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J. Eric Smithburn

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NOTRE DAME LAW SCHOOL

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Preface

After several years of teaching law students, I've concluded that one of the areas that has fallen through the law school curricular cracks is standard of review. Often in the substantive courses the emphasis is on "learning the law" with little attention given to the standards used by the reviewing courts. Even in moot court, a clear picture of the standard(s) of review is often not present. Perhaps one reason that standard of review is left out of the conversation is that the appellate courts themselves often don't discuss standard of review in their opinions, or they do so vaguely without stating the standard of review employed.

Understanding the different standards of review is necessary to the lawyer's informed reading of the appellate opinion. Further, the lawyer should use standard of review to discuss with the client the nature of the trial court's decision and the likelihood of success on review. If the client understands the difference between questions of law, which are reviewed *de novo*, and discretionary decisions, which are generally deferred to unless unreasonable, he or she will form realistic expectations about the trial and whether to consider an appeal.

The role of appellate courts and the history of appellate review are discussed, along with an overview of the concepts of scope of review and standard of review. The casebook is organized into chapters on the different standards of review and includes notes and questions. The book is adaptable to a lecture-discussion format or as a classroom adjunct to a seminar-research paper arrangement.

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