THE FINDING OF THE COURT. pdf

1: Virginia's Court System

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Printer-friendly version PDF version a 1 Effect. If requested by a party at any time prior to entry of judgment, in all contested actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous clearly against the preponderance of the evidence , and due regard shall be given to the opportunity of the circuit court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under these rules. A In an action for personal injury, medical injury, wrongful death, or property damage tried without a jury, the court shall determine the fault of all persons or entities, including those not made parties, who may have joint liability or several liability for the alleged injury, death, or damage to property. However, the court shall determine the fault of a nonparty only if: B The court shall allocate fault, on a percentage basis, among those persons or entities, including those not made parties, found to have contributed to the injury, death, or property damage. A finding of fault shall not subject a nonparty to liability in any actin or be introduced as evidence of liability in any action. The motion may be made with a motion for a new trial pursuant to Rule A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day. Rule 52 is similar to FRCP 52, but it retains prior Arkansas law by which the failure of a party to request special findings of fact by the court amounted to a waiver of that right. Prior Arkansas law was codified in superseded Ark. Where there was any substantial evidence to support the findings of the circuit judge, his decision had to be affirmed on appeal. Hembree Oil Company, Ark. Under this rule, the findings of the trial judge must be affirmed on appeal unless clearly erroneous, which is the same as clearly against the preponderance of the evidence. The rule, however, does not alter the fact that in some cases an issue must be proved by clear and convincing evidence. Section b does not appreciably change prior Arkansas law, as it has been commonly understood that courts had the inherent power to amend its findings or make additional findings during term time. Under this rule, motions to have the court amend its findings or make additional findings must be filed within ten days after the entry of judgment. The corresponding federal rule was so amended in The new third sentence of paragraph 1 makes plain that a pre-judgment motion to amend findings or to make additional findings is permissible. This is so under the corresponding federal rule, but prior Arkansas case law suggested that such a motion was not effective. National Bank of Commerce, Ark. The new fourth sentence provides that a motion to amend findings or for additional findings not ruled on by the court within 30 days of its filing or within 30 days of the date it is treated as filed is "deemed denied as of the 30th day. The text of subdivision a has been designated as paragraph 1 and paragraph 2 has been added. The latter implements Ark. It is based in part on section 2 of Act of , codified at Ark. A corresponding change has been made in Rule 49, which applies to jury verdicts. For discussion, see the notes accompanying that rule. Amended November 20, , effective January 1, ; amended January 28, ; amended May 24, , effective July 1, ; amended January 22, ; amended August 7, , effective January 1,

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2: Finding | Definition of Finding by Merriam-Webster

(a) Findings and Conclusions. (1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately.

Allegations of criminal behavior should be brought to the local police, the FBI, or another appropriate law enforcement agency. At the beginning of a federal criminal case, the principal actors are the U. Attorney the prosecutor and the grand jury. Attorney represents the United States in most court proceedings, including all criminal prosecutions. The grand jury reviews evidence presented by the U. Attorney and decides whether it is sufficient to require a defendant to stand trial. Burden of Proof In a criminal trial, the burden of proof is on the government. Defendants do not have to prove their innocence. The standard of proof in a criminal trial gives the prosecutor a much greater burden than the plaintiff in a civil trial. Pretrial At an initial appearance, a judge who has reviewed arrest and post-arrest investigation reports, advises the defendant of the charges filed, considers whether the defendant should be held in jail until trial, and determines whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. Defendants who are unable to afford counsel are advised of their right to a court-appointed attorney. Defendants released into the community before trial may be subject to electronic monitoring or drug testing, and required to make periodic reports to a pretrial services officer to ensure appearance at trial. The defendant enters a plea to the charges brought by the U. Attorney at a court hearing known as arraignment. More than 90 percent of defendants plead guilty rather than go to trial. If the defendant pleads not guilty, the judge will schedule a trial. Trial Criminal cases include limited pretrial discovery proceedings, similar to those in civil cases, but with restrictions to protect the identity of government informants and to prevent intimidation of witnesses. If a defendant is found not guilty, the defendant is released and the government may not appeal. The person may not be charged again for the same offense in a federal court. During sentencing, the court may consider U. Sentencing Commission guidelines, evidence produced at trial, and also relevant information provided by the pretrial services officer, the U. A sentence may include time in prison, a fine to be paid to the government, and restitution to be paid to crime victims. Supervision of offenders may involve services such as substance abuse testing and treatment programs, job counseling, and alternative detention options, such as home confinement or electronic monitoring.

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3: Civil Procedure Rule Findings by the court | www.enganchecubano.com

The court further stated: "The State urges us to adopt a per se rule that if the magistrate determines that a person is a drug dealer, then a finding of probable cause to search that person's residence automatically follows.

