Study J-1060 December 7, 1993

Memorandum 94-5

**Trial Court Unification: Appellate Jurisdiction**

The Commission's tentative recommendation on trial court unification would revise California Constitution Article VI, Section 11 on appellate jurisdiction to read:

> SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception , and except in causes within the appellate jurisdiction of the superior courts, courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute.
>
> ~~Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.~~
>
> An appellate division is created within each superior court. The appellate division has appellate jurisdiction in criminal causes other than felonies, and in civil causes prescribed by statute or by rule adopted by the Judicial Council not inconsistent with statute. Judges shall be assigned to the appellate division by the Chief Justice for a specified term pursuant to rules not inconsistent with statute adopted by the Judicial Council to encourage the independence of the appellate division.
>
> The Legislature may permit appellate courts and appellate divisions to take evidence and make findings of fact when jury trial is waived or not a matter of right.

The staff has several problems with the proposed language, each of which is discussed in this memorandum:

(1) The last clause of the first paragraph states that courts of appeal have appellate jurisdiction when superior courts have original jurisdiction "and in other causes prescribed by statute." The quoted language appears to have no meaning in a unified trial court.

(2) The reference to "appellate divisions" added to the last paragraph appears unnecessary and undesirable.

(3) The section confers appellate jurisdiction for every cause—appellate jurisdiction resides either in the court of appeal or in the appellate division of the

superior court. This destroys the present constitutional authority of the Legislature to withhold appellate jurisdiction for causes within the original jurisdiction of the municipal and justice courts.

### OTHER CAUSES PRESCRIBED BY STATUTE

Existing law gives appellate jurisdiction to the courts of appeal in all cases within the original jurisdiction of the superior courts "and in other causes prescribed by statute." This language has some meaning now because the superior courts do not have original jurisdiction in all causes. The language allows the Legislature to provide that some municipal or justice court cases may be appealed to the court of appeal rather than to the superior court. This is a power the Legislature has exercised. See, e.g., Code Civ. Proc. § 911.

In a unified court in which the superior court has original jurisdiction of all causes, it is meaningless to refer to causes within the original jurisdiction of the superior court and "other causes prescribed by statute." There was a suggestion at the Commission's November 1993 meeting that this language might refer to appeal of administrative proceedings. But judicial review of administrative proceedings is by writ, not by appeal, since administrative proceedings do not originate in the judicial branch. Moreover, if constitutional appeal language were necessary to give a court jurisdiction to review decisions in administrative proceedings, existing statutes providing for judicial review by writ of administrative decisions by the Supreme Court and superior courts would be invalid. See, e.g., Code Civ. Proc. § 1085; Pub. Util. Code § 1756.

The staff recommends that the Commission's recommendation on this matter be revised to delete the reference to other causes prescribed by statute:

> The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception, and except in causes within the appellate jurisdiction of the superior courts, courts of appeal have appellate jurisdiction when superior courts have original jurisdiction ~~and in other causes prescribed by statute~~ .
>
> **Comment.** The reference to other causes prescribed by statute is deleted as surplusage. Superior courts have original jurisdiction in all causes. Section 10.

### APPELLATE COURTS AND APPELLATE DIVISIONS

The last paragraph of Section 11 allows the Legislature to permit "appellate courts" to take evidence and make findings of fact in certain cases. The

Commission's tentative recommendation adds a reference to "appellate divisions."

The existing Constitution grants appellate jurisdiction to superior courts. The reference to factfinding by appellate courts apparently encompasses appellate departments of superior courts. Legislation on appellate factfinding treats all "reviewing courts" without distinction. See, e.g., Code Civ. Proc. § 909.

The Commission's tentative recommendation would grant appellate jurisdiction to the appellate divisions of the superior courts. Is the appellate division included in the reference to appellate courts? The staff believes it is. There is no functional difference between a grant of appellate jurisdiction to the superior court (exercised by its appellate department) and a grant of appellate jurisdiction to the appellate division of the superior court. The context of the reference to "appellate courts," following constitutional grants of jurisdiction to the Supreme Court, courts of appeal, and appellate divisions of superior courts, also reinforces the concept that "appellate courts" includes the appellate divisions of the superior courts.

Does the addition of an express reference to the appellate divisions do any harm? The staff is concerned that a constitutional distinction between appellate *courts* and appellate *divisions* may imply a difference that will cast doubt on the application of existing statutes relating to reviewing *courts*. It also will add clutter to what is now fairly clean constitutional language. (Of course, whether a provision of this character really needs to be in the Constitution at all is another matter.)

