When you hear the word "court," what comes to mind? Perhaps you see a judge in a black robe, jury members listening carefully to the testimony of a witness, and lawyers shouting, "I object!" These actions are typically seen in trial court (lower level court). Unlike trial courts, the Arkansas Supreme Court (highest court in the state), and the Arkansas Court of Appeals are appellate courts. Generally, cases heard at the Supreme Court and Court of Appeals levels have already been heard and decided at the trial-level court. If one or more of the parties are unhappy with the trial court's decision, they can appeal their case to the Arkansas Court of Appeals or the Arkansas Supreme Court.

REALITY CHECK: this is not TV

The Court of Appeals is the first stop to hear appeals from Arkansas trial courts across the entire state and will generally be the last stop for most cases. The Supreme Court generally hears criminal cases in which the punishment would be the death penalty or life imprisonment, cases involving interpreting the Arkansas Constitution, and cases involving orders directed at state, county, or city government agencies. The stakes are high when a case reaches the Supreme Court. In a criminal case, the decision could literally mean the difference between life and death. In a civil case, the decision may involve millions of dollars. The Arkansas Supreme Court has final say on matters of Arkansas law—just like the Supreme Court of the United States has final say on matters of federal law.

Q: WHAT INFORMATION DO JUDGES AND JUSTICES CONSIDER WHEN HEARING A CASE?

A: Judges in the Court of Appeals and Supreme Court justices will review the facts of the case as determined by the trial court; however, facts cannot be appealed. Whatever the jury (in a jury trial) or the judge (in a bench trial) decided the facts were (what they think happened based on the evidence presented) is usually not questioned by the appellate courts. One of the main reasons for this is because the judge, or the jury, depending on the type of trial, was in a better position to perceive the credibility, attitudes, emotions, or other characteristics of the witnesses giving testimony in trial.

Except in extraordinary circumstances, appellate courts are restricted to examining whether the trial court made the correct legal determinations, rather than hearing direct evidence and determining what the facts of the case were. For instance, a man is tried for burglary and the jury finds that he is guilty. On appeal, he argues that the judge improperly excluded the testimony of a witness who testified to the defendant's alibi. The appellate court could determine that this testimony was improperly excluded, and overturn his conviction. On the other hand, if the testimony was heard by the jury, and the jury still convicted the man; he may not argue that the jury simply made the wrong determination. The jury's determination of the facts is final.

As demonstrated in the example above, the admission of evidence can be appealed. When a lawyer objects and is either sustained or overruled by the judge, he or she has preserved this objection for appeal. An attorney must object and have his or her objection placed in the record in order to be able to bring this point up in appeal; otherwise, it is lost.

In the United States, we have two primary sources of law: laws passed by the legislature (statutes); and common law. Common law is often referred to as precedent and is used when a similar question has previously come before the Court of Appeals or Arkansas Supreme Court. The precedent from the earlier cases is very influential and most times binding on the Court. The American legal system likes to "let the decision stand," sometimes called by its Latin name, *stare decisis*.

What do lawyers and judges actually do?

Most people think that the majority of the work a lawyer does is arguing cases and judges simply listen. This is not true. The majority of a lawyer's and judges' work is writing and reading. At the trial court level, both sides submit briefs (persuasive papers telling the judge why their client is right and why the law is on their client's side). Everything said in court, unless specifically excluded, is recorded and put into a transcript. Judges write opinions explaining how and why they decided a case a certain way. If a case is appealed, both lawyers again write briefs for the appellate court. The Court of Appeals judges and justices of the Arkansas Supreme Court will have read all of these documents before oral arguments—the trial court briefs, the transcript, the opinion, and the appellate briefs, along with anything else the lawyers think the judges or justices need to see. Sometimes non-parties in the case, such as individuals or organizations, file briefs arguing why they believe one side is right and the consequences of deciding one way or the other. These are called *amicus curiae* briefs, which is Latin for "friend of the court."

oral argument PROCEDURES

Oral arguments give both parties the opportunity to present their case and give the judges and justices an opportunity to ask questions. When a case is heard on an appellate level, the names of the parties change. In the trial court there are plaintiffs (the one who filed the lawsuit) and defendants in a civil case or prosecution and defendant in a criminal case. On the appellate level, the side asking the court to hear the appeal is either called the petitioner or the appellant. The side that won below and did not want the appeal is called the respondent or appellee. These terms are interchangeable and sometimes judges and justices, confusingly, switch back and forth between them.

When lawyers argue before the Court of Appeals or Supreme Court, they do not call witnesses or present evidence. Instead, they explain why they think the law is on their client's side and why they think the previous court erred. Judges and justices frequently interrupt the lawyers to ask questions about particular aspects of the lawyer's argument where the judge or justice may be struggling. Lawyers arguing in front of the appellate court must know their case, inside and out, to be able to answer the questions.

Each side generally has 20 minutes to present their argument. The side that is appealing the earlier decision, the appellant or petitioner, will go first. They can reserve time to respond to arguments the other side makes. If they do not ask the Justices to reserve their time, they do not get to answer the other side's arguments.

THE FINAL DECISION

When the Court of Appeals or Supreme Court "affirms" a lower court, it is agreeing with the lower court. If the appeals court finds that the lower court did not correctly apply the law to the facts of the case, or if the appeals court responds to a question of law that has not yet been settled, the court may "vacate" or "reverse" the trial court's decision. Often, an appeals court will "reverse and remand" a decision. In both cases, the appeals court is sending the case back to the trial court to be dealt with according to the explanation of the law laid out in the appeals court's written opinion.

If an appeals court disagrees with the trial court's entire decision, it will "vacate" or "reverse in full." A case in which the appeals court only disagrees with part of the trial court's verdict, however, will be "reversed in part" or "remanded with instructions." These cases are sent back for the trial court to fix or re-hear only a specific issue or issues involved with the case, instead of hearing the entire case again or dismissing the entire case.

A case that is reversed and remanded "in part" or "with instructions" usually contains an error of reasoning in only one part of the case. Since the appeals court finds the rest of the case sound, it requires the trial court to look twice only at the parts of the case that do not fit the requirements of the law, instead of forcing the court and the parties to re-try the entire case.

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