

Appellate Practice in Texas: An Overview



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Class 5

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The 20,000-Foot-View of Lawyering Skills

(adapted from Professor Lori Twomey)

Preparing for Litigation or a Deal

- Establish the Attorney–Client Relationship.

- ✓ Learn the **facts**—interviews, depositions, discovery, document review.
- ✓ Identify the **issues**.
- ✓ **Research** the law applicable to each legal issue.
- ✓ **Analyze** how the applicable law fits with your client’s facts.
- ✓ **Memorialize** your analysis in a written document.
- ✓ Keep in constant **communication** with your client.

← **Legal
Drafting**

← **Predictive
(Objective)
Writing**

The Litigator

- ✓ Developing your theory of the case and accompanying strategy
- Pleadings—Petition/Complaint, Answer, Counterclaim
- Discovery
- ✓ Motions
- ✓ Communicating with opposing counsel
- Mediation/Negotiation
- ✓ Trial (partial: MSJ and motions)
- **Appeal**

The Deal Lawyer

- ✓ Negotiating the deal or specific terms
- ✓ Adding value to the deal—counseling client, conducting due diligence, anticipating and preventing problems, reducing transaction costs
- ✓ Translating the deal into a written contract
- ✓ Finding and using forms
- ✓ Reviewing/commenting on a contract written by another party
- Communicating with other parties

← **Legal
Drafting
and
Persuasive
Writing**

**Persuasive
Writing** →

In a Nutshell . . .



Today You Will Learn the Basics
of How an Appeal Works in the
State of Texas.



Appeal: Key Terms

- **“Appellant”**
 - Files appeal
 - Is unhappy with at least 1 decision of the trial court
 - Seeks to change trial judgment (reverse, modify, vacate)
- **“Appellee”**
 - Defends against appeal
 - Seeks to affirm trial judgment (at least in part) or to get appeal dismissed (if no jurisdiction)
- **“Record”**
 - Written record of what transpired in the court below.
 - Components:
 - **Clerk’s record**—always filed
 - **Reporter’s record**—sometimes filed

Appeal: What and Who

■ What may be appealed?

- Usual: a final judgment disposing of all of the issues and parties in the case.
- Less usual: an interlocutory order, but *only* if statute or rule allows it.

■ Who appeals?

- Any party who wishes to change the judgment or order being appealed.

Appeal: How Perfected—Civil (TRAP 25.1)

■ Method:

- File a **notice of appeal (“NOA”)** with trial-court clerk and
- pay **docketing fee** (limited exceptions).

■ Example:

NOTICE OF APPEAL

Notice is hereby given that the defendant, RUSTY SIMMONS, appeals to the First or Fourteenth Court of Appeals in Houston, Texas, from the 55th Judicial District Court’s final judgment signed on January 25, 2016.

Appeal: Briefs (TRAPs 38 and 9)

- **Timeline:** TRAP 38
- **Contents:** TRAP 38 (+ TRAP 9)
- **Practice pointer:** Check court of appeals' ("COA") **local rules!**





Appeal: Some Differences from Trial

■ Structure

- “Paper” record
- No evidence or witnesses
- Counsel “speaks” through briefs (& motions) and oral argument
- Shorter oral argument (30 min. to 1 hr., typically)
- Decision by panel (or all) justices

■ Timeline

■ Substance

- No fact-finding
- Record = “set”
- Review: not a “do over” of trial (next slides)

