordance with the special findings. Leese v. Clark (Cal. July 1, 1862), 20 Cal. 387, 1862 Cal. LEXIS 56.

Only when the special findings and the general verdict are inconsistent may judgment be rendered on the special findings. Obersteller v. Commercial Assurance Co. (Cal. Dec. 7, 1892), 96 Cal. 645, 31 P. 587, 1892 Cal. LEXIS 1000.

Granting a new trial instead of rendering judgment according to special findings, where the general verdict is not supported, is error. Haas v. Whittier (Cal. Feb. 25, 1893), 97 Cal. 411, 32 P. 449, 1893 Cal. LEXIS 556.

Where a finding upon a special issue or a particular question of fact is so inconsistent with the general verdict as to destroy its effect, the former controls, and the party against whom the verdict went is entitled to a judgment non obstante veredicto. Williams v. San Francisco & N. W. R. Co. (Cal. App. Nov. 1, 1907), 6 Cal. App. 715, 93 P. 122, 1907 Cal. App. LEXIS 188.

Immaterial special findings which are incorrect, but not inconsistent with the verdict, cannot prevail over material findings supported by the evidence, which support the verdict for the plaintiff. Bank of Anderson v. Home Ins. Co. (Cal. App. Sept. 10, 1910), 14 Cal. App. 208, 111 P. 507, 1910 Cal. App. LEXIS 123.

If a finding of any material fact is irreconcilable with the general verdict as rendered, the latter cannot be upheld though there may be a conflict among the special findings, one consistent and another inconsistent with the general verdict. Napa Valley Packing Co. v. San Francisco Relief & Red Cross Funds (Cal. App. June 16, 1911), 16 Cal. App. 461, 118 P. 469, 1911 Cal. App. LEXIS 280.

A general verdict will stand as against two special findings neither of which by itself is in irreconcilable conflict with the general verdict, though the two apparently conflict with each other in particulars but otherwise are agreeable with the general verdict. Law v. Northern Assurance Co. (Cal. May 9, 1913), 165 Cal. 394, 132 P. 590, 1913 Cal. LEXIS 436.

Where a finding is made on an issue which determines a cause, other issues bearing on the same cause become immaterial, and the fact that other findings are made, not in any way inconsistent with the findings which dispose of the case, is of no consequence. [\*In re Estate of Anderson\* \(Cal. App. Dec. 14, 1938\), 29 Cal. App. 2d 637, 85 P.2d 212, 1938 Cal. App. LEXIS 397.](#)

Jury's failure to answer any interrogatories submitted to it does not vitiate general verdict. [\*Bernson v. Bowman\* \(Cal. App. 2d Dist. July 15, 1960\), 182 Cal. App. 2d 697, 6 Cal. Rptr. 455, 1960 Cal. App. LEXIS 2167.](#)

#### **14. What Constitutes Inconsistency**

When the jury are directed by the court to find a general verdict, also to make a special finding of facts on questions submitted to them, and a general verdict is returned in favor of one party, while the findings on the special issues are in favor of the other party, the court should render judgment in accordance with the special findings, if they embrace all the issues raised in the pleadings; if, however, there is any one issue in the pleadings, not covered by the special findings, the judgment should be rendered on the general verdict, for where the special findings do not include issues which, if found for the defendant would sustain a general verdict in his favor, the special verdict cannot properly be deemed inconsistent with the general verdict. [\*McDermott v. Higby\* \(Cal. Oct. 1, 1863\), 23 Cal. 489, 1863 Cal. LEXIS 305.](#)

Answers to special questions that the jury "does not know," or "cannot determine" are inconsistent with a general verdict which implies necessary findings upon such questions to support it. [\*Larsen v. Leonardt\* \(Cal. App. Apr. 28, 1908\), 8 Cal. App. 226, 96 P. 395, 1908 Cal. App. LEXIS 213.](#)

A special verdict that all damages to the plaintiff amount to a certain sum is not inconsistent with a general verdict for certain items which altogether aggregate the same sum, although as to certain alleged items of damage there is no evidence. [\*Irrgang v. Ott\* \(Cal. App. Nov. 28, 1908\), 9 Cal. App. 440, 99 P. 528, 1908 Cal. App. LEXIS 107.](#)

A finding on a special question does not control a general verdict, where the question is so framed as to the time of an act, considering the evidence and another similar question, that the answer invited relates to a time different from that called for. [\*Foutz v. Los Angeles\* \(Cal. Mar. 25, 1914\), 167 Cal. 487, 140 P. 20, 1914 Cal. LEXIS 488.](#)

Only when as a matter of law a special finding taken by itself authorizes a judgment different from that which the general verdict will permit is a special finding inconsistent with a general verdict. [\*Lowen v. Finnilla\* \(Cal. May 14, 1940\), 15 Cal. 2d 502, 102 P.2d 520, 1940 Cal. LEXIS 239.](#)

Though special verdict, where inconsistent with general verdict, will control latter, special finding is inconsistent with general verdict only when, as matter of law, special finding when taken by itself would authorize judgment different from that which general verdict will permit. [\*Bate v. Marsteller\* \(Cal. App. 1st Dist. Mar. 3, 1965\), 232 Cal. App. 2d 605, 43 Cal. Rptr. 149, 1965 Cal. App. LEXIS 1506.](#)

