

Pitfalls of the Verdict Form and the Two-Issue Rule

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1. Florida's "two-issue rule" generally holds that an appellant cannot show reversible error when an error relates to one claim or defense and the verdict does not reveal whether the appellee prevailed on that basis or another not affected by the error.
2. Not every jurisdiction follows Florida's two-issue rule. Some jurisdictions hold the opposite and presume the error affected the result, requiring reversal. This gives rise to different but also important appellate considerations.
3. Appellate courts that follow the two-issue rule use it to avoid addressing what could otherwise be reversible error.
4. The rule's harsh effects can be avoided by requesting instructions and a verdict form that confirm whether the jury relied on a particular claim or defense in reaching its verdict, but doing this is not as easy as it sounds. The rule's application may be difficult to anticipate during trial.
5. For example, the rule has been said to apply only to separate claims and defenses, but Florida's appellate courts have considered multiple theories of a defendant's negligence to constitute separate claims.
6. The rule has also been said not to apply between elements of a single claim, but Florida courts have applied the rule to alternative means to prove elements of a single claim. One court refused to consider an error involving an apparent authority instruction because the jury may have found actual authority. Another court held that any error involving the consumer expectations test for product defects was not reviewable because the jury may have found the product at issue defective under the risk-utility test.
7. Where a single claim involves two or more theories and you have an argument for a partial directed verdict on one of them, you will likely invite a two issue rule problem if you do not ask for an itemized verdict that separates that theory from the others in the case.

8. Whether the two issue rule applies to evidentiary matters is less clear, but the safer course is to expect an appellate court to apply it.
9. Avoiding the rule's effects involves balancing trial counsel's desire to win the trial by using a simple verdict and appellate counsel's desire to avoid waiving appellate issues by using interrogatory verdicts. The best approach in a particular case is always a judgment call that should be reached after considering the options and potential consequences.
10. The difficulties in spotting the rule's application, the nuances of how trial and appellate strategies can be at odds, and the rule's potential severity are good reasons to consult your appellate counsel during trial with respect to the jury instructions and the verdict form.

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