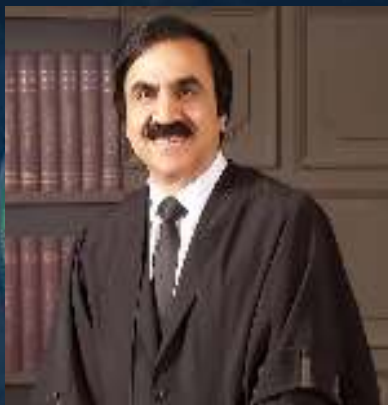


# CRIMINAL APPEAL PROCESS & PRESENTATION



## PRACTICAL CRIMINAL LAW TRAINING PROGRAM



**Zafar Kalanauri**

Advocate Supreme Court

**Trainer For:**

**Appeal**

[klc.com.pk](http://klc.com.pk)

**LAW OF APPEALS AS IS GIVEN IN  
CHAPTER XXXI OF CODE OF  
CRIMINAL PROCEDURE, 1898  
[SECTIONS 404-431]**

**Introduction**

**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 In chapter XXXI one section (section 411) stands omitted and one section (section 416) stands repealed and four new sections 406A, 411A, 414A and 415A have been added.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 behaviour.**
- 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 may suspend the sentence pending appeal and release appellant on bail.
- High Court may order arrest of accused in appeal for acquittal and commit him 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.

## **What is an Appeal?**

An appeal is a complaint in writing against the judgment or order passed by the trial Court, before the Appellate Court, pointing out the errors on facts and law. An appeal is continuity of the trial. An appeal is not inherent. It is a right conferred by law. An appeal is not a review or reference or revision. Each term is independent and has got its specific meaning. The only one thing common among all of them is the object that fairness and justice prevails. A Court cannot itself assume jurisdiction of an appellate Court unless the law confers such jurisdiction upon it.

The word “appeal” has not been defined in the Code of Criminal Procedure, 1898.

The word “appeal” means to remove a cause formally from inferior Court to a

higher Court with a view to ascertain whether the judgment is sustainable having been passed by a Court of Competent jurisdiction, sentence being awarded according to law and proceedings conducting conforming the provision so provided. The right of appeal is a matter of procedure. It is substantial right created by a statute and only exercisable when expressly given.<sup>1</sup>

Appeal being a continuation of original matter, appellate forum enjoys same authority and ample discretion to specify nature of sentence by declaring the same to run concurrently.<sup>2</sup>

Hearing of appeal is a valuable right. If an accused fails to appear before High

---

<sup>1</sup> PLD 1966 Lahore 684.

<sup>2</sup> PLD 1994 Quetta 1.

Court at the time of hearing of appeal after suspension of sentence, such accused person has no right of appeal and the same is liable to be dismissed.<sup>3</sup>

Where the sentence passed by the Magistrate exceeds four years running consecutively, appeal would lie directly before High Court.<sup>4</sup>

Right of Appeal and Revision deemed to be creation of statute since time immemorial, but when ordinary courts are competent to decide the disputed legal rights, then the ordinary rules of procedure are applicable to such courts and appeal would lie if it was allowed under the prevailing rules of procedure, notwithstanding that legal rights claimed

---

<sup>3</sup> 2001 MLD 300.

<sup>4</sup> 1991 MLD 2203.

arose under special statute which does not confer right of appeal.<sup>5</sup>

Order appealed against includes both the order of conviction as well as order of acquittal.<sup>6</sup>

A right of appeal in criminal matters is statutory one and is governed by section 404 Cr.P.C. that forms the commencement of Chapter XXXI of Cr. P. C. dealing with appeals. It is further pointed out that a right of appeal has to be specifically provided for in the statute, as it cannot arise by implication. It may further be noticed that a right of appeal is not a mere matter of procedure, but is a vested right, which inheres in a party from the commencement of the action in

---

<sup>5</sup> PLD 2009 Peshawar 70.