Only where special findings are such that, if they are supported, the general verdict could not stand on any theory within the issues is there an irreconcilable inconsistency. [\*Pitcher v. Kniss\* \(Cal. App. 4th Dist. Aug. 28, 1970\), 10 Cal. App. 3d 931, 89 Cal. Rptr. 676, 1970 Cal. App. LEXIS 1904.](#)

Though CCP § [625](#), provides that a jury's special findings control a general verdict if they are inconsistent therewith, no presumption will be indulged in a favor of answers of the jury to special interrogatories as against the general verdict, but every reasonable intendment in favor of the general verdict should be indulged, and all parts of the verdict are to be reconciled in support thereof if it can reasonably be done. Hence, the general verdict will stand unless the facts found by the jury in answer to special interrogatories are so clearly antagonistic to it as to be absolutely irreconcilable, the conflict being such as to be beyond the possibility of being removed by any evidence admissible under the issues, so that both the general verdict and special findings cannot stand. [\*Weisenburg v. Molina\* \(Cal. App. 4th Dist. May 18, 1976\), 58 Cal. App. 3d 478, 129 Cal. Rptr. 813, 1976 Cal. App. LEXIS 1532.](#)

## 15. Construction and Reconciliation

A special verdict of a jury on various questions submitted to them should be read together; and if the finding on a particular question be doubtful or obscure, reference may be had to the context for the purpose of ascertaining the true meaning. Findings should be so construed as to avoid a contradiction if it can be reasonably done. [\*Alhambra Addition Water Co. v. Richardson\* \(Cal. June 27, 1887\), 72 Cal. 598, 14 P. 379, 1887 Cal. LEXIS 585.](#)

Special findings should be construed and reconciled with a general verdict if it can be done reasonably, to the end that the purpose of this section be promoted rather than destroyed. [\*Antonian v. Southern Pacific Co.\* \(Cal. App. Jan. 27, 1909\), 9 Cal. App. 718, 100 P. 877, 1909 Cal. App. LEXIS 346.](#)

The court should not strain the language of a finding to make out a case of conflict, but the finding should be reconciled if it can reasonably be done. [\*Spear v. United R. of S. F.\* \(Cal. App. July 24, 1911\), 16 Cal. App. 637, 117 P. 956, 1911 Cal. App. LEXIS 255.](#)

Obscurities and apparent inconsistencies in the findings are to be given weight in favor of, rather than against, the general verdict. If the findings are open to double construction, that construction should be adopted which upholds the general verdict. [\*Spear v. United R. of S. F.\* \(Cal. App. July 24, 1911\), 16 Cal. App. 637, 117 P. 956, 1911 Cal. App. LEXIS 255.](#)

All presumptions are in favor of the general verdict, and it must control, if the special verdict is not absolutely irreconcilable therewith. [\*Petersen v. California Cotton Mills Co.\* \(Cal. App. Dec. 30, 1912\), 20 Cal. App. 751, 130 P. 169, 1912 Cal. App. LEXIS 205.](#)

All presumptions are in favor of a general verdict for the plaintiff, and it must control if a special verdict is not absolutely irreconcilable therewith; on the other hand, answers to interrogatories cannot be aided by intendment, as all intendments are in favor of the general verdict. [\*Koskela v. Albion Lumber Co.\* \(Cal. App. June 23, 1914\), 25 Cal. App. 12, 142 P. 851, 1914 Cal. App. LEXIS 181.](#)

All inferences and intendments favor a general verdict, and the answers to special interrogatories cannot be enlarged by inferences or intendments so as to vitiate the general verdict. [\*Tremble v. Tuman\* \(Cal. Aug. 10, 1917\), 175 Cal. 696, 167 P. 142, 1917 Cal. LEXIS 745.](#)

A general verdict and special finding should be reconciled if possible, and no specific finding should operate to overthrow the general conclusion of the jury unless they are entirely inconsistent and irreconcilable. [\*Drouillard v. Southern Pacific Co.\* \(Cal. App. Mar. 4, 1918\), 36 Cal. App. 447, 172 P. 405, 1918 Cal. App. LEXIS 438.](#)

A special finding must always be construed so as to be in harmony with the general verdict if such construction is reasonably possible. [\*Olsen v. Standard Oil Co.\* \(Cal. Jan. 30, 1922\), 188 Cal. 20, 204 P. 393, 1922 Cal. LEXIS 395.](#)

Although a special question be not in form commendable, in that it called for an answer giving the jury's "reason" for its general verdict instead of calling for a fact, yet, if it with the answer is fairly construable as a special question and finding, it will control the general verdict. [\*Jacobs v. Norwich Union Fire Ins. Soc.\* \(Cal. App. Jan. 19, 1935\), 4 Cal. App. 2d 1, 40 P.2d 899, 1935 Cal. App. LEXIS 355.](#)

Every reasonable intendment in favor of a general verdict must be indulged in order to reconcile all the findings of a jury. [\*Lowen v. Finnila\* \(Cal. May 14, 1940\), 15 Cal. 2d 502, 102 P.2d 520, 1940 Cal. LEXIS 239.](#)

