



Appeals

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Background

An appeal is a request from a party in a lower court proceeding to a higher ([APPELLATE](#)) court asking the [APPELLATE COURT](#) to review and change the decision of the lower court. If a [DEFENDANT](#) in a criminal case is found guilty of a charge or charges, the defendant has the right to appeal that [CONVICTION](#) or the punishment or sentencing. It is common for convicted defendants to appeal their convictions.

The defendant in a criminal trial may appeal after she or he is convicted at trial. In fact, it is very common for convicted defendants to appeal their convictions and/or sentencing. Usually only the defendant in a criminal trial may appeal. The [PROSECUTOR](#) may not appeal if the defendant is acquitted (found "not guilty") at trial. The prosecutor may not put the same defendant on trial for the same charge with the same [EVIDENCE](#). This kind of retrial is known as "double jeopardy." **DOUBLE JEOPARDY** is expressly prohibited under the Fifth Amendment of the United States Constitution. However, prior to or during a criminal trial, a prosecutor may be able to appeal certain rulings, such as when a judge has ordered that some evidence be "suppressed" Appeals that take place in the midst of a trial are called interlocutory appeals. In most cases, appeals can be very complicated; the appellate court tends to enforce technical rules for proceeding with an appeal.

In criminal cases, a federal court may review a conviction after all of the usual appeals have been exhausted. A convicted defendant may request one of these reviews in a petition for a [WRIT](#) of habeas corpus—Latin for "you have the body." Only a very small percentage of these petitions are granted. In death penalty cases, these proceedings have become highly controversial. Since a judicial or prosecutor's error in a death penalty case has such extreme consequences, courts review petitions for writs of [HABEAS CORPUS](#) very carefully.

The procedures of appellate courts consist of the rules and practices by which appellate courts review trial court judgments. Federal appellate courts follow the Federal Rules of Appellate Procedure. State appellate courts follow their own state rules of appellate procedure. In both state and federal jurisdictions, appeals are commonly limited to "final judgments." There are exceptions to the "final judgment rule," including instances of plain or fundamental error by the trial court, questions of subject-matter [JURISDICTION](#) of the trial court, or constitutional questions.

Encyclopedia of Everyday Law: Appeals

The issues under review in appellate court centers on written briefs prepared by the parties. These complex documents list the questions for the appellate court and enumerate the legal authorities and arguments in support of each party's position. Most appellate courts do not hear oral arguments unless there is a specific request by the parties. Few jurisdictions allow for oral argument as a matter of course. Where it is allowed, oral argument is intended to clarify legal issues presented in the briefs and lawyers are constrained to keep their oral presentations strictly to the issues on appeal. Ordinarily, oral arguments are subjected to a strictly enforced time limit. This time limit can be extended only upon the discretion of the court.

The Basis for an Appeal

There is an institutional preference for a trial court's rulings and findings in the U. S. judicial system. Thus, for an appellate court to hear an appeal from a lower court the aggrieved party must demonstrate to the appellate court that an error was made at the trial level. The error must have been substantial. "Harmless errors," or those unlikely to make a substantial impact on the result at trial, are not grounds for reversing the judgment of a lower court. Any error, defect, irregularity, or variance, which does not affect substantial rights, shall be disregarded.

Assuming that there was no harmless error, there are two basic grounds for appeal:

1. the lower court made a serious error of law (plain error),
2. the weight of the evidence does not support the verdict.

Plain error is an error or defect that affects the defendant's substantial rights, even though the parties did not bring this error or defect to the judge's attention during trial. Of course, some plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. In any event, plain error will form a basis for an appeal of a criminal conviction.

It is much more difficult to prevail in an appeal based on the alleged insufficient [WEIGHT OF EVIDENCE](#). Although appellate courts review the transcripts of trials, they almost never hear actual [TESTIMONY](#) of witnesses, view the presentation of evidence, or hear the parties' opening and closing arguments. Consequently, they are not in the best position to assess the weight of evidence in many cases. For this reason they place much confidence in trial courts' decisions on issues of facts. In an appeal based on an alleged insufficient weight of evidence to support a verdict, the error or misjudgment of evidence must truly be egregious for a defendant to expect to prevail on appeal.

Where are Appeals Filed?

Usually, individuals may only file an appeal with the next higher court in the same system in which the case originated. For example, if persons want to file an appeal from a decision in a state trial court, normally they may file their appeals only to the state intermediate appellate court. The party who loses on appeal may next appeal to the next higher court in the system, usually the state supreme court. The state's highest court is almost always the final word on matters of that state's law.

The Number of Appeals

Generally, the final judgment of a lower court can be appealed to the next higher court one time only. Thus, the total number of appeals depends on how many courts are "superior" to the court that made the contested

decision, and sometimes what the next higher court decides the appeal's basis. In states with large populations, it is common to find three or even four levels of courts, while in less populous states there may be only two. There are important differences in the rules, time limits, costs, and procedures depending on whether the case is in Federal court or state court. Also, each state has different rules. Finally, even within a single state one may find that there are different rules for appeals depend on the court in which the case originated.

Filing a Notice of Appeal is the first step in the appeal process. An appellate court cannot adjudicate a case if the notice is not properly filed in a timely manner. The notice must be filed within a definite time, usually 30 days in civil appeals and 10 days in criminal appeals. The period within which to file usually starts on the date a final judgment in the lower court is filed.

