

The Court's Charge

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The *Payne* Rule

“There should be but one test for determining if a party has preserved error in the jury charge, and that is whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling.”

Remember *Payne*

- Plaintiff sued after suffering a 12 foot fall into a State maintained culvert.
- The charge submitted *special* defect.
- The State objected the charge removed the question of whether it was a *special* or *premises* defect from the jury.
- State's request: Did the plaintiff have "*actual knowledge*" of the culvert?

3

Payne Holding

- The question was not whether the State's request should have been submitted.
- It is whether the State's question alerted the trial court that premises defect should be submitted.
- Why did the *request* make the court *aware* of the objection?
 - Because "actual knowledge" was *only* relevant to a premises defect claim.

4

Payne is Expanded

- *Tichacek*: Pretrial hearings on drainage issues make court aware of complaint. *Contrary to Rules 274 and 278.*
- *Wackenhut*: Spoliation hearing made court aware of complaint about spoliation instruction. *Contrary to Rule 274.*

Cruz v. Andrews Restoration, Inc.

- The issue was whether the omission of a question on trial attorneys' fees was preserved.
- No charge conference objection.
- Petitioner claimed that its pre-trial charge, which included the missing question, preserved the error.

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