Unless the facts found by the jury in answer to special interrogatories are so clearly antagonistic to a general verdict as to be absolutely irreconcilable, a general verdict will stand. [\*Lowen v. Finnila\* \(Cal. May 14, 1940\), 15 Cal. 2d 502, 102 P.2d 520, 1940 Cal. LEXIS 239.](#)

General verdict and special interrogatories are to be read and construed together. [\*Bernson v. Bowman\* \(Cal. App. 2d Dist. July 15, 1960\), 182 Cal. App. 2d 697, 6 Cal. Rptr. 455, 1960 Cal. App. LEXIS 2167.](#)

## Cal Code Civ Proc § 625

Where plaintiffs had burden of proving affirmative of issue embodied in specific interrogatory submitted to jury, jury answer of “Undecided because of contrary testimony” had same legal effect as negative answer. *Cooper v. Mart Associates (Cal. App. 1st Dist. Feb. 24, 1964)*, 225 Cal. App. 2d 108, 37 Cal. Rptr. 145, 1964 Cal. App. LEXIS 1350.

No presumption is to be indulged in favor of answers to special interrogatories and every reasonable intendment in favor of general verdict should be favored by court. *Bate v. Marsteller (Cal. App. 1st Dist. Mar. 3, 1965)*, 232 Cal. App. 2d 605, 43 Cal. Rptr. 149, 1965 Cal. App. LEXIS 1506.

Under CCP § 625, providing that when a special finding of fact is inconsistent with the general verdict, the former controls the latter, a special finding is inconsistent only when, as a matter of law, the special finding, when taken by itself, would authorize a judgment different from that which the general verdict will permit. Since the special verdict or finding provided for in § 625 is primarily and principally for the purpose of determining whether the general verdict is or is not against law, no presumption is to be indulged in favor of answers to special interrogatories and every reasonable intendment in favor of the general verdict is indulged. The general and special verdicts must be beyond possibility of reconciliation under any possible application of the evidence and instructions, and if any conclusions could be drawn thereunder which would explain the apparent conflict, the jury will be deemed to have drawn them. *Hasson v. Ford Motor Co. (Cal. May 31, 1977)*, 19 Cal. 3d 530, 138 Cal. Rptr. 705, 564 P.2d 857, 1977 Cal. LEXIS 148, overruled in part, *Soule v. General Motors Corp. (Cal. Oct. 27, 1994)*, 8 Cal. 4th 548, 34 Cal. Rptr. 2d 607, 882 P.2d 298, 1994 Cal. LEXIS 6027.

Under CCP § 625, providing that when a special finding of fact is inconsistent with the general verdict, the former controls the latter, a special verdict can control the general verdict only by its inherent force and clarity. Hence, if inconsistent special findings are rendered, one of which supports, and the other of which tends to negate the general verdict, the latter will stand. *Hasson v. Ford Motor Co. (Cal. May 31, 1977)*, 19 Cal. 3d 530, 138 Cal. Rptr. 705, 564 P.2d 857, 1977 Cal. LEXIS 148, overruled in part, *Soule v. General Motors Corp. (Cal. Oct. 27, 1994)*, 8 Cal. 4th 548, 34 Cal. Rptr. 2d 607, 882 P.2d 298, 1994 Cal. LEXIS 6027.

A special finding is inconsistent with the general verdict only when, as a matter of law, the special finding when taken by itself would authorize a judgment different from that which the general verdict will permit. Since the special verdict or finding provided for in CCP § 625, is primarily and principally for the purpose of determining whether the general verdict is or is not against law, no presumption is to be indulged in favor of answers to interrogatories, and every reasonable intendment in favor of the general verdict is indulged. The general and special verdicts must be beyond possibility of reconciliation under any possible application of the evidence and instructions. If any conclusions could be drawn thereunder which would explain the apparent conflict, the jury will be deemed to have drawn them. *Wylor v. Feuer (Cal. App. 2d Dist. Oct. 10, 1978)*, 85 Cal. App. 3d 392, 149 Cal. Rptr. 626, 1978 Cal. App. LEXIS 1982.

## 16. Particular Actions and Proceedings

Judgment was properly rendered for the amount specially found to be due, disregarding another finding of a less amount due after making certain allowances and a general verdict corresponding in particulars with the latter special finding, it being held that the special findings were not contradictory and that the former one controls. *Cox v. Delmas (Cal. July 21, 1893)*, 99 Cal. 104, 33 P. 836, 1893 Cal. LEXIS 621.

Special findings in an action for damages that a release in evidence was not procured by misrepresentations by the defendant, and that the defendant did nothing to prevent the plaintiff from having full knowledge of its character and effect, do not negative mutual mistake in executing the release, and where there was evidence of such mistake, a general verdict for plaintiff is not overcome by the special findings. *Hudgins v. Standard Oil Co. (Cal. App. Dec. 22, 1933)*, 136 Cal. App. 44, 28 P.2d 433, 1933 Cal. App. LEXIS 18.