<sup>6</sup> 1997 P. Cr. L. J. 1236.

the Court of first instance. Thus when there is no right of appeal in a special Act then the finding of acquittal or conviction passed thereunder becomes final.<sup>7</sup>

Trial Court and Appellate Court have ample powers to determine if sentences are to run concurrently.<sup>8</sup>

Appeal is purely a creature of statute and unless a right of appeal is clearly and expressly given by the statute, it does not exist nor is there any scope for inferring such right by implication.<sup>9</sup>

Appeal which is otherwise barred cannot be converted into petition under section 561-A Cr. P. C. and private complaint

---

<sup>7</sup> PLD 2004 Karachi 348.

<sup>8</sup> NLR 1997 Criminal Quetta 475.

<sup>9</sup> PLD 2006 Lahore 147.

cannot be allowed to achieve the object which he could have achieved by filing appeal.<sup>10</sup>

Decision on criminal appeal should be on merits despite the conviction having not been challenged by the accused.

Appellate Court has to ascertain if the evidence on record is sufficient to uphold the finding of conviction.<sup>11</sup>

An appeal on a matter of fact can only be brought on a certificate of the trial judge or with the leave of the Court.<sup>12</sup>

Delay in filing appeal may be condoned on mistaken advice.<sup>13</sup>

---

<sup>10</sup> PLD 2008 Lahore 147.

<sup>11</sup> 2005 YLR 1229

<sup>12</sup> PLD 1947 Privy Council 103.



A time barred appeal can be treated as revision.<sup>14</sup>

Delay in filing appeal can be condoned up to the pronouncement of judgment or upto the supply of the copy of the order, but in case where the delay is not explained from the date of the copy was obtained and the appeal is filed its condonation is not possible.<sup>15</sup>

Dismissal of appeal in default is not permissible.<sup>16</sup>

Convict should be given a reasonable period to prepare and present appeal.<sup>17</sup>

---

<sup>13</sup> 1993 P. Cr. L. J. 836.

<sup>14</sup> PLD 1962 Quetta 5

<sup>15</sup> 2009 P. Cr. L. J. 199.

<sup>16</sup> 1991 P. Cr. L. J. 1430.

Appeal is a continuation of judicial proceedings before the higher Court to reconsider the verdict of the lower Court on legal and factual aspects. An appeal is a step towards objective to be achieved by enactment.<sup>18</sup>

It is now well settled by now that right of appeal is a not a mere matter of procedure but is a vested right of a party from commencement of action in Court of first instance.<sup>19</sup>

Right of Appeal cannot be availed of unless it is conferred in a clear manner

---

<sup>17</sup> PLD 1953 Federal Court 138.

<sup>18</sup> NLR 2000 Labour SC 34.

<sup>19</sup> NLR 2005 Criminal SC 129.

by some enactment or statute or the rules having sanctity of some law.<sup>20</sup>

Appeal from fugitive accused liable to be dismissed even though appeal of his co-accused is accepted.<sup>21</sup>

Fugitive also found guilty of misuse of the concession of bail. Deliberately failed to surrender. Not entitled to concession of time to file special leave to appeal application.<sup>22</sup>

A fugitive from law is not entitled to seek any relief given by way of review.<sup>23</sup>

---

<sup>20</sup> NLR 2005 Criminal SC 129

<sup>21</sup> 1982 SCMR 623.

<sup>22</sup> 1962 SCMR 818.

<sup>23</sup> PLD 1982 SC 203.

If a convict after filing a petition, becomes fugitive and does not surrender, he deprives himself of the relief claimed in the petition. Similarly, there would be no difference if he absconds after obtaining special leave to appeal, or after obtaining a bail order. In order to maintain consistency, in such a situation although the Court would be obliged itself to examine the merits of the case for setting aside the acquittal, if need be the absconding acquitted accused would not be entitled to be heard, even through a counsel.<sup>24</sup>

---

<sup>24</sup> PLD 1981 SC 265.

## **Convict dying or released after serving out sentence**

So far as dead are concerned their appeals must be declared to have abated, but convicts who have been released after serving out their sentences, a stigma of conviction still adheres to them. Therefore, their cases have to be dealt with according to law.

