

Course Learning Outcomes for Unit VII

Upon completion of this unit, students should be able to:

1. Explain criminal court terminology.
3. Evaluate how the creation of new laws impact criminal courts.
 - 3.1 Analyze the laws that impact criminal cases.
4. Analyze the roles and operations of courts in the criminal justice process flow.
 - 4.1 Determine whether appeals will continue to include more subject matters and less crime.
5. Explain the various roles of court personnel.
 - 5.1 Determine if expert witnesses should be civilly liable for mistakes made when testifying.
6. Describe criminal court processes and procedures.
 - 6.1 Determine at what stage criminal appeals should be permitted.
 - 6.2 Describe what cases should be allowed appeals.
8. Evaluate ethical issues faced by professionals working in the criminal court system.
 - 8.1 Identify any ethical issues surrounding the case and court proceedings.

Course/Unit Learning Outcomes	Learning Activity
1	Unit Lesson Chapter 14 Unit VII Course Project
3.1	Unit Lesson Chapter 14 Unit VII Course Project
4.1	Unit Lesson Chapter 14 Unit VII Course Project
5.1	Unit Lesson Chapter 14 Unit VII Course Project
6.1	Unit Lesson Chapter 14 Unit VII Course Project
6.2	Unit Lesson Chapter 14 Unit VII Course Project
8.1	Unit Lesson Chapter 14 Unit VII Course Project

Reading Assignment

Chapter 14: The Appellate Process

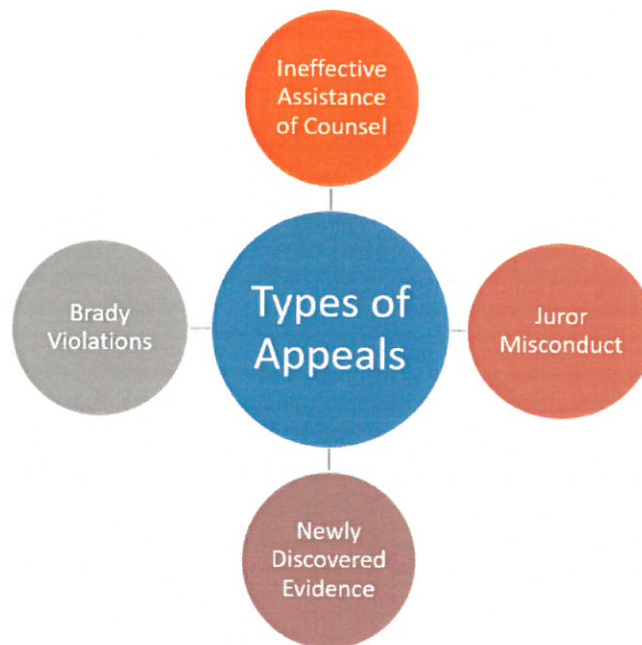
Unit Lesson

Appellate Process

Grounds for appeal: There are a few basic facts about appeals of which to be aware. In criminal cases, only the defendant may appeal; some states allow prosecutors to appeal, but the right is limited to interpretation of law and only if it is alleged that errors were made prior to the commencement of the trial. A court ruling can be appealed if there is a material error in the trial, violation of constitutional rights, or misinterpretation of law. Criminal defendants, after exhausting all appeals in a state court system, may file a writ of *habeas corpus* in federal court on constitutional grounds (this protects criminal defendants from abuse of constitutional issues by a state). Appeals are not a re-trial; no evidence or witnesses are allowed.

Death sentences: In some states, there is an automatic direct appeal for a person sentenced to death; in others, appeal is left to the convicted person. (Be sure to know your state's procedure.) The path for appeals has been simplified over the years, so for states, appeals of death penalties are now filed directly with the state's Supreme Court. After which, and at the discretion of the U.S. Supreme Court, it is placed on its docket after the state court decision is properly challenged. Either losing side may petition for a writ of *certiorari* with the U.S. Supreme Court that prompts a review of federal constitutional issues.

Even though there is a path to the state's Supreme Court for direct appeals, petitions may also be filed with the original trial judge and then appealed to any intermediate courts and, when applicable, the state's Supreme Court. These types of appeals may include but are not limited to the following issues:



Types of Appeals
(*Brady v. Maryland*, 1963)

Brady violations, occur when the state withholds evidence that could help the defense's case (*Brady v. Maryland*, 1963).

After all avenues of appeal for a death sentence fail, executive clemency is the last resort. Governors of states may stall death penalties for short terms to allow for a continuation of appeals or to commute the death sentence to a lesser sentence such as life without parole.

In 2015, reporters Frank R. Baumgartner and Anna W. Dietrich published their findings on the probability of persons sentenced to die actually being executed. Their study included a review of 8,466 cases from 1973 to 2013. The statistics below are not commonly known by the general public and criminal justice professionals.