Table of Contents a Courts other than District Court: Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Amendment Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment. Upon request made before the beginning of any closing arguments, such party shall have the right to submit supplemental proposed findings of fact and rulings of law within three days. Each proposed finding of fact and ruling of law should be set forth concisely in a separately numbered paragraph covering one subject. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Amendment Upon motion of a party made not later than 10 days after entry of judgment, or upon its own initiative not later than 10 days after entry of judgment, the court may amend its findings, if any, or make additional findings and may amend the judgment accordingly. This differs from practice in the Superior Court under Rule 52 a , which requires Superior Court judges to make findings and rulings as a matter of course in jury-waived actions, whether or not a party has submitted proposed findings and rulings. The rule also provides a party with the absolute right to a three-day period in which to submit supplemental proposed findings and rulings, as long as that party, before the beginning of any closing arguments, has filed proposed findings and rulings and has made a request to file supplemental proposed findings and rulings. The proposed findings and rulings and the request to file supplemental proposed findings and rulings may be contained in the same document. The amendments to Rule 52 c include a general description of the format and content of proposed findings and rulings by a provision that they be set forth concisely and in separately numbered paragraphs covering one subject for each request. In doing so, the rule intends to state a preferred, but not mandatory, format and content for proposed findings and rulings. A judge in the District Court or Boston Municipal Court may make findings and rulings, sua sponte, even where doing so is not required by this rule. The repeal of Rule 64A eliminates the "requests for rulings" procedure that had been in place in the District Court and Boston Municipal Court. Under that procedure, a party could obtain rulings of law from the court by filing requests for rulings of law prior to the beginning of any closing arguments. This prior procedure merely required the court to allow or deny a requested ruling of law, and did not require the court to make its own rulings of law. Under the prior procedure, there was no mechanism for a party to require findings of fact in District Court and Boston Municipal Court jury-waived actions. Under the amended language of Rule 52 c , a party now has the opportunity to require both findings of fact and rulings of law from the trial judge. The repeal of Rule 64A also eliminates the provisions regarding "warrants" requests. These were requests that the evidence warrants a finding for the requesting party or does not warrant a finding for the opposing party. The requirement of findings and rulings under Rule 52 c applies to all District Court and Boston Municipal Court cases governed by the Massachusetts Rules of Civil Procedure, that is, "cases traditionally considered tort, contract, replevin, or equity actions, except small claims actions. Supplementary process is one example where findings and rulings should not be required, since supplementary process is a statutory proceeding not falling within the ambit of cases that would be "traditionally considered tort, contract, replevin, or equity. Thus, Uniform Summary Process Rule 1 would make amended Rule 52 c , with its requirement of findings and rulings in the District Court and Boston Municipal Court upon the filing of

proposed findings and rulings, applicable to summary process cases in those courts. It should be noted that in summary process cases in the Superior Court and Housing Court, findings and rulings are required as a matter of course pursuant to Rule 52 a made applicable to summary process cases in those courts by virtue of Uniform Summary Process Rule 1. New sections c and d of Rule 52 are identical to the now-repealed provisions of Dist. The revision of paragraph a [now Mass. Rather, this rule provides that the court may make detailed findings of fact and rulings of law, and is required, as has been true in the past, to make rulings of law in response to requests for rulings submitted by any of the parties to the litigation. This procedure, and the whole mechanism of appeal to the Appellate Division of which it is the foundation, is set forth in Rule 64 of these rules. Important among these is the fact that in many of the District Courts, and particularly the Boston Municipal Court, a judge will frequently hear a large number of civil cases in the course of a single day, and on successive days, and the fact that most of these cases turn on questions of fact, which in turn relate to questions of credibility. If there were a mandatory requirement that written findings and rulings be made in each case under such circumstances, this would impose a tremendous burden in those courts. Even if adequate stenographic assistance were available to these courts for this purpose which is not the case , this would require a large expenditure of judicial time in preparing such findings where the element of credibility would be decisive, and would merely bring into play the provisions of MRCP, Rule 52, that "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. A clause has been added in the first sentence of paragraph b [now Mass. Lastly, the words "if any" have been added after the word "findings" in the first sentence of paragraph b [now Mass. This is consistent with the fact that this rule leaves it discretionary with the trial court whether findings of fact will be made. Even though the trial judge is not required to itemize his findings of fact, he may do so voluntarily. In actions tried without a jury, although the judge was required to pass on rulings of law requested by the parties. In Massachusetts equity practice, on the other hand, the trial judge was obligated, if the losing party requested, to "report the material facts" upon which his decision was based. If no request was made, a report was discretionary. United States Gypsum Co. The rule emphasizes the "opportunity of the trial court to judge the credibility of the witnesses. Those findings would not be reversed unless "plainly wrong.

