Court of Appeals

Memorandum

To: Judge Beasley

From: Angela Couch

Subject: Observations of "Transfer Cases" 1994-96

Date: August 22, 1996

Here are some basic observations I have drawn from the 62 "transfer cases" dated from 1994 to the present:

1. At least 15 cases have no discussion at all of why the Supreme Court (SCT) transferred the case to this Court;
2. The majority of the cases deal with an underlying constitutional challenge or question (25 cases);
3. 4 cases deal with wills -- there is no real discussion in any of the cases, other than one case specifically says that because the SCT transferred the case, questions regarding the validity of the will are moot (Penny Profit);
4. 2 cases deal with divorce -- one case has no real discussion, the other case states that the SCT said the true issue of the case is one of contract defense and not of divorce (Crotty);
5. 1 case involves a land dispute -- there is no

discussion as to why there was a transfer (Turner);

6. 19 cases deal with injunctions and/or TROs -- the basic idea behind the transfer is that the injunction and/or TRO is ancillary to the true issue of the case -- 11 cases specifically cite the Pittman and/or Beauchamp cases;

7. There are several "miscellaneous" cases seemingly not sounding in equity according to the SCT -- they involve equitable accounting, setting aside a rezoning application, equitable reformation of an insurance policy, declaratory judgment, writ of mandamus, and liquidated damages -- while there is no real pattern among these cases, there is some hint that these issues are merely ancillary to the true issues because some of the cases cite to the Pittman and/or Beauchamp cases (see, e.g., Dick)

8. As stated earlier, the majority of the cases are somehow connected to a constitutional issue -- here are some observations on this topic:

   a. there is discussion in many of the cases that the transfer is the equivalent to the SCT deciding that the constitutional issue is meritless or was not properly raised -- the Ryals and Krause cases are cited often (see, e.g., Keef, Dalton);

   b. in a few cases, the SCT seems to recharacterize an issue in such a way that it does not properly

have jurisdiction (I.B. and Poythress);

c. some cases state that the SCT says the case involves well settled constitutional principles of law (Ihesiaba, Lee, GMC) -- one case states the SCT says the true issue in the case is one only of applying constitutional principles and not constructing them (Atlanta Gas);

9. 3 cases are simply unclear why they were originally filed in the SCT, so there is no discussion as to why they were transferred (McKibbons, Kappers, Null)

10. 1 case is the text of a transfer from this Court to the SCT (T.A.W.); and

11. 1 case involves a codefendant in a felony murder that was found guilty only of aggravated assault; the appeal by the defendant who was found guilty of the felony murder was kept in the SCT (Smith v. State).

Court of Appeals

Memorandum

To: Judge Beasley

From: Jeremy Veillette/Angela Couch

Subject: Analysis of the jurisdiction of Georgia's two appellate courts regarding cases with an underlying constitutional issue

Date: August 22, 1996

The jurisdictions of the Supreme Court and the Court of Appeals, at least as defined by the Georgia Constitution, have remained substantially unchanged over the years. *Compare* GA. CONST. of 1945 and 1976, Art. VI, Sec. II, Par. IV (Ga. Code § 2-3704) *with* GA. CONST. of 1983, Art. VI, Sec. VI, Par. II. In terms of the Supreme Court's review of constitutional and statutory issues, there have been two important changes. The first is the omission of reference to particular superior courts as limiting which cases the Supreme Court will hear. The 1983 Constitution allows the Court to hear cases arising from almost any trial court; jurisdiction is based upon the case, not the court. Second, the 1983 Constitution grants the Court exclusive jurisdiction over appeals involving the constitutionality of not only the State and Federal laws and constitutions, but over municipal ordinances, something missing from the earlier constitutions. It is important to note, however, the Supreme Court has still sought to limit its own jurisdiction in many ways.

I. Definitions and Disagreements over "Construction"

Under the Georgia Constitution, the Supreme Court is given jurisdiction over "[a]ll cases involving the construction of a treaty or of the Constitution of the State of Georgia or of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn into question[.]" GA. CONST. of 1983, Art. VI, Sec. VI, Par. II. It is the duty of the court to examine a case to determine if it may exercise jurisdiction over the issues involved. Woodside v. City of Atlanta, 214 Ga. 75, 77 (103 SE2d 108)(1958).

In this inquiry, "construction of the Constitution" as employed "contemplates construction where the meaning of some provision of the Constitution is directly in question and doubtful under its own terms or under the decisions of [the Georgia Supreme Court] or the decisions of the Supreme Court of the United States. [cits.]" Id. In Woodside, the definition of "taking" was put into question, namely, was it a taking if the condemnor had not paid, and was this a condition precedent to his right to prosecute or appeal the condemnation award by the court. Id. Due to past conflicting decisions, the Court felt that a new construction of "taking" was required. Id. Justice Wyatt dissented for two reasons: 1) there was no specific provision of the law claimed as unconstitutional, and 2) the condemnees asserted the general provisions would be unconstitutional only if construed in a particular manner. Id. at 77-79. Thus, the condemnees claimed the laws affected their rights only under certain applications, which Wyatt argued was not a constitutional issue, but one of application for the Court of Appeals,

especially since "taking" had previously been deemed unambiguously to mean "actual, physical taking" and not a vague form of possession. Id. at 94 (Wyatt, P.J., dissenting).

Justice Wyatt was later proven correct in Bowers v. Fulton County, 225 Ga. 745 (171 SE2d 308)(1969), in which the Court found condemnation proceedings to only require application of constitutional provisions, a task for the Court of Appeals. But Justice Undercofler dissented, stating, "Construction is the determination of the meaning of a provision. Application is involved only where the provision is precise or has been conclusively defined by this Court." Id. (Undercofler, J., dissenting). If application is the focus of the case, its decision is for the Court of Appeals, whether it is by an unambiguous or unquestioned provision of the Constitution because the meaning of the provision has been determined and sustained. Id. In Shelton v. Housing Auth., 226 Ga. 309 (174 SE2d 221)(1970), the court reiterated the Bowers principle: "a question calling for a 'construction' of the Georgia Constitution...present[s] a question as to application only." Id. Justice Undercofler once again dissented, under the same rationale as in Bowers. Id. at 310 (Undercofler, J., dissenting).

In a similar vein, Oswell v. State, 181 Ga. App. 35 (351 SE2d 221)(1986), involved a claim of unreasonable searches and seizures which created a division as to the construction versus application definitions. Oswell was pulled over for a suspended license, and after placing him in the patrol car and writing two tickets, the officer searched the car and discovered a bag of marijuana. Id. A question of probable cause existed. Id. The majority found this to involve only the application of

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the Constitution. "This case presents this Court only with the choice of determining whether the search...and the resultant seizure were unreasonable, and not with the task of determining what the term 'unreasonable search and seizure' means." Id. at 37.

The dissenters argued that there were no Georgia Supreme Court cases which construed the Georgia Constitution in regards to automobile searches made incident to arrest when there were neither exigent circumstances justifying the search nor probable cause; therefore, the case required a defining of 'unreasonable' for these contexts. Id. (Beasley, J., dissenting). Although the Georgia and federal provisions may be worded identically, until the Georgia Supreme Court speaks on the issue, it may not be assumed that they mean the same in all situations. Id. at 38-39. (Beasley, J., dissenting).

In the Interest of T.A.W., 214 Ga. App. 1 (447 SE2d 136)(1994), raised similar concerns for the Court of Appeals. In T.A.W., the question of the powers of the juvenile courts to grant a new trial was raised. Appellant argued that Art. VI, Sec. I, Par. IV of the Georgia Constitution of 1983 granted such powers. But the court felt that it did not have jurisdiction over an issue involving a decision on either the power of the legislature to provide such powers to courts of record or the inherent powers of such courts under the Constitution. Id. at 2. In either case, such a determination is for the Supreme Court, for it involves the construction of the Constitution or a statute. Judge Smith, concurring specially, felt the constitutional provision in question was "plainly worded and not subject to construction." Id. at 6 (Smith, J., concurring). However, the majority maintained that the case required

either overruling past cases or declaring unconstitutional the statutes involved in those past cases, and this was best left to the Supreme Court. Id. at 6. Judge Blackburn, dissenting, saw only a call for application to the particular set of facts. Id. at 6 (Blackburn, J., dissenting). The juvenile courts were courts of record, and courts of record have power to grant new trials, GA. CONST. of 1983, Art. VI, Sec. I, Par. IV, so a mere recognition of these facts would allow the Court of Appeals to decide the issue. Id. at 7-8 (Blackburn, J., dissenting).

More recently, in In the Interest of I.B., 219 Ga. App. 268 (464 SE2d 865)(1995), the petitioner, the father of the child in question, sought to have his name expunged from the child abuse registry maintained by the Georgia Department of Human Resources and challenged the constitutionality of the statute establishing the registry. The trial court declared the case moot, because the father's name had been expunged, and it never ruled on the constitutional issues. Id. The Supreme Court transferred the case, as the only issue raised was the legal validity of the trial court's ruling, a matter for the Court of Appeals. Id.

The Court of Appeals saw itself as having to choose between alternatives: 1) finding the case moot, and thus being required to act as the Supreme Court in determining if the Supreme Court would entertain jurisdiction of the statute's constitutionality as an exercise of discretion, considering that the Supreme Court had already transferred the case once; 2) finding the case reviewable, requiring a remand of the case, opening the door for further litigation and appeal; or 3) affirming the trial court, but recognizing that if the Supreme Court declines

review, the constitutional issues would not be settled. Id. at 275-77.

The Court of Appeals, adopted a moderate approach finding that even if the statute was found unconstitutional, it would not affect the father's rights and render the opinion advisory. Id. at 276-77. Because a requirement for entertaining jurisdiction on appeal is that the interests of the parties must be affected, the court found the case moot, leaving the constitutional issues unsettled. Id. at 276-77.

