

under the new language interrogatories may not extend to issues of "pure law," i.e., legal issues unrelated to the facts of the case. *Cf. United States v. Maryland & Va. Milk Producers Assn., Inc.*, 22 F.R.D. 300 (D.D.C. 1958).

Since interrogatories involving mixed questions of law and fact may create disputes between the parties which are best resolved after much or all of the other discovery has been completed, the court is expressly authorized to defer an answer. Likewise, the court may delay determination until pretrial conference, if it believes that the dispute is best resolved in the presence of the judge.

The principal question raised with respect to the cases permitting such interrogatories is whether they reintroduce undesirable aspects of the prior pleading practice, whereby parties were chained to misconceived contentions or theories, and ultimate determination on the merits was frustrated. See James, *The Revival of Bills of Particulars under the Federal Rules*, 71 *Harv.L.Rev.* 1473 (1958). But there are few if any instances in the recorded cases demonstrating that such frustration has occurred. The general rule governing the use of answers to interrogatories is that under ordinary circumstances they do not limit proof. See e.g., *McElroy v. United Air Lines, Inc.*, 21 F.R.D. 100 (W.D.Mo. 1967); *Pressley v. Boehlke*, 33 F.R.D. 316, 317 (W.D.N.C. 1963). Although in exceptional circumstances reliance on an answer may cause such prejudice that the court will hold the answering party bound to his answer, e.g., *Zielinski v. Philadelphia Piers, Inc.*, 139 F.Supp. 408 (E.D.Pa. 1956), the interrogating party will ordinarily not be entitled to rely on the unchanging character of the answers he receives and cannot base prejudice on such reliance. The rule does not affect the power of a court to permit withdrawal or amendment of answers to interrogatories.

The use of answers to interrogatories at trial is made subject to the rules of evidence. The provisions governing use of depositions, to which Rule 33 presently refers, are not entirely apposite to answers to interrogatories, since deposition practice contemplates that all parties will ordinarily participate through cross-examination. See 4 *Moore's Federal Practice* 33.29[1] (2 ed. 1966).

Certain provisions are deleted from subdivision (b) because they are fully covered by new Rule 26(c) providing for protective orders and Rules 26(a) and 26(d). The language of the subdivision is thus simplified without any change of substance.

Subdivision (c). This is a new subdivision, adopted from Calif.Code Civ.Proc. §2030(c), relating especially to interrogatories which require a party to engage in burdensome or expensive research into his own business records in order to give an answer. The subdivision gives the party an option to make the records available and place the burden of research on the party who seeks the information. "This provision, without undermining the liberal scope of interrogatory discovery, places the burden of discovery upon its potential benefitee," *Louisell, Modern California Discovery*, 124-125 (1963), and alleviates a problem which in the past has troubled Federal courts. See *Speck, The Use of Discovery in United States District Courts*, 60 *Yale L.J.* 1132, 1142-1144 (1951). The interrogating party is protected against abusive use of this provision through the requirement that the burden of ascertaining the answer be substantially the same for both sides. A respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one familiar with the records. At the same time, the respondent unable to invoke this subdivision does not on that account lose the protection available to him under new Rule 26(c) against oppressive or unduly burdensome or expensive interrogatories. And even when the respondent successfully invokes the

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