

## **Rule 366. Powers of Reviewing Court; Scope of Review and Procedure; Lien of Judgment**

**(a) Powers.** In all appeals the reviewing court may, in its discretion, and on such terms as it deems just,

(1) exercise all or any of the powers of amendment of the trial court;

(2) allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or any other cause, allow new parties to be added or parties to be dropped, or allow parties to be rearranged as appellants or appellees, on such reasonable notice as it may require;

(3) order or permit the record to be amended by correcting errors or by adding matters that should have been included;

(4) draw inferences of fact; and

(5) enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief, including a remandment, a partial reversal, the order of a partial new trial, the entry of a remittitur, or the enforcement of a judgment, that the case may require.

### **(b) Scope of Review**

#### *(1) General*

(i) *Error of Law.* Any error of law affecting the judgment or order appealed from may be brought up for review.

(ii) *Error of Fact.* Any error of fact, in that the judgment or order appealed from is not sustained by the evidence or is against the weight of the evidence, may be brought up for review.

*(2) Scope and Procedure on Review in Jury Cases.* In jury cases the following rules govern:

(i) *Instructions.* No party may raise on appeal the failure to give an instruction unless the party shall have tendered it.

(ii) *Remittitur.* Consenting to a remittitur as a condition to the denial of a new trial does not preclude the consenting party from asserting on appeal that the amount of the verdict was proper. No cross-appeal is required.

(iii) *Post-Trial Motion.* A party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion.

(iv) *Review of Conditional Rulings on Post-Trial Motion.* The reviewing court, if it determines to reverse an unconditional ruling of the trial court on a post-trial motion, may review and determine any conditional rulings made by the trial court on other questions raised by the motion. No cross-appeal is required.

*(3) Scope and Procedure on Review in Nonjury Cases.* In non-jury cases the following rules govern:

(i) *Special Findings and Motions Unnecessary.* No special findings of fact, certificate of evidence, propositions of law, motion for a finding, or demurrer to the evidence is necessary to support the judgment or as a basis for review. The sufficiency of the evidence to support the judgment is subject to review without formal action to preserve the question.

(ii) *Post-Judgment Motions.* Neither the filing of nor the failure to file a post-judgment

motion limits the scope of review.

(iii) *Procedure When Judgment at Close of Plaintiff's Case is Reversed.* If a judgment entered in favor of the defendant pursuant to a motion for a finding or judgment at the close of plaintiff's case is reversed on appeal, the case shall be remanded with directions to proceed as though the motion had been denied by the trial court or waived.

**(c) Lien of Judgment.** If the reviewing court enters final judgment and orders its enforcement, a certificate or certified copy of the judgment may be filed in the office of the recorder of deeds of any county in which real estate of the judgment debtor is situated and, in case of registered land, a memorial thereof entered upon the register of the last certificate of the title to be affected, and the judgment shall thereupon have the same force and effect as a lien upon the real estate, as if the judgment had been originally rendered by a court in that county.

Amended October 21, 1969, effective January 1, 1970; amended May 28, 1982, effective July 1, 1982; amended December 17, 1993, effective February 1, 1994.

Committee Comments  
(Revised July 1, 1971)

As adopted effective January 1, 1967, this rule was former section 92 of the Civil Practice Act, as amended in 1965 (Ill. Rev. Stat. 1965, ch. 110, par. 92), without change of substance. The last sentence of former section 92(3)(b) and section 89 of the Civil Practice Act provided in substance that if in a nonjury law case the Appellate Court found a material fact contrary to the finding of the trial court, the Appellate Court's finding was conclusive on the Supreme Court. The provisions were repealed by the General Assembly in 1965 because they were in conflict with the broad appellate powers conferred on the Supreme Court by the judicial article. Laws of 1965, p. 2543, §§1, 2.

Paragraph (b)

Subparagraph (1) was paragraph (b) in the 1967 revision. The words "in any civil case" were deleted from new paragraph (i) in 1969 as unnecessary.

Subparagraphs (2) and (3) were added in 1969. They are taken from the provisions in the Civil Practice Act on scope of review and related procedure in jury and nonjury cases, mentioned below.

Subparagraphs (2)(i), (ii) and (iii) are taken from sections 67(3), 68.1(7), and 68.1(2) of the Civil Practice Act (Ill. Rev. Stat. 1969, ch. 110, pars. 67(3), 68.1(7), and 68.1(2)), respectively, without change of substance. Subparagraph 2(iv) is based on section 68.1(6) of the Act.

Subparagraph (2)(v) is new. It abrogates the ruling in *Keen v. Davis*, 108 Ill. App. 2d 55, 63-64 (5th Dist. 1969), denying reviewability, on the appeal from an order allowing a new trial, of questions raised by other rulings of the trial court on the post-trial motion. Once the appeal is allowed, the whole case is before the reviewing court, and efficient judicial administration is advanced by disposing of all questions presented by the record. See also Rule 306(a)(2).

Subparagraph (3)(i) combines paragraphs (3) and (4) of section 64 of the Civil Practice Act (Ill. Rev. Stat. 1967, ch. 110, pars. 64(3), (4)) without change in substance.

Subparagraphs (3)(ii) and (iii) are, respectively, the last sentence of section 68.3(1) and the last sentence of section 64(5) of the Civil Practice Act (Ill. Rev. Stat. 1969, ch. 110, pars. 68.3(1), 64(5)) without change of substance.

Commentary  
(December 17, 1993)

Paragraph (b)(2)(v) is deleted because Rule 306 contains a substantively identical provision.