II. Attempts to change jurisdiction and Collins v. State

As stated above, the 1983 Constitution altered the exclusive jurisdiction of the Supreme Court. Prior to the new Constitution, the legislature tried to effectuate some of the same changes in Act No. 299, Ga. L. 1977, p. 710. By this Act, the General Assembly assigned cases of armed robbery, rape, and arson in which the death penalty was not imposed to the Court of Appeals. Cases involving revenue, contested elections, and municipal ordinances were given to the Supreme Court. In doing so, the legislature was acting upon its powers in Art. VI, Sec. VI, Par. II of the Constitution of 1976, which states: "The General Assembly may provide for carrying cases or certain classes of cases to the Supreme Court and the Court of Appeals from the trial courts otherwise than by writ of error, and may prescribe conditions as to the right of a party litigant to have his case reviewed by the Supreme Court or Court of Appeals."

In Collins v. State, 239 Ga. 400 (236 SE2d 759)(1977), the Supreme Court found that the General Assembly surpassed its powers in enacting such changes. The Court found that the cases assigned to it were in fact

"given to the Court of Appeals under the Constitution[,]" but the changes to the Court of Appeals jurisdiction were "specifically authorized by the Constitution, and the General Assembly may effect such a transfer, provided such an enactment conforms to other Constitutional provisions." Id. at 401. The Court ruled that part of the Act affecting its jurisdiction was void, but, to effectuate the legislative intent of the Act, it ordered that such cases be docketed in the Court of Appeals and transferred to the Supreme Court for review. Id. at 401.

The Collins decision was subject to criticism soon after it was rendered. In his dissent in Echols v. Dekalb County, 146 Ga. App. 560, 568 (247 SE2d 114)(1978), Judge Deen strongly opposed the Supreme Court's "erroneous misinterpretation, misuse, and abuse of what is referred to as inherent power." He found the Supreme Court ruling that no one may amend the Constitution by means other than popular vote correct, but the order of the Court concerning the transfer of cases under Collins essentially amended the Constitution without popular approval. Id.

Since the Collins decision, the Constitution has been changed as to the jurisdictions of the courts, and the Supreme Court has been given jurisdiction over cases involving elections and ordinances, although it has never fully embraced its new assignments. Since the 1983 Constitution, Collins has lost much of its impact in the realm of jurisdiction.

III. Cases Giving Jurisdiction to the Court of Appeals

Over the years, the Supreme Court has transferred many constitutional-type of cases to the Court of Appeals, primarily by

asserting that the issues involved did not raise questions of construction or constitutionality, and thus it found the Court of Appeals' role of applying provisions to be expanded. Included in this line of cases are actions arising under 42 U.S.C. § 1983, Kroupa v. Cobb County, 262 Ga. 451 (421 SE2d 283)(1992) and double jeopardy, Patterson v. State, 248 Ga. 875 (287 SE2d 233)(1982); Nance v. State, 226 Ga. 778 (177 SE2d 681)(1970). Also, decisions concerning "the Law of the State," violations of rights, ordinances, the appellate process, and state revenue are particularly interesting and worthy of discussion.

A. Law of the State

The "law of the State" has been an area where the Supreme Court has used its powers to greatly restrict its own jurisdiction, and expand that of the Court of Appeals. Although the Supreme Court has never claimed to have denied a case involving the "law of the State," what it has done is limited the concept, so that today, "law of the State" means only enactments of the General Assembly and constitutional provisions.

1. Ordinances and Administrative Regulations

The 1983 Constitution, as discussed above, assigns exclusive appellate jurisdiction over appeals involving constitutionality of municipal ordinances. [See pages 11-12, which discusses current law.]

At one time municipal ordinances passed in pursuance of legislative authorization had the force of law and were the "law of the State." Forbes v. Mayor of Savannah, 160 Ga. 701 (128 SE2d 806)(1925). Forbes concerned a city tax on travelling salesmen, which Forbes claimed violated § 868 of the Civil Code and the Federal and State Constitutions. Id. Because the ordinance was passed under the authority granted by the

legislature to the City of Savannah, the Court ruled the ordinance was a valid State enactment. Id. at 702. In Maner v. Dykes, 183 Ga. 118 (187 SE2d 699)(1936), the Court reversed Forbes, arguing that Forbes was based upon a misinterpretation of precedent. The Court of Appeals had followed Forbes, finding that a rule of the PSC passed in pursuance of a legislative authority was the "law of the State," and a question of its constitutionality was for the Supreme Court. Manner v. Dykes, 52 Ga. App. 715 (184 SE2d 438)(1935). The Supreme Court disagreed, recognizing a distinction between "laws of the State and rules and regulations having the effect of laws." 183 Ga. at 119. The rules of bodies like the PSC were not "laws in the legal sense of the term[,]" so their review was for the Court of Appeals. Id. at 119. In overruling Forbes, the Court stated that while ordinances may have "the force of law," they are "mere police regulations of the municipal government," and as such, are only laws of the municipality itself. Id. at 120. The same principle applies to rules of administrative bodies such as the PSC. Carter v. Bishop, 209 Ga. 146 (71 SE2d 216)(1952).

2. Court Decisions

Court decisions have also been ruled not to be "law of the State." In Atlanta & West Point RR. Co. v. Hemmings, 182 Ga. 724 (16 SE2d 537)(1941), it was contended that prior decisions of the Supreme Court calling for juries to decide if the actions of train engineers at crossing constituted negligence were violative of the Commerce Clause. Once again the Court laid out a distinction between an enactment as law and other authority, here a decision, which had the force of law. An act

of the General Assembly had given certain unanimous decisions of the Court the force of law and provided that they could not be overturned without legislative action. Id. at 725. The Court stated that the Act recognized the cases "to be on the same plane 'as if the same had been enacted in terms by the General Assembly[,]'" but they were not the formal equivalents of the laws of the legislature. Id. at 727. "The phrase 'any law of the State,' as used in the constitutional provision...means a legislative enactment." Id. at 728.

The Court of Appeals has followed such precedent as recently as Spires v. Kim, 203 Ga. App. 302, 303 (416 SE2d 780)(1992), when it stated that "[w]hile the decision...may be the law of this State, it is not a state 'law' so that the Supreme Court would have jurisdiction over any case wherein a constitutional challenge is raised to its continued viability." The appellants in Spires contended that a recent Supreme Court decision preventing actions for wrongful births until the legislature allowed such actions violated due process rights. The Court of Appeals affirmed the trial court's dismissal of the wrongful birth complaint and allowed the appellants to seek a writ of certiorari to the Supreme Court on due process grounds. Id. at 303-04. The dissenters, Judges Beasley and Pope, disagreed with this result, arguing that the case should have been transferred to the Supreme Court to rule on the due process claim. Id. at 304-05 (Beasley, J., dissenting). They saw the appellants as arguing not that a statute was unconstitutional, but that the absence of a cognizable statutory cause of action, and the Supreme Court's refusal to recognize a common law action violated the Constitution. Id. at 305 (Beasley, J., dissenting). Their arguments

demonstrate that in some cases, an attack on a decision, whether or not it is "law of the State," is intimately tied to a statutory claim of sorts, but the courts have refused to address such issues.

3. Rules of the Courts

Rules of the courts are treated in a similar manner. In an appeal from a judgment in a condemnation case, the appellants challenged a rule of the Superior Court on constitutional grounds, but the Supreme Court ruled that a court rule is not the "law of the State" within the meaning of the Constitution, so jurisdiction was in the Court of Appeals. Shelton, supra, 226 Ga. at 309.

B. Violations of Rights

A claim which alleges only a violation of rights will often be found to be insufficient to vest jurisdiction in the Supreme Court. When one claims a violation of rights or that a judgment is contrary to the Constitution, the claim does not require the construction of any provision of the Constitution, but only its application to the particular facts, a matter for the Court of Appeals. Liles v. Still, 176 Ga. App. 65 (335 SE2d 168)(1985); Dixon v. State, 207 Ga. 192 (60 SE2d 439)(1950); Gaston v. Keehn, 195 Ga. 559 (24 SE2d 675)(1943).

C. Ordinances

Prior to the adoption of the Constitution of 1983, it was long settled that the Court of Appeals had jurisdiction over questions of the validity and constitutionality of ordinances. Loomis v. City of Atlanta, 206 Ga. 822 (58 SE2d 813)(1950); Moore v. City of Tifton, 207 Ga. 443 (62

SE2d 182)(1950). Such claims were seen as raising only a matter of application of constitutional provisions. Bowery Savings Bank v. Dekalb County, 239 Ga. 398 (236 SE2d 757)(1977); Ledbetter v. Roberts, 213 Ga. 47 (96 SE2d 614)(1957). The Constitution of 1983 put jurisdiction over ordinances in the Supreme Court, and the Court acknowledge this change in Kariuki v. Dekalb County, 253 Ga. 713 (324 SE2d 50)(1985). Kariuki pointed out the alterations in the jurisdiction between the 1976 and 1983 Constitutions by paraphrasing Art. VI, Sec. VI, Par. II: "the Supreme Court shall exercise exclusive appellate jurisdiction in specified types of cases, including all those in which the constitutionality of a law *or ordinance* has been drawn into question." Id. at 714 (emphasis in original). The Court noted that no qualification was contained such as "unless otherwise provided for by law." Id. at 714.

In Kariuki, the Court overruled Henson v. Dekalb County, 158 Ga. App. 348 (280 SE2d 393)(1981), which had held that Recorder's Courts decisions on ordinances could be appealed only by petitioning for certiorari to the Superior Court. The Kariuki Court found the language "exclusive jurisdiction" to mean that only the Supreme Court could now hear such appeals. Id. at 715. Thus, Kariuki established that the appeal could be taken directly to the Supreme Court, without first being reviewed by the Superior Court.

