Appeals

GIBSON DUNN

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GETTING THE DEAL THROUGH

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Global overview

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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 volume – 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 volume 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 issue 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.)

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.

The following chapters demonstrate how 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 requirements and customary practice.

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 generally well-advised to consult with an attorney with experience in the appellate court system involved.

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1 Outline and explain the general structure of your country's court system as it relates to the commercial appellate process.

In England and Wales, the High Court of Justice serves as the court of first instance for complex civil disputes and for cases in which the value of the claim exceeds £100,000. The High Court is subdivided into three divisions: the Queen's Bench Division, the Chancery Division and the Family Division. The Queen's Bench Division has the most varied jurisdiction and is, therefore, also the largest division of the High Court. The Queen's Bench Division is further subdivided into specialist courts encompassing the Commercial, Admiralty, Technology and Construction, Mercantile and Administrative courts. The Chancery Division is also subdivided into specialist areas, which include the Bankruptcy and Companies Court, the Patents Court and the Intellectual Property and Enterprise Court. Both the Chancery Division and the Commercial Court maintain a 'Financial List' in order that cases of importance to financial markets can be assigned to specialist judges. The High Court of Justice is based in London but there are courts for six separate geographical regions in England and Wales, called circuits, that try High Court cases in the district registries outside of London.

The High Court also serves as the first level of appeal for certain disputes originating in the subordinate courts of England and Wales (which might include, for example, simple or low value commercial disputes heard at first instance in the county courts).

Appeals in commercial matters from the High Court are heard by the Civil Division of the Court of Appeal. The Court of Appeal also has jurisdiction to hear appeals from various other courts and tribunals covering a wide range of subject matters. The Court of Appeal's Criminal Division will hear appeals from the Crown Court (a higher criminal court of first instance) relating to serious criminal offences.

The final court of appeal is the Supreme Court, which hears appeals on points of law in both civil and criminal matters from both the Court of Appeal and, in rare instances where the Court of Appeal is bypassed in a 'leapfrog procedure', the High Court. Leapfrog appeals are most likely to arise in cases of general public importance where both the High Court and the Court of Appeal are bound by a prior decision of the Supreme Court in relation to the point at issue.

The Supreme Court also serves as the ultimate appeal court for Scotland (for civil matters only) and Northern Ireland, which are otherwise separate jurisdictions with separate court systems (at least insofar as concerns most types of dispute).

2 Are there appellate courts that hear only civil matters?

The three divisions of the High Court (described above) only hear civil matters. The Queen's Bench and Chancery Divisions hear most appeals on civil commercial matters in cases originating in the subordinate courts.

The Court of Appeal's Civil Division is a specialist division dealing with civil matters. The Supreme Court, by contrast, hears both civil and criminal appeals (although, in respect of cases originating from Scotland, its jurisdiction is limited to civil appeals).

3 Are appeals from administrative tribunals handled in the same way as appeals from trial courts?

Generally speaking, administrative decision-makers in the public sector are subject to the supervisory jurisdiction of the courts and their decisions are susceptible to 'judicial review'. Applications for judicial review are made to the Administrative Court (which is a division of the High Court). Judicial review is distinct from a normal appeals process. Applications for judicial review can be made on four broad grounds: illegality, irrationality (which concerns the reasonableness or, in some cases, the proportionality of the decision), procedural impropriety or failure to uphold a legitimate expectation. Cases from the Administrative Court can be appealed to the Court of Appeal and Supreme Court in the usual way.

There are, separately, several specialist first-instance and appellate tribunals in England and Wales that have broad administrative appeal jurisdiction, through which cases must progress before reaching the Court of Appeal and Supreme Court.

The first-instance tribunals are known as the First-Tier Tribunal and the appellate tribunals are known as the Upper Tribunal. The First-Tier Tribunal includes seven separate chambers. These comprise the General Regulatory Chamber, the Social Entitlement Chamber, the Health, Education and Social Care Chamber, the Tax Chamber, the Property Chamber, the War Pensions and Armed Forces Compensation Chamber, and the Immigration and Asylum Chamber. The Upper Tribunal consists of four chambers: the Administrative Appeals Chamber, the Tax and Chancery Chamber, the Lands Chamber, and the Immigration and Asylum Chamber.