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4: U.S. V. Microsoft: Court's Findings Of Fact | ATR | Department of Justice

The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

A "cross-appeal" is an appeal brought by the respondent. The appellant is the party who, having lost part or all their claim in a lower court decision, is appealing to a higher court to have their case reconsidered. This is usually done on the basis that the lower court judge erred in the application of law, but it may also be possible to appeal on the basis of court misconduct, or that a finding of fact was entirely unreasonable to make on the evidence. The appellant in the new case can be either the plaintiff or claimant , defendant , third-party intervenor , or respondent appellee from the lower case, depending on who was the losing party. The winning party from the lower court, however, is now the respondent. In unusual cases the appellant can be the victor in the court below, but still appeal. An appellee is the party to an appeal in which the lower court judgment was in its favor. The appellee is required to respond to the petition , oral arguments , and legal briefs of the appellant. Ability to appeal[edit] An appeal "as of right" is one that is guaranteed by statute or some underlying constitutional or legal principle. The appellate court cannot refuse to listen to the appeal. In the Supreme Court , review in most cases is available only if the Court exercises its discretion and grants a writ of certiorari. In criminal matters, however, the state or prosecution generally has no appeal "as of right". And due to the double jeopardy principle, the state or prosecution may never appeal a jury or bench verdict of acquittal. Likewise, in some jurisdictions, the state or prosecution may appeal an issue of law "by leave" from the trial court or the appellate court. The ability of the prosecution to appeal a decision in favor of a defendant varies significantly internationally. By convention in some law reports, the appellant is named first. This can mean that where it is the defendant who appeals, the name of the case in the law reports reverses in some cases twice as the appeals work their way up the court hierarchy. This is not always true, however. Appealing criminal convictions[edit] Many jurisdictions recognize two types of appeals, particularly in the criminal context. The second is the collateral appeal or post-conviction petition, in which the petitioner-appellant files the appeal in a court of first instanceâ€”usually the court that tried the case. The key distinguishing factor between direct and collateral appeals is that the former occurs in state courts, and the latter in federal courts. Appellate review[edit] "Appellate review" is the general term for the process by which courts with appellate jurisdiction take jurisdiction of matters decided by lower courts. In most jurisdictions the normal and preferred way of seeking appellate review is by filing an appeal of the final judgment. Generally, an appeal of the judgment will also allow appeal of all other orders or rulings made by the trial court in the course of the case. This is because such orders cannot be appealed "as of right". However, certain critical interlocutory court orders , such as the denial of a request for an interim injunction , or an order holding a person in contempt of court , can be appealed immediately although the case may otherwise not have been fully disposed of. There are two distinct forms of appellate review, "direct" and "collateral". For example, a criminal defendant may be convicted in state court, and lose on "direct appeal" to higher state appellate courts, and if unsuccessful, mount a "collateral" action such as filing for a writ of habeas corpus in the federal courts. Generally speaking, "[d]irect appeal statutes afford defendants the opportunity to challenge the merits of a judgment and allege errors of law or fact. Borgen", F 3d. In Anglo-American common law courts, appellate review of lower court decisions may also be obtained by filing a petition for review by prerogative writ in certain cases. There is no corresponding right to a writ in any pure or continental civil law legal systems, though some mixed systems such as Quebec recognize these prerogative writs. Direct Appeal[edit] After exhausting the first appeal as of right, defendants usually petition the highest state court to review the decision. This appeal is known as a direct appeal. On direct appeal, a prisoner challenges the grounds of the conviction based on an error that occurred at trial or some other stage in the adjudicative process. This means that the defendant had to object to the error when it occurred in the trial. Because constitutional claims are of great magnitude, appellate courts might be more lenient to review the claim even if it was not preserved. For example, Connecticut applies the