Reversing a Conviction

As noted above, appeals judges generally defer to trial court findings, particularly findings of fact (as opposed to findings of law). Appellate courts resist overruling trial court judgments and provide trial courts with wide discretion in the conduct of trials. "Perfect trials" are not guaranteed. In most cases, an appellate court will overturn a guilty verdict only if the trial court made an error of law that patently or significantly contributed to the trial's outcome. In other words, a trial judge's error will not lead to a reversal of a conviction as long as the error can reasonably be considered harmless. Most errors are deemed "harmless," and there are consequently few reversals of convictions. There are, of course, some types of errors that are so egregious that they are presumed harmful, such as the use of a coerced [CONFESSION](#).

Sentencing is a different matter. When a trial court exercises its discretion in sentencing, an appellate court will rarely interfere. In some cases, however, the law specifies a particular sentence; if the judge gets it wrong, the appellate court will usually send the case back for resentencing.

Writs

A writ is a document or an order from a higher court that directs a lower court or a government official to take some kind of action. In any given trial, a defendant may appeal a case to the next higher appellate body only once, but the defendant may file multiple writs in that same trial. Defendants may seek several types of writs from appellate judges directed at the trial court or at a lower appellate court. Most writs require advanced legal knowledge and involve detailed procedures. Defendants contemplating making an application for a writ are wise to consult [COUNSEL](#).

Courts view writs as extraordinary remedies. This means that is, courts permit them only when a criminal defendant has no other adequate remedy, such as an appeal. In other words, a defendant may seek a writ to contest an issue that the defendant could not raise in a regular appeal. This action generally applies when the alleged error or mistake is not apparent in the record of the case. Generally, courts will adjudicate writs more quickly than regular appeals. If a defendant feels wronged by actions of the trial judge, he or she may need to take a writ to obtain an early review by a higher court. Some of the most common grounds for seeking a writ include:

- The defense failed to make a timely objection at the time of the alleged error or injustice
- A final judgment has not yet been entered in the trial court, but the party seeking the writ requires immediate relief to prevent further injustice or unnecessary expense
- Urgency

- The defendant has already lodged an unsuccessful appeal. Merely filing a writ that repeats the same unsuccessful grounds or arguments of an appeal is a frivolous writ and an appellate court will dismiss those writs immediately
- When an attorney has failed to investigate a possible defense

Writ of habeas corpus

In many countries, authorities may take citizens and incarcerate them for months or years without charging them. Those imprisoned have no legal means by which they can protest or challenge the [IMPRISONMENT](#). The framers of the U. S. Constitution wanted to prohibit this kind of occurrence in the new United States. Therefore, they included a clause in the Constitution that allows courts to issue writs of habeas corpus.

Defendants who are considering challenging the legal basis of their imprisonment—or the conditions in which they are being imprisoned—may seek relief from a court by filing an application for a "writ of habeas corpus". A writ of habeas corpus (which literally means to "produce the body") is a court order to a person or agency holding someone in [CUSTODY](#) to deliver the imprisoned individual to the court issuing the order. Many states recognize writs of habeas corpus, as does the U. S. Constitution. The U. S. Constitution specifically prohibits the government from suspending proceedings for writs of habeas corpus except under extraordinary circumstances—such as during times of war.

Convicted defendants have a number of options for challenging guilty verdicts and/or for seeking remedy for violations of constitutional rights, including motions, appeals, and writs. Note that convicted defendants must first have sought relief through the available state courts before they are permitted to seek relief in federal courts. Thus, defendants should consult lawyers to determine which remedies are available to them.

The U. S. Supreme Court

The United States Supreme Court is the "highest" court in the land. It has authority to hear appeals in nearly all cases decided in the Federal court system. It can also hear appeals that involve a "federal question", such as an issue involving a federal [STATUTE](#) or an issue arising under the U. S. Constitution. The Supreme Court will generally hear cases that originate in state court only after a decision by that state's highest court. Despite the great number of criminal cases that are appealed, very few criminal cases are ever heard by the Supreme Court. Fewer than 100 cases are actually heard and decided by the Supreme Court in any given year, and of these only a few are criminal cases.

Costs

Surprisingly, many appeals can be very inexpensive. If the appeal is focused on only one clearly defined issue of law, and all sides have prepared good briefs, it may cost very little to appeal. On the other hand, appeals—such as claims that the verdict was against the weight of the evidence—typically require both the printing of the entire trial record and extensive analysis and briefing. Such appeals are relatively expensive as they can require large amounts of lawyers' time. Additionally, they often turn out to be less successful.

Additional Resources

Briefing and arguing federal appeals: a new edition of "effective appellate advocacy." Frederick Bernays Wiener, Lawbook Exchange, 2001.

Criminal procedure, constitutional limitations in a nutshell, fifth ed., Israel, Jerold H. and Wayne R. LaFave. West Publishing Co., 1993.

Federal Court of Appeals manual: a manual on practice in the United States Court of Appeals, third ed., Knibb, David G., West Publishing Co., 1997.

<http://www.appellate-counsellor.com/> "Appellate Counsellor Home Page" Calvin House, 2002.

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<http://www.kentlaw.edu/7circuit/map.html>. "U.S. Federal Appellate Courts" Center for Law and Computers at Chicago-Kent College of Law, Illinois Institute of Technology, 2002.

<http://vls.law.vill.edu/Locator/statecourt/> "State Court Locator" Villanova University School of Law, 2000.

Organizations

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