The staff would simply preserve the existing constitutional reference to appellate courts and add language to the Comment removing any doubt concerning its application:

> The Legislature may permit appellate courts ~~and appellate divisions~~ to take evidence and make findings of fact when jury trial is waived or not a matter of right.
>
> **Comment.** The reference to appellate courts in the third paragraph includes the appellate divisions of the superior courts.

## LEGISLATIVE LIMITATION OF APPELLATE JURISDICTION

### Existing Law

Under the existing constitutional provision, appellate jurisdiction of the courts of appeal and of the superior courts is ultimately and completely

statutory. The Legislature by statute directly controls the appellate jurisdiction of the superior courts. The Legislature by statute indirectly controls the appellate jurisdiction of the courts of appeal, since the courts of appeal have appellate jurisdiction of causes in superior courts, and whether a cause is assigned to the superior courts or to the municipal and justice courts is determined by statute. Art. VI, § 10.

Not only is the appeal path determined by statute under existing law, but whether a matter is appealable at all is subject to statutory control. Under Section 11, matters that arise in municipal and justice courts are nonappealable unless appellate jurisdiction in the superior courts is prescribed by statute.

The Commission's tentative recommendation may inadvertently remove the existing legislative power to withhold appellate jurisdiction for some causes. Under the Commission's formulation, all causes are either within the appellate jurisdiction of the courts of appeal or within the appellate jurisdiction of the superior courts. There is no option to make some causes nonappealable as they are now.

This analysis assumes that the constitutional allocation of appellate jurisdiction carries with it a right to appeal. However, it is arguable that the constitutional grant of appellate jurisdiction does not guarantee a right to appeal; rather, the Constitution may be silent as to the right to appeal, and the matter may be subject to statute. There are cases going both ways on the issue. The historical development of the constitutional language on appellate jurisdiction is traced in the Exhibit to this memorandum. The cases and statutes are discussed below.

**Cases Finding a Constitutional Right of Appeal**

In 1923, when the leading case of ***In re* Sutter-Butte By-Pass Assessment,** 190 Cal. 532, 213 P. 974 (1923), was decided, the California Constitution gave the Supreme Court appellate jurisdiction in superior court cases involving "the legality of any tax, impost, assessment, toll, or municipal fine." *Sutter-Butte* involved a statute making nonappealable a trial court decision in a proceeding to validate a drainage district assessment. The court held the statute conflicted with the constitutional provision giving the Supreme Court appellate jurisdiction in cases involving legality of an assessment. The court said, "litigants have a constitutionally guaranteed right of appeal in all litigated matters within the express jurisdiction of appellate courts."

**Byers v. Smith**, 4 Cal. 2d 209, 47 P.2d 705 (1935), was decided at a time when the California Constitution gave appellate jurisdiction to the courts of appeal in cases involving removal from office. In *Byers* the official removed from office appealed the judgment, and the Court of Appeal, acting pursuant to statute, stayed execution pending determination of the appeal. The constitutionality of the statute authorizing the stay was challenged as a statutory variance of the constitutional grant of jurisdiction. The Supreme Court said the issue was "whether the procedure adopted in the present case is reasonably adapted to make effective and operative the constitutional grant" of appellate jurisdiction. The court cited *Sutter-Butte* with approval, saying in dictum that the Legislature cannot "destroy or abridge the right of an appeal constitutionally granted." The court held the statutory stay provision valid because it was "reasonably adapted to protect the interests of the public and the constitutional right of the official."

***In re* Shafter-Wasco Irrigation District**, 55 Cal. App. 2d 484, 130 P.2d 755 (1942), was decided at a time when the California Constitution gave courts of appeal appellate jurisdiction in superior court cases in such "special proceedings as may be provided by law." In that case irrigation district dissolution proceedings were appealed under a statute requiring the appeal to be heard and determined within three months. The Court of Appeal noted the constitutional language giving appellate jurisdiction to the courts of appeal but avoided facing the constitutional question by construing the three-month limit as directory only. The court observed in dictum that if the three-month limit were construed as mandatory, it would be an unconstitutional limitation on the court's appellate jurisdiction.

A 1991 court of appeal opinion, written by Justice Blease and ordered depublished by the California Supreme Court, held that the provision in the California Public Records Act providing for review by writ and precluding review by appeal of cases under that act was unconstitutional because of the express grant of appellate jurisdiction in Article VI, Section 11, of the California Constitution. **State Board of Control v. Superior Court**, 279 Cal. Rptr. 413 (1991). The court relied on *Sutter-Butte* in a scholarly analysis of the cases. The California Supreme Court ordered the opinion depublished because of its 1991 decision that review by writ under the Public Records Act is a full review on the merits, making appeal unnecessary. **Times Mirror Co. v. Superior Court**, 53 Cal. 3d 1325, 813 P.2d 240, 283 Cal. Rptr. 893 (1991). The court said that, although the

question of whether the statute prohibiting appeal is unconstitutional under Article VI, Section 11, "is an interesting one, we need not decide it in this case."