following standard to review unpreserved claims: Collateral Appeal[edit] All States have a post-conviction relief process. Similar to federal post-conviction relief, an appellant can petition the court to correct alleged fundamental errors that were not corrected on direct review. These proceedings are normally separate from the direct appeal, however some states allow for collateral relief to be sought on direct appeal. An appeal from the post conviction court proceeds just as a direct appeal. That is, it goes to the intermediate appellate court, followed by the highest court. If the petition is granted the appellant could be released from incarceration, the sentence could be modified, or a new trial could be ordered. Habeas corpus in the United States Notice of appeal[edit] A "notice of appeal" is a form or document that in many cases is required to begin an appeal. The nature of this form can vary greatly from country to country and from court to court within a country. The specific rules of the legal system will dictate exactly how the appeal is officially begun. For example, the appellant might have to file the notice of appeal with the appellate court, or with the court from which the appeal is taken, or both. In New Jersey, for example, the Administrative Office of the Court has promulgated a form of notice of appeal for use by appellants, though using this exact form is not mandatory and the failure to use it is not a jurisdictional defect provided that all pertinent information is set forth in whatever form of notice of appeal is used. This can vary from country to country, as well as within a country, depending on the specific rules in force. United States courts of appeals Generally speaking the appellate court examines the record of evidence presented in the trial court and the law that the lower court applied and decides whether that decision was legally sound or not. If the appellate court finds no defect, it "affirms" the judgment. If the appellate court does find a legal defect in the decision "below" i. It may, in addition, send the case back "remand" or "remit" to the lower court for further proceedings to remedy the defect. This might be the proper standard of review, for example, if the lower court resolved the case by granting a pre-trial motion to dismiss or motion for summary judgment which is usually based only upon written submissions to the trial court and not on any trial testimony. Another situation is where appeal is by way of "re-hearing". Certain jurisdictions permit certain appeals to cause the trial to be heard afresh in the appellate court. Sometimes, the appellate court finds a defect in the procedure the parties used in filing the appeal and dismisses the appeal without considering its merits, which has the same effect as affirming the judgment below. Generally, there is no trial in an appellate court, only consideration of the record of the evidence presented to the trial court and all the pre-trial and trial court proceedings are reviewedâ€”unless the appeal is by way of re-hearing, new evidence will usually only be considered on appeal in "very" rare instances, for example if that material evidence was unavailable to a party for some very significant reason such as prosecutorial misconduct. In some systems, an appellate court will only consider the written decision of the lower court, together with any written evidence that was before that court and is relevant to the appeal. In other systems, the appellate court will normally consider the record of the lower court. In those cases the record will first be certified by the lower court. The appellant has the opportunity to present arguments for the granting of the appeal and the appellee or respondent can present arguments against it. Arguments of the parties to the appeal are presented through their appellate lawyers, if represented, or " pro se " if the party has not engaged legal representation. Those arguments are presented in written briefs and sometimes in oral argument to the court at a hearing. At such hearings each party is allowed a brief presentation at which the appellate judges ask questions based on their review of the record below and the submitted briefs. In an adversarial system , appellate courts do not have the power to review lower court decisions unless a party appeals it. Therefore, if a lower court has ruled in an improper manner, or against legal precedent , that judgment will stand if not appealed â€” even if it might have been overturned on appeal. The United States legal system generally recognizes two types of appeals: A trial de novo is usually available for review of informal proceedings conducted by some minor judicial tribunals in proceedings that do not provide all the procedural attributes of a formal judicial trial. If unchallenged, these decisions have the power to settle more minor legal disputes once and for all. If a party is dissatisfied with the finding of such a tribunal, one generally has the power to request a trial "de novo" by a court of record. In such a proceeding, all issues and evidence may be developed newly, as though never heard before, and one is not restricted to the evidence heard in the lower proceeding. Sometimes, however, the decision of the lower proceeding is itself admissible as evidence, thus helping to curb frivolous appeals. In

some cases, an application for "trial de novo" effectively erases the prior trial as if it had never taken place. Each seeks to prove to the higher court that the result they desired was the just result. Precedent and case law figure prominently in the arguments. In order for the appeal to succeed, the appellant must prove that the lower court committed reversible error , that is, an impermissible action by the court acted to cause a result that was unjust, and which would not have resulted had the court acted properly. In cases where a judge rather than a jury decided issues of fact, an appellate court will apply an "abuse of discretion" standard of review. This is usually defined as a decision outside the bounds of reasonableness. In some cases, an appellant may successfully argue that the law under which the lower decision was rendered was unconstitutional or otherwise invalid, or may convince the higher court to order a new trial on the basis that evidence earlier sought was concealed or only recently discovered. In the case of new evidence, there must be a high probability that its presence or absence would have made a material difference in the trial. Another issue suitable for appeal in criminal cases is effective assistance of counsel. If a defendant has been convicted and can prove that his lawyer did not adequately handle his case and that there is a reasonable probability that the result of the trial would have been different had the lawyer given competent representation, he is entitled to a new trial. A lawyer traditionally starts an oral argument to any appellate court with the words "May it please the court. In some jurisdictions the mandate is known as the "remittitur". The result of an appeal can be: Where the reviewing court basically agrees with the result of the lower courts ruling s. Where the reviewing court basically disagrees with the result of the lower courts ruling s , and overturns their decision. Where the reviewing court sends the case back to the lower court. There can be multiple outcomes, so that the reviewing court can affirm some rulings, reverse others and remand the case all at the same time. Remand is not required where there is nothing left to do in the case. In other words, after looking at the case, they chose not to say anything. The result for the case of review improvidently granted is effectively the same as affirmed, but without that extra higher court stamp of approval. Wikiquote has quotations related to: Appellate procedure in the United States Look up appeal in Wiktionary, the free dictionary.

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5: Where to Find Briefs of the Supreme Court of the U.S.

Because the court finds that the jury's finding is supported by the evidence, the court holds that Gibbons is entitled to recover punitive damages from Allred & Co. In appellate courts, properly, only holdings are affirmed, whereas factual findings are disturbed only when clearly erroneous, against the great weight of the evidence, etc.