Kariuki was overruled a few years later in Russell v. City of East Point, 261 Ga. 213 (403 SE2d 50)(1991). As in Kariuki, the defendant-appellant challenged the ordinance under which he had been convicted. He did so through a direct appeal to the Supreme Court. Id. The Russell court relied upon City of Atlanta Bd. of Zoning Adjustment v. Midtown

North, Ltd., 257 Ga. 496 (360 SE2d 569)(1987), noting that although the Constitution governed jurisdiction of the subject matter of an appeal, statute determined the method of appeal. Id. This principle also governed the decision in Trend Development Corp. v. Douglas County, 259 Ga. 425 (383 SE2d 123)(1989), where that court held that challenges to zoning ordinances must "not only be reviewed by the Superior Court, but must also follow the procedure for discretionary review set forth in OCGA § 5-6-35(a)(1)." Russell, 261 Ga. at 213. In Russell, the defendant appealed from a Recorder's Court and no constitutional provision or statute provided a direct appeal from that court. Id. Russell did not alter the fact that the Supreme Court had jurisdiction over ordinances, it only gave the Court more power in deciding what cases it would hear.

D. The Appellate Process

The enactment of the direct and discretionary appeals statutes (now OCGA § 5-6-34 & 35) in 1979 gave the appellate courts "the discretion not to entertain an appeal where the Superior Court had reviewed a decision of certain specified cases or made a decision in certain cases." Not included in these were decisions of the PSC and probate courts and cases involving ad valorem taxes and condemnations. Citizens and Southern Nat'l. Bank v. Rayle, 246 Ga. 727 (273 SE2d 139)(1980). In Trend Development, supra, 259 Ga. at 425, the Supreme Court expanded the discretionary appeal to zoning cases; in such cases the appeal is from a court review of a decision of an administrative agency (the Zoning Board) within the meaning of OCGA § 5-6-35(a)(1). This requirement of application applied to all appeals of zoning cases to either the Court of

Appeals or the Supreme Court, but the decision in Trend was questioned as to whether it properly applied the law, because the Zoning Boards are not true administrative bodies, and the Superior Courts are not allowed a full review of the Board decisions. See Schockley v. Fayette County, 260 Ga. 489, 492 n.2 (396 SE2d 883)(1990)(Hunt, J. concurring). Where the underlying subject matter involves the class of cases covered under the discretionary appeal statute, the discretionary procedures must be adhered to even when a party is appealing a matter procedurally subject to direct appeal under OCGA § 5-6-34(a). Rebich v. Miles, 264 Ga. 467 (448 SE2d 192)(1994). If the procedures are not followed, the Court will dismiss the appeal. *See* Id.; Self v. Bayneum, 265 Ga. 14 (453 SE2d 27)(1995); Armstrong v. Miles, 265 Ga. 344 (455 SE2d 587)(1995).

E. State Revenues

Cases involving revenues of the state have traditionally been within the jurisdiction of the Court of Appeals, but following the decision in Collins v. State, 239 Ga. 400, the Supreme Court reviewed many of these cases under the transfer procedures set forth there. Notably, however, the Court has also limited what falls within the meaning of "revenues of the State." Transamerica Ins. Co. v. State of Georgia, 246 Ga. 183 (269 SE2d 466)(1980), dealt with a dispute over a claim to the funds in the registry of the court in a garnishment proceeding. The Court of Appeals transferred the case as involving the revenues of the state since the fund was established with city bonds. The Supreme Court saw the case as only involving the priority of claimants, not state funds, so it transferred the case back to the Court of Appeals.

The situation established by Collins v. State was ended in Collins v. A.T. & T. Co., 265 Ga. 37 (456 SE2d 50)(1995), a case involving an appeal of a decision of a Superior Court overturning an income tax ruling by the State Revenue Commissioner. The basis of the A.T. & T. opinion was that the decision in Collins v. State was rendered prior to the 1983 Constitution which did not include as among the subjects in the jurisdiction of the Supreme Court. Id. Therefore, it was clear that the Court of Appeals was to have jurisdiction under the 1983 scheme, and the Supreme Court ordered all present and future revenue cases transferred to the Court of Appeals. Id. at 37-38.

One area of revenue which has generated some confusion due to the Collins v. State procedures is ad valorem tax cases. After Collins v. State, both the Supreme Court and the Court of Appeals were hearing ad valorem tax cases, often with only the assessment of the tax, not its underlying ordinance, being contested. Dekalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277 (282 SE2d 880)(1981), remedied this dual use of jurisdiction by holding that the Supreme Court had jurisdiction only if the constitutionality of a statute or ordinance was called into question in the case; tax assessments, by themselves, were for the Court of Appeals. Although Dekalb County dealt with a contested assessment, the Supreme Court heard the case since past, procedures had been followed. Id. at 278. The new jurisdiction was to be enforced in the future. *See* Ayers v. Mobley, 248 Ga. 869 (287 SE2d 4)(1982); Ayers v. Douglas County Bd. of Tax Assessors, 248 Ga. 382 (203 SE2d 457)(1981).

IV. Insufficient Claims of Jurisdiction

Even if a case involves a matter which would normally fall within the jurisdiction of the Supreme Court or the Court of Appeals, the courts still may not entertain the case. Most often this is due to the issue not being properly raised by the party or ruled upon by the trial court. *See e.g.*, Morton v. State, 206 Ga. App. 413 (425 SE2d 336)(1992) (jurisdiction was proper in the Court of Appeals, even though appellant challenged the constitutionality of a zoning ordinance, because his attempt was not properly raised and ruled upon in the trial court). Also, if the issue has been decided in a previous case, the Court may reject the appeal. In all of these situations, when the Supreme Court refuses such a case, it normally finds jurisdiction to be in the Court of Appeals.

A. Timeliness of the Claim

The sufficiency of raising a constitutional question has two aspects: 1) when the issue is raised; and 2) how the issue is raised. Claims of constitutional violations "must be made at the first opportunity, either in pleadings, objections to evidence, or in some other appropriate way pending the trial." Parker v. State, 220 Ga. App. 303, 310 (1992); *see also* Blackston v. State of Georgia, 255 Ga. 15 (334 SE2d 679)(1985). It may not be raised for the first time in a motion for a new trial or similar motion, unless the opportunity has not arisen beforehand. E.P. v. State of Georgia, 230 Ga. 770 (199 SE2d 313)(1973). In such a case, jurisdiction is for the Court of Appeals, not the Supreme Court. Id.; Yield, Inc. v. City of Atlanta, 239 Ga. 578 (238 SE2d

351)(1977).

B. Sufficiency of the Claim

In order to properly raise a constitutional issue, both the statute and constitutional provisions in question and the manner of their inconsistency all must be pled. Manufacturer's Trust Co. v. Wilby-Kincey Serv. Corp., 204 Ga. 273 (49 SE2d 514)(1948). In Manufacturer's Trust, the plaintiff contended that the construction of the garnishment statute in question by the garnishee "would be a judicial injustice and judicial legislation, and it would deny to the plaintiff in attachment the equal protection of the law to all persons in like and similar circumstances, under the State and Federal Constitutions, and the Fourteenth Amendment to the Federal Constitution, and deny due and like process to citizens of other states afforded to the citizens of out state, contrary to the State and Federal Constitutions." Id. at 273-274. The Supreme Court saw the party as *attempting* to raise a constitutional issue, but the sufficiency of the claim was deemed inadequate, because specific provisions were not cited.

The specific requirements for raising a constitutional issue were set out in Williams v. State, 217 Ga. 312 (122 SE2d 229)(1961): "'(1) the statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statute, or some designated part of it, violates such constitutional provision.' [cit.]" Id. at 313. Even if one claims that a statute is "in violation

of the constitutional provision of the State of Georgia, forbidding the enactment of legislation containing a plurality of subject matter and containing matter which is not germane and which is not included in the title," this is not sufficiently pled to place jurisdiction in the Supreme Court, for "the specific part, paragraph, and section of the Constitution" are not set out. Lilly v. Crisp County School System, 224 Ga. 45 at 45 (159 SE2d 707)(1968).

By the time of North Georgia Finishing, Inc. v. Di-Chem, Inc., 231 Ga. 260 (201 SE2d 321)(1973), the Court was not so strict, partly due to the relaxed pleading standards under the Civil Practice Act of 1966. Counsel in North Georgia argued that a garnishment statute violated due process and equal protection, but improperly cited the code section involved, using the annotated code, rather than the actual enactment. Id. at 261. The Court held this to be sufficient to raise the constitutional question. Id. at 262. Justice Grice, concurring specially, strongly opposed this reading of the pleading requirements, arguing that even should one refer to the annotated code, one must still reference the statute itself. Id. at 265 (Grice, P.J., concurring). Citations to the annotated code were for convenience, not establishing one's claim. Id. at 265 (Grice, P.J., concurring). Nothing in the Civil Practice Act altered the strict requirements set out in prior cases. Id. at 264-268 Grice, J., concurring).

Still, one must clearly show *how* the statute violate[d] the Constitution. When a defendant alleged a statute "violates the Fourth Amendment of the United States Constitution by requiring that 'the motion to suppress shall...state facts showing wherein the search and seizure

were unlawful,'" the attack on the statute was considered "vague and indefinite." Wallin v. State, 248 Ga. 29, 30 (279 SE2d 687)(1981). As the Supreme Court aptly stated, "It is not the duty of this court to fashion the defendant's argument for him." Id.

