**GROUNDS FOR APPEAL**

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**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**](https://www.americanbar.org/groups/public_education/resources/law_related_education_network1/glossary/glossary_h/#habeascorpuspetition)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 IN CIVIL CASES**

Appeal has not been defined in Civil Procedure Code. It is, in fact, that complaint, which is made to some superior court against decision of subordinate court. Basic object of appeal is to test soundness of decision of lower court. Appeal may be filed against original decree, or against decree passed in appeal.

**2. Relevant Provisions**

Following are the relevant Provisions regarding appeal and second appeal

(i) Section 96, 97, 98, 99, of CPC for 1st Appeal

(ii) Section 100, 101, 102, 103 of CPC for 2nd appeal

(iii) **Cross Reference**

(a) Section 17, 18 of West Pakistan Civil court ordinance II of 1962

(b) Order 41, 42 of CPC

**3. Meaning of Appeal**

“*Appeal means removal of a cause from inferior to a superior court for the purpose of a testing soundness of decision of an inferior court”.*

**4. Definition of Appeal**

“*Judicial examination of the decision by a higher court of the decision of the inferior court”.*

**5. Right of Appeal**

Every person has given right of appeal against decree. However, right of appeal is not an inherent right. Rather it can only be availed where it is expressly granted by law. Appeal lies against a decree and not against a judgment.

**6. Nature of Right of Appeal**

Rights of appeal are substantive right and they are not mere matters of procedure. Right of appeal is governed by the law prevailing at the date of the suit and not by law that prevails at the date of the decision or at the date of filling of the appeal.

**7. Appeals from a decree**

An appeal lies under section 96 CPC only from a decree because the decree marks the stage at which the jurisdiction of the court which the appeal is made begins. As such unless a decree is drawn up, no appeal lies from a mere finding, but if the finding amount to a decree, an appeal would lie.

## **Kinds of Appeal**

Appeal may be classified not following two kinds.

### **1st Appeal**

Generally, first appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorize to hear appeal from the decisions of such court.

**(8.1) Forum of Appeal**

First appeal lies to the District court, if the value of the subject matter of the suit is below Rs. Two lakhs, and to the high court in all other cases.

**(8.2) Person who may Appeal**

Only such persons, who are party to the suit, or who are adversely affected by the decree may appeal; Stranger to suit or proceedings is not prohibited by CPC 1908 from filling an appeal against an order whereby he was aggrieved.

**(8.3) Person otherwise competent to file appeal**

Following persons are also competent to file an appeal

(i) legal representatives of the party after such persons have been impleaded as party,

(ii) Transferee of the interest of party,

(iii) Any person claiming under a party

(iv) Any person represented by a party

(v) A benamidar on behalf of a real owner,

(vi) A guardian on behalf of a minor

(vii) Government (Federal or Provincial)

**(8.4) Appeal against interlocutory order**

An appellate court does not have the benefit of the evidence which has to be recorded in the suit under appeal and as it does not have such benefit, it cannot give a conclusive finding on any issue which turns on evidence and it should also not give such a finding because if it did so, it would prejudice the trial court’s appreciation of evidence.

**(8.5) Jurisdiction of Appellate court**

The appellate court has got the jurisdiction to adjudicate upon a matter only if there is either an appeal pending or cross-objections field by the respondents. The court could not suo motu interfere with the judgment of the trial judge which was subject to its appellate jurisdiction. Any order so passed is without jurisdiction and hence a nullity. The objection on this ground can be taken at any time and in any proceedings.

**(8.6) Decisions in Appeal under section 98**

All decisions in an appeal shall be made by the majority and if no majority is established which necessary to alter or reverse the decree appealed from, then the decree shall stand confirmed. It is the right of the first appellate court to come to a conclusion different from that of trial court on re-appraisal of evidence.

**(i) Reference to other judges where no majority**

When a court consisting of more than two judges and an appeal is heard by its bench of two judges and they differ on a point of law, they may refer that point to the other judges of the same court and then the matter shall be decided according to the majority, including judges who refer that matter.

**(8.7) Effect of irregularity under section 99**

Decision which is correct on merits, and within the jurisdiction of the court making it, should not be set-up by an appeal, merely on the grounds of technical or immaterial defects i.e mis-joinder of parties etc.

### **2nd Appeal**

Generally, second appeal lies to the High Court, from every decree passed in an appeal, by a court subordinate to lie High Court. It lies only on grounds mentioned in section 100 CPC but not on question of fact.

**(9.1) Grounds for Second Appeal**

**(i) Decision being contrary to law**

A decision contrary to law is open to interference in second appeal, and the decree may be amended to bring it in conformity with legal requirements.

**(ii) Decision being contrary to the usage having force of law**

The expression usage having the force of law means a local or family usage, which is distinguished from general law. A usage having the force of law should be ancient, invariable, certain and reasonable.

**(iii) Decision having failed to determine some material issue of law or usage having the force of law**

The failure to determine, some material issue of law or usage having the force of law, by the lower court, is a good ground for second appeal.

**(iv) Substantial error or defect in procedure**

Where there is a substantial error or defect in procedure, provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits, it can be a ground for second appeal.

**(9.2) Interference barred in Second Appeal**

(a) Finding of fact is not susceptible to interference in second appeal.

