

Can I appeal?

**WHEN, HOW AND WHERE TO
APPEAL**

**JOINT APIL NW & PROCEDURE GROUP MEETING
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Welcome

Preview

- **When should an appeal be considered?**
- **Reviews and re-hearings**
- **When is permission to appeal required?**
- **How is permission to appeal obtained?**
- **Routes of appeal**
- **QOCS on appeal**
- **Questions.**

Introduction

- **Time limits**
- **Who does what?**
- **Permission to appeal**
- **Approach of the court on appeal**
- **Importance of appeals.**

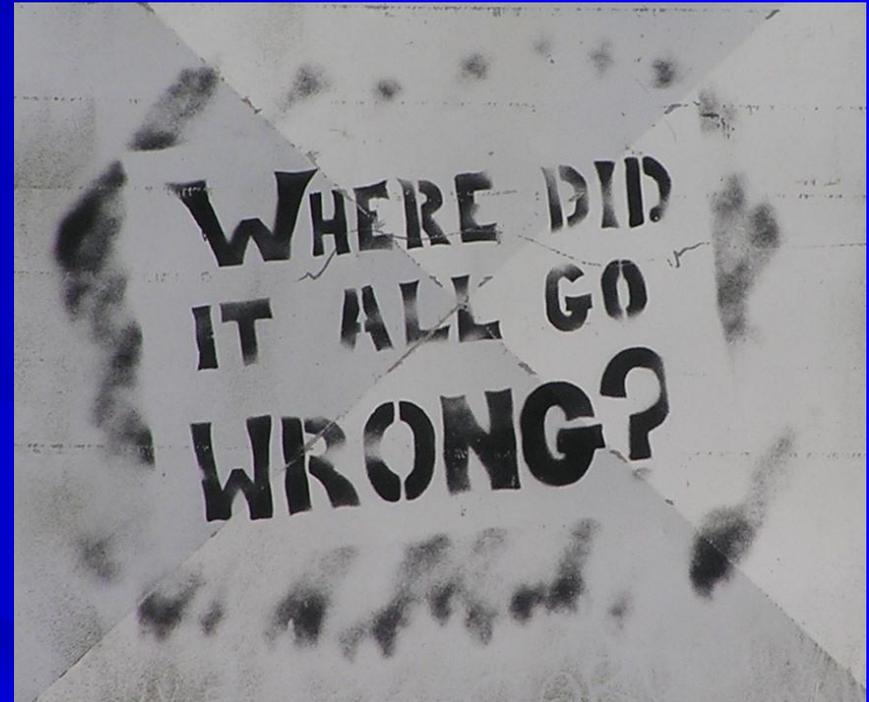
When should an appeal be considered - 5 key factors

1. Always consider merits
2. Manage time from day one
3. Permission is key
4. Know your grounds
5. Think presentation



Always consider merits

- Where did it all go wrong?
- Learning lessons
- Improving risk assessment, risk management & outcomes



Always consider merits

- **Post-Jackson economics**
- **QOCS**
- **Profit costs & disbursements v's appeal costs**



Manage time from day one

- Time limits
- Extensions
- Applying out of time (beware of Mitchell)
- Notes & transcripts
- Documents, chasing & collation



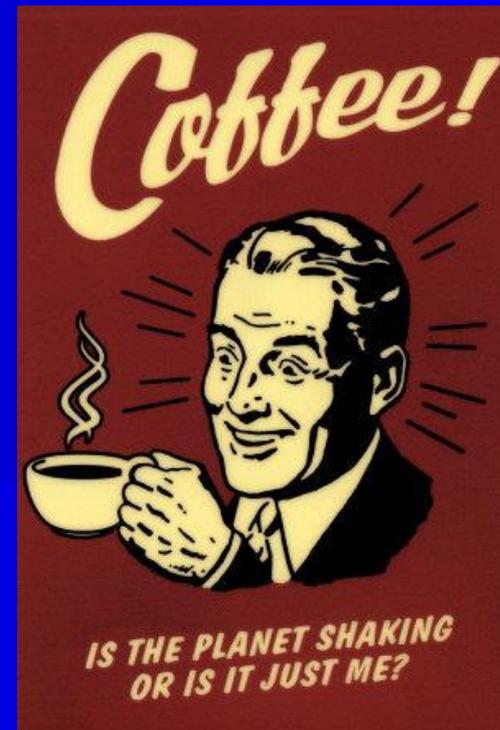
Permission is key

- **When to ask?**
- **Reconsideration**
- **Consequences of failure**
- **Consequences of success (review, mediation & Part 36)**