C. Necessity of a Trial Court Ruling

The trial court must also rule upon the constitutional issue for the party to present it at appeal. In State Highway Dept. v. Kirchmeyer, 222 Ga. 79 (148 SE2d 387)(1966), which involved a challenge to a condemnation statute, the trial court sustained the pleadings against attack. The Supreme Court ruled that this was not necessarily "an adjudication of every ground of the pleadings, but only...that at least one of the grounds...was meritorious." Id. Unlike the overruling of a motion or pleading, which is a total adjudication under Burke v. State, 205 Ga. 520 (54 SE2d 348)(1949), a sustaining of the motion or pleading is not enough, in itself, to preserve the constitutional attack. If the trial court only sustains the pleadings or does not *directly* rule upon the constitutional issue, the case involves only an application of principles for the Court of Appeals. Raskin v. Wallace, 215 Ga. App. 603 (451 SE2d 485)(1994); Young v. State, 225 Ga. 221 (167 SE2d 591)(1969).

D. The Impact of Previous Adjudications of the Issue

"[W]here the Supreme Court has previously passed upon the constitutionality of a statute made upon substantially the same grounds as one presented by a bill of exceptions, no constitutional question is raised that will give the Supreme Court jurisdiction." Wright v. State,

216 Ga. 228 (115 SE2d 331)(1960); Huguley v. State, 225 Ga. 191 (167 SE2d 152)(1969). If a proper motion is made to overrule that previous decision, then the court may rule upon the constitutionality of the statute, for that question is open for reconsideration. This is the case even if the Court finds that a decision on the constitutional claim is unnecessary for the resolution of the case. Id.

E. Relation to the Rights and Interests of the Parties

The issue involved must deal directly with the rights and interests of the parties involved in the case. In Gay v. Lewis, 215 Ga. 317 (109 SE2d 646)(1959), the county sheriff attacked three statutes which governed the disbursement of county fines and monies for the salaries of certain officers, but he failed to attack a much older, similar statute which was no longer effectively applied due to the more recent enactments. This older statute was not repealed and was still in effect. Id. at 318. Because of this, the Supreme Court found that even should the three acts attacked be voided, the last would still be active, and its result would be the same as that prescribed in the other statutes. Id. at 318. Thus, no issue was presented because a "constitutional question which bears no reasonable relation to the case in hand could not be considered as determining jurisdiction. The question must be so related to the particular case that a decision thereon will be necessary." Id. at 319. Because the result was identical with or without the statutes attacked, the Court found the interests of the parties to not be affected in any way. Pruitt v. State, 227 Ga. 188 (179 SE2d 339)(1971).

V. Exceptions Allowing Jurisdiction to be Exercised

Even when the case may lack the sufficiency under the requirements above to present a constitutional question, the Court still has exercised jurisdiction when it felt that a decision was necessary. The first reason is the "public import" exception, which is rather self-explanatory. In State of Georgia v. Crane, 224 Ga. 643 (164 SE2d 116)(1968), the validity of an unsigned contract option was challenged under the statute of frauds and the Constitution and was seen as falling within the "public import" exception because the issues in the case might touch upon many other parties in the future. The Court decided this issue, even though the appellees had abandoned their claim before the Court. Id.

A second exception is the inherent power of the Court to hear any issue presented in a dispute before it, even if the parties may have never raised or argued the issue. This is done in "the interests of judicial economy so as to avoid...additional yet unavoidable litigation." Cheeley v. Henderson, 261 Ga. 498 (405 SE2d 865)(1991); *cf.*, I.B., supra, 219 Ga. App. at 268 (examining the "capable of repetition yet evades review" exception to moot issues, analogous to that of "unavoidable litigation"). In Cheeley, when the sufficiency of a legal malpractice claimant's affidavit was necessary for a decision, even though the parties never raised the issue before the Court, the Court nonetheless rendered a decision on the affidavit. Id. Justice Hunt strongly opposed this use of "inherent powers" when the parties had not even addressed the issue in their enumerations of error. Id. at 499

(Hunt, J., dissenting).

VI. Effects of a transfer by the Supreme Court

When the Supreme Court transfers a case to the Court of Appeals, stating that the constitutional issue was insufficiently raised, ruled upon, etc., the transfer may have significant effects upon the adjudication of the dispute. In Johnston v. Atlanta Humane Society, 173 Ga. App. 416 (326 SE2d 585)(1985), Johnston's dog (worth $1000) wandered off without any identification tags. The dog was found and dropped off with the Humane Society, which published notice of the dog being found. Id. After nine days, the dog was "adopted" according to the procedures in a city ordinance. Id. Johnston sued for the dog's return or its value, claiming that the city ordinance governing the adoption deprived him of property without due process. The case was transferred by the Supreme Court to the Court of Appeals, which ruled that the "Supreme Court's refusal to review appellant's constitutional challenge mandates the finding that appellant's contentions of error on constitutional grounds are without merit." Id. at 418.

Wayne County v. Herrin, 210 Ga. App. 747 (437 SE2d 793)(1993), had similar results. That case was based upon the firing and refusal to reappoint certain county officials. Id. The ordinance setting forth the procedures and powers involved was challenged as unconstitutional. Id. at 751. The Court of Appeals transferred the case to the Supreme Court, which transferred the case back. Id. at 751. The Court of Appeals ruled, "[t]his court has no jurisdiction to consider constitutional challenges...[and] we must decline to address this argument raised by the

efendants." Id. at 751. The same principle applies in cases deemed by the Supreme Court to not have been properly raised. Such cases confer "no jurisdiction upon the Supreme Court and present nothing for appellate review in [the Court of Appeals]." Parker, supra, 220 Ga. App. 303, 310. In cases of this type, the Court of Appeals most often dismisses the claim as without merit. *See e.g.*, Keef v. State, 220 Ga. App. 134 (2) (--- SE2d ---) (1996) (transfer from the Supreme Court to the Court of Appeals is equivalent to the Supreme Court deciding that the constitutional issue is meritless).

Conclusion

For the most part, the jurisdictions of the appellate courts have remained stable throughout the years. In the areas of ordinances and the ppellate process, though, the Courts have been subjected to many changes in procedures, often creating inconsistency in the applications of jurisdiction. The Supreme Court has also developed many tools to judge the sufficiency of claims and quickly dispose of them, sometimes by transferring the case to the Court of Appeals. The problem is not the boundaries of the jurisdictions, which would be easy to define, but how the Courts apply these boundaries in determining what cases to entertain.

estates as subject to consideration on appeal though not raised below, 11 ALR2d 317.

Appealability of order granting or denying right of intervention, 15 ALR2d 336.

Appealability of order pertaining to pretrial examination, discovery, interrogatories, production of books and papers, or the like, 37 ALR2d 586.

Reviewability, on appeal from final judgment, of interlocutory order, as affected by fact that order was separately appealable, 79 ALR2d 1352.

Inattention of juror from sleepiness or other cause as ground for reversal or new trial, 88 ALR2d 1275.

Judgment subject to appeal as entitled to full faith and credit, 2 ALR3d 1384.

Validity and effect of criminal defendant's express waiver of right to appeal as part of negotiated plea agreement, 89 ALR3d 864.

Appeal by state of order granting new trial in criminal case, 95 ALR3d 596.

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance — modern status, 11 ALR4th 399.

5-6-34. Judgments and rulings deemed directly appealable; procedure for review of judgments, orders, or decisions not subject to direct appeal; scope of review; hearings in criminal cases involving a capital offense for which death penalty is sought.

(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

(1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;

(2) All judgments involving applications for discharge in bail trover and contempt cases;

(3) All judgments or orders directing that an accounting be had;

(4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;

(5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;

(6) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;

(7) All judgments or orders refusing applications for dissolution of corporations created by the superior courts; and

(8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will.

(b) Where the trial judge in rendering an order, decision, or judgment, not otherwise subject to direct appeal, certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had, the Supreme Court or the Court of Appeals may thereupon, in their respective discretions, permit an appeal

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance — modern status, 11 ALR4th 399.

Relief other than by dissolution in cases of intracorporate deadlock or dissension, 34 ALR4th 13.

Appealability of order suspending imposition or execution of sentence, 51 ALR4th 939.

5-6-35. Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas.

(a) Appeals in the following cases shall be taken as provided in this Code section:

(1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders;

(3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is $2,500.00 or less;

(4) Appeals from cases involving garnishment or attachment, except as provided in paragraph (5) of subsection (a) of Code Section 5-6-34;

(5) Appeals from orders revoking probation;

(6) Appeals in all actions for damages in which the judgment is $10,000.00 or less;

(7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;

(8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;

(9) Appeals from orders granting or denying temporary restraining orders;

(10) Appeals from awards of attorney's fees or expenses of litigation under Code Section 9-15-14; and

(11) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

EQUITY

The Supreme Court has stated that an equity case is within its jurisdiction when the complaint contains allegations and prayers for equitable relief, including where the judgment or decree involves the grant of permanent injunction. However, the Supreme Court will not exercise jurisdiction if the equitable feature is removed during the progress of the claim.

Under the "bad equity rule," the Supreme Court has held that it has jurisdiction in those cases where the pleadings of the party who invokes the aid of equity, while for some reason not sufficient to set forth a case in equity, allege acts and contain prayers raising a substantial question as to whether the pleader in entitled to relief in equity. The bad equity rule was used frequently in the past, but has not been referred to since 1980.

In earlier cases the Supreme Court held that the determination of whether a case is in equity is based on the remedy sought and not the underlying issues. Robinson v. Lindsey, 184 Ga. 684 (1937). Now the Supreme Court will transfer cases when it finds that the issue of equity is ancillary to the substantive issue of law and would be a matter of routine once the underlying issues of law were resolved. Pittman v. Harbin Clinic Professional Assoc., 263 Ga. 66 (428 SE2d 328) (1993); Beauchamp v. Knight, 261 Ga. 608 (409 SE2d 208) (1991).

Transfer of 32 Equity Cases from 1994 to the Present

A majority of the cases cite either Pittman or Beauchamp finding that the equity issue is ancillary to the underlying issue of law. In other cases, the Court of Appeals held that the transfer of the appeal is tantamount to a ruling eliminating and resolving the equitable and injunctive issues which only the Supreme Court can decide.