25

---

<sup>25</sup> PLD 1967 SC 545

So far as dead are concerned their appeals must be declared to have abated, but convicts who have been released after serving out their sentences, a stigma of conviction still adheres to them. Therefore, their cases have to be dealt with according to law.<sup>25</sup>

**Withdrawal of Appeal by a convict is the discretion of a Convict, what is still the duty of a Court?**

A convicted person is not bound to appeal even where the law gives him such right and that being so there is no principle standing in the way of his withdrawing the appeal.<sup>26</sup>

---

<sup>26</sup> PLD 1959 SC 119.

However, it was held in the case of *Sikandar Hayat v. Ata* that if full effect is given to the provisions of section 423 Cr. P. C. a duty will be clearly spelt out of the Court to decide the appeal on merits notwithstanding the absence of the appellant or his pleader or his prayer to withdraw from the appeal.<sup>27</sup>

### **What are the essential conditions to allow additional evidence at Appeal Stage?**

The exceptional circumstances in which a party seeking to adduce fresh evidence at the hearing of an appeal is allowed to do so are well known. It is essential condition that the evidence was not available at the trial and that reasonable

---

<sup>27</sup> PLD 1970 SC 224.

diligence would not have made it available.<sup>28</sup>

In the case of *Rajasoorta v. Disciplinary Committee* their lordships of the Privy Council observed that before additional evidence is admitted it would require to be satisfied on two points:

- (i) that it could not with reasonable diligence have been made available either before the Disciplinary Committee or before the Supreme Court; and
- (ii) that it would have formed a determining factor, in , or had a important influence on the result.<sup>29</sup>

---

<sup>28</sup> PLD 1954 PC 1.

<sup>29</sup> PLD 1957 PC 1.



## **Guidelines for Appellate Court**

In exercising the power conferred by the Code and before reaching its conclusions upon fact the High Court should and will always give proper weight and consideration in such matters as,-

- (i) the view of the trial Judge as to the credibility of the witnesses;
- (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial;
- (iii) the right of the accused to the benefit of any doubt; and
- (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness.

If attaching due weight to those matters, the Court hearing an appeal on the facts under section 411-A come to the conclusion that the verdict of the jury was wrong, it is bound to allow the appeal and reverse the verdict. It has no right to uphold the verdict merely on the ground that it is not perverse or unreasonable. So to do would be to deprive the appellant of the right of appeal which the statute gives to him.<sup>30</sup>

### **Appeal is not to cure infirmities in the prosecution case**

Appeal should not be allowed to cure infirmities in the prosecution case. Where the record of the case, as prepared at the trial provided ample material for a just and proper decision on points, which

<sup>30</sup> PLD 1947 PC 103.

the High Court sought to elucidate by means of the additional evidence they recorded allowing the prosecution, a further opportunity during the hearing of the appeal to clear up these doubts was not a judicial exercise of the discretion vested in them.<sup>31</sup>

### **Supreme Court is not bound to refer every judgment cited at the Bar**

The Supreme Court is not, in any event, bound to refer to every judgment cited at the Bar nor can the fact that it has not done so be a ground for reviewing decision of Supreme Court, particularly, where the decision has no relevance at all.

---

<sup>31</sup> PLD 1952 F.C. 71

Statutory right of appeal confers a right of rehearing of the whole dispute unless expressly restricted in scope and the appellate Court is not confined to the reasons which have been given by the Court below as the grounds of its decision. The appellate Court has to consider the controversy entire a fresh; both as regards facts and as regards law, and can substitute its own opinion in place of the decision taken by the lower Court.<sup>32</sup>

### **Duty of High Court**

Merely because the counsel for the appellant has not pressed the appeal on merits, the High Court is not relieved of its duty to peruse the record in order to find out whether there is ample evidence against

---

<sup>32</sup> PLD 1954 FC 123

the convict. This is necessary to secure due and efficient administration of justice and also to show that the Court has applied its mind to the facts of the case and has reached on its own conclusion.<sup>33</sup>

## **Calling of record discretion of the Court**

Calling of record is the discretion of the Court.<sup>34</sup>

## **Review**

A judgment delivered in a criminal case is not open to review under the Criminal Procedure Code.<sup>35</sup>

---

<sup>33</sup> 1971 SCMR 626.