(b) Plea not raised wither in written statement or even in appeal below, could not be taken up in second appeal by the High Court.

(c) Delivery of possession is a question of fact and cannot be interfered with in second appeal.

(d) Findings of fact by first appellate court cannot be challenged in second appeal, particularly when no erroneous approach to the case or findings of fact is shown to have been made by first appellate court.

(e) The question of adverse possession may not necessarily of a document, particularly revenue record, is a question of law.

(f) Concurrent findings of fact by two lower court cannot be challenged in second appeal ever if it is erroneous or a different conclusion is possible.

(g) Where lower courts arrived at a finding of a fact after thoroughly perusing, assessing and appreciating evidence the point cannot be reopened in second appeal.

**(9.3) Allowing Revision to be treated as second appeal**

The High Court has allowed the revision to be treated as second appeal. The only point in issue is from what date this revision should be treated to be converted into a second appeal.

(a) from the date a misconceived civil revision petition was instituted

(b) from the date is request was made for its conversion or

(c) from the date it was allowed to be converted and registered as a second appeal

**CRIMINAL APPEAL**

Part VII of the Code of Criminal Procedure, 1898 is devoted to Appeal, Reference and Revision. It has two chapters. Chapter XXXI is exclusively on the subject of Appeals while Chapter XXXII is on the subjects of Reference and Revisions.

The subject of Appeals has been dealt with in sections 404 to 431. In chapter XXXI one section (section 411) stands omitted and one section (section 416) stands repealed and four new sections 406A, 411A, 414A and 415A have been added. This chapter deals with 34 subjects, namely:

• Unless otherwise provided by CR. P. C. 1898 or any other law for the time being in force no appeal shall lie from any judgment or order of a Criminal Court. • Appeal may lie from order rejecting application for restoration of attached property. • Appeal may lie from order requiring security for keeping peace or for good behavior. • Appeal may lie from order refusing to accept or rejecting a surety. • Appeal from sentence of Assistant Sessions Judge or a Judicial Magistrate, Special Magistrate or any person sentenced under section 349 PPC. • Appeals to Court of Sessions how heard. • Appeals from sentence of Court of Session to lie to the High Court. • Appeals from sentence of High Court to lie to the High Court to be heard by Division Bench as specified in section 411-A (1), (2) and (3). • Subject to such rules as may from time to time be made by the Supreme Court in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to the

Supreme Court from any order made on appeal under subsection (1) of section 411A Cr. P. C. by the Division Court of the High Court in respect of which order the High Court declares that the matter is a fit one for appeal.

• No appeal in certain cases when accused pleads guilty. • No appeal in petty cases. • No appeal from certain summary convictions. • No appeal from certain summary convictions under the law of price control. • An appeal may be brought against any sentence referred to in section 413 and 414 by which any punishment therein mentioned is combined with any other punishment, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace. A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined. • Special right of appeal in certain cases. • Appeal in case of acquittal by Public Prosecutor on the direction of Provincial Government and by the Complainant in complaint case on grant of special leave to appeal by the High Court on his application to be made within sixty days of passing of acquittal order. • Where application made for the grant of special leave to appeal from an order of acquittal is refused, no appeal shall lie under section 417(1) Cr. P. C. • A person aggrieved by the order of acquittal passed by any Court other than High Court, may within 30 days file an appeal against such order. • Appeal on what matters admissible. An appeal may lie on a matter of fact as well as a matter of law. The alleged severity of a sentence shall be deemed to be a matter of law. • Petition of appeal to be in writing and shall be accompanied by a copy of order appealed against. • When appellant is in jail, he may present his petition of appeal and copies accompanying the same to the officer in charge of the Jail who shall forward the same to the Appellate Court. • Appellate Court may dismiss the appeal summarily after giving reasonable opportunity of hearing to the appellant or his pleader. Appellate Court has the discretion to call record of the case before dismissing the appeal summarily. • Notice must be given by the Appellate Court to the Appellant or his pleader, and to State counsel of the time and place at which appeal will be heard. On application of State Counsel copy of grounds of appeal shall be given to him. • Powers of Appellate Court in disposing of appeal (are to send for record of the case, after perusal of record and hearing both sides, if he considers there is no sufficient ground for interfering, dismiss the appeal or reverse such order and direct further inquiry, or himself make any amendment or any consequential or incidental order that may be just or proper. • Rules contained in Chapter 26 shall apply to judgments of any Appellate Court other than a High Court. • Order by High Court on appeal shall be certified to lower courts. • Appellate Court my suspend the sentence pending appeal and release appellant on bail. • High Court may order arrest of accused in appeal for acquittal and commit his to prison pending disposal of appeal or admit him to bail. • Appellate Court may take further evidence. • Where judges composing Court of Appeal are equally divided in opinion, the case with their opinion shall be laid before another judge of the same Court and such judge after such hearing as he thinks fit shall deliver his opinion and the judgment or order shall follow such opinion. • Judgments and Orders passed by an Appellate Court upon appeal shall be final except in cases provided for in s. 417 and Ch. 32 of the Cr. P. C. • Every appeal under s. 411-A (2) or s. 417 Cr. P. C. shall finally abate on death of accused and every other appeal under Ch. 31 except an appeal from a sentence of fine shall finally abate on death of appellant.