

	<b>STANDARDS OF REVIEW</b>
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	<p>The power of an appellate court to revisit certain issues is limited by the standard of review: that's the rule that tells appellate courts to what extent they can substitute their views as to both facts and law for those of the trial court.</p>

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	<b><u>Appellate Gaul Revisited: Standards in Search of Definition</u></b>
	<p>All appellate Gaul ... is divided into three parts: review of facts, review of law, and review of discretion.</p>

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	<p><b><u>Mechanics Of Arguing The Standard Of Review</u></b></p>
	<p>Where, in the brief, do you address standard of review?</p>

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	<p><b><u>New Appellate Rules</u></b></p>
	<p>Rule(a)(9)(B): for each issue, a concise statement of the applicable <b>review</b> (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues).</p>

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	<p><b><u>Comment to Rule 16(a)(9)(B)</u></b></p>
	<p>“The standard of review is a critical factor in every appeal, constituting the lens through which the court views the issues presented.”</p>

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## Three Standards of Review

1. De Novo
2. Clearly Erroneous
3. Abuse of Discretion

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## Standards Of Review

DENOVO	CLEARLY ERRONEOUS	ABUSE OF DESCRETION
Question of Law	Question of Fact	Procedural Issue
<div style="display: flex; align-items: center; justify-content: center;"> <div style="width: 100px; height: 10px; background-color: #ccc; margin-right: 5px;"></div> <div style="width: 100px; height: 10px; background-color: #ccc; margin-right: 5px;"></div> <div style="flex-grow: 1; border-bottom: 1px solid #ccc; position: relative;"> <div style="position: absolute; right: -10px; top: -5px; border-left: 10px solid transparent; border-right: 10px solid transparent; border-bottom: 15px solid #ccc;"></div> </div> </div>		
Least Deference		Most Deference

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**Judge Selva described the "deference continuum" as follows:**

Appeals are usually arrayed along a degree of-deference continuum, stretching from plenary review at one pole to high deferential modes of review at the opposite pole. At the "no deference" end of the continuum lie appeals involving unadulterated questions of law, the resolution of which customarily entails de novo review. At the other end of the continuum lie appeals involving straight factual determinations, the resolution of which customarily entails acceptance of the trier's judgment in the absence of palpable error.

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	<p><b><u>Rulings of Law</u></b>  <b><u>De Novo Standard</u></b></p>
	<p>Under the de novo standard, a reviewing court comes to its own conclusions irrespective of the trial court's conclusions.</p>

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	<p><b><u>Findings of Fact</u></b>  <b><u>Clearly Erroneous Standard</u></b></p>
	<p>"A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."  <u>Commonwealth v. Holley</u>, 52 Mass. App. Ct. 659, 664, n.3 (2001).</p>

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	<p><b><u>Review of Procedural Rulings</u></b>  <b><u>Abuse of Discretion</u></b></p>
	<p>The abuse of discretion standard is very high: no conscientious judge, acting intelligently, could honestly have taken the view expressed by the trial judge.  <u>Commonwealth v. Jones</u>, 373 Mass. 423, 427 (1977)</p>

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	<b><u>As Rare As Flying Pigs</u></b>
	<p>The ‘no conscientious judge’ standard is so deferential that, if actually applied, an abuse of discretion would be as rare as flying pigs.” <u>L.L. v. Commonwealth.</u>, 470 Mass. 169, n.27, 185 (2014) (Botsford, J.)</p>

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	<b><u>Mixed Questions Of Law And Facts</u></b>
	<p>A reviewing court may determine that the factual aspects of an issue outweigh the legal ones, and thus a clearly erroneous standard applies or that the legal issues outweigh the factual ones and that a de novo standard applies.</p>

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	<b><u>Ultimate Questions of Fact</u></b>
	<p>The concept of whether a finding of ultimate fact (i.e., a conclusory fact resting on several subsidiary facts) is a question of fact or law meets different answers in different scenarios and in different jurisdictions.</p>

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	<b><u>Constitutional Facts</u></b>
	Constitutional facts involve issues normally reviewed deferentially but because of their Constitutional implications are reviewed de novo.

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	<b><u>Substantial Risk of Miscarriage of Justice</u></b>
	Unpreserved errors at trial are reviewed on appeal under a higher, more difficult standard for substantial risk of miscarriage of justice.

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	<b>Questions?????</b>

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