**Cases Casting Doubt on Constitutional Right of Appeal**

A number of cases after *Sutter-Butte* reached the opposite conclusion without expressly overruling it.

**Trede v. Superior Court**, 21 Cal. 2d 630, 134 P.2d 745 (1943), was decided at a time when the California Constitution gave courts of appeal appellate jurisdiction in superior court cases in such "special proceedings as may be provided by law." Liquidation proceedings against a savings and loan company were appealed under a statute providing that appeal did not stay liquidation proceedings. The company sought a writ of prohibition from the Supreme Court to prevent liquidation during the appeal, arguing that liquidation before final judgment is an unreasonable exercise of the police power—if the company were to win the appeal after liquidation, the victory would be meaningless. The Supreme Court denied the writ, saying "There is no constitutional right to an appeal; the appellate procedure is entirely statutory and subject to complete legislative control." The court concluded the Legislature may therefore impose any condition or restriction on stay of execution during an appeal. The court did not cite any constitutional provision, nor did it cite *Sutter-Butte*.

**Modern Barber Colleges, Inc. v. California Employment Stabilization Commission**, 31 Cal. 2d 720, 728, 192 P.2d 916 (1948), involved the analogous question of whether the constitutional jurisdiction of courts to issue writs of mandate (as opposed to appeal) confers on litigants a right to seek mandate or whether the right may be limited by statute. The court held that the "mere statement in the Constitution that a court has the power to grant certain remedies . . . does not mean that the rights which those remedies were intended to protect have been fixed in the Constitution." The court referred to the "analogous" situation involving the constitutional grant of appellate jurisdiction. The court said, "In interpreting this provision, the courts have held that the Legislature has the power to declare by statute what orders are appealable, and, unless a statute does so declare, the order is not appealable." The court cited *Trede* in support. The court also cited *Sutter-Butte* and *Byers* with a *"cf."* but did not explain why they are distinguishable. The court also noted by further analogy that, notwithstanding the constitutional grant of original jurisdiction to the superior court "in all civil cases," it "has consistently been held, in accordance with the

overwhelmingly majority view, that the Legislature has complete power over the rights involved in such actions and may either create or abolish particular causes of action."

*In re* **Taya C.**, 2 Cal. App. 4th 8, 2 Cal. Rptr. 810, 812-13 (1991), *Supreme Court review denied Apr. 23, 1992*, arose under the current constitutional provision giving appellate jurisdiction to the courts of appeal where the superior court has original jurisdiction. In that case the parents of a child adjudicated a dependent of the juvenile court argued that a statute limiting judicial review to extraordinary writ proceedings violated their constitutional appeal right, including the right to file a brief, orally argue, receive a written opinion, and petition for rehearing. The court held they did not have a constitutional right of appeal:

> The parents confuse the jurisdiction of a reviewing court with a litigant's right to appeal a judicial decision. The fact that judgments and some orders of a superior court may be appealed to an intermediate appellate court does not mean every order or finding is appealable. The California Supreme Court and the courts of appeal derive their appellate jurisdiction from the California Constitution (art. VI, § 11). The right of a party to appeal, however, is wholly statutory and no judgment or order is appealable unless expressly made so by statute. . . .
>
> Because the Legislature has complete control over the right of appeal, it can restrict, change, withhold or even abolish that right.

The court did not cite *Sutter-Butte*.

**Treatises**

Witkin says that "when appellate jurisdiction is conferred by the California Constitution, it cannot be destroyed or abridged by legislative action or inaction," citing *Sutter-Butte*, *Byers*, and *Shafter-Wasco*. 9 B. Witkin, California Procedure *Appeal* § 2, at 33 (3d ed. 1985).

The C.E.B. practice book says "The right to appeal, and the jurisdiction of the courts to hear and act on appeals, is established by Article VI of the California Constitution." California Civil Appellate Practice § 1.1 (Cal. Cont. Ed. Bar 2d ed. 1985). This "constitutional mandate" is implemented by Sections 904.1-904.5 of the Code of Civil Procedure. *Id.* § 1.5.

Nonetheless, it appears to be generally accepted that some final judgments and orders are nonappealable.