- 3,194 sentences were overturned on appeal; 523 based on an underlying statute were declared unconstitutional (16%); for 890, the conviction was overturned; and for 1,781, the death penalty was overturned, but guilt was sustained.
- 2,979 remained on death row as of December 31, 2013 (93%).
- 1,359 were executed (16%).
- 509 died while on death row, either from suicide or natural causes (6%).
- 392 had their sentence commuted by state governors to life in prison (5%).
- 33 were removed from death row for miscellaneous reasons (Baumgartner & Dietrich, 2015).

An analysis of the aforementioned statistics indicates that entities and persons who believe the death penalty is bad for society are winning; the problem criminal justice professionals face is if the state does not satisfy the needs of surviving victims of crimes warranting a death penalty, then will society revert back to the times of King Hammurabi when laws allowed for the grieving victims to stone a convicted murderer to death? Also needing the attention of our profession is the following issue: Should the will of the majority to enforce death penalties be overturned by a minority of the population? These questions cannot be answered easily, but as criminal justice professionals, our members must be prepared to carry out the mandates of the U.S. Constitution, Bill of Rights, and decisions of the U.S. Supreme Court.

Errors of law: The errors of law in criminal trial far exceed those in civil trials, and the reason is simple. In criminal trials, the burden of proof for conviction is on the prosecutor, and the standard of proof is *beyond a reasonable doubt*. In civil trials, on the other hand, the standard for finding in favor of the plaintiff is *by a preponderance of evidence*. It stands to reason by logical scrutiny that more accused criminal defendants will be exonerated of their crimes by false negatives—acquittals of factually guilty persons.

Admission of evidence: There are approximately 30 objections a counsel can make to the admission of evidence. If the subject evidence is improperly excluded or admitted, an appeal may be filed to correct the error. Appeals must be based on material issues that a reasonable person (juror) would consider relevant to the issues presented. Here is an example of an insignificant error: The counsel asks a witness if his mother called him, and he answers, “Yes, at 3:00 in the morning.” The opposing counsel could object to this as nonresponsive due to the witness voluntarily offering the time of the call, but an experienced trial attorney would only object if the time was relevant (e.g., if the time of the call provided was an alibi). On the other hand and contrary to television/movie drama trials, such trivial objections would not be made because they tend to annoy the judge.

Improper exclusion: There are two basic errors made in criminal trials that trigger appeals: the counsel fails to offer relevant evidence or the court (judge) improperly excludes evidence. Keep in mind that the evidence must have been relevant to the issues of the case.

Improper admittance: The corollary of improper exclusion is the inclusion of non-admissible evidence. Both prosecutors and defense attorneys try to put every shred of evidence before a court/jury that would help the government or the defendants not withstanding a low probability of having the evidence admitted. It would be improper and possibly malpractice for trial counsel to prejudge the admissibility of evidence and not offer it into evidence and allow the court (judge) to rule on the issue. When non-admissible evidence does get past the court, then an appeal is a proper remedy.

Faulty jury instructions: Jury instructions are necessary to help the jurors understand the elements of the crime they are addressing. This needs to be done in a straightforward way without using legal jargon or complex scenarios. Without jury instructions, jury deliberations would inevitably become free-for-all discussions on who should win. And even if the issues are properly identified, the jury will not know how to decide them unless the instructions clearly articulate the applicable legal principles. Ill-prepared jury instructions have been and will probably continue to be a source of appeals.

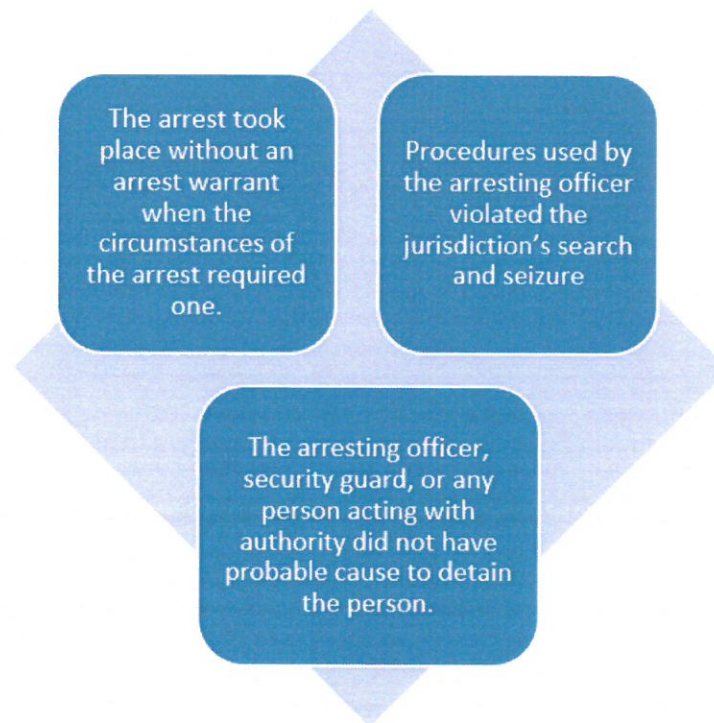
Insufficiency and weight of evidence: Television and movies misidentify insufficiency and weight of evidence. The difference between the two is, literally, life and death. Reversal of a conviction based on weight of the evidence allows the government to retry the defendant. A reversal based on sufficiency of the evidence precludes a second trial based on the double jeopardy clause of the Fifth Amendment. The *Tibbs v. Florida* case provides clear and distinct definitions that may be used to distinguish the two concepts; see below.

