
Appealability and Review

1. Which standard of review applies to this argument?

A student at a private university sued the university in federal court for negligence after he fell from scaffolding in a university-owned theater building. At trial, after briefing from both parties, the court permitted the jury to hear testimony that there had been several previous accidents in the same building. The jury found for the student, and the university appealed. One of the university's arguments on appeal is that the testimony about the previous accidents should have been excluded as irrelevant and highly prejudicial.

- **Abuse of discretion**
- Clearly erroneous
- De novo
- Harmless error

Note:
The function of appeals in the American legal system is not to ensure that the trial court made no errors. Allowing appeals courts to review every decision made in the trial court, as part of a free-ranging search for errors, would prolong litigation and generate extraordinary costs. Therefore, federal courts have various procedural rules for what issues may be grounds for reversal. No appellate court will reverse any ruling if it finds only a harmless error. As defined by 28 U.S.C. § 2111, a harmless error or defect is one that does not affect the substantial rights of the parties.

Appellate courts use a different standard of review for pure questions of law and issues of fact. If the issue is a pure question of law, the appeals court typically reviews the issue de novo, which means no deference will be given to the trial court's ruling, and the appellate court will decide the issue from scratch. When the issue involves solely findings of fact and those facts were found by a jury, appellate courts are very reluctant to reverse. In federal court, the Re-examination Clause of the Seventh Amendment and Supreme Court case law hold federal courts to a very high standard for reversing a jury's findings. A federal appeals court will generally overturn a jury verdict because of what it perceives as a fact-finding error only if there is a complete absence of proof on some material issue.

Appellate courts apply a "clearly erroneous" standard when reviewing the fact-finding of a judge in a bench trial. Outlined in Federal Rule of Civil Procedure (FRCP) 52(a)(6), federal courts must not set aside findings of fact made from the bench unless those findings were clearly erroneous.

When reviewing discretionary rulings by the trial court, such as evidentiary or discovery rulings, appellate courts will use the abuse of discretion standard of review. The reviewing appellate court will be highly deferential to the trial court judge's factfinding ability.

A is correct. As explained above, discretionary rulings by the court, such as evidentiary rulings, are reviewed under the abuse of discretion standard of review, which is highly deferential. Here, a determination as to whether evidence is irrelevant or highly prejudicial and should be excluded is within the trial court's discretion because it requires an understanding of the entire case and the factual context in which the evidence is being offered. Therefore, it is reviewed on appeal using an abuse of discretion standard.

B is incorrect. An appellate court applies the clearly erroneous standard when reviewing findings of fact made by the trial court in a bench trial. This question specifically mentions a jury in the facts, so the case at the trial court level was not a bench trial. Therefore, the standard does not apply to judicial rulings on the admissibility of evidence in a jury trial.

C is incorrect. An appellate court applies the de novo standard to trial court rulings on pure issues of law. Because an evidentiary ruling involves the application of legal standards to facts—i.e., relevance and prejudice as related to the facts in the case—it is not a ruling on a pure issue of law and therefore not subject to de novo review.

D is incorrect. An appellate court applies the harmless error standard when it determines that a trial court's erroneous admission of evidence did not affect any party's substantial rights. It is a conclusion an appellate court reaches after reviewing and determining the impact of an erroneous evidentiary ruling, not the standard of review that the court applies to determine whether it was erroneous to admit the evidence in the first instance.

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2. Should the appellate court hear the merits of the surgeon's appeal?

The surgeon has appealed the denial of the motion. A patient domiciled in State A sued a surgeon domiciled in State B in a federal court in State A, alleging claims for malpractice. The surgeon moved to dismiss the action for lack of personal jurisdiction. The court denied the motion and set discovery cutoff and trial dates.

- **No, because the appellate court lacks jurisdiction over the appeal**
- No, because the district court's decision on jurisdiction is final
- Yes, because a contrary appellate decision could terminate the action
- Yes, because the surgeon's personal- jurisdiction challenge raises a constitutional question

Note:
In both federal and state litigation, the party who loses at trial generally has the right to appeal the adverse judgment. Generally, only final orders are reviewable on appeal. Under Federal Rules of Appellate Procedure (FRAP) 3 and 4, an appeal may be taken by filing a notice of appeal with the district court within 30 days from the entry of the judgment. A final order is one that disposes of the whole case on its merits, by rendering final judgment not only as to all the parties but as to all causes of action involved.