Know your grounds

- (1) Errors of law
- (2) Findings of fact
- (3) Exercise of discretion
- (4) Fresh evidence (or change of circumstances)
- (5) Procedural error



Grounds: Errors of law

- Simple error
- Perversity
- Absence of evidence
- Failure to give adequate reasons
- Failure to resolve material conflicts



Grounds: Errors of fact

- **NB: Presumption lower court correct**
- **Failure to take into account relevant matters (appearance)**
- **Material inaccuracy or inconsistency**



Grounds: Discretion



The judge always wore a crown when he made rulings that could only be overturned by the “abuse of discretion” standard to let everyone know... “This is it, baby.”

Grounds: Discretion

- Again, possibilities are endless
- General approach is one of reluctant interference and the “generous ambit”
- NB: rise of public law considerations



Grounds: Discretion

* Rise of the Tinker Man *



Grounds: Fresh Evidence

- **Ladd v Marshall**
- **Not reasonably obtained before, important (if not decisive) & credible (if not conclusive)**
- **Change of circumstances**



Grounds: Procedural Error

- Not to be confused with, but mindful of Mitchell (serious departure required)
- Management of evidence or trial (e.g. experts, P36 offers)



**Tutas v East London Bus & Coach Co Ltd
[2013] EWCA Civ 1380**

Judge wrong to allow late challenge to special damages item and / or to admit fresh evidence as to liability for physiotherapy charges in sum of £513.50.

Goodman v Faber Prest Steel

[2013] EWCA Civ 153

Judge erred in accepting C's evidence that he had experienced knee and back pain immediately after a road traffic accident without dealing with contradictory documentary evidence, such as medical records, and explaining why oral evidence was to be preferred.

Hussain v Hussain [2013] R.T.R. 11

Judge had been wrong to conclude that a claimant in a road traffic accident had been complicit with the defendant in making a fraudulent insurance claim.

Hussain v Hussain [2013] R.T.R. 11

The identified bases for the finding of fraudulent involvement (it made greater financial sense if the proceeds were shared and there were inconsistencies within the claimant's medical records) were not sufficiently cogent to justify an inference of fraudulent complicity in a staged collision.

Hussain v Hussain [2013] R.T.R. 11

The judge having made no findings or observations as to the manner or demeanour in which the claimant gave his evidence or as to any other weaknesses in it.

Palfrey v WM Morrisons Plc [2012] EWCA Civ 1917

Although Judge correct to find supermarket was primarily liable for injuries suffered following trip over shelf-stacking trolley, his judgment was based on incorrect findings of fact.

Palfrey v WM Morrisons Plc [2012] EWCA Civ 1917

The judge should have found that combination of trolley's design and position created a foreseeable risk of injury where the attention of customers was foreseeably diverted to shelves at a higher level.

**Palfrey v WM Morrisons Plc
[2012] EWCA Civ 1917**

**Contributory negligence adjusted
accordingly; 50% reduced to 20%.**

Dawkins v Carnival Plc (t/a P&O Cruises) [2012] 1 Lloyd's Rep. 1

When considering slip claim by passenger on cruise ship (and where the burden of proof lay), in the absence of evidence from members of staff regarding implementation the judge had not been entitled to infer from the existence of a system that the offending spillage occurred only a very short time before the accident.

Fox v Foundation Piling Ltd
[2011] C.P. Rep. 41; [2011] 6 Costs L.R. 961

Judge erred in awarding the defendant its costs following the making of a significant, but ineffective Part 36 offer (c.f. Calver v BAA, as abrogated by changes to CPR 36.14).

Fox v Foundation Piling Ltd
[2011] C.P. Rep. 41; [2011] 6 Costs L.R. 961

Whilst he had exaggerated his claim, his conduct was not sufficient to justify a departure from the general rule that the unsuccessful party should pay the costs of the action.

Fox v Foundation Piling Ltd
[2011] C.P. Rep. 41; [2011] 6 Costs L.R. 961

**CF: Medway Primary Care Trust v
Marcus [2011] 5 Costs L.R. 808; [2011]
P.I.Q.R. Q4 – D ‘successful party’ when
C recovered £2,000 as against original
claim of £525,000 –main claim failing
on causation.**

Singh v Habib [2011] C.P. Rep. 34

Although Ladd v Marshall continued to influence the way in which the courts should proceed, CPR r.52.11(2) gave the court a wide discretion as to when it would admit fresh evidence.

