CIVIL PROCEDURE

CASES, PROBLEMS, AND EXERCISES

Fourth Edition

ALTERNATIVE CHAPTER 12

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ALTERNATIVE CHAPTER 12

JURY TRIALS

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Many view trial by lay jury as one of the defining characteristics of the Anglo-American legal system. This is not to say that no other system uses juries. Many nations use some form of jury in criminal cases. A few non Anglo-American nations even allow juries in certain civil cases. But while juries are not unique to the Anglo-American system, it is probably fair to say that in no other system has the jury played so significant a role in defining the nature of an institution. The jury originated in England prior to the Magna Carta. It has served over the centuries as a populist check on government, offsetting the power of the wealthier and often more elitist judges. In this fashion, the jury gave ordinary people a limited role in government.

Given the crucial role juries have played in Anglo-American legal history, you may be surprised to learn that the use of juries in civil cases has been steadily decreasing in most Anglo-American nations. The sole exception is the United States. While jury trials in civil cases in the United Kingdom and Canada, for example, are increasingly rare, they remain common in the United States. Juries in this nation are widely used in both state and federal courts, and in a wide array of civil cases.

In fact, the United States Constitution and many state constitutions provide a constitutional right to a jury. You may already know the Sixth Amendment, which affords a right to a jury in criminal cases. Less well-known is the Seventh Amendment, which provides a right to a jury in civil actions. This condensed Chapter does not cover the Seventh Amendment in detail. However, the full version of the Chapter does deal with the issue.

The Seventh Amendment does not guarantee a jury in all cases. First, unlike most of the rest of the Bill of Rights, it applies only to the federal courts. A party litigating a state claim in state court must look to the state constitution or state law to determine if he is entitled to a jury. Second, the Seventh Amendment applies only in "suits at common law." This limit means there is no right to a jury in a case seeking only an injunction or specific performance (both of which would historically have been heard in the courts of equity, not the common-law courts). Finally, even when there is a constitutional right to a jury, a party must file a timely demand for the jury. Even with these limits, that the framers thought the right to a jury trial in a civil case was important enough to enshrine in the United States

Constitution speaks volumes about the historic view of the jury in American legal history.

A. SELECTING AND EMPANELLING THE JURY

1. DEMAND

A party can lose its right to a jury trial by failing to request a jury in timely fashion. Rule 38(b) requires a party to demand a jury within 14 days following the last pleading dealing with the issues on which the party has a right to a jury under the Seventh Amendment or by statute. Any party may demand a jury, not only the party with the qualifying claim.

A party may limit its demand for a jury to fewer than all of the claims that qualify for a jury. If the demand is limited, any other party who desires a jury trial of other issues triable by a jury must also file a timely demand for those issues or waive its rights. If a demand for jury is made without specifying any issues, it is deemed to be a demand for a jury trial on all issues in the case. However, the trial court will use the jury only for those issues that qualify for a jury trial. Rule 38(d) provides that once a party files a demand for a jury, she cannot withdraw it without the consent of all parties.

Rule 39(b) allows the court, in its discretion, to order a jury trial even if the demand is filed too late. The main factors a court considers under this Rule are whether the demand was made within a reasonable time after the deadline for demanding a jury expired, whether the failure to make a timely demand was the result of inadvertence, mistake, or excusable neglect, and whether a late motion for a jury trial will prejudice the other parties.

2. FORMING THE JURY

Selecting the jury that will sit in a case involves a multi-step process. First, the universe of potential jurors must be narrowed down to a pool from which the actual jury will be drawn. From the jurors' perspective, this step is commonly referred to as "getting called for jury duty." Following that, the parties and court can eliminate potential jurors who may have bias, real or perceived. The term "voir dire" is used to refer to the examination and exclusion of individual jurors.

a. Selecting the Pool of Potential Jurors

In federal courts, the Jury Selection and Service Act of 1968 (28 U.S.C. § 1861 et seq.) provides a uniform method for selecting jurors in federal civil cases. Each district court has a plan for jury selection consistent with the statute, which includes two important general principles: (1) random selection of jurors from voter lists; and (2) determination of juror disqualifications, excuses, exemptions, and exclusions on the basis of

objective criteria. The statute also provides that no citizen shall be excluded from jury service "on account of race, color, religion, sex, national origin, or economic status."