**Statutes**

In civil cases, the right to appeal is provided in Sections 904-904.5 of the Code of Civil Procedure. These sections say an "appeal may be taken," and are not couched in terms of appellate jurisdiction. In criminal cases, the defendant may appeal from "a final judgment of conviction." Pen. Code §§ 1237(a), 1466(a)(2)(A). The prosecution cannot appeal from a judgment of acquittal, but may appeal from a number of specified orders. See Pen. Code §§ 1238, 1466(a)(1).

The following civil judgments and orders are nonappealable, with the caveat that the constitutionality of making these judgments and orders nonappealable may be cast in doubt by *Sutter-Butte*. See generally 9 B. Witkin, California Procedure *Appeal* § 37, at 61 (3d ed. 1985).

(1) Adjudications of contempt. Code Civ. Proc. § 1222 (contempt judgments and orders "are final and conclusive"). This section was held constitutional under an early version of the California Constitution which prescribed appellate jurisdiction in specific categories not including contempt. Gale v. Tuolumne County Water Co., 169 Cal. 46, 52, 145 P. 532 (1914); Tyler v. Connolly, 65 Cal. 28, 2 P. 414 (1884). There has been no case on the constitutionality of this statute since the 1966 constitutional revision broadening appellate jurisdiction of courts of appeal under Article VI, Section 11, to include all cases where "superior courts have original jurisdiction." There is nothing in the report of the California Constitution Revision Commission to indicate the Commission believed it was significantly broadening constitutional rights of appeal. The report said Section 11 "collects" former provisions on appellate jurisdiction, and that the Commission deleted detailed references to appellate jurisdiction because such detail is "unnecessary in the Constitution." See State Board of Control v. Superior Court, *supra*. Nonetheless, if *Sutter-Butte* is still good law, there may now be a constitutional right of appeal from superior court contempt adjudications.

(2) Review of a superior court judgment granting or denying a petition for a writ of mandamus or prohibition directed to a municipal or justice court relating to a pending matter is by a new writ petition to an appellate court, not by appeal. Code Civ. Proc. § 904.1(a); California Civil Writ Practice § 5.25, at 169 (Cal. Cont. Ed. Bar 2d ed. 1987). Review in this manner by the appellate court is discretionary. Code Civ. Proc. § 904.1(a).

(3) There is no right to appeal under the Probate Code except as provided in that code. Code Civ. Proc. § 904.1(j); 1 California Decedent Estate Practice § 6.63 (Cal. Cont. Ed. Bar, rev. Mar. 1992). Probate Code appeal provisions are in

Sections 2750 (guardianship-conservatorship), 7240 (estate administration), 17207 (trust law), and 19028 (trust law).

(4) Appeals under the Family Code are as provided in that code. Code Civ. Proc. § 904.1(j). Family Code sections on appeals are set out in the Comment to Family Code Section 210.

(5) A court order directing or refusing disclosure under the California Public Records Act is not appealable. Gov't Code § 6259(c). This is an exception to the general rule that review of the granting or denial of an extraordinary writ directed to a nonjudicial agency is by appeal. Code Civ. Proc. § 904.1(a). *Times Mirror, supra,* held that review by writ under the Public Records Act is a full review on the merits, and therefore appeal is unnecessary. It did not cite *Sutter-Butte.*

The suggestion in 9 B. Witkin, California Procedure *Appeal* § 37, at 61 (3d ed. 1985), that a writ of mandate concerning an election irregularity under Elections Code Section 10015 is nonappealable appears no longer to be good law. Code of Civil Procedure Section 904.1(a) makes such orders appealable. The rule that most interlocutory orders are not appealable seems more secure against constitutional attack than nonappealable final judgments. See generally *id.* § 43, at 66-67. The same seems true of a judgment entered pursuant to an appellate reversal with directions, because the doctrine of law of the case prevents relitigating the same issues. See generally *id.* § 636, at 617-18.

**Staff Recommendation**

Many final judgments and orders are nonappealable under long-accepted practice. If *Sutter-Butte* is still good law, and the constitutional grant of appellate jurisdiction carries with it the right of a litigant to appeal notwithstanding a contrary statute, then many final judgments and orders currently thought to be nonappealable are in fact appealable. Moreover, for our current purposes, the Commission's tentative recommendation describing an appeal path for every cause (either in the court of appeal or appellate division of the superior court) in effect destroys the Legislature's ability to control appealability of anything.