For example, an appeal from a decision made by a local authority imposing an environmental fine might be first heard in the General Regulatory Chamber. An appeal from the General Regulatory Chamber in such a case would then be heard in the Administrative Appeals Chamber. Any subsequent appeal would be heard by the Court of Appeal and, finally, the Supreme Court in the usual way.

4 Is there a separate appellate bar or other requirement for attorneys to be admitted before appellate courts?

Barristers are able to exercise rights of audience in all courts in England and Wales without the need for any separate admission or assessment. Although solicitors in England and Wales are granted rights of audience in all courts once they are admitted, they may not exercise those rights in front of the higher courts until they have passed a dedicated advocacy assessment.

Generally speaking, there is no separate appellate bar in England and Wales, and appeals are therefore typically handled by the same lawyers that handled the trial. This said, practitioners with more appellate experience are commonly brought in to handle appeals (usually as an addition to the counsel team from the trial).

5 If separate jurisdictions exist for particular territorial subdivisions or subject matters, explain their main differences as to commercial appeals.

The UK is comprised of three separate legal jurisdictions separated by geography: England and Wales, Scotland and Northern Ireland. For civil cases, the appeals from the latter two jurisdictions ultimately converge with those of England and Wales at the highest level of appeal, the Supreme Court (as explained above).

Additionally, aside from the specialist tribunals described above, a separate tribunal jurisdiction exists for most employment disputes known as the Employment Tribunal. Appeals from the Employment Tribunal are heard by the Employment Appeal Tribunal in the first

instance. Judgments of the Employment Appeal Tribunal, like those of the various chambers of the Upper Tribunal (described above) can be appealed to the Court of Appeal (for England and Wales), the Court of Session (for Scotland), or the Court of Appeal of Northern Ireland and, ultimately, to the Supreme Court.

A separate specialist tribunal also exists to deal with competition matters. The Competition Appeal Tribunal's jurisdiction includes hearing appeals from the decisions of the Competition and Markets Authority and certain other industry regulators. It also has jurisdiction over actions for damages and other monetary claims or collective settlements relating to infringements of competition legislation.

6 What are the deadlines for filing an appeal in a commercial matter?

As parties require permission to appeal a decision of a lower court, the filing of an appeal in a typical commercial matter involves submitting an application for permission along with supporting documentation (discussed in more detail below) within 21 days of the lower court's decision, or such other period as may be specified by the lower court.

Permission to appeal can be sought from the lower court at the hearing in which the appealed decision was made. Alternatively, the lower court may adjourn the hearing in order to give a party time to apply for permission to appeal. Where permission is refused by the lower court, permission can be sought directly from the appeal court. It is possible to apply directly to the appeal court for permission. However, given that the application to the lower court is relatively informal and does not require any additional filings to be made, very little is gained by not first seeking permission from the lower court.

Generally, permission to appeal will be granted where either the appeal would have a real prospect of success, or there is some other compelling reason for the appeal to be heard. The 'real' referred to in the first limb means that the appeal's prospect of success must be realistic and not fanciful in order for permission to be granted. The second limb can be satisfied where the question posed is a novel one or where the issue is of importance to the public. Permission to appeal will not be granted in respect of purely hypothetical or academic questions.

7 What are the key steps a litigant must take to commence an appeal?

As noted above, obtaining permission to appeal is the first stage in any appeal process.

To apply for permission to appeal from the High Court to the Court of Appeal, a party must file an appeal notice (Form N161: https://formfinder.hmctsformfinder.justice.gov.uk/n161-eng.pdf) and a skeleton argument with the Court of Appeal. A skeleton argument is a written document that outlines the submissions that a party intends to make in oral argument. This must be filed within 21 days of the decision being appealed and then served by the appellant on the opposing parties. The other parties then have 14 days to file a statement of reasons explaining why permission should not be granted, although this is optional. A single Court of Appeal judge will nearly always decide the application for permission on paper, without a hearing. A court fee (presently £528) is payable at the permission stage.