TRANSFER OF CASES FROM 1994 TO THE PRESENT WHICH INVOLVE OTHER ISSUES

Several of the cases involve wills, but they have no discussion of the reason for the transfer. One case does specifically state that the enumerations regarding the validity of the will have been rendered moot by the transfer to the Court of Appeals. Penny Profit v. McMullen, 214 Ga. App. 740 (448 SE2d 787) (1994).

A few cases relate to divorce. One cases states that construction of a settlement agreement made pursuant to a divorce decree was a matter of contract law, not divorce law. Crotty v. Crotty, 21 Ga. App. 408 (465 SE2d 517) (1995).

Court of Appeals

Memorandum

To: Judge Beasley

From: Jeremy Veillette/Angela Couch

Subject: Analysis of the jurisdiction of Georgia's two appellate courts regarding cases with an underlying constitutional issue

Date: August 22, 1996

The jurisdictions of the Supreme Court and the Court of Appeals, at least as defined by the Georgia Constitution, have remained substantially unchanged over the years. *Compare* GA. CONST. of 1945 and 1976, Art. VI, Sec. II, Par. IV (Ga. Code § 2-3704) *with* GA. CONST. of 1983, Art. VI, Sec. VI, Par. II. In terms of the Supreme Court's review of constitutional and statutory issues, there have been two important changes. The first is the omission of reference to particular superior courts as limiting which cases the Supreme Court will hear. The 1983 Constitution allows the Court to hear cases arising from almost any trial court; jurisdiction is based upon the case, not the court. Second, the 1983 Constitution grants the Court exclusive jurisdiction over appeals involving the constitutionality of not only the State and Federal laws and constitutions, but over municipal ordinances, something missing from the earlier constitutions. It is important to note, however, the Supreme Court has still sought to limit its own jurisdiction in many ways.

I. Definitions and Disagreements over "Construction"

Under the Georgia Constitution, the Supreme Court is given jurisdiction over "[a]ll cases involving the construction of a treaty or of the Constitution of the State of Georgia or of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn into question[.]" GA. CONST. of 1983, Art. VI, Sec. VI, Par. II. It is the duty of the court to examine a case to determine if it may exercise jurisdiction over the issues involved. Woodside v. City of Atlanta, 214 Ga. 75, 77 (103 SE2d 108)(1958).

In this inquiry, "construction of the Constitution" as employed "contemplates construction where the meaning of some provision of the Constitution is directly in question and doubtful under its own terms or under the decisions of [the Georgia Supreme Court] or the decisions of the Supreme Court of the United States. [cits.]" Id. In Woodside, the definition of "taking" was put into question, namely, was it a taking if the condemnor had not paid, and was this a condition precedent to his right to prosecute or appeal the condemnation award by the court. Id. Due to past conflicting decisions, the Court felt that a new construction of "taking" was required. Id. Justice Wyatt dissented for two reasons: 1) there was no specific provision of the law claimed as unconstitutional, and 2) the condemnees asserted the general provisions would be unconstitutional only if construed in a particular manner. Id. at 77-79. Thus, the condemnees claimed the laws affected their rights only under certain applications, which Wyatt argued was not a constitutional issue, but one of application for the Court of Appeals,

especially since "taking" had previously been deemed unambiguously to mean "actual, physical taking" and not a vague form of possession. Id. at 94 (Wyatt, P.J., dissenting).

Justice Wyatt was later proven correct in Bowers v. Fulton County, 225 Ga. 745 (171 SE2d 308)(1969), in which the Court found condemnation proceedings to only require application of constitutional provisions, a task for the Court of Appeals. But Justice Undercofler dissented, stating, "Construction is the determination of the meaning of a provision. Application is involved only where the provision is precise or has been conclusively defined by this Court." Id. (Undercofler, J., dissenting). If application is the focus of the case, its decision is for the Court of Appeals, whether it is by an unambiguous or unquestioned provision of the Constitution because the meaning of the provision has been determined and sustained. Id. In Shelton v. Housing Auth., 226 Ga. 309 (174 SE2d 221)(1970), the court reiterated the Bowers principle: "a question calling for a 'construction' of the Georgia Constitution...present[s] a question as to application only." Id. Justice Undercofler once again dissented, under the same rationale as in Bowers. Id. at 310 (Undercofler, J., dissenting).

In a similar vein, Oswell v. State, 181 Ga. App. 35 (351 SE2d 221)(1986), involved a claim of unreasonable searches and seizures which created a division as to the construction versus application definitions. Oswell was pulled over for a suspended license, and after placing him in the patrol car and writing two tickets, the officer searched the car and discovered a bag of marijuana. Id. A question of probable cause existed. Id. The majority found this to involve only the application of

the Constitution. "This case presents this Court only with the choice of determining whether the search...and the resultant seizure were unreasonable, and not with the task of determining what the term 'unreasonable search and seizure' means." Id. at 37.

The dissenters argued that there were no Georgia Supreme Court cases which construed the Georgia Constitution in regards to automobile searches made incident to arrest when there were neither exigent circumstances justifying the search nor probable cause; therefore, the case required a defining of 'unreasonable' for these contexts. Id. (Beasley, J., dissenting). Although the Georgia and federal provisions may be worded identically, until the Georgia Supreme Court speaks on the issue, it may not be assumed that they mean the same in all situations. Id. at 38-39. (Beasley, J., dissenting).

In the Interest of T.A.W., 214 Ga. App. 1 (447 SE2d 136)(1994), raised similar concerns for the Court of Appeals. In T.A.W., the question of the powers of the juvenile courts to grant a new trial was raised. Appellant argued that Art. VI, Sec. I, Par. IV of the Georgia Constitution of 1983 granted such powers. But the court felt that it did not have jurisdiction over an issue involving a decision on either the power of the legislature to provide such powers to courts of record or the inherent powers of such courts under the Constitution. Id. at 2. In either case, such a determination is for the Supreme Court, for it involves the construction of the Constitution or a statute. Judge Smith, concurring specially, felt the constitutional provision in question was "plainly worded and not subject to construction." Id. at 6 (Smith, J., concurring). However, the majority maintained that the case required

either overruling past cases or declaring unconstitutional the statutes involved in those past cases, and this was best left to the Supreme Court. Id. at 6. Judge Blackburn, dissenting, saw only a call for application to the particular set of facts. Id. at 6 (Blackburn, J., dissenting). The juvenile courts were courts of record; and courts of record have power to grant new trials, GA. CONST. of 1983, Art. VI, Sec. I, Par. IV, so a mere recognition of these facts would allow the Court of Appeals to decide the issue. Id. at 7-8 (Blackburn, J., dissenting).

More recently, in In the Interest of I.B., 219 Ga. App. 268 (464 SE2d 865)(1995), the petitioner, the father of the child in question, sought to have his name expunged from the child abuse registry maintained by the Georgia Department of Human Resources and challenged the constitutionality of the statute establishing the registry. The trial court declared the case moot, because the father's name had been expunged, and it never ruled on the constitutional issues. Id. The Supreme Court transferred the case, as the only issue raised was the legal validity of the trial court's ruling, a matter for the Court of Appeals. Id.

The Court of Appeals saw itself as having to choose between alternatives: 1) finding the case moot, and thus being required to act as the Supreme Court in determining if the Supreme Court would entertain jurisdiction of the statute's constitutionality as an exercise of discretion, considering that the Supreme Court had already transferred the case once; 2) finding the case reviewable, requiring a remand of the case, opening the door for further litigation and appeal; or 3) affirming the trial court, but recognizing that if the Supreme Court declines

review, the constitutional issues would not be settled. Id. at 275-77.

The Court of Appeals, adopted a moderate approach finding that even if the statute was found unconstitutional, it would not affect the father's rights and render the opinion advisory. Id. at 276-77. Because a requirement for entertaining jurisdiction on appeal is that the interests of the parties must be affected, the court found the case moot, leaving the constitutional issues unsettled. Id. at 276-77.

II. Attempts to change jurisdiction and Collins v. State

As stated above, the 1983 Constitution altered the exclusive jurisdiction of the Supreme Court. Prior to the new Constitution, the legislature tried to effectuate some of the same changes in Act No. 299, Ga. L. 1977, p. 710. By this Act, the General Assembly assigned cases of armed robbery, rape, and arson in which the death penalty was not imposed to the Court of Appeals. Cases involving revenue, contested elections, and municipal ordinances were given to the Supreme Court. In doing so, the legislature was acting upon its powers in Art. VI, Sec. VI, Par. II of the Constitution of 1976, which states: "The General Assembly may provide for carrying cases or certain classes of cases to the Supreme Court and the Court of Appeals from the trial courts otherwise than by writ of error, and may prescribe conditions as to the right of a party litigant to have his case reviewed by the Supreme Court or Court of Appeals."

In Collins v. State, 239 Ga. 400 (236 SE2d 759)(1977), the Supreme Court found that the General Assembly surpassed its powers in enacting such changes. The Court found that the cases assigned to it were in fact

"given to the Court of Appeals under the Constitution[,]" but the changes to the Court of Appeals jurisdiction were "specifically authorized by the Constitution, and the General Assembly may effect such a transfer, provided such an enactment conforms to other Constitutional provisions." Id. at 401. The Court ruled that part of the Act affecting its jurisdiction was void, but, to effectuate the legislative intent of the Act, it ordered that such cases be docketed in the Court of Appeals and transferred to the Supreme Court for review. Id. at 401.

The Collins decision was subject to criticism soon after it was rendered. In his dissent in Echols v. Dekalb County, 146 Ga. App. 560, 568 (247 SE2d 114)(1978), Judge Deen strongly opposed the Supreme Court's "erroneous misinterpretation, misuse, and abuse of what is referred to as inherent power." He found the Supreme Court ruling that no one may amend the Constitution by means other than popular vote correct, but the order of the Court concerning the transfer of cases under Collins essentially amended the Constitution without popular approval. Id.