## 17. Contract Actions

In an action for the price of goods sold to a corporate defendant and individual defendants, a special issue as to whether plaintiff sold the goods to any defendant other than the corporation is on a material issue, and a negative answer overcomes a general verdict against the corporation, where the proof is that it was liable, if at all, only by its assumption of the debts of the individuals and by novation to their contract. [\*Napa Valley Packing Co. v. San Francisco Relief & Red Cross Funds\* \(Cal. App. June 16, 1911\), 16 Cal. App. 461, 118 P. 469, 1911 Cal. App. LEXIS 280.](#)

In an action by an owner of land against the surety on a building contractor's bond, where special verdicts were found by the jury on certain issues submitted to it, and the jury also found a general verdict for the plaintiff importing that the contractor had abandoned the work before completion, and that by reason of such abandonment and the completion of the work by the owner the surety was liable, in view of the fact that the issue of abandonment was directly in the case, and the jury had been specifically instructed on the question of abandonment, there was no inconsistency between the special and general verdict, and the trial court erred in refusing to enter judgment for the plaintiff in accordance with the general verdict. [\*Tremble v. Tuman\* \(Cal. Aug. 10, 1917\), 175 Cal. 696, 167 P. 142, 1917 Cal. LEXIS 745.](#)

The jury having found a general verdict for the plaintiff, it may well be true that the jury be considered to have found an acceptance by the defendant of the work under the contract sued on, although the special interrogatory calling for a finding thereon was unanswered. [\*California Well Drilling Co. v. California Midway Oil Co.\* \(Cal. May 28, 1918\), 178 Cal. 337, 177 P. 849, 1918 Cal. LEXIS 478.](#)

In an action to recover liquidated damages for breach of a contract to market fruit, where the jury not only rendered a general verdict in favor of the defendant but answered fourteen special interrogatories in such a manner as to indicate that, with two exceptions, its members accepted the testimony of defendant as true in all particulars, the special findings as to the date the contract was signed were immaterial and were not so antagonistic to the general verdict as to be absolutely irreconcilable; and where neither of such special findings would authorize a judgment different from that permitted by the general verdict they could not be said to be inconsistent therewith. [\*Placentia Cooperative Orange Growers Asso. v. Henning\* \(Cal. App. Nov. 23, 1931\), 118 Cal. App. 487, 5 P.2d 444, 1931 Cal. App. LEXIS 195.](#)

In action charging plaintiff's former employer with misrepresenting business income on which part of plaintiff's remuneration was based, tried as action for damages for fraud and in which court in no way indicated that a verdict could be returned for plaintiff on theory of money had and received, conversion or breach of oral contract, a general verdict for plaintiff was inconsistent with, and controlled by, a special finding negating fraud on part of defendant. [\*Bond v. De Witt\* \(Cal. App. July 14, 1954\), 126 Cal. App. 2d 540, 272 P.2d 561, 1954 Cal. App. LEXIS 2053.](#)

## 18. Tort Actions

In an action for wrongful death, special findings by the jury that the railroad company exercised ordinary care and prudence in selecting its servants in charge of the train, and that the accident was not proximately caused by the negligence of any of its servants, are in conflict with a general verdict for the plaintiff, which cannot stand, though the complaint charges negligence in constructing and maintaining the road, as well as in the running of the train and in the selection of employees. [\*Vaughn v. California C. R. Co.\* \(Cal. Feb. 1, 1890\), 83 Cal. 18, 23 P. 215, 1890 Cal. LEXIS 631.](#)

In an action for damages for personal injuries, the fact that the jury by their special verdict found that each of several things, including the incompetency of the winchman, in unloading the vessel, was the "proximate cause" of the injury to the slingman, does not render it and the general verdict so inconsistent as to require that it and the general verdict in favor of the slingman be set aside; properly construed, the special verdict means that all such things contributed to the injury, and the general verdict will be sustained if one of the matters specially found on is sufficient to support it. [\*Worley v. Spreckels Bros. Commercial Co.\* \(Cal. June 11, 1912\), 163 Cal. 60, 124 P. 697, 1912 Cal. LEXIS 374.](#)

Failure to answer particular questions bearing on a single issue of negligence cannot be held to amount to a disagreement upon the general verdict for the plaintiff, where the pleadings make other issues of negligence some of which may have been found supporting the general verdict independent of what the answer would have been on the particular special questions. [\*O'Connell v. United R. of S. F.\* \(Cal. App. May 11, 1912\), 19 Cal. App. 36, 124 P. 1022, 1912 Cal. App. LEXIS 92.](#)

Where in an action for damages for diverting storm waters to the plaintiff's land, the jury by special findings found that the storm and flood that occasioned the damage were unprecedented, such special findings were not inconsistent with the general verdict for plaintiff in the absence of any finding that the unprecedented character of the storm was the sole cause of the injuries. [\*Farrell v. Ontario\* \(Cal. App. Jan. 3, 1919\), 39 Cal. App. 351, 178 P. 740, 1919 Cal. App. LEXIS 212.](#)

A general verdict for the plaintiff for slander in calling her "a bitch," which is not actionable per se, is inconsistent with special answers that the defendant did not mean to impute unchastity and had no evil purpose of slandering her. [\*Martin v. Sutter\* \(Cal. App. Nov. 28, 1922\), 60 Cal. App. 8, 212 P. 60, 1922 Cal. App. LEXIS 57.](#)