<sup>34</sup> 1969 SCMR 418.

<sup>35</sup> 1971 SCMR 789.

## **Touchstone of the Holy Qur'an and Sunnah**

Right of appeal being a substantive right, the denial of copy of judgment and of hearing in appeal would amount to denial of the substantive right resulting into injustice on the touchstone the Holy Qur'an and Sunnah.<sup>36</sup>

## **Points Worth consideration in Appeal**

- (i) An appellate Court will not normally interfere in the verdict of acquittal.
- (ii) An appellate Court will give due weight and consideration to the findings of the lower Court, particularly the trial Court which had the occasion of not only

---

<sup>36</sup> PLD 2009 FSC 36

recording the evidence but also watching the demeanour of the witnesses.

- (iii) An appellate Court will consider: What is the view of the trial judge regarding the credibility of witnesses?
- (iv) An appellate Court will consider that verdict of acquittal affirms the initial plea that every person is presumed to be innocent unless proved guilty.
- (v) An appellate Court should keep in mind that it is not sufficient ground of interference that on reappraisal of evidence a different view is possible.
- (vi) An appellate Court is to see as to whether reappraisal of evidence shows any manifest wrong, perversity or uncalled for

conclusion from facts proved on record.

- (vii) An appellate Court is to see as to whether the finding arrived at by the trial Court is wholly artificial, shocking and ridiculous.
- (viii) An appellate Court is to see whether material evidence has been disregarded by the trial Court.
- (ix) An appellate Court is to see whether material evidence has been misread blatantly to an extent that miscarriage of justice has occasioned.
- (x) An appellate Court is to see whether evidence has been brought on record illegally.
- (xi) There is however no bar upon the superior courts to interfere in the acquittal judgment, but the Courts exercise extra caution while



exercising jurisdiction in appeals against acquittal.

(xii) The right of accused to any benefit of doubt; and

(xiii) Mere disregard of technicalities in a criminal trial without rusting injustice is not enough for interference.<sup>37</sup>

## **Double presumption of Innocence of Accused in case of acquittal**

Presumption of innocence of accused is double in cases of acquittal and the Court would not interfere unless it is found that conclusion drawn by the trial Court is not supported by evidence on record.<sup>38</sup>

---

<sup>37</sup> 2009 P. Cr. L. J. 199.

<sup>38</sup> 2010 P. Cr. L. J. 1027; 2009 SCMR 946; PLD 1985 SC 1.

# **Fundamental points about an Appeal**

## **Not a re-arguing of the case**

**An appeal is not an opportunity to re-argue the case – to have a “second bite of the cherry”.**

## **Error correction**

**An appeal is all about error correction. It is an opportunity to have the Appeal Court correct any errors in the lower Court judgment. That means the questions for the Appeal Court will be:**

**Is there an error or errors (in the lower Court’s judgment)?**

**If yes, is the error/errors sufficiently significant to affect the result in the lower Court?**

**If yes, what should the new outcome be?**

**The third question relates to relief. An appellant must state the relief it seeks on appeal.**

## **Procedure**

- 1. The appeal filed before the high court has to be in written form and is presented by the convict or the accused person or by his advocate. In case if the convict person is in jail then the jail authorities would file the appeal on his behalf.**
- 2. The appeal filed before the Court should contain the clear grounds. The court has the power to dismiss the appeal without conducting the detailed hearing if there is no sufficient ground for interfering but this can be done only after giving the opportunity to accused or his advocate of being heard and present the case before the concerned court.**
- 3. The appeal filed by the accused through the jail authorities has also given the opportunity to be heard unless the appeal is frivolous or which is disproportionate to the circumstances of the case.**

**4. The appeals cannot be rejected summarily unless the term is expired for filing the appeal. If the appeal is dismissed which is filed by the jail authorities and the court finds that another petition of appeal is presented by the accused himself or through his advocate which has not been considered by the court then the Court hear such petition and dispose it if it is required for interest of justice.**