Since the Collins decision, the Constitution has been changed as to the jurisdictions of the courts, and the Supreme Court has been given jurisdiction over cases involving elections and ordinances, although it has never fully embraced its new assignments. Since the 1983 Constitution, Collins has lost much of its impact in the realm of jurisdiction.

III. Cases Giving Jurisdiction to the Court of Appeals

Over the years, the Supreme Court has transferred many constitutional-type of cases to the Court of Appeals, primarily by

asserting that the issues involved did not raise questions of construction or constitutionality, and thus it found the Court of Appeals' role of applying provisions to be expanded. Included in this line of cases are actions arising under 42 U.S.C. § 1983, Kroupa v. Cobb County, 262 Ga. 451 (421 SE2d 283)(1992) and double jeopardy, Patterson v. State, 248 Ga. 875 (287 SE2d 233)(1982); Nance v. State, 226 Ga. 778 (177 SE2d 681)(1970). Also, decisions concerning "the Law of the State," violations of rights, ordinances, the appellate process, and state revenue are particularly interesting and worthy of discussion.

A. Law of the State

The "law of the State" has been an area where the Supreme Court has used its powers to greatly restrict its own jurisdiction, and expand that of the Court of Appeals. Although the Supreme Court has never claimed to have denied a case involving the "law of the State," what it has done is limited the concept, so that today, "law of the State" means only enactments of the General Assembly and constitutional provisions.

1. Ordinances and Administrative Regulations

The 1983 Constitution, as discussed above, assigns exclusive appellate jurisdiction over appeals involving constitutionality of municipal ordinances. [See pages 11-12, which discusses current law.]

At one time municipal ordinances passed in pursuance of legislative authorization had the force of law and were the "law of the State." Forbes v. Mayor of Savannah, 160 Ga. 701 (128 SE2d 806)(1925). Forbes concerned a city tax on travelling salesmen, which Forbes claimed violated § 868 of the Civil Code and the Federal and State Constitutions. Id. Because the ordinance was passed under the authority granted by the

legislature to the City of Savannah, the Court ruled the ordinance was a valid State enactment. Id. at 702. In Maner v. Dykes, 183 Ga. 118 (187 SE2d 699)(1936), the Court reversed Forbes, arguing that Forbes was based upon a misinterpretation of precedent. The Court of Appeals had followed Forbes, finding that a rule of the PSC passed in pursuance of a legislative authority was the "law of the State," and a question of its constitutionality was for the Supreme Court. Manner v. Dykes, 52 Ga. App. 715 (184 SE2d 438)(1935). The Supreme Court disagreed, recognizing a distinction between "laws of the State and rules and regulations having the effect of laws." 183 Ga. at 119. The rules of bodies like the PSC were not "laws in the legal sense of the term[,]" so their review was for the Court of Appeals. Id. at 119. In overruling Forbes, the Court stated that while ordinances may have "the force of law," they are "mere police regulations of the municipal government," and as such, are only laws of the municipality itself. Id. at 120. The same principle applies to rules of administrative bodies such as the PSC. Carter v. Bishop, 209 Ga. 146 (71 SE2d 216)(1952).

2. Court Decisions

Court decisions have also been ruled not to be "law of the State." In Atlanta & West Point RR. Co. v. Hemmings, 182 Ga. 724 (16 SE2d 537)(1941), it was contended that prior decisions of the Supreme Court calling for juries to decide if the actions of train engineers at crossing constituted negligence were violative of the Commerce Clause. Once again the Court laid out a distinction between an enactment as law and other authority, here a decision, which had the force of law. An act

of the General Assembly had given certain unanimous decisions of the Court the force of law and provided that they could not be overturned without legislative action. Id. at 725. The Court stated that the Act recognized the cases "to be on the same plane 'as if the same had been enacted in terms by the General Assembly[,]'" but they were not the formal equivalents of the laws of the legislature. Id. at 727. "The phrase 'any law of the State,' as used in the constitutional provision...means a legislative enactment." Id. at 728.

The Court of Appeals has followed such precedent as recently as Spires v. Kim, 203 Ga. App. 302, 303 (416 SE2d 780)(1992), when it stated that "[w]hile the decision...may be the law of this State, it is not a state 'law' so that the Supreme Court would have jurisdiction over any case wherein a constitutional challenge is raised to its continued viability." The appellants in Spires contended that a recent Supreme Court decision preventing actions for wrongful births until the legislature allowed such actions violated due process rights. The Court of Appeals affirmed the trial court's dismissal of the wrongful birth complaint and allowed the appellants to seek a writ of certiorari to the Supreme Court on due process grounds. Id. at 303-04. The dissenters, Judges Beasley and Pope, disagreed with this result, arguing that the case should have been transferred to the Supreme Court to rule on the due process claim. Id. at 304-05 (Beasley, J., dissenting). They saw the appellants as arguing not that a statute was unconstitutional, but that the absence of a cognizable statutory cause of action, and the Supreme Court's refusal to recognize a common law action violated the Constitution. Id. at 305 (Beasley, J., dissenting). Their arguments

demonstrate that in some cases, an attack on a decision, whether or not it is "law of the State," is intimately tied to a statutory claim of sorts, but the courts have refused to address such issues.

3. Rules of the Courts

Rules of the courts are treated in a similar manner. In an appeal from a judgment in a condemnation case, the appellants challenged a rule of the Superior Court on constitutional grounds, but the Supreme Court ruled that a court rule is not the "law of the State" within the meaning of the Constitution, so jurisdiction was in the Court of Appeals. Shelton, supra, 226 Ga. at 309.

B. Violations of Rights

A claim which alleges only a violation of rights will often be found to be insufficient to vest jurisdiction in the Supreme Court. When one claims a violation of rights or that a judgment is contrary to the Constitution, the claim does not require the construction of any provision of the Constitution, but only its application to the particular facts, a matter for the Court of Appeals. Liles v. Still, 176 Ga. App. 65 (335 SE2d 168)(1985); Dixon v. State, 207 Ga. 192 (60 SE2d 439)(1950); Gaston v. Keehn, 195 Ga. 559 (24 SE2d 675)(1943).

C. Ordinances

Prior to the adoption of the Constitution of 1983, it was long settled that the Court of Appeals had jurisdiction over questions of the validity and constitutionality of ordinances. Loomis v. City of Atlanta, 206 Ga. 822 (58 SE2d 813)(1950); Moore v. City of Tifton, 207 Ga. 443 (62

SE2d 182)(1950). Such claims were seen as raising only a matter of application of constitutional provisions. Bowery Savings Bank v. Dekalb County, 239 Ga. 398 (236 SE2d 757)(1977); Ledbetter v. Roberts, 213 Ga. 47 (96 SE2d 614)(1957). The Constitution of 1983 put jurisdiction over ordinances in the Supreme Court, and the Court acknowledge this change in Kariuki v. Dekalb County, 253 Ga. 713 (324 SE2d 50)(1985). Kariuki pointed out the alterations in the jurisdiction between the 1976 and 1983 Constitutions by paraphrasing Art. VI, Sec. VI, Par. II: "the Supreme Court shall exercise exclusive appellate jurisdiction in specified types of cases, including all those in which the constitutionality of a law *or ordinance* has been drawn into question." Id. at 714 (emphasis in original). The Court noted that no qualification was contained such as "unless otherwise provided for by law." Id. at 714.

In Kariuki, the Court overruled Henson v. Dekalb County, 158 Ga. App. 348 (280 SE2d 393)(1981), which had held that Recorder's Courts decisions on ordinances could be appealed only by petitioning for certiorari to the Superior Court. The Kariuki Court found the language "exclusive jurisdiction" to mean that only the Supreme Court could now hear such appeals. Id. at 715. Thus, Kariuki established that the appeal could be taken directly to the Supreme Court, without first being reviewed by the Superior Court.

Kariuki was overruled a few years later in Russell v. City of East Point, 261 Ga. 213 (403 SE2d 50)(1991). As in Kariuki, the defendant-appellant challenged the ordinance under which he had been convicted. He did so through a direct appeal to the Supreme Court. Id. The Russell court relied upon City of Atlanta Bd. of Zoning Adjustment v. Midtown

North, Ltd., 257 Ga. 496 (360 SE2d 569)(1987), noting that although the Constitution governed jurisdiction of the subject matter of an appeal, statute determined the method of appeal. Id. This principle also governed the decision in Trend Development Corp. v. Douglas County, 259 Ga. 425 (383 SE2d 123)(1989), where that court held that challenges to zoning ordinances must "not only be reviewed by the Superior Court, but must also follow the procedure for discretionary review set forth in OCGA § 5-6-35(a)(1)." Russell, 261 Ga. at 213. In Russell, the defendant appealed from a Recorder's Court and no constitutional provision or statute provided a direct appeal from that court. Id. Russell did not alter the fact that the Supreme Court had jurisdiction over ordinances, it only gave the Court more power in deciding what cases it would hear.

D. The Appellate Process

The enactment of the direct and discretionary appeals statutes (now OCGA § 5-6-34 & 35) in 1979 gave the appellate courts "the discretion not to entertain an appeal where the Superior Court had reviewed a decision of certain specified cases or made a decision in certain cases." Not included in these were decisions of the PSC and probate courts and cases involving ad valorem taxes and condemnations. Citizens and Southern Nat'l. Bank v. Rayle, 246 Ga. 727 (273 SE2d 139)(1980). In Trend Development, supra, 259 Ga. at 425, the Supreme Court expanded the discretionary appeal to zoning cases; in such cases the appeal is from a court review of a decision of an administrative agency (the Zoning Board) within the meaning of OCGA § 5-6-35(a)(1). This requirement of application applied to all appeals of zoning cases to either the Court of

Appeals or the Supreme Court, but the decision in Trend was questioned as to whether it properly applied the law, because the Zoning Boards are not true administrative bodies, and the Superior Courts are not allowed a full review of the Board decisions. See Schockley v. Fayette County, 260 Ga. 489, 492 n.2 (396 SE2d 883)(1990)(Hunt, J. concurring). Where the underlying subject matter involves the class of cases covered under the discretionary appeal statute, the discretionary procedures must be adhered to even when a party is appealing a matter procedurally subject to direct appeal under OCGA § 5-6-34(a). Rebich v. Miles, 264 Ga. 467 (448 SE2d 192)(1994). If the procedures are not followed, the Court will dismiss the appeal. *See* Id.; Self v. Bayneum, 265 Ga. 14 (453 SE2d 27)(1995); Armstrong v. Miles, 265 Ga. 344 (455 SE2d 587)(1995).