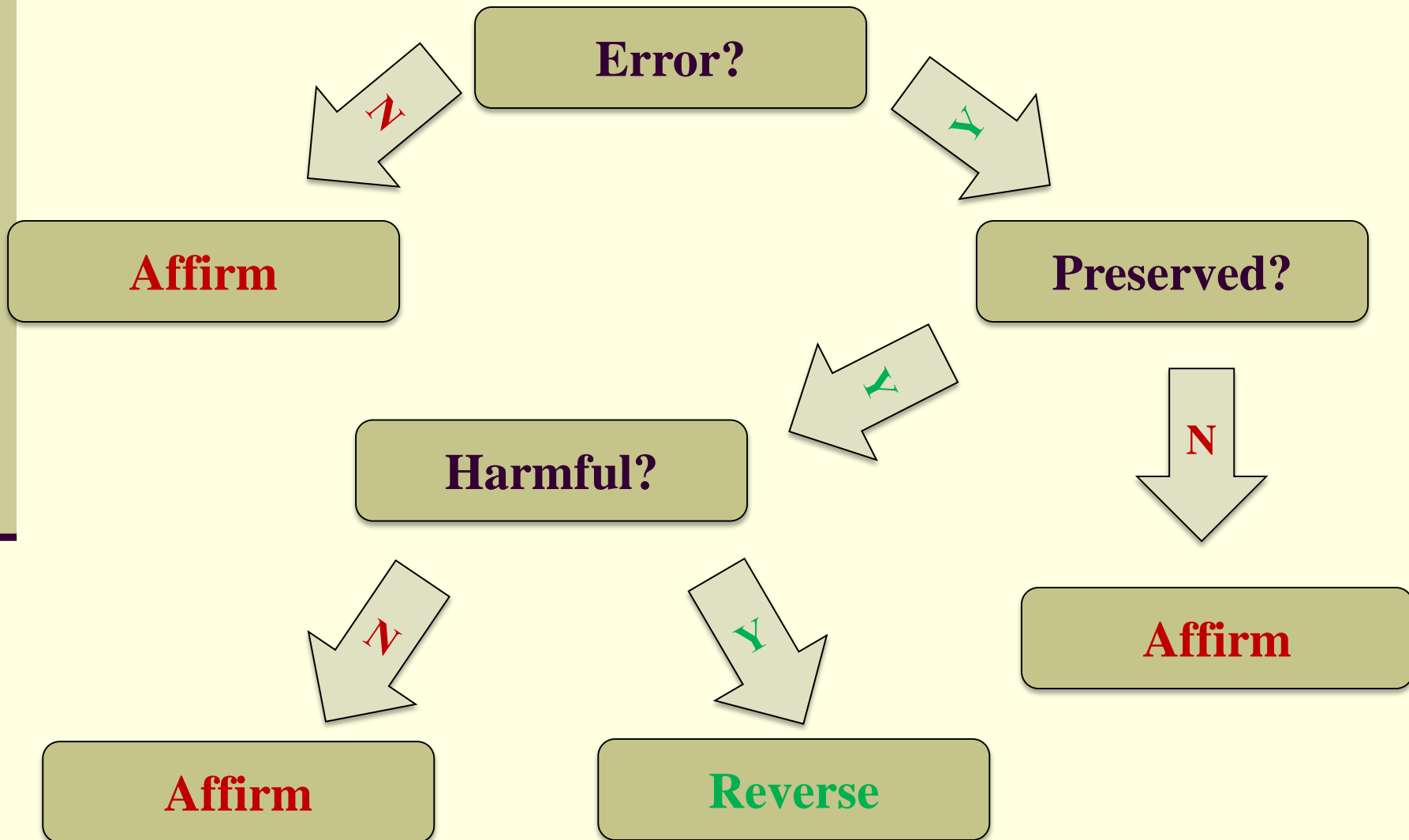


Appeal: What Appellant Generally Needs to Win on Appeal

- Appellant generally needs 3 things:
 1. Error
 2. Preservation of complaint about error
 3. Harm resulting from error

See next slide for diagram. →

Appeal: What Appellant Generally Needs to Win on Appeal



Appeal: Where to Find the Texas Rules of Appellate Procedure (TRAPs)

■ Books

■ Annotated (e.g.):

- West's Vernon's Code Annotated
- O'Connor's Civil Appeals

■ Unannotated: softback volumes of TX civil rules

■ On line

■ WestlawNext, Lexis Advance, Bloomberg Law (annotated; paid)

■ Texas Judiciary Online:

http://www.txcourts.gov/media/514722/trap_2014_01_01.pdf (unannotated; free)

Oral Arguments at the Local Courts of Appeals

- First Court of Appeals:
 - <http://www.search.txcourts.gov/Submission.aspx?coa=coa01&s=c>
- Fourteenth Court of Appeals:
 - <http://www.search.txcourts.gov/submission.aspx?coa=coa14>
- 301 Fannin St. (historic 1910 Harris County Courthouse):
<http://www.thc.state.tx.us/preserve/projects-and-programs/texas-historic-courthouse-preservation/restored-courthouses/harris>
- Arguments are open to the public.