In an action for damages for personal injuries by scalding, the judgment on the special verdict, notwithstanding the general verdict, could be sustained only if it might be said that under no circumstances within the issues could the defendant be held liable to the plaintiff, because though the special verdict showed the plaintiff to have been negligent, still the defendant's negligence might have been the sole proximate cause of the injury. [\*Lowen v. Finnilla\* \(Cal. May 14, 1940\), 15 Cal. 2d 502, 102 P.2d 520, 1940 Cal. LEXIS 239.](#)

In an action for personal injury by scalding, the answer "yes" given to a special interrogatory as to whether any signs designated the hot and cold water taps was not inconsistent with a general verdict for the plaintiff. [\*Lowen v. Finnilla\* \(Cal. May 14, 1940\), 15 Cal. 2d 502, 102 P.2d 520, 1940 Cal. LEXIS 239.](#)

In a wrongful death action which went to the jury on the issues of negligence, contributory negligence, proximate cause, and damages, and in which the jury returned a unanimous verdict for defendants, a causerie between the court and the jury foreman could not be given the effect of an answer to a special interrogatory that the verdict was based on a jury finding of lack of negligence of defendant driver, where the jury foreman, answering the court's question after verdict, advised that the basis of the verdict was lack of negligence, where the defense verdict might have been reached for any one of three different reasons, and where there was nothing in the record to show that the jury foreman knew by what process of reasoning the jurors had made their individual determinations. [\*Funderburk v. General Tel. Co.\* \(Cal. App. 2d Dist. June 11, 1968\), 262 Cal. App. 2d 869, 69 Cal. Rptr. 275, 1968 Cal. App. LEXIS 2378.](#)

In an action against the manufacturer of an automobile by occupants injured as the result of the automobile brake's failure to function, allegedly resulting from a heat-induced vaporization of the brake fluid, a special finding that there was no "defect" in the brakes at the time of manufacture and original sale, did not preclude a further special finding that the manufacturer was negligent, and a general verdict against the manufacturer was therefore not prohibited by CCP § 625, providing when a special finding of fact is inconsistent with the general verdict, the former controls the latter, where the record reflected the common understanding of the court, counsel, and jury that, under the complaint and the evidence, the negligence and strict liability counts were independent of each other, and that a failure to find a "defect," would not necessarily preclude all liability on the manufacturer's part, and since a finding of inconsistent verdicts would ignore the jury's express finding of negligence, and would render superfluous a legal theory submitted to the jury without objection of either party. [\*Hasson v. Ford Motor Co.\* \(Cal. May 31, 1977\), 19 Cal. 3d 530, 138 Cal. Rptr. 705, 564 P.2d 857, 1977 Cal. LEXIS 148, overruled in part, \*Soule v. General Motors Corp.\* \(Cal. Oct. 27, 1994\), 8 Cal. 4th 548, 34 Cal. Rptr. 2d 607, 882 P.2d 298, 1994 Cal. LEXIS 6027.](#)

In a suit brought by a financial corporation against an insurer alleging breach of contract and fraud, among other things, and arising out of the refusal to pay a claim, the jury returned two inconsistent special verdicts with respect to the insurer's adjuster. The trial court properly resolved that the adjuster was not liable for fraud as the element of intent was missing. [\*Textron Financial Corp. v. National Union Fire Ins. Co.\* \(Cal. App. 4th Dist. May 20, 2004\), 118 Cal. App. 4th 1061, 13 Cal. Rptr. 3d 586, 2004 Cal. App. LEXIS 777, overruled in part, \*Zhang v. Superior Court\* \(Cal. Aug. 1, 2013\), 57 Cal. 4th 364, 159 Cal. Rptr. 3d 672, 304 P.3d 163, 2013 Cal. LEXIS 6520.](#)

## 19. Miscellaneous Types of Actions

Special findings showing the plaintiff's note to be unpaid were inconsistent with a general verdict for the plaintiff, a pledgor of corporate stock, suing for conversion by the pledgee in failing to collect and apply dividends which would have paid the debt and in selling the pledged stock. [\*McAulay v. Moody\* \(Cal. Mar. 24, 1900\), 128 Cal. 202, 60 P. 778, 1900 Cal. LEXIS 571.](#)



## Cal Code Civ Proc § 625

In an action by a principal against an agent for money received by the agent with an allegation in the complaint that the defendant fraudulently misappropriated it, a special finding against fraud is inconsistent with a general verdict for the amount found due, the fact of fraud being material only to arrest and imprisonment for the debt. *Portland Cracker Co. v. Murphy* (Cal. Dec. 14, 1900), 130 Cal. 649, 63 P. 70, 1900 Cal. LEXIS 905.

In an action for damages for falsely representing that a flat in a building was under lease from month to month, by reason of which the plaintiff was induced to lease the building, whereas in reality it was under lease for a year at a monthly rental, a special answer that it was not under lease for a year at a monthly rental is inconsistent with a general verdict for the plaintiff, the question being limited to the existence of a yearly lease contrary to the alleged representation. *Di Vecchio v. Luchsinger* (Cal. App. Dec. 17, 1909), 12 Cal. App. 219, 107 P. 315, 1909 Cal. App. LEXIS 22.