E. State Revenues

Cases involving revenues of the state have traditionally been within the jurisdiction of the Court of Appeals, but following the decision in Collins v. State, 239 Ga. 400, the Supreme Court reviewed many of these cases under the transfer procedures set forth there. Notably, however, the Court has also limited what falls within the meaning of "revenues of the State." Transamerica Ins. Co. v. State of Georgia, 246 Ga. 183 (269 SE2d 466)(1980), dealt with a dispute over a claim to the funds in the registry of the court in a garnishment proceeding. The Court of Appeals transferred the case as involving the revenues of the state since the fund was established with city bonds. The Supreme Court saw the case as only involving the priority of claimants, not state funds, so it transferred the case back to the Court of Appeals.

The situation established by Collins v. State was ended in Collins v. A.T. & T. Co., 265 Ga. 37 (456 SE2d 50)(1995), a case involving an appeal of a decision of a Superior Court overturning an income tax ruling by the State Revenue Commissioner. The basis of the A.T. & T. opinion was that the decision in Collins v. State was rendered prior to the 1983 Constitution which did not include as among the subjects in the jurisdiction of the Supreme Court. Id. Therefore, it was clear that the Court of Appeals was to have jurisdiction under the 1983 scheme, and the Supreme Court ordered all present and future revenue cases transferred to the Court of Appeals. Id. at 37-38.

One area of revenue which has generated some confusion due to the Collins v. State procedures is ad valorem tax cases. After Collins v. State, both the Supreme Court and the Court of Appeals were hearing ad valorem tax cases, often with only the assessment of the tax, not its underlying ordinance, being contested. Dekalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277 (282 SE2d 880)(1981), remedied this dual use of jurisdiction by holding that the Supreme Court had jurisdiction only if the constitutionality of a statute or ordinance was called into question in the case; tax assessments, by themselves, were for the Court of Appeals. Although Dekalb County dealt with a contested assessment, the Supreme Court heard the case since past, procedures had been followed. Id. at 278. The new jurisdiction was to be enforced in the future. *See* Ayers v. Mobley, 248 Ga. 869 (287 SE2d 4)(1982); Ayers v. Douglas County Bd. of Tax Assessors, 248 Ga. 382 (203 SE2d 457)(1981).

IV. Insufficient Claims of Jurisdiction

Even if a case involves a matter which would normally fall within the jurisdiction of the Supreme Court or the Court of Appeals, the courts still may not entertain the case. Most often this is due to the issue not being properly raised by the party or ruled upon by the trial court. *See e.g.*, Morton v. State, 206 Ga. App. 413 (425 SE2d 336)(1992) (jurisdiction was proper in the Court of Appeals, even though appellant challenged the constitutionality of a zoning ordinance, because his attempt was not properly raised and ruled upon in the trial court). Also, if the issue has been decided in a previous case, the Court may reject the appeal. In all of these situations, when the Supreme Court refuses such a case, it normally finds jurisdiction to be in the Court of Appeals.

A. Timeliness of the Claim

The sufficiency of raising a constitutional question has two aspects: 1) when the issue is raised; and 2) how the issue is raised. Claims of constitutional violations "must be made at the first opportunity, either in pleadings, objections to evidence, or in some other appropriate way pending the trial." Parker v. State, 220 Ga. App. 303, 310 (1992); *see also* Blackston v. State of Georgia, 255 Ga. 15 (334 SE2d 679)(1985). It may not be raised for the first time in a motion for a new trial or similar motion, unless the opportunity has not arisen beforehand. E.P. v. State of Georgia, 230 Ga. 770 (199 SE2d 313)(1973). In such a case, jurisdiction is for the Court of Appeals, not the Supreme Court. Id.; Yield, Inc. v. City of Atlanta, 239 Ga. 578 (238 SE2d

351)(1977).

B. Sufficiency of the Claim

In order to properly raise a constitutional issue, both the statute and constitutional provisions in question and the manner of their inconsistency all must be pled. Manufacturer's Trust Co. v. Wilby-Kincey Serv. Corp., 204 Ga. 273 (49 SE2d 514)(1948). In Manufacturer's Trust, the plaintiff contended that the construction of the garnishment statute in question by the garnishee "would be a judicial injustice and judicial legislation, and it would deny to the plaintiff in attachment the equal protection of the law to all persons in like and similar circumstances, under the State and Federal Constitutions, and the Fourteenth Amendment to the Federal Constitution, and deny due and like process to citizens of other states afforded to the citizens of out state, contrary to the State and Federal Constitutions." Id. at 273-274. The Supreme Court saw the party as *attempting* to raise a constitutional issue, but the sufficiency of the claim was deemed inadequate, because specific provisions were not cited.

The specific requirements for raising a constitutional issue were set out in Williams v. State, 217 Ga. 312 (122 SE2d 229)(1961): "'(1) the statute or the particular part or parts of the statute which the party would challenge must be stated or pointed out with fair precision; (2) the provision of the Constitution which it is claimed has been violated must be clearly designated; and (3) it must be shown wherein the statute, or some designated part of it, violates such constitutional provision.' [cit.]" Id. at 313. Even if one claims that a statute is "in violation

of the constitutional provision of the State of Georgia, forbidding the enactment of legislation containing a plurality of subject matter and containing matter which is not germane and which is not included in the title," this is not sufficiently pled to place jurisdiction in the Supreme Court, for "the specific part, paragraph, and section of the Constitution" are not set out. Lilly v. Crisp County School System, 224 Ga. 45 at 45 (159 SE2d 707)(1968).

By the time of North Georgia Finishing, Inc. v. Di-Chem, Inc., 231 Ga. 260 (201 SE2d 321)(1973), the Court was not so strict, partly due to the relaxed pleading standards under the Civil Practice Act of 1966. Counsel in North Georgia argued that a garnishment statute violated due process and equal protection, but improperly cited the code section involved, using the annotated code, rather than the actual enactment. Id. at 261. The Court held this to be sufficient to raise the constitutional question. Id. at 262. Justice Grice, concurring specially, strongly opposed this reading of the pleading requirements, arguing that even should one refer to the annotated code, one must still reference the statute itself. Id. at 265 (Grice, P.J., concurring). Citations to the annotated code were for convenience, not establishing one's claim. Id. at 265 (Grice, P.J., concurring). Nothing in the Civil Practice Act altered the strict requirements set out in prior cases. Id. at 264-268 Grice, J., concurring).

Still, one must clearly show *how* the statute violate[d] the Constitution. When a defendant alleged a statute "violates the Fourth Amendment of the United States Constitution by requiring that 'the motion to suppress shall...state facts showing wherein the search and seizure

were unlawful,'" the attack on the statute was considered "vague and indefinite." Wallin v. State, 248 Ga. 29, 30 (279 SE2d 687)(1981). As the Supreme Court aptly stated, "It is not the duty of this court to fashion the defendant's argument for him." Id.

C. Necessity of a Trial Court Ruling

The trial court must also rule upon the constitutional issue for the party to present it at appeal. In State Highway Dept. v. Kirchmeyer, 222 Ga. 79 (148 SE2d 387)(1966), which involved a challenge to a condemnation statute, the trial court sustained the pleadings against attack. The Supreme Court ruled that this was not necessarily "an adjudication of every ground of the pleadings, but only...that at least one of the grounds...was meritorious." Id. Unlike the overruling of a motion or pleading, which is a total adjudication under Burke v. State, 205 Ga. 520 (54 SE2d 348)(1949), a sustaining of the motion or pleading is not enough, in itself, to preserve the constitutional attack. If the trial court only sustains the pleadings or does not *directly* rule upon the constitutional issue, the case involves only an application of principles for the Court of Appeals. Raskin v. Wallace, 215 Ga. App. 603 (451 SE2d 485)(1994); Young v. State, 225 Ga. 221 (167 SE2d 591)(1969).

D. The Impact of Previous Adjudications of the Issue

"[W]here the Supreme Court has previously passed upon the constitutionality of a statute made upon substantially the same grounds as one presented by a bill of exceptions, no constitutional question is raised that will give the Supreme Court jurisdiction." Wright v. State,

216 Ga. 228 (115 SE2d 331)(1960); Huguley v. State, 225 Ga. 191 (167 SE2d 152)(1969). If a proper motion is made to overrule that previous decision, then the court may rule upon the constitutionality of the statute, for that question is open for reconsideration. This is the case even if the Court finds that a decision on the constitutional claim is unnecessary for the resolution of the case. Id.

E. Relation to the Rights and Interests of the Parties

The issue involved must deal directly with the rights and interests of the parties involved in the case. In Gay v. Lewis, 215 Ga. 317 (109 SE2d 646)(1959), the county sheriff attacked three statutes which governed the disbursement of county fines and monies for the salaries of certain officers, but he failed to attack a much older, similar statute which was no longer effectively applied due to the more recent enactments. This older statute was not repealed and was still in effect. Id. at 318. Because of this, the Supreme Court found that even should the three acts attacked be voided, the last would still be active, and its result would be the same as that prescribed in the other statutes. Id. at 318. Thus, no issue was presented because a "constitutional question which bears no reasonable relation to the case in hand could not be considered as determining jurisdiction. The question must be so related to the particular case that a decision thereon will be necessary." Id. at 319. Because the result was identical with or without the statutes attacked, the Court found the interests of the parties to not be affected in any way. Pruitt v. State, 227 Ga. 188 (179 SE2d 339)(1971).