**5. The high court dismissing the appeal has to give reasons in support and the dismissal of appeal summarily has to be used cautiously.**

**6. If such appeal is not dismissed summarily then the formal hearing notice containing the time and place of hearing shall be given to the accused or his advocate, state and the complainant. The appeal is heard and dismissed at the particular date and place of hearing as fixed by the high court.**

### **Bail Pending Appeal**

**Where the appeal is pending before the court, the court shall record the reasons in writing and suspend the sentence which is passed against the convict person and if the convicted person is in the confinement.**

**If the person is convicted by the high court, then the high court has the power to grant the bail if the court is satisfied by the reason:**

- 1. Commission of the offence by the accused is bailable and the person is on bail.**
- 2. When the person is released on bail and is sentenced for not more than 3 years of imprisonment. The bail granted to the convict person is for some period, during which the accused can file the appeal and obtain a bail from the appellate court.**
- 3. In cases where the appellant is sentenced to imprisonment, the time during which the accused is released on bail is excluded for the computation of the term of the sentence. But in certain cases where the high may issue the warrant for the arrest of the accused person and it may either grant him bail or may sentence him with imprisonment, such appeal are filed against the acquittal order by the state or the complainant himself.**

## **Limitation Period**

**The time period for filing the appeal is 30 days against the death sentence passed by the death sentence passed by the session court or the high court having its original jurisdiction. The limitation period is 90 days against the order of acquittal and the limitation period is 90 days in the cases where the order has to be made after seeking the special leave of the court.**

# **Fundamental points about an Appeal**

## **Different tasks of Appellant/Respondent:**

**The appellant has an adverse judgment of the lower Court. Its task is to persuade the Appeal Court that the lower Court's judgment is erroneous to the extent that it requires correction.**

**The Appellant must also identify what the appropriate correction should be (i.e. what relief should be granted to the appellant).**

**In summary:**

**The appellant's task is to provide answers to the three questions set out above.**

**The onus on appeal rests squarely on the appellant..**



## **Fundamental points about an Appeal**

**The respondent has a favourable judgment from the lower Court. Its task is to hang on to that judgment:**

**To fend off the appellant's assertions of error; and If appropriate, to support the judgment on other grounds.**

**The description respondent is the key. The respondent is responding to the appellant's challenges to the lower Court's judgment.**

**A respondent does not start from scratch. The respondent does not have to mount its case in the lower Court all over again.**

## **APPEALS BEFORE SUPREME COURT**

**An appeal can be filed against any judgement, final order or sentence of a High Court in a criminal proceeding in following situations.**

- 1. Firstly, if the concerned High Court has an appeal reversed an order of acquittal of an accused person and sentenced him to death. Imprisonment for life as to imprisonment for a period of not less than ten years.**
- 2. Secondly, if the High Court has withdrawn for trial before itself any case from any of its subordinate courts and in such trial has convicted the accused person and sentenced him to death or to the imprisonment for life or for a period of not less than ten years.**
- 3. Thirdly, if the High Court certifies that the case is a fit one for appeal to the Supreme Court.**

- 4. Lastly, a person convicted on a trial held by the High Court in its extraordinary original criminal jurisdiction can also appeal to the Supreme Court.**
  
- 5. However no appeal can be filed by a convicted person if the sentence, passed against him by the HC does not exceed the term of 6 months as fine not exceeding 1000 as both such imprisonment and fine.**
  
- 6. The criminal appeal can be filed if the High Court disregarded or misapplied the established principles of criminal law.**

## **Procedure**

- 1. The memorandum of appeal should be in the form of a petition and should contain concisely and as far as possible, in a chronological order the principal steps in the proceedings from its commencement in the subordinates courts till its conclusion in the High Court.**
- 2. The petition of appeal has to be accompanied by a certified copy of the judgement / order challenged in the appeal and as well the certified copy of the certificate of the High Court in case appeal is filed on a certificate.**
- 3. In cases where the High Court has passed a summary order (that is a brief order without hearing the matter in details) or where the High Court has not recorded**