The Court has considered the record evidence submitted by the parties, made determinations as to its relevancy and materiality, assessed the credibility of the testimony of the witnesses, both written and oral, and ascertained for its purposes the probative significance of the documentary and visual evidence presented. Upon the record before the Court as of July 28, , at the close of the admission of evidence, pursuant to Fed. The Court shall state the conclusions of law to be drawn therefrom in a separate Memorandum and Order to be filed in due course. A "personal computer" "PC" is a digital information processing device designed for use by one person at a time. A typical PC consists of central processing components e. PC systems, which include desktop and laptop models, can be distinguished from more powerful, more expensive computer systems known as "servers," which are designed to provide data, services, and functionality through a digital network to multiple users. The operating system also supports the functions of software programs, called "applications," that perform specific user-oriented tasks. The operating system supports the functions of applications by exposing interfaces, called "application programming interfaces," or "APIs. These blocks of code in turn perform crucial tasks, such as displaying text on the computer screen. An operating system designed to run on an Intel-compatible PC will not function on a non-Intel-compatible PC, nor will an operating system designed for a non-Intel-compatible PC function on an Intel-compatible one. Similarly, an application that relies on APIs specific to one operating system will not, generally speaking, function on another operating system unless it is first adapted, or "ported," to the APIs of the other operating system. Defendant Microsoft Corporation is organized under the laws of the State of Washington, and its headquarters are situated in Redmond, Washington. Since its inception, Microsoft has focused primarily on developing software and licensing it to various purchasers. In , Microsoft began shipping a software package called Windows. The product included a graphical user interface, which enabled users to perform tasks by selecting icons and words on the screen using a mouse. Although originally just a user-interface, or "shell," sitting on top of MS-DOS, Windows took on more operating-system functionality over time. In , Microsoft introduced a software package called Windows 95, which announced itself as the first operating system for Intel-compatible PCs that exhibited the same sort of integrated features as the Mac OS running PCs manufactured by Apple Computer, Inc. Windows 95 enjoyed unprecedented popularity with consumers, and in June , Microsoft released its successor, Windows Microsoft is the leading supplier of operating systems for PCs. The company transacts business in all fifty of the United States and in most countries around the world. Microsoft licenses copies of its software programs directly to consumers. An OEM typically installs a copy of Windows onto one of its PCs before selling the package to a consumer under a single price. The Internet is a global electronic network, consisting of smaller, interconnected networks, which allows millions of computers to exchange information over telephone wires, dedicated data cables, and wireless links. The Internet links PCs by means of servers, which run specialized operating systems and applications designed for servicing a network environment. The World Wide Web "the Web" is a massive collection of digital information resources stored on servers throughout the Internet. These resources are typically provided in the form of hypertext documents, commonly referred to as "Web pages," that may incorporate any combination of text, graphics, audio and video content, software programs, and other data. A user of a computer connected to the Internet can publish a page on the Web simply by copying it into a specially designated, publicly accessible directory on a Web server. Internet content providers "ICPs" are the individuals and organizations that have established a presence, or "site," on the Web by publishing a collection of Web pages. Most Web pages are in the form of "hypertext"; that is, they contain annotated references, or "hyperlinks," to other Web pages. Hyperlinks can be used as cross-references within a single document, between documents on the same site, or between documents on different sites. Typically, one page on each Web site is the "home page," or the first

access point to the site. The home page is usually a hypertext document that presents an overview of the site and hyperlinks to the other pages comprising the site. PCs typically connect to the Internet through the services of Internet access providers "IAPs" , which generally charge subscription fees to their customers in the United States. There are two types of IAPs. Internet service providers "ISPs" such as MindSpring and Netcom, on the other hand, offer few services apart from Internet access and relatively little of their own content. A "Web client" is software that, when running on a computer connected to the Internet, sends information to and receives information from Web servers throughout the Internet. A "Web browser" is a type of Web client that enables a user to select, retrieve, and perceive resources on the Web. In particular, Web browsers provide a way for a user to view hypertext documents and follow the hyperlinks that connect them, typically by moving the cursor over a link and depressing the mouse button. Although certain Web browsers provided graphical user interfaces as far back as , the first widely-popular graphical browser distributed for profit, called Navigator, was brought to market by the Netscape Communications Corporation in December Microsoft introduced its browser, called Internet Explorer, in July Currently there are no products, nor are there likely to be any in the near future, that a significant percentage of consumers world-wide could substitute for Intel-compatible PC operating systems without incurring substantial costs. Furthermore, no firm that does not currently market Intel-compatible PC operating systems could start doing so in a way that would, within a reasonably short period of time, present a significant percentage of consumers with a viable alternative to existing Intel-compatible PC operating systems. It follows that, if one firm controlled the licensing of all Intel-compatible PC operating systems world-wide, it could set the price of a license substantially above that which would be charged in a competitive market and leave the price there for a significant period of time without losing so many customers as to make the action unprofitable. Demand Substitutability Server Operating Systems Consumers could not turn from Intel-compatible PC operating systems to Intel-compatible server operating systems without incurring substantial costs, since the latter type of system is sold at a significantly higher price than the former. A consumer intent on acquiring a server operating system would also have to buy a computer of substantially greater power and price than an Intel-compatible PC, because server operating systems generally cannot function properly on PC hardware. The price of an Intel-compatible PC operating system accounts for only a very small percentage of the price of an Intel-compatible PC system. Thus, even a substantial increase in the price of an Intel-compatible PC operating system above the competitive level would result in only a trivial increase in the price of an Intel-compatible PC system. Very few consumers would purchase expensive servers in response to a trivial increase in the price of an Intel-compatible PC system. Furthermore, a consumer would not obtain a satisfactory substitute for an Intel-compatible PC operating system even if he purchased a server, since server operating systems lack the features â€” and support for the breadth of applications â€” that induce users to purchase Intel-compatible PC operating systems. Thus, for consumers who already own an Intel-compatible PC system, the cost of switching to a non-Intel compatible PC operating system includes the price of not only a new operating system, but also a new PC and new peripheral devices. It also includes the effort of learning to use the new system, the cost of acquiring a new set of compatible applications, and the work of replacing files and documents that were associated with the old applications. Very few consumers would incur these costs in response to the trivial increase in the price of an Intel-compatible PC system that would result from even a substantial increase in the price of an Intel-compatible PC operating system. For example, users of Intel- compatible PC operating systems would not switch in large numbers to the Mac OS in response to even a substantial, sustained increase in the price of an Intel-compatible PC operating system. The response to a price increase would be somewhat greater among consumers buying their first PC system, because they would not have already invested time and money in an Intel-compatible PC system and a set of compatible applications. Apple does not license the Mac OS separately from its PC hardware, however, and the package of hardware and software comprising an Apple PC system is priced substantially higher than the average price of an Intel- compatible PC system. Furthermore, consumer demand for Apple PC systems suffers on account of the relative dearth of applications written to run on the Mac OS. It is unlikely, then, that a firm controlling the licensing of all Intel-compatible PC operating systems would lose so many new PC users to Apple as the result of a substantial, enduring price

