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LEGAL BYTE

Greetings to my valued connections!

Another byte of law for your interest: Appellate Law: What if you don't raise an argument in the trial court, are you barred from raising it on appeal?

Appeals are to correct errors of the trial court. They are not to re-litigate a case if you don't like the verdict. So, what if you claim that the trial judge made an error but you or your lawyer does not raise the argument during the trial? Are you barred on appeal?

In California the answer is: it depends. The general rule is that if one does not raise the argument in the trial court the party is barred from raising it on appeal. *Jenner v. City Council* (1958) 164 CA2d 490, 498, 331 P.2d 176 (except for public policy issues). But ..

If the parties fully brief the issue, even if not raised in the lower court, the appellate court can consider the issue. *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1520-21, 253 Cal.Rptr. 321.

Second, the court distinguishes between presenting new arguments vs. new inferences from the evidence developed in the trial court. So, if a party presents new inferences from the evidence the appellate court will consider the arguments. *Maxwell v. Colburn* (1980) 105 CA3d 180, 185, 163 CR2d 912, 914.

Third, there is a case which states "on appeal the responding parties are free to advance legal arguments that they did not raise in the trial court and on which the trial court did not rely." *L.K. v. Golightly* (2011) 199 Cal.App.4th 641, 644. This statement appears to be opposed to the rules set forth above. For this proposition the Golightly court cited to *Little v. Los Angeles County Assessment Appeals Bds.* (2007) 155 Cal.App.4th 915, 925, fn. 6 in which the court stated: "Respondents are free to urge affirmance of the judgment on grounds other than those cited by the trial court." The first does not appear to support the second. Do you agree?

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Appeals; civil trials; family law; assist with trial preparation: 2nd chair, motions, research, witnesses, all aspects of trials; local counsel (California); referral fees paid.

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