

***Student Instructions for Appeals – Civil**

Typical Civil Appeals

In the United States, when one side loses or is unhappy with the outcome of their case, they have the right to appeal.¹ Appeals at both the state and federal level are heard by three-judge courts. For example, in *Hazelwood School District v. Kuhlmeier* (a school newspaper First Amendment case where the principal blocked publication of Kuhlmeier’s article), the trial court found in favor of the school district. Kuhlmeier appealed, arguing that even though the article in question was to appear in a school newspaper (as opposed to a regular one), the First Amendment still applied. The case was heard by one of the three-judge courts in the Eighth Circuit, sitting in Missouri. The Eighth Circuit found in favor of Ms. Kuhlmeier and reversed the trial court’s decision.

What You’ll Be Doing

You and your classmates will write and/or argue constitutional law, using actual court cases (mostly U. S. Supreme Court) on issues like abortion, gay rights, the college admission process, and religion in schools. You’ll be either an appellate judge or a lawyer.

You’ll receive:

- These instructions on how to do an appeal
- A Case Packet (information needed to write your briefs and opinions)
- A set of sample forms to use as a formatting guide
- Some blank and/or PDF forms to use when typing your brief

LAWYER PREPARATION AND ROLE

Begin by reading your Case Packet to learn what happened in the lower court and what issues and questions you’ll be dealing with. Now begin to frame your arguments and counter arguments.

As a lawyer, you’ll write a brief explaining why your side should win. The lawyer representing the appellant (the one who lost in the lower court) writes the Appellate Brief, which explains what went wrong in the lower court and why the appellate court should reverse the lower court’s decision. The winner writes a Reply Brief, which explains why the lower court’s decision should be upheld (kept in place). Then you’ll argue your case (oral argument) before a three-judge court. Be ready to respond to the judges’ questions, and to counter your opponents’ arguments.

THE JUDGE’S JOB

You’ll sit in one of the 12 circuits in the U. S. and hear cases. You’ll prepare for oral argument by reading the Case Packets and the briefs written by your classmates. You’ll write out some tough, probing questions to ask the attorneys appearing before you. After the oral arguments, the three of you will discuss the cases and see where you stand. When two or three judges agree on the outcome (who won), one of those judges volunteers to write the opinion. A judge who disagrees with the outcome can write a “dissenting” opinion.

1 In a criminal case, only the defendant can appeal a conviction. The state cannot appeal an acquittal, as this would violate the Eighth Amendment’s “double jeopardy” provision.

2 A “holding” is the court making law.

* *Excerpted and abbreviated*