

Appeals 2019

Contributing editors
Mark A Perry and Perlette Michèle Jura
Gibson Dunn



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Lexology Getting The Deal Through is delighted to publish the third edition of *Appeals*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Mark A Perry and Perlette Michèle Jura of Gibson, Dunn & Crutcher LLP, for their continued assistance with this volume.



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Global overview

Mark A Perry and Perlette Michèle Jura

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The procedure for appealing adverse decisions is an essential component of the civil justice systems in most countries. A decision by a court of first instance usually produces a winner and a loser, and the losing party will frequently examine its options for review of that decision in the appellate courts.

For commercial or business disputes in which substantial amounts of money or other valuable rights are at stake – the cases that are the focus of this book – the legal systems in most countries provide for some form of appellate review as a matter of right. In addition, many jurisdictions have several levels of appellate review, with the higher courts exercising discretion over the cases they review.

This book aims to provide an introduction to the appellate systems in a number of different countries. The focus is on appeals in high-value commercial disputes resolved in the main civil courts of first instance (trial courts) in a country's national or federal system. Appeals of the decisions of arbitral tribunals, regulatory agencies, specialist tribunals and local courts fall outside the scope of the book. So, too, do appeals involving administrative, criminal and family matters.

Some recurring issues in appellate practice include determining which decisions or rulings are appealable; when and where an appeal may (or must) be filed; and what deference, if any, the reviewing court will give to the judgment of the trial-level adjudicator. Practical considerations include limits on the form and content of written submissions, whether there will be an opportunity to present oral argument, and the scope of the issues that will and will not be considered by an appellate tribunal.

To help elucidate these and other issues, this volume presents a series of questions concerning topics that regularly arise in commercial or business appeals. Experts in each country have responded to these questions and have provided an overview of the appellate process in their jurisdiction. Those interested in learning more are encouraged to contact the chapter authors, or other attorneys in the jurisdiction.

Each chapter focuses on a specific country and includes an overview of the appellate tribunals in that country's national court system, as well as any significant special or local tribunals of which litigants should be aware. Each chapter likewise previews the most important appellate rules, timing and documentation requirements. The chapters also identify how to determine which rulings are appealable rulings, and summarise the limitations on the introduction of new evidence and argument.

The country-specific chapters also address issues that frequently arise at the outset of an appeal, such as securing the judgment and obtaining an injunction or stay. They also summarise the orders that may be issued at the conclusion of the appellate process (for example, whether the appellate courts in a particular country issue reasoned decisions or opinions explaining why an appeal has been sustained or rejected).

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The chapters also address financial aspects of the appellate process, including attorneys' fees, third-party financing and settlement during appeal.

Finally, each chapter discusses what happens if an initial appeal is unsuccessful – specifically, whether another level of appellate review is available.

As the following chapters illustrate, appeals are different to trials in every jurisdiction. Appeals are usually heard by a judge (or, frequently, several judges) without the involvement of a jury or laypersons. There are often restrictions on the factual and legal points that can be made. The submissions, both written and oral, tend to be stylised and must conform to both formal requirements and customary practice. The focus in an appellate proceeding is on whether an error was committed, rather than which party should prevail.

Indeed, appellate practice is sufficiently different to trial-level litigation that in many jurisdictions a specialised appellate bar, either formal or informal, has arisen. Companies, organisations and individuals considering an appeal (or being forced to defend an appeal) are advised to consult with an attorney with particular experience in the appellate court system involved.

As part of Gibson Dunn's extensive litigation and disputes practice, we regularly represent clients in the first instance and in appellate courts in the United States, the UK and elsewhere, including the courts of the Dubai International Financial Centre and offshore jurisdictions such as the British Virgin Islands and the Cayman Islands. Our U.S. litigators are experienced in state and federal courts at both the trial and appellate levels, including the U.S. Supreme Court.

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