Jurors do not have to be drawn from an entire federal district. The local plan must prescribe a method for putting into the master jury wheel at least 1,000 names chosen at random from voter registration lists or lists of actual voters within the district or division. Each county, parish, or similar political subdivision must be substantially proportionally represented in the master jury wheel. Periodically, names are drawn at random from the master jury wheel, and each person whose name is drawn is sent a juror qualification form to complete and return. A judge then determines on the basis of the information provided on the juror qualification form and other competent evidence whether a person is unqualified for, exempt from, or excused from jury service. The remaining names are then put into the qualified jury wheel, from which names are drawn at random as needed for assignment to jury panels.

Any United States citizen who is 18 or older, who has resided for one year within the judicial district, and is able to read, write, speak, and understand the English language is qualified to serve as a juror unless she is incapable, by reason of mental or physical infirmity, to render satisfactory jury service, or has been convicted of or charged with a felony in federal or state court and her civil rights have not been restored. The local plan specifies groups of persons or occupational classes whose members are exempt from jury service. The plan must provide exemption for persons on active service in the armed forces, firemen and policemen, and federal or state public officials actively engaged in the performance of official duties. The plan may also specify groups of persons or occupational classes whose members shall, on individual request, be excused from jury service.

A person chosen for a jury panel from the qualified jury wheel and summoned for service may be excused by the court upon showing (1) undue hardship or extreme inconvenience, for a period as the court deems necessary; (2) an inability to render impartial jury service; (3) that her service as a juror would be likely to disrupt the proceedings; or (4) that her service as a juror would be likely to threaten the secrecy of the proceedings or otherwise adversely affect the integrity of jury deliberations.

Any party may challenge underrepresentation of particular groups in his jury pool as a violation of the "fair cross-section" requirement. The qualifications of jurors and the selection of jury panels, as prescribed in the Jury Selection and Service Act of 1968, are intended to ensure that litigants have their disputes decided by juries chosen from a fair cross section of the community and that all citizens have the opportunity to be considered for service on juries. This requirement applies only to the jury *panel* from which the petit jury is selected. The petit jury (the jury that actually

decides the case) does not have to reflect a cross-section of the community. *Holland v. Illinois*, 493 U.S. 474 (1990). Imagine the difficulties in applying a cross-section requirement to a six- or twelve-person petit jury, as well as the impact on the voir dire process.

Relief requires a showing that the group alleged to have been excluded is a "distinctive" group in the community, that the representation of this group in the venire from which the jury is selected was not fair and reasonable in relation to the number of such persons in the community, and that this underrepresentation was due to systematic exclusion of the group in the jury selection process. The party claiming discrimination by the systematic exclusion of a particular group has the burden of establishing the exclusion. A sufficiently large disparity between the representation of a group in the population and its representation on jury panels is sufficient to show a prima facie case. The opposing party may rebut a prima facie case by showing that "a significant state interest [is] manifestly and primarily advanced by those aspects of the jury-selection process . . . that result in the disproportionate exclusion of a distinctive group."

In *Duren v. Missouri*, 439 U.S. 357 (1979), the state of Missouri "provided an automatic exemption from jury service for any women requesting not to serve." The Supreme Court found the automatic exemption to be a violation of the federal *constitutional* cross-section requirement. The Court held that "systematic exclusion of women that results in jury venires averaging less than 15% female violates the Constitution's fair-cross-section requirement." However, the Court noted that "reasonable exemptions, such as those based on special hardship, incapacity, or community needs," could produce a pool of jurors that was representative of the community.

What groups are "distinctive" for purposes of a cross-section requirement? Young adults and college students are not distinctive groups. Likewise, the exclusion of young people which results from the intermittent recompiling of the jury lists has been justified in the interest of judicial economy. *See Hamling v. United States*, 418 U.S. 87 (1974), rehearing denied 419 U.S. 885 (1974).

b. *Voir Dire*

The process of *voir dire* narrows the pool to the actual petit jury that will hear the case. Federal Rule 48 prescribes a jury of no fewer than six and no more than twelve members. Federal district local rules vary from district to district in the number of jurors prescribed. Individual district rules set the jury size at six, eight, or twelve. Some local rules follow Rule 48 and provide a range between six and twelve from which the district court can choose. Other local rules give the court discretion to seat a number of jurors different from the number set out in the Rule.

State courts, of course, are not bound by Rule 48. Like the federal courts, states typically empanel from six to twelve jurors, depending on the state and the nature of the action.