If permission to appeal is granted, the appellant may then file a new skeleton argument and all of the parties must agree the content of the bundles, which are then lodged with the Court of Appeal ahead of the hearing of the substantive appeal. A listing questionnaire must also be filed by the appellant setting out practical matters relating to the substantive appeal. A court fee (presently £1,199) is payable at this stage.

Where permission to appeal has already been granted or is not required, the appeal notice, skeleton, bundles and listing questionnaire listed above can be filed and lodged with the Court of Appeal directly.

In order to appeal from the Court of Appeal to the Supreme Court, it is once again necessary to seek permission to appeal from either the lower court (the Court of Appeal) or the appellate court itself (the Supreme Court). A potential appellant must seek the lower court's permission to appeal before seeking it from the Supreme Court. An application for permission to appeal must be produced on Form 1 (www.supremecourt.uk/docs/court-form-01.pdf). The application should set out briefly the facts and points of law and include a brief summary of the reasons why permission should be granted. The grounds of appeal should not normally exceed 10 pages of A4. An appeal panel of three Supreme Court justices will consider applications for permission. As with the Court of Appeal, these are typically decided on paper, without a hearing. The other parties to the matter will be entitled, but not obligated to file a notice of objection to the appeal, setting out why permission to appeal should not be granted. Again, as is the case in the courts below, where permission is granted by the lower court, it is possible to proceed directly to the filing of a substantive appeal.

Where permission to appeal is granted (by whichever source), the appellant must give notice to the Supreme Court and the other parties that it intends to proceed with the appeal. Further copies of the application for permission to appeal will then need to be filed with the Supreme Court registry. The Supreme Court listing officer will then contact all of the parties and make arrangements for the substantive hearing to be fixed.

8 How is the documentation for appeals prepared?

For appeals from the High Court to the Court of Appeal, it is the responsibility of the party requesting permission to appeal to obtain an approved transcript of the judgment being appealed, together with a sealed copy of the judgment and copies of any order made by the lower court granting or refusing permission to appeal. These can all be obtained from the lower court. These are then lodged with the Court of Appeal along with the appeal notice. They must also be included in the core appeal bundle at both the permission to appeal stage and at the hearing of the substantive appeal.

9 In commercial matters, may litigants appeal by right or is appellate review discretionary?

As noted above, a party ordinarily needs permission to appeal a decision of a High Court or County Court judge. There are very limited exceptions to this requirement, the most important example being where the appeal concerns the liberty of appellant. In such cases, that party is entitled to an appeal as of right.

10 Can litigants appeal any ruling from a trial court, or are they limited to appealing only final judgments?

The Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of the High Court. This includes interlocutory orders and directions. Put simply, the outcome or result of any hearing in the lower court may be appealed. It should be noted that, technically speaking, it is not the reasoned judgments of the lower courts that can be challenged; but rather the orders that result from them. This is why appeals focus on issues of law, rather than findings of primary fact.

11 In a typical commercial dispute, must a litigant post a bond or provide security to appeal a trial court decision?

The Court of Appeal may order security for costs of an appeal to be paid by an appellant. This order will be made on the basis of the same grounds as any security for costs order made by a High Court judge at first instance. In commercial disputes this will most likely be in circumstances where the appellant is resident outside of the jurisdiction, or where there are doubts that the appellant would be able to pay the respondent's costs of the appeal in the event that the appeal was unsuccessful.

12 Are there special provisions for interlocutory appeals?

No. As all appeals are against orders of the lower court, no distinction between interlocutory and final judgments is made. A judge in the lower court may rely on their general case management powers to adjourn the matter while an appeal of an interlocutory order is heard, although this will generally be a matter at the discretion of that judge.

