LAW CLASS  
How Courts Work

Steps in a Trial

Appeals

A popular misconception is that cases are always appealed. Not often does a losing party have an automatic right of appeal. There usually must be a legal basis for the appeal—an alleged material error in the trial—not just the fact that the losing party didn’t like the verdict.

In a civil case, either party may appeal to a higher court. In a criminal case, only the defendant has a right to an appeal in most states. (Some states give the prosecution a limited right to appeal to determine certain points of law. These appeals usually occur before the actual trial begins. Appeals by the prosecution after a verdict are not normally allowed because of the prohibition in the U. S. Constitution against double jeopardy, or being tried twice for the same crime.)

Criminal defendants convicted in state courts have a further safeguard. After using all of their rights of appeal on the state level, they may file a writ of habeas corpus in the federal courts in an attempt to show that their federal constitutional rights were violated. The right of a federal review imposes the check of the federal courts on abuses that may occur in the state courts.

An appeal is not a retrial or a new trial of the case. The appeals courts do not usually consider new witnesses or new evidence. Appeals in either civil or criminal cases are usually based on arguments that there were errors in the trial’s procedure or errors in the judge's interpretation of the law.

Appeal Procedure

The party appealing is called the appellant, or sometimes the petitioner. The other party is the appellee or the respondent. The appeal is instituted with the filing of a notice of appeal. This filing marks the beginning of the time period within which the appellant must file a brief, a written argument containing that side's view of the facts and the legal arguments upon which they rely in seeking a reversal of the trial court. The appellee then has a specified time to file an answering brief. The appellant may then file a second brief answering the appellee's brief.

Sometimes, appeals courts make their decision only on the basis of the written briefs. Sometimes, they hear oral arguments before deciding a case. Often the court will ask that the case be set for oral argument, or one of the parties will request oral argument. At oral argument, each side's attorney is given a relatively brief opportunity to argue the case to the court, and to answer questions posed by the judges. In the U.S. Supreme Court, for example, an hour is set for oral argument of most cases, which gives each side's lawyers about half an hour to make their oral argument and answer questions. In the federal courts of appeals, the attorneys are often allotted less time than that - 10- or 15-minute arguments are common.

The appellate court determines whether errors occurred in applying the law at the lower court level. It generally will reverse a trial court only for an error of law. Not every error of law, however, is cause for a reversal. Some are harmless errors that did not prejudice the rights of the parties to a fair trial. For example, in a criminal case a higher court may conclude that the trial judge gave a legally improper instruction to the jury, but if the mistake were minor and in the opinion of the appellate court had no bearing on the jury's finding, the appellate court may hold it a harmless error and let a guilty verdict stand. However, an error of law, such as admitting improper evidence, may be determined to be harmful and therefore reversible error.

After a case is orally argued or otherwise presented for judgment, the appeals court judges will meet in conference to discuss the case. Appellate courts often issue written decisions, particularly when the decision deals with a new interpretation of the law, establishes a new precedent, etc. At the conference, one judge will be designated to write an opinion. The opinion may go through several drafts before a majority of the court agrees with it. Judges disagreeing with the majority opinion may issue a dissenting opinion. Judges agreeing with the result of a majority decision but disagreeing with the majority's reasoning may file a concurring opinion. Occasionally the appeals court will simply issue an unsigned opinion. These are called per curiam (by the court).

If the appeals court affirms the lower court's judgment, the case ends, unless the losing party appeals to a higher court. The lower court decision also stands if the appeals court simply dismisses the appeal (usually for reasons of jurisdiction).

If the judgment is reversed, the appellate court will usually send the case back to a lower court ( remand it) and order the trial court to take further action. It may order that

•a new trial be held,

•the trial court's judgment be modified or corrected,

•the trial court reconsider the facts, take additional evidence,

or consider the case in light of a recent decision by the appellate court.

In a civil case, an appeal doesn’t ordinarily prevent the enforcement of the trial court's judgment. The winning party in the trial court may order the judgment executed. However, the appealing party can file an appeal or supersedeas bond. The filing of this bond will prevent, or stay, further action on the judgment until the appeal is over by guaranteeing that the appealing party will pay or perform the judgment if it is not reversed on appeal.