The process of winnowing the jury pool, or "voir dire", involves asking jurors a series of questions to flush out any bias for or against one of the parties. Under Federal Rule 47(a) the trial court has broad discretion to conduct the examination of prospective jurors or to permit the parties to ask questions. If the court conducts the voir dire examination, the parties may submit proposed questions, which the court may ask if it deems the questions to be proper. Sufficient questioning is necessary to ensure that the selection process is meaningful.

Usually, voir dire occurs by the court or counsel questioning all prospective jurors simultaneously. However, the court has the authority to conduct individual voir dire, which consumes a lot more time, if there is a concern about answers given by one juror "poisoning" the views of other jurors, e.g., knowledge about the case.

The purpose of voir dire examination is to determine any possible basis for challenging jurors for cause (when the challenging party must establish the prospective juror's explicit or implicit bias) and to develop background information to be considered in the intelligent exercise of peremptory challenges (when the challenging party generally need not offer a reason for the challenge).

Because of its central role in the selection of a fair and impartial jury, the voir dire examination is one of the most important parts of the trial. It is the first opportunity counsel has to address the jury in connection with the case. The impressions the jurors have about the case and about counsel at the conclusion of the examination may last throughout the trial.

i. Challenges for Cause

If there are reasonable grounds to believe that a juror cannot render a fair and impartial verdict, the juror should be excused for cause. However, disqualification is not required merely because a juror does not understand or immediately accept every legal concept presented during voir dire. The test is not whether a juror agrees with the law when it is presented; it is whether, after having heard all of the evidence, the prospective juror can adjust his views to the requirements of the law and render a fair and impartial verdict.

The court may exercise considerable discretion in deciding whether to excuse an individual juror for cause. Even if the parties fail to make a challenge for cause, the court has an affirmative duty to explore undisclosed information of which it is aware affecting the qualification of an individual juror.

A challenge for cause is used to exclude both a juror who fails to meet one or more of the statutory qualifications for jury duty as well as a juror who is biased as between the parties or as to the substance of the dispute. The challenger has the burden of persuading the judge that the prospective juror is not impartial or unqualified, and the standard of review on appeal is abuse of discretion. There is no limit to the number of jurors who may be struck for cause. Appellate courts reviewing challenges for cause are highly deferential to the trial judge's exercise of discretion.

Suppose a juror gives false information during voir dire, or simply remains silent and does not answer a question that applied to him. As to the issue of false information, a trial court has the discretion to decide whether a post-verdict hearing is necessary to determine juror bias or in exceptional circumstances whether such bias is to be inferred. It must be proved both that the juror failed to answer honestly a material question on voir dire, and that a correct answer would have provided a valid basis for a challenge for cause. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548 (1984). As for a failure to answer at all, the concern is that the information the juror should have revealed may have justified a challenge for cause or at least would have enabled a party to exercise a peremptory challenge intelligently.

ii. Peremptory Challenges

In addition to challenges for cause, state and federal courts allow for peremptory challenges. Generally, a party need not provide any reason for its peremptory challenge. In federal court, each party has a statutory right to three peremptory challenges. If there are multiple defendants or plaintiffs, the three peremptory challenges per side are shared by all. Alternatively, the trial court may grant additional peremptory challenges, to be exercised separately or jointly. The procedure by which the parties are required to use their peremptory challenges varies widely from district to district and is regulated by local rule or local custom.

The use of peremptory challenges protects each party's interest in a fair and impartial jury. However, a party in a civil case cannot use peremptory challenges to exclude jurors on account of their race or gender. In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Court set up a three-part analytical test that radically altered the process of evaluating peremptory challenges. First, a party may show a prima facie case of purposeful racial or gender discrimination by showing that the facts and any other relevant circumstances raise an inference that the party using the peremptory challenges excluded potential jurors from the petit jury on account of their race or gender. For example, a "pattern" of strikes (e.g., 60% of African-Americans were excluded using the challenges but only 30% of panelists undergoing voir dire are African-American) or the questions and statements during voir dire examination and in exercising the challenges may support or refute an inference of discriminatory purpose.

If the first step is satisfied, the second step shifts the burden to the party who exercised the peremptory challenges to show a neutral explanation for challenging the jurors. The explanation need not be enough to justify a challenge for cause. Finally, the trial court must determine if the challenging party has established purposeful discrimination.

Intentional discrimination in jury selection is prohibited on the basis of both race and gender. For example, in *Hernandez v. New York*, 500 U.S. 352 (1991), the Court found that Hispanics have a right to be free from discrimination in jury selection. Then, in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994), the Court extended *Batson* to gender. "Striking individuals on the assumption that they hold particular views simply because of their gender is practically a brand upon them, affixed by law, an assertion of their inferiority."