increase as to make the action unprofitable. It is therefore proper to define a relevant market that excludes the Mac OS. No operating system designed for a hand-held computer, a "smart" wireless telephone, a television set-top box, or a game console is capable of performing as an adequate operating system for an Intel-compatible PC. Therefore, in order to adopt a substitute for the Intel-compatible PC operating system from the realm of "information appliances," a consumer must acquire one or more of these devices in lieu of an Intel-compatible PC system. It is possible that, within the next few years, those consumers who otherwise would use an Intel-compatible PC system solely for storing addresses and schedules, for sending and receiving E-mail, for browsing the Web, and for playing video games might be able to choose a complementary set of information appliances over an Intel-compatible PC system without incurring substantial costs. To the extent this substitution occurs, though, it will be the result of innovation by the producers of information appliances, and it will occur even if Intel- compatible PC operating systems are priced at the same level that they would be in a competitive market. More importantly, while some consumers may decide to make do with one or more information appliances in place of an Intel-compatible PC system, the number of these consumers will, for the foreseeable future, remain small in comparison to the number of consumers deciding that they still need an Intel-compatible PC system. One reason for this is the fact that no single type of information appliance, nor even all types in the aggregate, provides all of the features that most consumers have come to rely on in their PC systems and in the applications that run on them. Thus, most of those who buy information appliances will do so in addition to, rather than instead of, buying an Intel-compatible PC system. Not surprisingly, then, sales of PC systems are not expected to suffer on account of the growing consumer interest in information appliances. It follows that, for the foreseeable future, a firm controlling the licensing of all Intel-compatible PC operating systems could set prices substantially above competitive levels without losing an unacceptable amount of business to information appliances. A network computer system sometimes called a "thin client" typically contains central processing components with basic capabilities, certain key peripheral devices such as a monitor, a keyboard, and a mouse , an operating system, and a browser. The system contains no mass storage, however, and it processes little if any data locally. Instead, the system receives processed data and software as needed from a server across a network. A network computer system lacks the hardware resources to support an Intel-compatible PC operating system. It follows that software applications written to run on a specific Intel-compatible PC operating system will not run on a network computer. Network computers can run applications residing on a designated server, however. Moreover, a network computer system typically can run applications residing on other servers, so long as those applications are accessible through Web sites. The ability to run server-based applications is not exclusive to network computer systems, however. Generally speaking, any PC system equipped with a browser and an Internet connection is capable of accessing applications hosted through Web sites. Still, a user who already owns a relatively expensive Intel-compatible PC system is not likely to abandon the investment and acquire less powerful hardware just because one of the least expensive components of his PC system â€” the operating system â€” is substantially more expensive than it would be under competitive conditions. Just as does the Mac OS, the network computing model presents a somewhat more attractive alternative to the first-time computer buyer. But as in the case where a prospective purchaser is considering acquiring the Apple alternative, a new buyer considering the network computing model must choose between types of computer systems. If the consumer opts for the less expensive hardware of the network computer, that hardware will not support an Intel-compatible PC operating system; and if the new buyer opts for the more expensive hardware of an Intel-compatible PC, an Intel-compatible PC operating system will almost certainly come pre-installed and in any event represent very little additional cost relative to the price of the hardware. Only a few firms currently market network computer systems, and the systems have yet to attract substantial consumer demand. In part, this is because PC systems, which can store and process data locally as well as communicate with a server, have decreased so much in price as to call into question the value proposition of buying a network computer system. This fact would not change if the price of an Intel-compatible PC operating system rose significantly, because the resulting change in the price of an Intel-compatible PC system would be very minor. Another reason for the limited demand for network computer systems is the fact that few consumers are in a position to turn from PC systems to network