- **Sufficiency of the evidence:** This means that a defendant is not convicted because a jury member who has viewed the evidence, even in the most favorable circumstances to the prosecution, cannot render a guilty verdict beyond a reasonable doubt.
- **Weight of the evidence:** This refers to credibility. A reversal based on this means that the court has determined that there is a greater amount of credible evidence for one side over the other (*Tibbs v. Florida*, 1982).

Sentencing errors: Sentencing errors are rare in that if a convicted felon is sentenced within the sentencing guidelines for the appropriate jurisdiction, the sentencing court's decision will not be reviewed. On the other hand, if the sentencing court does not follow the guidelines, the appellate court will probably remand the case for resentencing.

There have been cases where the convicted felon has medical or mental conditions that should have been considered when imposing the sentence. If they were not, the sentencing judge could be required by the appellate court to reanalyze possible sentences that take into account the medical or mental condition of the petitioner and sentence the convicted felon again. The risk is that the sentencing judge has the discretion to impose a longer sentence. Therefore, a decision in these cases should not be taken lightly.

False arrest and search and seizure: A person convicted of a crime may appeal the conviction if the facts listed below are true or at least if the attorney representing the convicted person believes they are probably true.



False Arrest Criteria

Juror misconduct – ethical issues: Each jurisdiction has standards for use in instructing attorneys and judges on how to define juror misconduct and ethical issues involving criminal cases. There are several issues involving juror misconduct and ethics:

- bias in the context of juror misconduct,
- implied bias,
- concealment of material information during a preliminary examination of a witness,
- third-party contact with a juror,
- obtaining information for outside sources,
- actually biased jurors, and
- refusal to deliberate.

The majority of the aforementioned grounds for appeal are easy to define using common sense as a standard. On the other hand, it is also obvious that the vast majority of jurors enter the box with some bias—some more than others. This human trait cannot be avoided, so the question on appeal will be if the inherent bias affected the deliberation when considering the issues of the assigned case. One of the better admonitions to jurors/judges was that they should not ignore the facts involved, but they should make a decision based on the facts of the case—not their opinion (*Irvin v. Down*, 1961).

Implied bias is used to deselect potential jurors during initial questioning. A California Code section is provided as a sample of how jurisdictions deselect potential jurors from the pool:

- consanguinity or affinity within the fourth degree of parties, witnesses, and members of the trial team;
- any familial or business relationship with any person associated with the case;
- previous participation in any legal proceedings concerning the case before the bench (court);
- personal interest in the events surrounding to case;
- having an unqualified opinion or belief as to the merits of the case before hiring evidence;
- enmity against or bias toward either the government or the defendant; and
- conscientious objection to incarceration or the death penalty (California Code of Civil Procedure, 2016).

Ineffective assistance of counsel: The term itself—ineffective assistance of counsel—brings forth images from television and movies portraying an inarticulate counsel making obvious common sense mistakes that no layperson would make. Reality is different; the examples below are grounds to appeal criminal convictions based on ineffective assistance of counsel as provided for in the Sixth Amendment. They consist of a counsel's failure to take the following actions:

- present defense witnesses,
- seek DNA or serology testing,
- object to evidence/suppress evidence,
- interview/cross witnesses, and
- file an appeal.

Juvenile Court Appeals

Jurisdictions vary on the timeframe for filing appeals concerning juvenile court dispositions. Generally, they are short time frames in the 30-day range. An appeal from juvenile court decisions/sentences generally are based on the judge making a decision that is not in the best interest of the child. Decisions range from incarceration, up to and including adult jail or prison, to a verbal warning.

In juvenile cases, an appeal can never hurt a child but can sometimes ensure a more appropriate decision is made by the justice system.

References

- Baumgartner, F. R., & Dietrich, A. W. (2015, March 17). Most death penalty sentences are overturned. Here's why that matters. *Washington Post*. Retrieved from https://www.washingtonpost.com/news/monkey-cage/wp/2015/03/17/most-death-penalty-sentences-are-overturned-heres-why-that-matters/?utm_term=.ddb0b9b4b385
- Brady v. Maryland, 373 U.S. 83 (1963).
- California Code of Civil Procedure, § 225 (2016).
- Irvin v. Down, 366 U.S. 717 (1961).
- Tibbs v. Florida, 457 U.S. 31 (1982).

Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

Locate, identify, read, and understand your jurisdiction's Code of Criminal Procedure addressing appeals and writs of error. The following is an example:

State of Texas; Code of Criminal Procedure; Title 1; Chapter 44.