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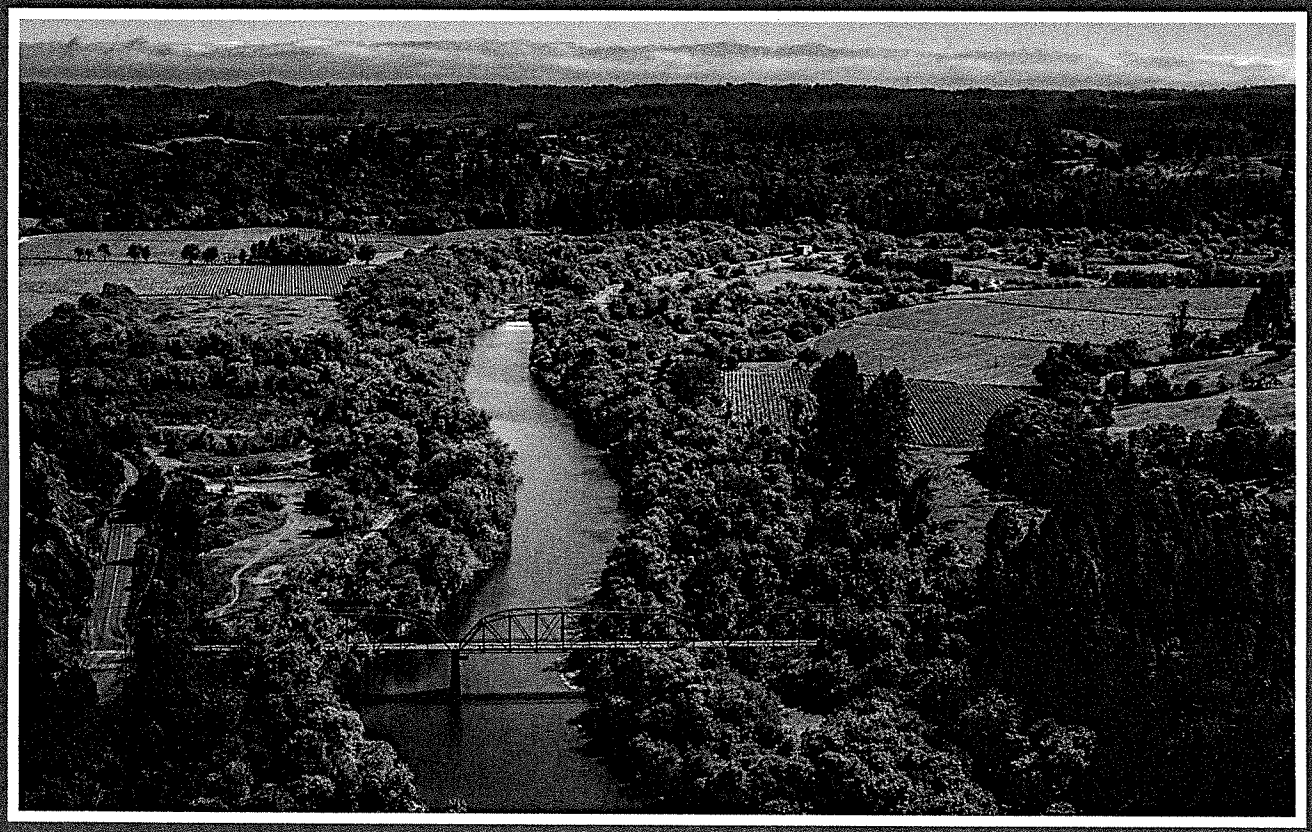

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# The Trial Court Is (Almost) Always Right: Burdens, Inferences and Presumptions on Appeal

Many attorneys and parties make the common mistake of believing that the appellate court is another opportunity to argue their case. It is often thought that a second set of judicial eyes would see what to them are obvious errors. But, to use a baseball analogy, when you step up to the plate in the appellate court, you have 2 strikes, 3 balls, 2 outs and an umpire whose job it is to call the next pitch a strike unless you hit it out of the park.

Burdens, inferences and presumptions in the appellate court can create a trap for the unwary trial lawyer considering whether to appeal an adverse decision or prepare a petition for writ review.

The scope of appellate review is relatively narrow, and limited by specialized jurisdictional principles unique to appellate litigation (*Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62, 69.) The appellate court's jurisdiction is generally governed by Code of Civil Procedure section 902 and appealable decisions and orders are limited by Code of Civil Procedure section 904.1. The appellate court is confined to deciding issues of law, not reviewing issues of fact. The appellate court will not review factual questions, nor substitute its judgment for the judgment of the trier of fact in the trial court (*Brown v. Oxtoby* (1941) 45 Cal.App.2d 702, 705.)

The usual burdens of proof on issues that apply in the trial court do not apply in the appellate court. For instance, in the trial court, the party asserting a proposition or bringing a claim has the burden of proof. In the appellate court, that burden of proof does not apply. Instead, the appellant has the burden to prove nearly everything in the appellate court, regardless of who had the burden of proof in the trial court.

The good news is, the appellate court will review errors of law. The bad news is, your client must jump over several hurdles to affirmatively prove those errors of law.

The trial court's decision is presumed correct. The appellate court will indulge in all intendments and presumptions to uphold the trial court's decision (*Conservatorship of O.B.* (2019) 32 Cal.App.5th 626, 633.) Countless appellate opinions begin by intoning the mantra: "A judgment appealed from is presumed correct and all intendments and presumptions are indulged in favor of its correctness." It's never good news for the appellant when the Court's opinion begins this way.

Even if you can show an error of law by the trial court, you're not yet home free, because the appellate court will uphold the trial court on *any* lawful basis, whether or not the trial court stated it as a ground for its decision (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 880, fn. 10.) The appellate court reviews the ruling, not the trial court's reasons for its ruling. The reason for this rule is that there can be no prejudice from an error in logic (*Fierro v. Landry's Restaurant* (2019) 32 Cal.App.5th 276 286.) And the appellate court is only interested in prejudicial errors, not harmless errors (*Tint v. Sanborn* (1989) 211 Cal.App.3d 1225, 1235.)

When the evidence on an issue is conflicting, the appellate court will accept the evidence which is most favorable to the judgment (*Bancroft-Whitney Co. v. Glen* (1966) 64 Cal.2d 327, 344.) When either one of two inferences may fairly be deduced from evidence, the appellate court must accept the inference which will be favorable to judgment. (*Id.* at 348.)

The appellate court will review an error only when a record has been made in the trial court. If a record is silent or incomplete on an issue, the appellate court will construe it against the appellant (*Fernandes v.Singh* (2017) 16 Cal.App. 5th 932, 935, fn.3.) I cannot count the number of cases I have reviewed for trial counsel who are convinced the trial court erred, but the issue was never raised in briefs or at oral argument. In the trial court, at least make an offer of proof. No record, no appeal.

When representing an appellant on appeal, not only must you show that the trial court erred and that your client was prejudiced as a result of that error, you must, as a practical matter, convince the appellate judges that the trial court cannot be upheld on *any* lawful ground, even if the trial court didn't consider it. These burdens, inferences and presumptions render most any appeal a Sisyphean task. Keep them in mind when considering the likelihood of success on appeal.

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