computer systems without making substantial sacrifices; for the network computing option exhibits significant shortcomings for current PC owners and first-time buyers alike. The problems of latency, congestion, asynchrony, and insecurity across a communications network, and contention for limited processing and memory resources at the remote server, can all result in a substantial derogation of computing performance. Moreover, the owner of a network computer is required to enter into long-term dependency upon the owner of a remote server in order to obtain functionality that would reside within his control if he owned a PC system. If network computing becomes a viable alternative to PC-based computing, it will be because innovation by the proponents of the network computing model overcomes these problems, and it will happen even if Intel-compatible PC operating systems are priced at competitive levels. In any case, that day has not arrived, nor does it appear imminent. Server-Based Computing Generally As the bandwidth available to the average user increases, "portal" Web sites, which aggregate Web content and provide services such as search engines, E-mail, and travel reservation systems, could begin to host full lines of the server-based, personal-productivity applications that have begun to appear in small numbers on the Web. If so, increasing numbers of computer users equipped with Web browsers and IAP connections could begin to conduct a significant portion of their computing through these portals. Again, that day is not imminent; for at least the next few years, the overwhelming majority of consumers accessing server-based applications will do so using an Intel-compatible PC system and a browser. Operating systems are not the only software programs that expose APIs to application developers. Such software is often called "middleware" because it relies on the interfaces provided by the underlying operating system while simultaneously exposing its own APIs to developers. Currently no middleware product exposes enough APIs to allow independent software vendors "ISVs" profitably to write full-featured personal productivity applications that rely solely on those APIs. Even if middleware deployed enough APIs to support full-featured applications, it would not function on a computer without an operating system to perform tasks such as managing hardware resources and controlling peripheral devices. Thus, the growth of middleware-based applications could lower the costs to users of choosing a non-Intel-compatible PC operating system like the Mac OS. It remains to be seen, though, whether there will ever be a sustained stream of full-featured applications written solely to middleware APIs.

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6: Appellate procedure in the United States - Wikipedia

Courts & Clerk's Offices Trial Courts & Clerks by County. Choose a county below for local rules, statistics, e-filing information and how to get case information.

Forms What are these and why do I need them? Your case is not finished until the judge signs the Findings of Fact and Conclusions of Law and the Decree and Judgment. These are the documents necessary to actually get you divorced, distribute the property and debt or establish a final custody order. Who writes them up? Sometimes the judge will create these documents. In most instances, however, the judge will ask one of the parties to submit them. If a lawyer is involved in the case, the judge will often assign this task to the lawyer. What happens if the other side writes them up and they say something different than I expected? Once the proposed documents have been submitted and served on you, you have 5 days to object. See Civil Rule 78 b. Return to top of page Can I easily change a final order? Once the judge signs the final paperwork - usually a decree, findings of fact and conclusions of law, possibly an order or a judgment - the decision is final and binding. You can only modify an order in very specific situations. For custody, you need to show that there has been a change in circumstances. To learn more about modifying a custody order, see the modification section. For child support, there needs to be: You may find the FAQs on Child Support helpful to decide whether to file a motion to modify child support. For property and debt division, it is very difficult to change the outcome of final property and debt decisions in a divorce or dissolution case. Once the court order divides and distributes property and debt to a specific person, that person may take action that is very hard or impossible to reverse. For example, if a spouse is awarded the house from the marriage, he may sell the house. At that point, it would be impossible to get the house back if the other spouse thinks something different should have happened with the house. Also, the court could order one spouse to receive a sum of money from the marriage. The receiving spouse may spend that money and not be able to get it back. If you want to ask the court to change a property or debt division order, you can file: You do not prepare these forms for a dissolution case; the judge will take care of it.

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7: Criminal Cases | United States Courts

findings of fact These consolidated civil antitrust actions alleging violations of the Sherman Act, Ã‚Â§Ã‚Â§ 1 and 2, and various state statutes by the defendant Microsoft Corporation, were tried to the Court, sitting without a jury, between October 19, , and June 24,