13 Are there special rules relating to injunctions or stays, whether entered in the trial court or on appeal?

Injunctions are granted at the discretion of the court and are not available as of right. An injunction will usually be granted where it appears to the court to be just and convenient to do so. The court has a broad discretion when granting injunctions. However, in the American *Cyanamid* case, the House of Lords (the Supreme Court's predecessor) established an important test that is routinely applied in determining whether an interim (rather than a final) injunction should be granted. In applying that test, the court is to consider two issues: (i) whether there

Update and trends

As a member of the European Union (EU), the United Kingdom is currently subject to the jurisdiction of the Court of Justice for the European Union (CJEU). After more than 40 years of membership, a significant proportion of the legislation currently in force in the UK originates from the EU. As a general rule, pursuant to article 267 of the Treaty on the Functioning of the European Union (TFEU), where resolution of an issue of EU law is necessary to enable a court in the United Kingdom to give judgment in a particular case, that question must be referred to the CJEU for determination unless the answer is so obvious from the CJEU's prior case law that there can be no scope for doubt (this is known as the 'acte clair' doctrine). Technically, the duty to refer matters to the CJEU only applies to courts of 'final jurisdiction' in the various member states of the EU, which, in the United Kingdom, would be the Supreme Court, though lower courts may also refer questions to the CJEU at their discretion (provided the necessary conditions, described above, are met). For example, the Court of Appeal regularly refers questions to the CJEU. All courts of the United Kingdom, including the Supreme Court, are bound by the judgments of the CJEU. Once a reference is made, the CJEU will issue a ruling on the points of law referred. The case then returns to the domestic court for determination in light of that ruling. This process can take many months.

Following a referendum in June 2016, the people of the United Kingdom voted to leave the EU. In March 2017, the United Kingdom invoked article 50 TFEU, which triggers a two-year countdown to 'Brexit' (during which the United Kingdom and the other member states will seek to agree the terms of the Brexit deal). At this stage, it is impossible to say what role the CJEU will play in the legal system of the United Kingdom after March 2019. It seems unlikely that the courts of the United Kingdom will remain subject to the jurisdiction of the CJEU in the long run, however, there is likely to be a transitional period while any new arrangements are in the process of implementation. Even after any transitional period has elapsed, significant amounts of legislation originating from the EU are likely to remain on the statute books in the United Kingdom and it is possible the past judgments of the CJEU will remain persuasive as to its meaning.

is a serious question to be tried and (ii) the 'balance of convenience' (ie, a court will balance the respective inconvenience or loss to each party dependant on whether or not the interim injunction is granted).

A stay, by contrast, imposes a temporary halt on proceedings. Proceedings can be continued if a stay is lifted. The court has inherent jurisdiction to stay the whole or any part of any proceedings. In deciding whether to impose a stay, the court will have a wide discretion and each case will be judged on its facts. Although stays may be imposed for a number of reasons, they are often ordered to give parties an opportunity to settle, pending the resolution of a test case or to protect concurrent claims.

14 If a litigant files an appeal in a commercial dispute, does it stay enforcement of the trial court judgment?

Unless an appeal court or a lower court orders otherwise, or the appeal is from the Immigration and Asylum Chamber of the Upper Tribunal, an appeal will not operate as a stay of any order or decision of the lower court. Therefore, if carrying out the order contained in a judgment would defeat the benefit of a successful appeal, a party may seek to secure a stay of that order.

A stay will not generally be ordered unless there is likely to be real prejudice caused to a party (in the sense of irremediable harm) if the judgment is enforced and the appellant later wins the appeal. In determining whether to order a stay pending an appeal, the essential question is whether there is a risk of injustice to one or more parties.

15 On an appeal from a commercial dispute, may the first-level appellate court consider the facts and law anew, or is its power to review limited?

An appeal is limited to a review of the decision (ie, the order) of the lower court unless the applicable procedural rules state otherwise or the court considers that, in the circumstances of the appeal, it would be in the interests of justice to hold a rehearing.

An appeal court's powers to 'review' the factual findings of the lower court cover a broad spectrum of procedures, but in relation to primary findings of fact based on evaluation of oral evidence, an appeal court will generally be unlikely to overturn a first instance judge's findings of fact. At the other end of the spectrum are appeals on points of law where no consideration of factual evidence is required. In between lies multi-factorial decisions based on inferences from documentary material.