In an action against a sheriff for the conversion of mortgaged personal property attached and sold on the execution for the creditor of the mortgagor, where the jury found on sufficient evidence that the sum of \$449.90, part of the mortgage, was advanced to pay a prior valid mortgage, and rendered a special and general verdict for that sum, but found upon special issues against other items included in the mortgage, a mere negative finding as to the validity of the mortgage as a whole, raising the question whether or not a mortgage would be void as to creditors, where only the good faith of the mortgagee is called in question, is to be construed in connection with all the special findings and general verdict, and so construed, an inconsistency claimed between the findings and general verdict because of such negative finding does not exist. *Morgan v. Nesbitt* (Cal. App. Dec. 5, 1910), 14 Cal. App. 747, 113 P. 125, 1910 Cal. App. LEXIS 47.

In an action to quiet title, the findings are in irreconcilable conflict where the first finding is “that all the material allegations of the plaintiffs complained of herein are true”; the second finding is “that all the material allegations of the defendant’s answer herein are not true”; the third finding is “that the plaintiff is the owner in fee” of the real property described; and the fourth finding is “that the plaintiff’s claim of title to said real property is unfounded and without right.” *Huling v. Seccombe* (Cal. App. Jan. 4, 1928), 88 Cal. App. 238, 263 P. 362, 1928 Cal. App. LEXIS 212.

In a will contest, where the jury finds, upon a special issue, that a will was executed under undue influence, a finding that the decedent was of unsound mind is not inconsistent therewith, and the same is true of a finding that the purported will was not properly subscribed. *In re Estate of Anderson* (Cal. App. Dec. 14, 1938), 29 Cal. App. 2d 637, 85 P.2d 212, 1938 Cal. App. LEXIS 397.

#### IV. APPEAL

##### 20. Generally

In an action for divorce, it is optional with the judge to submit special issues to a jury or not, and his refusal to submit them will not be reviewed on appeal. *Cleghorn v. Cleghorn* (Cal. Jan. 10, 1885), 66 Cal. 309, 5 P. 516, 1885 Cal. LEXIS 421.

An objection to the form of a special verdict must be taken before the verdict is received and recorded, otherwise the objection will not be considered on appeal. *Alhambra Addition Water Co. v. Richardson* (Cal. June 27, 1887), 72 Cal. 598, 14 P. 379, 1887 Cal. LEXIS 585.

Only when the trial court refuses upon proper objection to require the jury to exercise its powers, either by answering or by expressing its inability to agree upon an answer, and only when there has been no waiver by the objector, can error be predicated on the jury’s failure to answer a special question. *Van Damme v. McGilvray Stone Co.* (Cal. App. June 3, 1913), 22 Cal. App. 191, 133 P. 995, 1913 Cal. App. LEXIS 33.

The question of whether a special verdict is so inconsistent with a general verdict as to control it as a matter of law is determinable on the pleadings and findings of the jury, and on appeal it will be assumed that the evidence was sufficient to support the general verdict. *Lowen v. Finnilla* (Cal. May 14, 1940), 15 Cal. 2d 502, 102 P.2d 520, 1940 Cal. LEXIS 239.

Since general verdict imports findings in favor of prevailing party on all material issues, appellate court is not required to speculate on what particular ground jury may have found against losing party. [\*Hope v. Arrowhead & Puritas Waters, Inc.\* \(Cal. App. 2d Dist. Oct. 5, 1959\), 174 Cal. App. 2d 222, 344 P.2d 428, 1959 Cal. App. LEXIS 1687.](#)

Special interrogatories presented to a jury after it had returned general verdict in defendant's favor, and answers thereto, were of no effect in determining appeal from judgment, since they were not given to jury at proper time. [\*Vivion v. National Cash Register Co.\* \(Cal. App. 2d Dist. Feb. 21, 1962\), 200 Cal. App. 2d 597, 19 Cal. Rptr. 602, 1962 Cal. App. LEXIS 2751.](#)

Objections to form of special interrogatories cannot be made on appeal in absence of objection to their form made prior to their submission to jury, especially where, in view of fact that questions submitted to jury were each denominated "Interrogatory No. &mdash; &mdash;," defendants could not have been misled into believing they did not have to object to their form no matter what they thought purpose of questions might be. [\*Bate v. Marsteller\* \(Cal. App. 1st Dist. Mar. 3, 1965\), 232 Cal. App. 2d 605, 43 Cal. Rptr. 149, 1965 Cal. App. LEXIS 1506.](#)

Where the evidence supports implied findings on any set of issues which will sustain a verdict, it will be assumed that the jury so found; an appellate court need not speculate on what particular ground the jury may have found in favor of the prevailing party. [\*Gordon v. Strawther Enterprises, Inc.\* \(Cal. App. 1st Dist. May 29, 1969\), 273 Cal. App. 2d 504, 78 Cal. Rptr. 417, 1969 Cal. App. LEXIS 2194.](#)

## 21. Determination and Disposition of Cause

A judgment correct in substance will not be reversed because of an erroneous special verdict. *La Fonton v Gaucheron* (1856) 1 CU 30.