We are unable to say with any certainty to what extent *Sutter-Butte* remains good law. The staff believes there is enough doubt that it would not be prudent simply to provide appellate jurisdiction for all causes, relying on legislative authority to restrict the right to appeal for some causes. The legislative authority

needs to be express in the Constitution. The staff would revise the Commission's tentative recommendation on this matter to read:

> SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. ~~With that exception, and except in causes within the appellate jurisdiction of the superior courts, courts~~ Courts of appeal have appellate jurisdiction when superior courts have original jurisdiction , except in causes within the appellate jurisdiction of the Supreme Court, causes within the appellate jurisdiction of the superior courts, and ~~in~~ other causes prescribed by statute.
>
> An appellate division is created within each superior court. The appellate division has appellate jurisdiction in criminal causes other than felonies, and in civil causes prescribed by statute or by rule adopted by the Judicial Council not inconsistent with statute. Judges shall be assigned to the appellate division by the Chief Justice for a specified term pursuant to rules not inconsistent with statute adopted by the Judicial Council to encourage the independence of the appellate division.
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> **Comment.** The first paragraph makes clear that the appellate jurisdiction of the courts of appeal is limited by the appellate jurisdiction of the appellate divisions of the superior courts. The courts of appeal do not have appellate jurisdiction over causes assigned to the appellate divisions of the superior courts for appellate review. Likewise, the courts of appeal do not have appellate jurisdiction over matters made nonappealable by statute. This preserves the effect of existing law. See, e.g., 9 B. Witkin, California Procedure *Appeal* § 2 (3d ed. 1985). Nothing in this section limits the original writ jurisdiction of the courts of appeal. See Section 10 (original jurisdiction).

Respectfully submitted,

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Exhibit

**Trial Court Unification: Appellate Jurisdiction**

## HISTORY OF CONSTITUTIONAL PROVISIONS ON APPELLATE JURISDICTION

**1849 to 1879:** During this period, there were no courts of appeal. Article VI, Section 4, of the 1849 Constitution provided:

> Sec. 4. The Supreme Court shall have appellate jurisdiction in all cases when the matter in dispute exceeds two hundred dollars, when the legality of any tax, toll, or impost or municipal fine is in question, and in all criminal cases amounting to felony on questions of law alone. And the said court, and each of the justices thereof, as well as all district and county judges, shall have power to issue writs of *habeas corpus* at the instance of any person held in actual custody. They shall also have power to issue all other writs and process necessary to the exercise of their appellate jurisdiction, and shall be conservators of the peace throughout the state.

**1879 to 1904:** During this period, there were no courts of appeal. Article VI, Section 4, of the revised Constitution of 1879 provided:

> Sec. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

**1904 to 1928:** The 1904 amendment to Article VI, Section 4, established the district courts of appeal:

> Sec. 4. The Supreme Court shall have appellate jurisdiction on appeal from the Superior Courts in all cases in equity, except such as arise in

Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to two thousand dollars; also, in all such probate matters as may be provided by law; also, on questions of law alone, in all criminal cases where a judgment of death has been rendered; the said court shall also have appellate jurisdiction in all. cases, matters, and proceedings pending before a District Court of Appeal which shall be ordered by the Supreme Court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court of Appeal, or before any judge thereof, or before any Superior Court in the State, or before any judge thereof. . . .

The District Courts of Appeal shall have appellate jurisdiction on appeal from the Superior Courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in Justices' Courts), in proceedings in insolvency, and in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the Supreme Court); also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. . . .

**1928 to 1966:** The 1928 amendment placed the provisions for appellate jurisdiction in separate sections with slight modification of their scope:

Sec. 4. The supreme court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as arise in municipal or justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine also, in all such probate matters as may be provided by law; also, on questions of law alone, in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a district court of appeal, which shall be ordered by the supreme court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court or before any district court of appeal, or before any justice thereof, or before any superior court in the state, or before any judge thereof.

> Sec. 4b. The district courts of appeal shall have appellate jurisdiction on appeal from the superior courts (except in cases in which appellate jurisdiction is given to the supreme court) in all cases at law in which the superior courts are given original jurisdiction; also, in all cases of forcible or unlawful entry or detainer (except such as arise in municipal, or in justices' or other inferior courts); in proceedings in insolvency; in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, prohibition, usurpation of office, removal from office, contesting elections, eminent domain, and in such other special proceedings as may be provided by law; also, on questions of law alone, in all criminal cases prosecuted by indictment or information, except where judgment of death has been rendered. . . .

**1966 to present:** In 1966, the provisions for appellate jurisdiction were simplified and recodified in Article VI, Section 11:

> Sec. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute.
>
> Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties. . . .