An appeal court will generally allow an appeal where the decision of the lower court is either wrong, or unjust because of a serious procedural or other irregularity in the proceedings in the lower court. 'Wrong' in this context means containing an error of law, an error of fact or an error in the exercise of the court's discretion.

16 If a party is dissatisfied with the outcome of the first-level appeal, is further appeal possible?

If a party is dissatisfied with the outcome of a first-level appeal, a further appeal may be possible, depending on the court in which the appeal was heard and the order that was made. However, as explained above, a prospective appellant will generally need to ask for permission (either from the appellate court or the court appealed from) before it can make an appeal.

For example, if a judgment from the Court of Appeal is being appealed to the Supreme Court, an application for permission to appeal must first be made to the Court of Appeal. If that Court refuses permission, an application may be made to the Supreme Court. Permission to appeal to the Supreme Court will only be granted in cases that raise an arguable point of law of general public importance that, in the view of the judges determining the permission application, ought to be considered by the Supreme Court at that time.

17 How long do appeals typically take from application to appeal to a final decision?

How long it takes to bring an appeal and to receive a final decision is highly dependent on various factors, including the court or list in which the appeal is brought, the workload of that court or list and the complexity and urgency of the appeal being heard. In the Court of Appeal, once permission to appeal is granted, depending on the urgency of the case, a hearing could take place and a judgment could be delivered within six months. However, a typical appeal in a complex commercial matter determined on a non-urgent basis might take between 12 and 18 months from permission to judgment. A similar timeframe (12 to 18 months) is also to be expected in the Supreme Court.

18 What is the briefing and argument process like in a typical commercial appeal?

The briefing process, generally referred to as appeal submissions, ordinarily involves the parties sequentially exchanging written submissions in the months prior to the appeal hearing. The structure and content of these written submissions will typically form the basis of an oral argument.

Oral argument at a typical commercial appeal will generally be focused on finding errors of law or fact in the primary judge's decision. In the absence of witnesses and experts (which would have been dealt with at the trial level), the usual procedure is for the counsel for the appellant to orally present their case for appeal, followed by the respondent's counsel making oral submissions as to why the appeal should fail. Depending on the nature of the oral submissions put forth by the respondent's counsel, the appellant's counsel may take the opportunity to reply to the respondent's submissions. During the course of oral argument, the appellate judges may put questions to advocates, although this will depend on the structure and content of the submissions and the preference of the judge.

19 Are appeals limited to the evidentiary record that was before the trial court, or can new evidence be introduced on appeal?

The usual rule is that the court to which an appeal is made will not receive evidence (oral or otherwise) that was not before the lower court. Such evidence is known colloquially as 'fresh evidence', and

will only be admitted in limited circumstances. The following are matters the court will consider in exercising its discretion as to whether to admit fresh evidence:

- whether the evidence could have been obtained with reasonable diligence for use before the lower court;
- whether the evidence is such that, if given, it would probably have an important influence on the result of the case (though it need not be decisive); and
- whether the evidence is apparently credible (though it need not be incontrovertible).

Subject to the permission of the court, fresh evidence may be either oral or written.

20 If litigants uncover new evidence of wrongdoing that they believe altered the outcome of a trial court judgment, can they introduce this evidence on appeal?

The proper course for a litigant that wishes to rely on fresh evidence to show that a trial court's judgment was obtained by fraud is to commence a fresh action asking for the trial court's judgment to be set aside, rather than raising the issue on appeal.

Evidence that is allegedly probative of fraud must satisfy the usual requirements for the admissibility of fresh evidence. The litigant must be able to show that the evidence of fraud upon which he or she seeks to rely was not available at the time of trial, and could not with reasonable diligence have been discovered for use at trial.

21 May parties raise new legal arguments on appeal?

The general rule is that a party may not rely on a point unless it was taken at trial. The leave of the court is required to rely on new points of law. The court will only grant leave where a party satisfies what has been described as the 'heavy burden' of showing that the case could not have been conducted differently, in any material respect, as regards the evidence had the new point been raised at trial.