In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58 2 For an Interlocutory Injunction. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings. The motion may accompany a motion for a new trial under Rule If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52 a. Notes As amended Dec. July 1, ; Apr. The provisions of U. The rule stated in the third sentence of Subdivision a accords with the decisions on the scope of the review in modern federal equity practice. It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there was conflict of testimony, or of a fact deduced or inferred from uncontradicted testimony. Silver King Consolidated Mining Co. In the following states findings of fact are required in all cases tried without a jury waiver by the parties being permitted as indicated at the end of the listing: Rule , 2 N. In the following states the review of findings of fact in all non-jury cases, including jury waived cases, is assimilated to the equity review: Burk Township, 4 S. Puget Sound Realty Associates, 76 Wash. For examples of an assimilation of the review of findings of fact in cases tried without a jury to the review at law as made in several states, see Clark and Stone, Review of Findings of Fact, 4 U. The amended rule makes clear that the requirement for findings of fact and conclusions of law thereon applies in a case with an advisory jury. This removes an ambiguity in the rule as originally stated, but carries into effect what has been considered its intent. The two sentences added at the end of Rule 52 a eliminate certain difficulties which have arisen concerning findings and conclusions. The first of the two sentences permits findings of fact and conclusions of law to appear in an opinion or memorandum of decision. One Ford Sedan S. Under original Rule 52 a some courts have expressed the view that findings and conclusions could not be incorporated in an opinion. Ohio 43 F. But, to the contrary, see Wellman v. See also Matton Oil Transfer Corp. Findings of fact aid in the process of judgment and in defining for future cases the precise limitations of the issues and the determination thereon. Thus they not only aid the appellate court on review Hurwitz v. Forness, supra; United States v. Matton Oil Transfer Corp. But the judge need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for over-elaboration of detail or particularization of facts. New York Central R. Ohio 9 Fed. The last sentence of Rule 52 a as amended will remove any doubt that findings and conclusions are unnecessary upon decision of a motion, particularly one under Rule 12 or Rule 56, except as provided in amended Rule 41 b. As so holding, see Thomas v. Ohio 6 Fed. Warfield Natural Gas Co. Notes of Advisory Committee on Rulesâ€" Amendment Rule 52 a has been amended to revise its penultimate sentence to provide explicitly that the district judge may make the findings of fact and conclusions of law required in nonjury cases orally. Nothing in the prior text of the rule forbids this practice, which is widely utilized by district judges. The objective is to lighten the burden on the trial court in preparing findings in nonjury cases. In addition, the amendment should reduce the number of published district court opinions that embrace written findings. Notes of Advisory Committee on Rulesâ€" Amendment Rule 52 a has been amended 1 to avoid

continued confusion and conflicts among the circuits as to the standard of appellate review of findings of fact by the court, 2 to eliminate the disparity between the standard of review as literally stated in Rule 52 a and the practice of some courts of appeals, and 3 to promote nationwide uniformity. See Note, Rule 52 a: United States, F. Texas Education Agency, F. Banco de Ponce, F. The commentators also disagree as to the proper interpretation of the Rule. Miller, Federal Practice and Procedure: Moore, Federal Practice The Supreme Court has not clearly resolved the issue. Consumers Union of United States, Inc. United States Gypsum Co. These considerations are outweighed by the public interest in the stability and judicial economy that would be promoted by recognizing that the trial court, not the appellate tribunal, should be the finder of the facts. To permit courts of appeals to share more actively in the fact-finding function would tend to undermine the legitimacy of the district courts in the eyes of litigants, multiply appeals by encouraging appellate retrial of some factual issues, and needlessly reallocate judicial authority. It parallels the revised Rule 50 a , but is applicable to non-jury trials. It authorizes the court to enter judgment at any time that it can appropriately make a dispositive finding of fact on the evidence. Accordingly, the reference to Rule 41 formerly made in subdivision a of this rule is deleted. As under the former Rule 41 b , the court retains discretion to enter no judgment prior to the close of the evidence. Judgment entered under this rule differs from a summary judgment under Rule 56 in the nature of the evaluation made by the court. Notes of Advisory Committee on Rulesâ€" Amendment This technical amendment corrects an ambiguity in the text of the revision of the rule, similar to the revision being made to Rule This amendment makes clear that judgments as a matter of law in nonjury trials may be entered against both plaintiffs and defendants and with respect to issues or defenses that may not be wholly dispositive of a claim or defense. Notes of Advisory Committee on Rulesâ€" Amendment The only change, other than stylistic, intended by this revision is to require that any motion to amend or add findings after a nonjury trial must be filed no later than 10 days after entry of the judgment. Previously, there was an inconsistency in the wording of Rules 50, 52, and 59 with respect to whether certain post-judgment motions had to be filed, or merely served, during that period. This inconsistency caused special problems when motions for a new trial were joined with other post-judgment motions. These motions affect the finality of the judgment, a matter often of importance to third persons as well as the parties and the court. The Committee believes that each of these rules should be revised to require filing before end of the day period. Filing is an event that can be determined with certainty from court records. It should be noted that under Rule 6 a Saturdays, Sundays, and legal holidays are excluded in measuring the day period, and that under Rule 5 the motions when filed are to contain a certificate of service on other parties. Committee Notes on Rulesâ€" Amendment The language of Rule 52 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. Rules 23 e , 23 h , and 54 d 2 C are examples. Amended Rule 52 a 5 includes provisions that appeared in former Rule 52 a and 52 b. Rule 52 a provided that requests for findings are not necessary for purposes of review. It applied both in an action tried on the facts without a jury and also in granting or refusing an interlocutory injunction. Amended Rule 52 a 5 makes explicit the application of this part of former Rule 52 b to interlocutory injunction decisions. The standards that govern judgment as a matter of law in a jury case have no bearing on a decision under Rule 52 c. Committee Notes on Rulesâ€" Amendment Former Rules 50, 52, and 59 adopted day periods for their respective post-judgment motions. Rule 6 b prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6 b to permit additional time, the former day periods are expanded to 28 days. Rule 6 b continues to prohibit expansion of the day period. Changes Made after Publication and Comment. The day period proposed in the August publication is shortened to 28 days.

8: How to Find Out the Outcome of a Court Hearing: 7 Steps

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