Singh v Habib [2011] C.P. Rep. 34

Public interest favoured the admission of fresh evidence which raised concerns of fraud arising out of a road traffic accident where damages had been claimed for personal injury.

Uren v Corporate Leisure (UK) Ltd [2011] I.C.R. D11

Although it could not be said that the judge's decision was wrong, the Court of Appeal could not be satisfied it was sound.

Uren v Corporate Leisure (UK) Ltd [2011] I.C.R. D11

A retrial was ordered where the judge had (1) not carried out a sufficient analysis of the conflicting opinions of the experts, (2) wrongly disregarded the impressions of eyewitnesses about the safety of the game and (3) not made it clear why he regarded certain statistics quoted by D1's expert as important or the reliance he placed on them.

Keefe v Isle of Man Steam Packet Co Ltd [2010] EWCA Civ 683

Where an employer had breached its duty of care to take measurements of noise levels in the Claimant's place of work, the judge had failed – as required – to make a benevolent assessment of the evidence provided by the Claimant and a correspondingly critical assessment of that tendered by the Defendant – applying *Armory v Delamirie* (1721)

SABIR v OSEI-KWABENA

[2015] EWCA Civ 1213

CA considered correct balance to be struck between causative potency & blameworthiness when apportioning liability for a collision between a motorist & a pedestrian. Motorists would generally be found to have high levels of both because of destructive potential of a car.

**O'CONNOR v PENNINE ACUTE HOSPITALS
[2015] EWCA Civ 1244**

Judge entitled to find nerve injury had been caused during dissecting process, after considering the totality of the evidence - he had not drawn inferences which were not open to him.

QUANTRELL v TWA LOGISTICS

[2016] EWCA Civ 399

Judge had not erred in his approach to the evidence surrounding an accident at work involving a fork lift – he had been entitled to reject the operator's account of how the accident had happened and to doubt his credibility as a witness.

ENGLISH HERITAGE v TAYLOR

[2016] EWCA Civ 448

CA upheld breach of OLA s.2 owing to failure to provide a sign warning visitors to one of its sites of a sheer drop which was not obvious, whilst reiterating principle that adult visitors did not require warnings of obvious risk (if exercising free choice).

**FLETCHER v CHANCERY LANE
SUPPLIES LTD
[2016] EWCA Civ 1112**

Judge had had no legitimate basis to find that an employer was vicariously liable, when its employee had not given evidence and it had been impossible to know whether task was sufficiently connected to the employee's work.

**DEAN & CHAPTER OF ROCHESTER
CATHEDRAL v DEBELL
[2016] EWCA Civ 1094**

Cathedral not liable in negligence for personal injury suffered by a pedestrian who had tripped and fallen over a small piece of concrete while walking within its precincts. The trial judge had misdirected himself and failed to correctly apply the foreseeability test.

Think Presentation

- Engage the judge at the outset & introduce the issues
- Brevity, clarity & accuracy count
- Structure & signpost
- NB: Tombstone [2009] 1 WLR 1143



Think Presentation

- **Make effective use of chronologies & summarise key points**
- **Check formalities**
- **Imagine presenting or considering papers**



Review or Re-Hearing

- **The difference**
- **What is a review (what is “wrong”)?**
- **When will there be a re-hearing?.**

How is Permission to Appeal Obtained?

- **When to apply: the court making the decision or the appellate court?**
- **P -v- P [2015] EWCA Civ 447: see paragraph 52.3.4 of the White Book commentary**
- **Time limit: 21 days**
- **Relief from sanctions.**

Documents

- **Appellant's notice form N161**
- **Grounds of appeal**
- **Order under appeal**
- **Transcript**
- **Skeleton argument**
- **Other documents**
- **Key documents required within 21 days.**

Fee

- **£140**
- **£235 in the Court of Appeal.**

Destination of Appeals



<u>Court</u>	<u>Deciding judge</u>	<u>Decision under appeal</u>	<u>Destination</u>
County	DJ	Any, other than a decision in non-insolvency proceedings brought pursuant to the Companies Acts	CJ(CC)
	CJ	A decision in non-insolvency proceedings brought pursuant to Companies Acts	HC
	CJ	Any	HC
High	Master	Any	HCJ
	HCJ	Any	CA

Will QOCS Apply?

- **PARKER v BUTLER**
- **QBD (Edis J) 26/05/2016**
- **[2016] EWHC 1251 (QB)**



Questions

Thank You