In federal litigation, Federal Rule of Civil Procedure (FRCP) 54(b) may allow for an appeal when there is a final judgment on one claim but other claims in the same suit remain. The standard for this partial judgment rule is that the "court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." If the court does not expressly determine that there is no just reason for delay, there can be no appeal. Fed. R. Civ. P. 54(b)

A is correct. Appellate courts are courts of appellate jurisdiction, and therefore have jurisdiction only over appeals. Only final orders may be appealed to the appellate courts. Certain involuntary dismissals, such as those based on lack of jurisdiction, improper venue, or failure to join an indispensable party, do not operate as an adjudication on the merits. In this case, the defendant filed a motion to dismiss for lack of personal jurisdiction, which the court denied. The motion is not appealable because it is not a final order, and therefore, the appellate court does not have jurisdiction.

B is incorrect. A final order is one that disposes of the whole case on its merits by rendering final judgment, not only as to all the parties but also as to all causes of action involved. The district court's decision on the motion to dismiss was not a final or partial final order. The motion did not dispose of any claims or defenses on the merits.

C is incorrect. The denial of a motion to dismiss for lack of personal jurisdiction is not a final order, and so, is not appealable. However, if the district court had found there was no personal jurisdiction, the action would have terminated.

D is incorrect. As explained above, the denial of a motion to dismiss for lack of personal jurisdiction is not a final order and so is not appealable.

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3. Is the appellate court likely to overturn the findings?

A construction contractor brought a breach of contract claim in federal court against a homeowner who had hired the contractor to build an apartment over an existing garage. The action turned on the scope of the work covered by the contract. The contractor and the homeowner were the only witnesses at the bench trial, and they strongly disagreed about the scope of the work. At the end of the trial, the judge stated findings of fact on the record but never issued a written opinion. Neither party objected to the findings. The judge found in favor of the homeowner, and the contractor appealed.

- **No, because the appellate court must give due regard to the trial judge's opportunity to determine witness credibility**
- No, because the contractor failed to object to the findings when the judge stated them in open court
- Yes, because a judge must set forth findings of fact in a written opinion or memorandum of decision
- Yes, because there were disputed issues of fact at trial

Note:
The function of appeals in the American legal system is not to ensure that the trial court made no errors. Allowing appeals courts to review every part of the trial court's case, as part of a free-ranging search for errors, would prolong litigation and generate extraordinary costs. Therefore, federal courts have various procedural rules for what issues may be grounds for reversal. No appellate court will reverse any ruling if it finds only a harmless error. As defined by 28 U.S.C. § 2111, a harmless error or defect is one that does not affect the substantial rights of the parties.

Appellate courts use a different standard of review for pure questions of law and issues of fact. If the issue is a pure question of law, the appeals court typically reviews the issue de novo, which means no deference will be given to the trial court's ruling, and the appellate court will decide the issue from scratch. When the issue involves solely findings of fact and those facts were found by a jury, appellate courts are very reluctant to reverse. In federal court, the Re-examination Clause of the Seventh Amendment and Supreme Court case law hold federal courts to a very high standard for reversing a jury's findings. A federal appeals court will generally overturn a jury verdict because of what it perceives as a fact-finding error only if there is a complete absence of proof on some material issue.

Appellate courts apply a "clearly erroneous" standard when reviewing the fact-finding of a judge in a bench trial. Outlined in Federal Rule of Civil Procedure (FRCP) 52(a)(6), federal courts must not set aside findings of fact made from the bench unless those findings were clearly erroneous.

When reviewing discretionary rulings by the trial court, such as evidentiary or discovery rulings, appellate courts will use the abuse of discretion standard of review. The reviewing appellate court will be highly deferential to the trial court judge's fact-finding ability.

FRCP 52(a)(1) states that "findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court."

A is correct. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility. In this case, the judge made findings of fact based on the witnesses' testimony. The appellate court will not overturn these findings unless clearly erroneous, a very high standard to meet.

B is incorrect. The contractor may still appeal the judge's findings. However, the appellate court must give deference to the trial judge's findings.

C is incorrect. FRCP 52(a)(1) states that a judgment may be stated on the record or in an opinion or memorandum. It is not required that a judge always produce a written opinion.

D is incorrect. When a judge sits without a jury, the judge acts as both the finder of fact and law. The judge may decide disputed issues of fact, which are given great deference in the appellate court.

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4. What advice should the attorney give?

The factory has asked its attorney's advice as to whether it may appeal the court's denial of summary judgment in order to avoid an expensive trial. A man who owned riverfront property sued an upstream factory in federal court for polluting the river, seeking injunctive relief and $250,000 in damages. The factory moved for summary judgment on the ground of res judicata (claim preclusion), arguing that the man had sued on and lost an identical claim one year before. The court denied the motion.