If the chosen race-neutral reasons for the strikes "are so far at odds with the evidence that pretext is the fair conclusion," those explanations may indicate "the very discrimination the explanations were meant to deny." In *Miller-El v. Dretke*, 545 U.S. 231 (2005), the Court found reversible error when the trial court accepted offered race-neutral explanations that were pretextual. Peremptory challenges were used to strike ten of eleven qualified black venire panel members, when at last two of them were "ostensibly acceptable" to a prosecutor seeking the death penalty, and there were strong similarities between struck black venire members and retained white venire members.

Most decisions hold that the neutral explanation for peremptorily striking a potential juror need not be derived from voir dire. A party may use her own personal knowledge concerning a juror and information supplied from outside sources. The test is not whether the information is true or false; it is whether she has a good-faith belief in the information and whether she can articulate the reason to the trial court in a race-neutral or gender-neutral way that does not violate the juror's constitutional rights.

B. CONDUCTING A JURY TRIAL

Logically, the next step in the discussion of jury trials would be to discuss the conduct of the actual case. However, Civil Procedure tend not to spend much time on the trial. The reason for this omission is that most of the issues at trial involve questions of what evidence can be used to support a party's side of the case. The complex subject of evidence is typically reserved to a separate upper-level course.

The main point to stress about the trial in this course is the need to object to mistakes by the court and rules violations by opposing parties. No trial is perfect. The purpose of appeals is to allow mistakes to be cured. However, in order to appeal a particular issue—for example, an erroneous

evidentiary ruling, a decision involving amendment of the pleadings, or a prejudicial statement made by the judge or an opposing party in front of the jury—the party must ordinarily file a contemporaneous objection. In addition, if the same issue arises again at a later stage in the proceeding (such as a jury instruction including improperly admitted evidence), the party must renew the objection. Failure to make and, if necessary, renew an objection will often lead the court of appeals to refuse to review the issue.

C. INSTRUCTIONS AND VERDICTS

1. INSTRUCTIONS

Before a jury leaves the courtroom to deliberate, the judge must instruct them about the applicable law. The jury instructions discuss every important issue in the case and teach the jury the applicable principles of law. Federal Rule 51(a) allows the parties to submit proposed jury instructions to the court no later than the close of the evidence. Before instructing the jury and before the parties' closing arguments, the trial court informs the parties about the instructions it intends to use. Besides enabling the parties to object to the instructions the trial court intends to give, informing the parties also permits attorneys to adjust their closing arguments to "fit" the instructions.

The instructions must include direction to the jurors about the number of jurors required for a verdict. In federal civil cases, Federal Rule 48 states that a verdict must be unanimous unless the parties otherwise stipulate. By contrast, in many states the minimum number of jurors who must agree to a verdict is less than unanimity, e.g., 9 of 12 jurors must agree, or 5 of 6 jurors must agree.

2. FORMS OF VERDICT

Trial courts in most civil jury cases instruct the jury to return what is known as a "general verdict," which in a single statement reflects the jury's conclusion about which party wins the case. The essence of a general verdict is "We find in favor of the plaintiff" or "We find in favor of the defendant." Federal Rule 49 also allows two alternatives to a general verdict: a general verdict with interrogatories and a special verdict.

General verdict with written questions. Rule 49(b) allows the trial court to ask the jury to return a general verdict, but to accompany that general verdict with answers to certain questions about particular issues in the case. A general verdict with written questions under Rule 49(b) requires the jury to give close attention to the more important fact issues and the jury's answers serve to check the propriety of the general verdict. One benefit of using this type of verdict is that if some legal error requires setting aside the general verdict and the answer to some of the questions,

it may be unnecessary to relitigate other issues already decided under properly submitted questions. For example, with no error on the issue of liability and causation, a new trial may be confined to damage issues.

The disadvantage of a general verdict with interrogatories is that the answers to specific questions may be inconsistent with each other and/or with the general verdict. The last part of Rule 49(b) addresses these issues, indicating how the judge should resolve any discrepancies. In some cases the discrepancies cannot be resolved, requiring the judge to send the jury back for further deliberations, or possibly even to grant a new trial.

Special verdict. Under Rule 49(a), the trial court has the authority to dispense with a general verdict altogether, and instead to submit various fact issues to the jury in the form of individual fact questions, on each of which the jury is to return a special verdict. A special verdict asks the jury to decide specific factual questions such as "At the time of the accident, was the plaintiff wearing her seat belt?" From the special verdict answers, the judge constructs the equivalent of a general verdict.