22 What are the rules regarding attorneys' fees and costs on appeal?

The costs rules applicable to appeals are generally the same as those that apply to other civil proceedings before the courts of England and Wales. The general rule is that costs follow the event; ie, the loser will pay the winner's costs. The court to which an appeal is made has discretion not only over the costs of the appeal, but also over the costs incurred in the proceedings before the lower courts. Any costs award might involve detailed assessment proceedings.

23 Can parties enter into a settlement agreement to vacate the trial court judgment after an appeal has been taken?

The parties may enter into a settlement agreement after an appeal has been commenced. It is not always necessary to provide for a formal variation of a trial court's order or judgment. While that order or judgment might stand, the parties' separate contractual agreement to settle will often be sufficient to dispose of the matter. In such a case, the parties ought to approach the court with a joint request that the appeal be dismissed by consent.

In circumstances where the parties agree that the order of the trial court was wrong, and are agreed on the terms of the order that ought to be substituted, they may ask the appeal court to allow the appeal, and to substitute the parties' agreed order for the order of the trial court.

24 Are there any limits on settlement once an appeal has been taken?

No. Settlement once an appeal has been taken is as binding as if made at any other stage of the proceedings. The parties retain their broad contractual scope to settle as they see fit.

25 May third parties fund appeals?

Third-party litigation funding is generally permitted in England and Wales and no special restrictions apply in connection with the funding of appeals.

Litigation funding is increasingly provided by specialist third-party litigation funders. Additionally or alternatively, a party's solicitors might assume some or all of the potential risk in exchange for an enhanced return in the event of a successful claim through the use of a conditional fee arrangement or damages-based agreement. After-the-event insurance is also widely used.

Third-party litigation funding is now largely considered to increase access to justice and, at the same time, old-fashioned rules prohibiting champerty and maintenance have been progressively eroded in recent years. This said, those funding litigation must be careful to act with propriety and in accordance with public policy objectives and applicable regulation.

26 If litigation funding is permitted in an appeal, must funding sources be disclosed to the court or other parties to the litigation?

There is no general requirement to disclose funding sources to the court or to the other parties to the case. However, in some circumstances, other parties to the litigation might be able to obtain an order from the court that the identity of those funding litigation against them must be disclosed, eg, where it is necessary to facilitate an application for security for the costs of litigation.

27 Must appellate courts in your country write decisions explaining their rulings? Can the courts designate the precedential effect of their decisions?

Appeal courts must give reasons for their decisions. In general, the reasons for the decision are set out in (often lengthy) written judgments.

The precedential effect of an appeal court's decision in England and Wales is determined by the doctrine of precedent. When the High Court hears appeals from the subordinate courts, eg, the County Courts, it is generally bound both by the decisions of the Court of Appeal and Supreme Court as well as by its own prior decisions.

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Similarly, the Court of Appeal is bound by the decisions of the Supreme Court and its own prior decisions. The Supreme Court, by contrast, can overrule its own decisions.

28 Will the appellate courts in your country consider submissions from non-parties?

There are various ways in which non-parties can play a role in court proceedings in England and Wales. Non-parties who have a legitimate interest in the issues in a case might either seek to intervene at their own initiative or be invited to intervene either by the court or by one or more of the parties to a dispute. In other cases, an amicus curiae might be invited by the court to make submissions on a point of law or on behalf of an unrepresented party. Most commonly, however, third-party interventions are made in the public interest. In administrative law 'judicial review' cases (in particular) it is relatively common for non-party interveners to apply for, and be granted, permission to make submissions (whether written, oral or both) to the court both at first-instance hearings and in appeals. Charities, NGOs and government agencies are the most common non-party interveners in proceedings before the courts of England and Wales.

29 What are the ordinary forms of relief that can be rendered by an appellate court in a civil dispute?

An appellate court will ordinarily do one of three things. It might uphold the order of the lower court (though it might justify that order by different reasoning). Alternatively, it might substitute its own order for that of the lower court. This might include awarding any type of relief originally sought by the parties in the lower courts. In a commercial dispute, this is likely to include an award of damages. Finally, an appellate court might, in some circumstances, set aside the order of the lower court but remit the case back to that lower court for reconsideration.

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