- 1. reasons as grounds for granting the certificate and in certain appeals in the contempt cases 4 certified (or uncertified copies if such copies are affirmed to be true copy upon affidavits of the judgement or order and decree of the subordinate court are also required to be filed with the petition of appeal.**
- 4. Where the appellant has been sentenced to a term of imprisonment, the petition of appeal is required to state if the appellant has surrendered. If the appellant has not surrendered to the sentence, the appeal cannot be registered unless the court on a written application orders its registration where the appellant is in jail; he may present his petition of appeal through the offices-in-charge of the jail.**

### **Court Fee**

**No court fee is payable in Criminal appeals.**

## **Limitation**

**A Criminal appeal in which a certificate has been granted by the High Court is required to be filed within 60 days from the date of the said certificate. In other cases, appeal is to be filed within sixty days from the date of the judgement; final order or sentence appealed from.**

**But in computing the period of limitation, the time spent for obtaining a copy of the judgement as order appealed from or the time spent on obtaining the certificate and order granting the certificate are excluded.**

**Again, if sufficient cause is shown, delay in filing the criminal appeal may be condoned by the Supreme Court.**

## **Bail Pending Appeal**

**The Supreme Court has same powers as the High Court for granting bail to the accused pending his appeal.**

## **Abatement**

**The Criminal appeals in the Supreme Court would abate or continue at the death of the accused on similar grounds as before the High Court.**

## **Supreme Court-Special Leave to Appeal** **On Certificate by High Court**

**SLP-Special Leave to appeal**

**The Supreme Court is mainly an appellate court and can entertain appeals both in the Civil and Criminal matters if certain specified requirements are met with. The appeals may be filed against the judgment/order of the various High Courts and as well as the Subordinate Courts.**

### **Special Leave To Appeal**

**If the High Court refuses to certify a case as above said or if any of the conditions as above said are not fulfilled any party the case can seek special leave to file appeal from the Supreme Court itself.**

**The Supreme Court may grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed as made by any court as tribunal. However, special leave to appeal cannot be obtained to challenge any judgement, determination, sentence or order passed as made by any court as tribunal constituted by as under any law relating the Armed Forces.**

## **Civil Special Leave Petition**

### **Procedure**

**The party desirous of seeking special leave to appeal is required to file a special leave petition in a specified format.**

- 1. A detailed description and address of the parties and their status in the High Court in the form of the memo of parties is to be mentioned in the very beginning of the petition.**
- 2. Details pertaining to the judgement/order challenged in the petition.**
- 3. Questions of law arising for consideration in the petition.**
- 4. Declaration to the effect that no other petition seeking leave to appeal has been filed by the appellant against the same judgement/order.**



- 5. Declaration to the effect that the documents filed with the petition are true and form part of the record of the courts below.**
- 6. Ground for filing the appeal.**
- 7. Grounds for seeking interim reliefs (reliefs such as stay etc sought from the court pending disposal of the appeal by the court).**
- 8. Lastly main prayer or relief sought in the petition and the interim prayer ( reliefs such as stay etc. pending disposal of the appeal by the court).**
- 9. At the end, place and date of preparing and filing the petition and as well as name of the advocate has to be mentioned. Along with the petition, a concise note regarding the relevant events and incidents and as well the proceedings in the subordinate courts and the High Court is to be submitted in a chronological order. This note is referred to as the list of dates.**

- 10. Petition should be confined to the submissions relied on by the appellant in the courts below. But the appellant may with due notice to the opposite party and with leave of the court may submit additional grounds at the time of hearing.**
- 11. Every petition is required to be supported by the affidavit of the appellant or by any person authorised by the appellant.**
- 12. The petitioner is required to file 4 sets of the petition & accompanying papers.**

#### **Court Fee**

**The person filing a special leave petition is required to pay court fee as per the scheduled table of court fees.**

#### **Limitation**

**The special leave petition has to be filed within 60 days in case the certificate of fitness to appeal to Supreme Court is refused by the High Court. The period of sixty days is calculated from the date of the order of refusal by the High Court.**