Notwithstanding their potential utility, general verdicts with written questions and special verdicts are used relatively rarely. It can be difficult for a judge to frame precise and accurate questions, which increases the chance for error. Second, jurors may misunderstand the relationship between the questions and give inconsistent answers.

D. OVERTURNING THE JURY

Chapter 11, Part B, discusses the judgment as a matter of law, which allows the court to grant a judgment contrary to the jury verdict when the verdict is clearly incorrect as a matter of law. But not all cases are so clear-cut. In some, the judge realizes a serious mistake occurred at trial, but is unsure whether and how that mistake affected the ultimate outcome. In others, the judge thinks the jury is clearly wrong, but the error is not clear enough to warrant judgment as a matter of law. The judge in these situations may be able to order a new trial, which allows a *new* jury to decide the case. The new trial motion can be governed by two different rules, depending on how soon after the verdict it arises.

1. NEW TRIALS UNDER RULE 59

Federal Rule 59(a) gives a court the authority and the duty to order a new trial if necessary to prevent injustice. Unlike some state rules, Rule 59 does not list the grounds for which new trials are available. Basically, new trial orders fall into two categories. The first is when there was a procedural error before or during trial, such as improper admission or exclusion of evidence, incorrect jury instructions, and misconduct by the opposing party. New trials will be granted only for procedural errors likely to have affected the ultimate outcome of the case.

A trial court also can grant a new trial on the ground that the verdict was "against the great weight of the evidence." A new trial on this basis is somewhat similar to a judgment as a matter of law, covered in Chapter 11, Part B. However, there is a fundamental difference: rather than decide the case himself, the judge orders another trial, often with a different jury.

What does it mean for a judgment to be against the great weight of the evidence? The trial judge believes there was sufficient evidence for the case to be submitted to the jury, and that a rational jury could decide in favor of the verdict-winner. Therefore, the case is not as one-sided as one warranting judgment as a matter of law. Nevertheless, the great weight of the evidence favors the verdict-loser. The judge is not required to view the evidence in the light most favorable to the verdict-winner, i.e., she is free to weigh the evidence for herself including an assessment of credibility. In other words, the judge can sit as a "13th juror." If the judge believes that the jury made a serious and clear mistake in its verdict, she can grant a new trial.

Procedure. Federal Rule 59(b) contains a strict deadline. A party must move for a new trial under Rule 59 no later than 28 days following entry of the judgment. Unlike most time periods in the Federal Rules, this 28-day period cannot be extended. (It may seem odd that the party is not required to move for new trial *before* entry of judgment. However, entry of judgment in federal court is a ministerial act. As soon as a verdict is returned, the clerk automatically enters judgment in accordance with the verdict.) Motions for judgments as a matter of law are covered by the same 28-day deadline, and that period also cannot be extended.

Most new trial motions seek a retrial on all fact and law issues. However, Rule 59(a) enables a party to obtain a trial on "some" of the issues. If an error at trial requires a new trial on one issue that is separate from other issues in the case, and the error did not affect the determination of other issues, the scope of the new trial may be limited to the single issue. For example, a court can grant a new trial limited to damages when the liability issues were properly determined.

Rule 59(d) permits a court to grant a new trial on its own initiative, without the need for a party to file a motion. The court's *sua sponte* order may be for any of the reasons that a party could request a new trial by motion.

Altering or amending the judgment. Rule 59(e) permits a party to file a motion asking the court to alter or amend its judgment, instead of granting a new trial. As with a motion for new trial, the appellate standard of review is abuse of discretion. The common grounds for a motion to alter or amend include an intervening change in the law, correction of a clear error, and prevention of manifest injustice.

Remittitur and Additur. When a trial court determines that a jury award is excessive, it may ask the verdict-winner to agree to a reduction, known as *remittitur*, in exchange for the court's denial of a motion for a new trial. If the winner agrees, the jury's verdict will be reduced to the maximum amount the jury could have awarded without being excessive. Similarly, if the jury award is too low, the court can ask the liable party to agree to an increase, which is called *additur*. In federal court, only remittitur is available. In 1935, the Supreme Court held that additur violates the Seventh Amendment right to a jury verdict. State courts are not bound by the Seventh Amendment, and may be free to use additur.