- The factory may appeal if the appellate court finds that the case involves a controlling question of law upon which the courts are divided
- The factory may appeal if the trial court certifies that there is no just reason for delay
- **The factory may not appeal until after a trial on the merits or other disposition resulting in a final judgment**
- The factory may not appeal, because the denial of summary judgment is a collateral order

Note:
In both federal and state litigation, the party who loses at trial generally has the right to appeal the adverse judgment. Generally, only final orders are reviewable on appeal. A final order is one that disposes of the whole case on its merits, by rendering final judgment not only as to all the parties but as to all causes of action involved.

An interlocutory appeal is discretionary and may be available when: (i) the trial judge certifies that the interlocutory order involves a controlling question of law, as to which there is substantial ground for difference of opinion, and immediate appeal from the order may materially advance the ultimate termination of the litigation; and (ii) the court of appeals agrees to allow the appeal.

In federal litigation, Federal Rule of Civil Procedure (FRCP) 54(b) may allow for an appeal when there is a final judgment on one claim but other claims in the same suit remain. The standard for this partial judgment rule is that the "court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." If the court does not expressly determine that there is no just reason for delay, there can be no appeal. Fed. R. Civ. P. 54(b)

If the claim or issue is separable from and collateral to the main suit and is too important to require deferring appellate review, it may be classified as a judgment in a separate ("collateral") proceeding and thus be appealable.

C is correct. Once a final judgment is entered, then the factory may appeal. The denial of the motion for summary judgment is not appealable until the trial has ended and/or a final judgment has been entered. As discussed below, no other exception applies to allow the denial of the summary judgment to be heard on appeal.

A is incorrect. This answer choice states the standard for interlocutory appeals, which allow review without a final order in specific circumstances. In this case, the motion for summary judgment does not contain a controlling question of law on which courts are divided. An appeal from the denial of summary judgment would not meet the requirements for interlocutory review.

B is incorrect. This answer choice states the standard for the appealability of partial judgments. Although in some cases a party may appeal a partial judgment, that is only when the court explicitly finds that there is no just reason for delay. This is inapplicable here, where no such finding has been made, nor is there any reason to believe that a delay would be unjust.

D is incorrect. This answer is only partially correct. Although the factory may not appeal, it is not because the denial of summary judgment satisfies the standard for a collateral order appeal. A collateral order must be a claim or issue that is separable from the main suit. Collateral issues may be appealed if too important to require deferring appellate review. The denial of summary judgment here is not collateral and cannot be appealed.

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5. Which of the following principles governs the appellate court's review?

The defendant wants to appeal. After a federal trial in which the jury awarded the plaintiff $100,000 in compensatory damages and $7 million in punitive damages, the defendant moved for a new trial on the ground that the verdict was not supported by the evidence and also that the punitive damages award was unconstitutionally excessive. The trial court, after reviewing the evidence, denied the motion on the condition that the plaintiff accept a reduced punitive damages award of $1 million, which the plaintiff did.

- The trial court cannot weigh the evidence in ruling on a motion for a new trial
- The trial court must give the plaintiff the minimum amount that the jury could have awarded under the evidence
- **The trial court's decision to reduce the punitive damages award is reviewed de novo**
- The trial court's reduction of the punitive damages award improperly invaded the province of the jury

Note:
C is correct. An award of punitive damages is subject to the Eighth and Fourteenth Amendments to the Constitution. The state is prohibited from imposing grossly excessive punishments. When a trial court reduces a punitive damages award on the ground that it is unconstitutionally excessive, the appellate court reviews that determination de novo. See Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001).

A is incorrect. Federal Rule of Civil Procedure (FRCP) 59 allows a party to move for a new trial on the ground that the verdict is against the weight of the evidence. Accordingly, the trial court may weigh the evidence and the credibility of witnesses when considering a motion for a new trial.

B is incorrect. When a new trial motion is denied on the condition that the plaintiff accepts a lower amount of damages than the jury awarded, the trial court has discretion to award any amount supported by the evidence.

D is incorrect. Remittitur is constitutional and does not interfere with the province of the jury, so long as the trial court gives the plaintiff the option of proceeding with a new trial. See Dimick v. Schiedt, 293 U.S. 474, 486–487 (1935). Here, the trial court conditioned the denial of the defendant's motion for a new trial on the plaintiff's acceptance of a lower damages award, thereby giving the plaintiff the option of proceeding with a new trial.