**In other cases, the period of limitation is 90 days from the date of judgement or order challenged in the special leave petition. However, while computing the period of limitation, the period of time spent in making the application to seek certificate in the High Court till its rejection is to be excluded.**

## **Criminal Special Leave Petition**

### **Procedure**

- 1. The petition seeking special leave to file a criminal appeal should coherently and concisely state all such facts as may be necessary to enable the court to determine whether the special leave should be granted.**
- 2. The petition has to be duly signed by the Advocate for the petitioner unless the petitioner appears in persons. The petition should also state if the petitioner had moved the High Court concerned for leave to appeal against its decision and the order of the High Court regarding the same.**
- 3. The petition should also clearly mention a statement as to whether the petitioner had filed any petition for special leave to appeal against judgement / order under challenge. Earlier if such a special leave petition had been filed earlier, its result should also be mentioned duly supported by an affidavit of the or any other person duly authorised by the appellant.**
- 4. The submissions in the petition should be confirmed only to the pleadings already made before the court / tribunal whose order is challenged and the other documents relied upon in these proceedings. No additional facts, documents as ground can be stated as relied upon without permission of the court.**

- 5. The Petition is to be accompanied by:**
- 6. A certified copy of the judgement or order appealed from and**
- 7. An affidavit in support of the statement of facts contained in the petition.**

**In case the appellant has been sentenced to a term of imprisonment, the petition should mention clearly if the petitioner has surrendered where the petitioner has not surrendered to the sentence. The court cannot hear the petition unless the court exempts the petitioner from surrendering.**

#### **Court Fee**

**No court fee is payable on filing a criminal special leave petition.**

#### **Limitation**

**The criminal special leave petition has to be filed within 60 days if leave to appeal was refused by the High Court. The period of sixty days has to be computed from the date of refusal. The period of limitation in any other case not involving sentence of death is 90 days from the date of judgement or order appealed from and in case involving a sentence of death is 60 days.**

**But while computing the period of limitation, the period of time spent in making application to High Court for seeking leave and its rejection there after, wherever applicable will be excluded.**

## **Fundamental points about an Appeal**

### **Appeals on a question of law**

It is necessary to identify the question/ questions of law that will be argued on appeal.

# **Approach to assessing grounds of Appeal**

## **First steps**

**Read the judgment of the lower Court (which is the findings of the Lower Court) thoroughly then read it again, even more thoroughly.**

**If you are acting for the appellant draw up a list of the arguments you consider may be available on appeal (i.e. the point/points that you believe the lower Court Judge got wrong and the reasons why they are wrong.**

**This will become the basis for your written submissions and oral presentation.**

**If you are acting for the respondent draw up a list of the arguments that are available to support the judgment from the Lower Court.**

## **Approach to assessing grounds of Appeal**

**The lawyers for both the appellant and the respondent should then rigorously test each of the appeal points and the arguments in support of the points.**

**One way of testing the arguments on appeal is to ask one of your team members to play the “devil’s advocate” and question/test your points of appeal and arguments in support. This will often expose flaws/weaknesses in your argument that are best faced up to and addressed early in the process. It will be an “early taste” of the scrutiny your arguments will receive from the Appeal Court Judges.**

## **Approach to assessing grounds of Appeal**

**Revise your appeal points and arguments in support in light of the testing exercise.**

**Ensure that your appeal points are in logical, ordered form. Each point should be in a concise bullet point format. Confine your appeal points to those which have a real prospect of success. Drop any points you assess as being weak. That requires good judgment and courage but it is important because:**

**A “kitchen sink” approach on appeal tends to irritate and alienate the appeal Court. The Judges will be asking themselves “why are these weak points being taken”. That will only serve to detract from any worthwhile points you have.**

**Conversely, an appeal limited to a point/points which has real merit is attractive to the Appeal Court because it will go directly to the core of the case.**



# Written submissions on Appeal

## Structure

**As a general point to remember you will know the case better than the Appeal Court Judge. You should be aiming to adopt a structure which:**