Motions for judgment as a matter of law joined with motions for new trial. Verdict losers often file both a motion for judgment as a matter of law and a new trial motion, hoping for a judgment in their favor, but willing to accept a new trial as a second-best option. In such a case, Rule 50(c) requires the judge to rule on both motions, even though if the judge *grants* judgment as a matter of law, the new trial motion may seem moot. In such a case, Rule 50(c)(1) specifies that the judge's ruling on the new trial motion is "conditional." The purpose of this seemingly odd requirement is to avoid a second appeal on the new trial issue if the court of appeals overturns the grant of judgment as a matter of law.

2. RELIEF FROM A JUDGMENT UNDER RULE 60

In many cases, a party will not discover grounds for a new trial until after the 28 day period for seeking a new trial under Rule 59 period has expired. Rule 60 provides a limited safety valve in these situations. The Rule authorizes a court to give a party relief from a judgment, which depending on the circumstance may be a new trial, or even an order setting aside the judgment without another trial.

Federal Rule 60(b) covers mistakes made by the parties, as well as a number of other justifications for relief from a judgment. Review Rule 60(b). As you can see, relief is not available under the Rule merely because the judgment was against the great weight of the evidence. Instead, the Rule focuses on procedural problems, misconduct by an opposing party, or other events the party may not have learned about within the 28 days following entry of judgment. Subsection c(1) requires parties to bring all Rule 60(b) motions within a "reasonable time," and further sets a maximum period of one year for motions under subparts b(1), (2), and (3). Because of Rule 6(b), that one-year period cannot be extended, unlike most other time limits in the Rules.

Given the policy importance of final judgments, Rule 60 relief is seldom granted. For example, in the case of "newly-discovered evidence"—probably the most common grounds for seeking relief under the rule—Rule 60(b)(1) allows relief if the party could not have discovered the evidence

with "reasonable diligence.' The evidence must also be likely to change the result in the earlier trial.

There is, however, one exception to the general observation that Rule 60(b) relief is rare: Rule 60 is often used successfully as a device for setting aside default judgments under Rule 55(c). Provided the party can show it has a chance of prevailing at trial, and can justify its failure to answer in the action (such as lack of notice), courts are inclined to give it a chance to prove its case.

Void judgment. Rule 60(b)(4) simply states that relief from a judgment is available because the judgment is void. A judgment is void if the court lacked jurisdiction (1) over the subject matter; or (2) over the defendant(s), when the motion is made to vacate a default judgment. Unlike most decisions under Rule 60(b), the issue of void judgments is a matter of law, rather than being discretionary with the court.

Change of circumstances. Rule 60(b)(5) provides relief from a judgment when the judgment is satisfied, released or discharged, when a prior judgment on which the current judgment is based has been reversed or vacated, or any other time when continued enforcement of the judgment would be unfair. The first clause, dealing with satisfied judgments, is rarely grounds for relief. Once a judgment has been paid, there is ordinarily no compelling reason for a court to cancel it.

The second basis is limited to cases where the current judgment is based on a prior judgment, e.g., a judgment in a suit to enforce a prior judgment which has been reversed. This basis is inapplicable merely because a case relied on as precedent by a court in rendering the current judgment has been reversed. However, if the court gave claim or issue preclusion effect (see Chapter 13) to a prior judgment that has since been reversed, relief may be available.

The third application of Rule 60(b)(5) occurs when it is no longer equitable that the current judgment should have prospective application, i.e., the trial court can modify a decree with prospective effects in light of changed circumstances. The "prospective effect" aspect means that the main impact of Rule 60(b)(5) will be in cases involving injunctive or declaratory relief, rather than judgments for damages.

"Any other reason." The catchall provision is Rule 60(b)(6), which permits relief from the judgment for "any other reason justifying relief." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380, 394–95, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993), discussed the scope of Rule 60(b)(6) relative to 60(b)(1) (which unlike 60(b)(6) has a one-year deadline):

> These provisions [Rule 60(b)(1) and 60(b)(6)] are mutually exclusive, and thus a party who failed to take timely action due to "excusable neglect" may not seek relief more than a year after the judgment by resorting to subsection (6). To justify relief under

> subsection (6), a party must show "extraordinary circumstances" suggesting that the party is faultless in the delay. If a party is partly to blame for the delay, relief must be sought within one year under subsection (1) and the party's neglect must be excusable.

A similar logic applies when a party tries to use Rule 60(b)(6) to get around the one-year deadline in situations otherwise falling with Rules 60(b)(2) or (3).