If the answer in the defendant's favor would not be inconsistent with a general verdict in the plaintiff's favor, failure to submit special questions or failure of the jury to answer them would not be prejudicial. [\*Pigeon v. W. P. Fuller & Co.\* \(Cal. Dec. 8, 1909\), 156 Cal. 691, 105 P. 976, 1909 Cal. LEXIS 378.](#)

Where the general verdict was for the defendant and either of his defenses entitled him to judgment if a finding in favor of either was sustained by the evidence and not affected by any error, want of evidence to sustain the finding on the other defense or any error committed in regard to it is not prejudicial, and does not overcome the general verdict. [\*Big Three Mining & Milling Co. v. Hamilton\* \(Cal. Dec. 27, 1909\), 157 Cal. 130, 107 P. 301, 1909 Cal. LEXIS 269.](#)

Where there is an irreconcilable conflict between the general verdict for the plaintiff and the special findings of the jury, the judgment for the plaintiff must be reversed. [\*Chormicle v. Southwest Warehouse Co.\* \(Cal. Apr. 23, 1910\), 157 Cal. 649, 108 P. 863, 1910 Cal. LEXIS 307.](#)

When more than one special issue which would sustain a judgment is submitted to a jury, and the jury's general verdict is supported by one of the special verdicts and not by the others, if there is no self-destroying inconsistency between them, that one which is correctly found will sustain the judgment, and the incorrect special verdicts become harmless error. [\*California Wine Assn. v. Commercial Union Fire Ins. Co.\* \(Cal. Dec. 28, 1910\), 159 Cal. 49, 112 P. 858, 1910 Cal. LEXIS 233.](#)

Where a general verdict in the appellant's favor implies a favorable finding, and where the answer to another special question makes an unanswered one immaterial, an appellant is not harmed by the failure to answer. [\*Wiencke v. Bibby\* \(Cal. App. Dec. 15, 1910\), 15 Cal. App. 50, 113 P. 876, 1910 Cal. App. LEXIS 17.](#)

Where special findings are not only inconsistent with themselves, but irreconcilable with the general verdict, this is ground for reversal. [\*McEwen v. New York Life Ins. Co.\* \(Cal. App. Jan. 9, 1914\), 23 Cal. App. 694, 139 P. 242, 1914 Cal. App. LEXIS 304.](#)

Where findings are irreconcilably in conflict the judgment must be reversed, for the reason that it is impossible, under such circumstances, to determine which findings controlled the court in rendering its judgment. [\*Huling v. Seccombe\* \(Cal. App. Jan. 4, 1928\), 88 Cal. App. 238, 263 P. 362, 1928 Cal. App. LEXIS 212.](#)

In an action for wrongful death, where the deceased left as her heirs at law a husband, from whom she was separated, and four minor children, who were dependent on her for support, the court did not commit reversible error, after instructing the jury as to the law applicable to the general facts of the case, in further instructing them that if they should find for the plaintiff they should fix the amount of damages in one lump sum, and after doing so, make special findings as to the amount each particular heir was entitled to receive from the total damage found. [Cate v. Fresno Traction Co. \(Cal. July 25, 1931\), 213 Cal. 190, 2 P.2d 364, 1931 Cal. LEXIS 509.](#)

In an action on a contract, the submission to the jury of the question whether letters and a telegram contained a refusal to perform on the part of the active party was error, since the construction of such documents was a matter of law for the court, but the error was harmless in view of the fact that the court, in rendering judgment on the verdict for such active party, made its own conclusion. [In re Sargavak's Estate \(Cal. App. Mar. 22, 1949\), 203 P.2d 827, 1949 Cal. App. LEXIS 1846, superseded, \(Cal. Apr. 11, 1950\), 35 Cal. 2d 93, 216 P.2d 850, 1950 Cal. LEXIS 317.](#)

In an action on a written contract, while it was error to submit to the jury an interrogatory as to the interpretation of a phrase in the instrument, such error was harmless in view of the fact that the court's construction of the phrase in its judgment corresponded with an explanation thereof by one of the parties and only incidentally with the interpretation of the jury, the court's determination being considered as its own conclusion without regard to the jury's deliberation. [In re Sargavak's Estate \(Cal. App. Mar. 22, 1949\), 203 P.2d 827, 1949 Cal. App. LEXIS 1846, superseded, \(Cal. Apr. 11, 1950\), 35 Cal. 2d 93, 216 P.2d 850, 1950 Cal. LEXIS 317.](#)

Where jury makes a special finding negating fraud but brings in a general verdict apparently including exemplary damages, a judgment based on such verdict will be reversed. [Bond v. De Witt \(Cal. App. July 14, 1954\), 126 Cal. App. 2d 540, 272 P.2d 561, 1954 Cal. App. LEXIS 2053.](#)

In action for value of attorney's services, defendants are not prejudiced by special interrogatory erroneously permitting jurors to decide what constitutes legal services on question asking whether attorney performed such services, where evidence warrants no inference other than he did perform and verdict shows that jurors undoubtedly determined that he did. [Sloan v. Stearns \(Cal. App. 2d Dist. Nov. 28, 1955\), 137 Cal. App. 2d 289, 290 P.2d 382, 1955 Cal. App. LEXIS 1188.](#)