**Unfold the argument in the most helpful and informative way.**

**Gives the appropriate level of information at each stage. Do not overload the Appeal Court with information, but on the other hand do not leave the Appeal Court short of information which makes it difficult for the Judge to understand your argument as it develops.**

**Develop the argument in the most logical way. That is, one point leading to the next.**

**Avoid backtracking around and presenting the argument in an illogical manner.**

## **Written submissions on Appeal**

**Alternatively, when you come to the order of your appeal points you may decide that you have a very strong point (a “king hit”). If this is the case the best approach is to make this point your first point even if that is not the most logical order.**

**When preparing your submissions put yourself in the place of the Appeal Judge who will start the process with little or no knowledge of the case.**

# Written submissions on Appeal

## A basic format

A basic and fairly typical structure is:

- Outline/summary of argument.
- Background.
- Facts.
- Law.
- First point on appeal (with supporting arguments).
- Second point on appeal (with supporting arguments).
- Any further points on appeal (with supporting arguments).
- Concluding summary (including if you are acting for the appellant what the “new” outcome should be assuming the appeal is successful or a summary of why the lower Court judgment should be upheld if you are acting for the respondent).

# Written submissions on Appeal

## Brevity

**Brevity is important. A “slim” submission requires much more understanding of your case and much more time and care to prepare than a lengthy rambling submission.**

**It takes time to condense the appeal points and supporting arguments down to their essence. This is time very well spent because it is time that the Appeal Court will not have to spend trying to unravel and make sense of a lengthy poorly constructed submission.**

**Brevity is also important in the written submissions so that you have “room” to develop the points on appeal/arguments in support during the oral presentation.**

# **Written submissions on Appeal**

## **The facts**

**Provide the Appeal Court with a summary of the essential facts of the case.**

**Note that you must assume that the facts provided are correct and undisputed.**

# Written submissions on Appeal

## The law

If you accept some of the lower Court Judge's summary of the law then say so. You can adopt this type of approach:

*"The Judge's summary of the law is at paragraphs ^-^:*

*Points (a), (b) and (c) are accepted  
It is submitted that the Judge's analysis of the law contains two major errors in points (d) and (e)."*

Review/consider the relevant case authorities. Decide which are the most important case authorities to support the points on appeal and what arguments from the case authorities are available to "counter" the case authorities which support the appeal points of the other party.

# **Written submissions on Appeal**

## **Your appeal points/approach**

**Start by stating your proposition. This is the point/points you are wanting the Appellate Court to accept. Get it out up front directly and simply (i.e. an outline/summary of your argument).**

**Then develop your supporting argument in a series of crisp, logical steps. Give only as much detail as is needed to support and explain each point.**

**Constantly test your argument by asking yourself - “Do I need to include this?”, “Why am I putting this in?”, “What is the relevance or usefulness of the point I am making and how will the point I am making help me to persuade the Appeal Court Judge to rule in my favour?”**

# **Layout of Submissions**

**Use a layout which is easy to follow.**

**Use headings, short paragraphs, bullet points and numbering for the series of points and arguments in support.**

**Set out case authorities separately.**

**Avoid dense blocks of text including references to cases. This type of layout is far more difficult for a Judge to follow.**



# **Timeframes**

**The mooting competition rules state that each mooter has 10 minutes to present their submissions (including any questions from the Appeal Court Judge).**

**You can assume that the Appeal Court Judge will have some questions. On average set aside two or three minutes of your available time to answer questions from the Judge.**

**Finally, after the presentation of both teams' submissions each team will have a three to five minute right of reply.**

**Make sure that you can present the material in your written submissions within the available timeframes.**

# **Right of reply**

**The mooter who will be presenting the reply for each team should prepare a draft outline of the reply after receiving the other party's written submissions.**

**At the hearing handwritten notes can be added to the draft reply outline when listening to the other party's submissions.**

**The draft written reply outline and notes taken during the appeal hearing are then used to present the reply. (NB: The reply notes are not provided to the Appeal Court Judge or the other party).**

**THANK YOU!**