

Chapter 3

Notices and Grounds of Appeal

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An Occasion for Advocacy

Notices of appeal are too often regarded as no more than a formal necessity, written and submitted frequently in haste, for the narrow purpose of preserving rights of appeal, before time limits expire. That approach squanders the opportunity, long since recognised by good advocates, of having the first word. The notice of appeal from the perspective of the advocate, as opposed to the pleader, represents far more than this.

A notice of appeal presents a significant forensic advantage, both as the first vehicle to advance an effective argument and as a platform for effective advocacy.

The notice of appeal is practically always the first document the appeal judge or judges will read and it is almost certainly the last they also consider, even if only to cross-check that all matters raised have been considered and dealt with in the judgment. In that sense the notice is a first and last port of call. It necessarily holds a captured audience. It therefore presents an important opportunity, one not to be squandered.

Appeals Considered in Legal Context

An appeal by definition, leads to an action in a court of appeal. Here the parties find themselves in well-defined legal positions. The appellant is the losing party, no longer an applicant, respondent, plaintiff or defendant, or an accused, but a party against whom a judgment or verdict is duly entered and capable of execution, unless and until set aside by a court of competent jurisdiction: *Cameron v Cole*;¹ *Re Macks*; *Ex*

¹ (1944) 68 CLR 571.

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