Failure to order separate and special interrogatory on issue whether construction superintendent was agent of distributor or independent contractor was not prejudicial error in action for injuries suffered in building under construction brought against distributor for whom building was being constructed and construction superintendent. [Philips v. Sun-Best Fruit Distributors \(Cal. App. 4th Dist. May 2, 1958\), 160 Cal. App. 2d 70, 324 P.2d 948, 1958 Cal. App. LEXIS 2095.](#)

## **22. Interference with Exercise of Discretion**

The submission of special interrogatories to a jury rests in the sound discretion of the trial court and interference with the court's discretion is not warranted unless it is clearly made to appear that the discretion has been abused. [Mayfield v. Fidelity & Casualty Co. \(Cal. App. Sept. 30, 1936\), 16 Cal. App. 2d 611, 61 P.2d 83, 1936 Cal. App. LEXIS 486.](#)

In libel action, it was not prejudicial error to deny defendant's request for special interrogatories and verdicts where nothing appeared to indicate such denial was abuse of discretion. [Larrick v. Gilloon \(Cal. App. 4th Dist. Dec. 18, 1959\), 176 Cal. App. 2d 408, 1 Cal. Rptr. 360, 1959 Cal. App. LEXIS 1502, overruled, Field Research Corp. v. Superior Court of San Francisco \(Cal. May 14, 1969\), 71 Cal. 2d 110, 77 Cal. Rptr. 243, 453 P.2d 747, 1969 Cal. LEXIS 238.](#)

Giving of special interrogatories lies in trial court's discretion and is not subject to review in absence of clear abuse of discretion. [Perry v. Schwartz \(Cal. App. 2d Dist. Sept. 6, 1963\), 219 Cal. App. 2d 825, 33 Cal. Rptr. 511, 1963 Cal. App. LEXIS 2443.](#)

Giving of special interrogatories to jury is addressed to discretion of judge, and court's determination of propriety of requested special finding is not subject to review in absence of clear abuse of discretion. [Cembrook v. Sterling Drug, Inc. \(Cal. App. 1st Dist. Dec. 7, 1964\), 231 Cal. App. 2d 52, 41 Cal. Rptr. 492, 1964 Cal. App. LEXIS 777.](#)

Whether requests for special findings shall be submitted to the jury lies within the discretion of the trial judge; and absent a showing of a clear abuse of discretion, his determination on the issue is not subject to review. [Oakes v. McCarthy Co. \(Cal. App. 2d Dist. Nov. 7, 1968\), 267 Cal. App. 2d 231, 73 Cal. Rptr. 127, 1968 Cal. App. LEXIS 1381.](#)

## **Research References & Practice Aids**

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### **Jurisprudences**

Cal. Forms Pleading & Practice (Matthew Bender®) ch 322 “Juries and Jury Selection”.

Cal. Forms Pleading & Practice (Matthew Bender®) ch 326A “Jury Verdicts”.

### **Law Review Articles:**

Changes made by 1957 amendment. 32 St BJ 543.

Contributory negligence as a defense to medical malpractice in California. 8 U.S.F. L. Rev. 336.

### **Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 300](#) “Indemnity And Contribution”.

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 318](#) “Judgments”.

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 371](#) “Motions After Trial,” § § 371.10 et seq.

Rutter Cal Prac Guide, Personal Injury §§ 3:281.10, 3:283.4, 3:283.7, 9:647, 9:649, 9:661 et seq.

7 Witkin Procedure (5th ed) Trial §§ 340-350.

### **Practice Guides**

Matthew Bender ® Practice Guide: Cal. Trial and Post Trial Civil Procedure §§ [14.09](#)[2], 17.03, 17.04[1], 18.10[1], 18.10[2], 18.10[6], 18.11, 18.12[1], 18.14[1], 18.15[1], 18.22, 18.23[1], 18.28[1], 18.42[3], 18.42[4], 18.46, 18.47, 20.03, 20.09[3], 27.05[1].

### **Jury Instructions**

Judicial Council of California Civil Jury Instructions, [CACINos. 5008](#), 5012 (Matthew Bender).

### **Annotations:**

Reversible effect of informing jury of effect that their answers to special interrogatories or special issues may have on ultimate liability or judgment. [90 ALR2d 1040](#).

Withdrawal of special interrogatories or special questions submitted to jury. [91 ALR2d 776](#).

Submission of special interrogatories in connection with general verdict under Federal Rule 49(b), and state counterparts. [6 ALR3d 438](#).

Products liability, inconsistency of verdicts on separate theories of negligence, breach of warranty, or strict liability. [41 ALR4th 9](#).

### **Hierarchy Notes:**

## Forms

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### SUGGESTED FORMS

#### Request for Submission of Special Interrogatories

*[Title of Court and Cause]*

The \_\_\_\_\_ *[party]* in the above-entitled action respectfully submits to the court the following special interrogatories and requests that the court instruct the jury in the above-entitled action to answer in writing each of the interrogatories in the event that they return a general verdict.

\_\_\_\_\_ *[Set forth interrogatories].*

Dated \_\_\_\_\_.

\_\_\_\_\_  
Attorney for \_\_\_\_\_

Deering's California Codes Annotated  
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