V. Exceptions Allowing Jurisdiction to be Exercised

Even when the case may lack the sufficiency under the requirements above to present a constitutional question, the Court still has exercised jurisdiction when it felt that a decision was necessary. The first reason is the "public import" exception, which is rather self-explanatory. In State of Georgia v. Crane, 224 Ga. 643 (164 SE2d 116)(1968), the validity of an unsigned contract option was challenged under the statute of frauds and the Constitution and was seen as falling within the "public import" exception because the issues in the case might touch upon many other parties in the future. The Court decided this issue, even though the appellees had abandoned their claim before the Court. Id.

A second exception is the inherent power of the Court to hear any issue presented in a dispute before it, even if the parties may have never raised or argued the issue. This is done in "the interests of judicial economy so as to avoid...additional yet unavoidable litigation." Cheeley v. Henderson, 261 Ga. 498 (405 SE2d 865)(1991); *cf.*, I.B., supra, 219 Ga. App. at 268 (examining the "capable of repetition yet evades review" exception to moot issues, analogous to that of "unavoidable litigation"). In Cheeley, when the sufficiency of a legal malpractice claimant's affidavit was necessary for a decision, even though the parties never raised the issue before the Court, the Court nonetheless rendered a decision on the affidavit. Id. Justice Hunt strongly opposed this use of "inherent powers" when the parties had not even addressed the issue in their enumerations of error. Id. at 499

(Hunt, J., dissenting).

VI. Effects of a transfer by the Supreme Court

When the Supreme Court transfers a case to the Court of Appeals, stating that the constitutional issue was insufficiently raised, ruled upon, etc., the transfer may have significant effects upon the adjudication of the dispute. In Johnston v. Atlanta Humane Society, 173 Ga. App. 416 (326 SE2d 585)(1985), Johnston's dog (worth $1000) wandered off without any identification tags. The dog was found and dropped off with the Humane Society, which published notice of the dog being found. Id. After nine days, the dog was "adopted" according to the procedures in a city ordinance. Id. Johnston sued for the dog's return or its value, claiming that the city ordinance governing the adoption deprived him of property without due process. The case was transferred by the Supreme Court to the Court of Appeals, which ruled that the "Supreme Court's refusal to review appellant's constitutional challenge mandates the finding that appellant's contentions of error on constitutional grounds are without merit." Id. at 418.

Wayne County v. Herrin, 210 Ga. App. 747 (437 SE2d 793)(1993), had similar results. That case was based upon the firing and refusal to reappoint certain county officials. Id. The ordinance setting forth the procedures and powers involved was challenged as unconstitutional. Id. at 751. The Court of Appeals transferred the case to the Supreme Court, which transferred the case back. Id. at 751. The Court of Appeals ruled, "[t]his court has no jurisdiction to consider constitutional challenges...[and] we must decline to address this argument raised by the

defendants." Id. at 751. The same principle applies in cases deemed by the Supreme Court to not have been properly raised. Such cases confer "no jurisdiction upon the Supreme Court and present nothing for appellate review in [the Court of Appeals]." Parker, supra, 220 Ga. App. 303, 310. In cases of this type, the Court of Appeals most often dismisses the claim as without merit. *See e.g.*, Keef v. State, 220 Ga. App. 134 (2) (--- SE2d ---) (1996) (transfer from the Supreme Court to the Court of Appeals is equivalent to the Supreme Court deciding that the constitutional issue is meritless).

Conclusion

For the most part, the jurisdictions of the appellate courts have remained stable throughout the years. In the areas of ordinances and the appellate process, though, the Courts have been subjected to many changes in procedures, often creating inconsistency in the applications of jurisdiction. The Supreme Court has also developed many tools to judge the sufficiency of claims and quickly dispose of them, sometimes by transferring the case to the Court of Appeals. The problem is not the boundaries of the jurisdictions, which would be easy to define, but how the Courts apply these boundaries in determining what cases to entertain.

JURISDICTIONAL ISSUES OF EQUITY
OUTLINE OF CASES

JURISDICTIONAL ISSUES OF EQUITY

I. EQUITABLE RELIEF "ANCILLARY"

A. IN GENERAL

Barton v. Barton 216 Ga. App. 292 (454 SE2d 155) (1995)
- appeal from an order granting final judgment cancelling a deed to secure a debt
- contrary to appellee's suggestion, this appeal in an equity case is not subject to transfer to the SCt, but is within the jurisdiction of this Ct since only issues of law are raised...and there is not substantive issue of equity presented
- cites Beauchamp supra at 609(2)

Auto Cash Inc. v. Hunt 216 Ga. App. 239 (454 SE2d 162) (1995)
- Auto Cash sought injunctive relief arguing that Hunt's continued use of its trademark would result in irreparable harm; case filed in SCt
- SCt summarily transferred the cases to this court, which does not have jurisdiction of equity cases, thus indicating that the appeals should have been filed in this court in the first place b/c equitable relief was merely ancillary
- cites Beauchamp see below
- since this court does not have jurisdiction over the question of whether equitable relief in the form of injunction should have been granted or denied, but only over the efficacy or the summary judgment rulings, the appeals should have been brought in this Ct pursuant to the interlocutory appeal procedure b/c the crux of the matter is whether SJ was properly denied

Dick v. Williams 215 Ga. App. 629 (452 SE2d 172) (1994) **Judge Pope**
- plaintiffs brought a complaint in equity against defendants seeking to set aside the grant of a rezoning application...the trial court granted plaintiffs request for equitable relief and this appeal , which was originally filed by defendants in the SCt, followed
- by order ... the SCt transferred the case to this court, on the basis that "the equitable relief granted by the trial court was a matter of routine once the underlying issues of law were resolved ... citing Pittman v. Harbin
- although we agree with plaintiff's assessment that the SCt, not this court has jurisdiction of this appeal...we are constrained by principles of fairness and justice to consider the merits of this appeal
- however, we note that jurisdiction of the appellate courts of this state is set forth in our state constitution and neither this court nor the SCt can broaden or limit jurisdiction on its won initiative; nor can the SCt confer jurisdiction on this court where such jurisdiction would not otherwise be proper

Bryant v. Employer Retirement Systems of Georgia 264 Ga. 125 (441 SE2d 757) (1994)
- Primary issue is whether the trial correctly construed OCGA § 47-2-332 and certain federal provisions
- Equitable relief sought would have been a matter of routine once the underlying issues of law, i.e. statutory construction issues, were resolved

McAlpin v. Coweta Fayette Surgical Assoc. 207 Ga. App. 669 (458 SE2d 499) (1995)
- TCT entered interlocutory injunction -- party appealed to SCt which transferred matter here under Pittman

Krystal Co. v. Carter 256 Ga. 43 (343 SE2d 490) (1986)

injunction was prayed for, none granted or necessary; injunction would have been merely ancillary cites Baranan, supra at 123

it is clear therefore that the injunction issue is one of mere form and that the substantive question on appeal is a legal question over which the CtApp has jurisdiction

Zepp v. Mayor of Athens 255 Ga. 449 (339 SE2d 576) (1985)

it follows that jurisdiction of this appeal is in the CtApp

where the plaintiff attacks the validity of a statute and seeks to enjoin its enforcement, the injunctive feature of the case is considered to be ancillary to the other relief sought and will not in itself, vest jurisdiction in this court Baranan

Pace Constr. Co. v. Houdaille-Duval-Wright Division of Houdaille Indust. 245 Ga. 696 (266 SE2d 504 (1980)

appellant argues that for purposes of the right of appeal under Code Anot § 6-701(a)(3), an order denying a motion for a stay of judicial proceeding pending arbitration is equivalent to an order denying an application for an interlocutory injunction, and that therefore the present appeal is properly before this court by virtue of its appellate jurisdiction in all equity cases

we conclude, however, that even if for the purposes of the right of appeal, a stay pending arbitration is legally equivalent to an interlocutory injunction, the present appeal would not constitute an equity case so as to vest this court with appellate jurisdiction

the issue of the stay is ancillary to the issue of the enforceability of the subcontractors arbitration clause -- such enforceability is a legal issue over which the CtApp has jurisdiction

the dispositive issue is a legal issue...transferred to CtApp

Related case Phillips Constr. 250 Ga. 488 (1983)

Atlantic States Construction v. Beavers 250 Ga. 828 (301 SE2d 81) (1983)

This is not an equity case because (1) legal question with monetary damages and (2) it involves a statutory form of specialized declaratory judgment

appraisal rights: damages amount in value of stock, therefore equitable issue is ancillary

Peoples Bank of Bartow County v. Austin 159 Ga. App. 223 (283 SE2d 81) (1981)

(1) the appeal having been originally filed with the SCt, same has been transferred to this court as the equitable issue concerning permanent injunction is ancillary to the declaratory relief sought

the SCt considered the injunction issue to the one of mere form and that the substantive question on appeal [summary judgment] is a legal question over which the CtApp has jurisdiction citing Baranan 239 Ga 122 & Bowery 239 Ga 398

we proceed to consider the enumeration of error based upon the granting of the SJ here

Baranan v. Georgia State Board of Nursing Home Administrators 239 Ga. 122 (236 SE2d 71) (1977)

the only substantive issue on appeal relates to the constitutionality of the above rules; therefore, the appeal is transferred to the CtApp

the issue of any permanent injunction is ancillary to the declaratory relief, i.e. if the declaration is for the plaintiff, the injunction will issue if it against the plaintiff, it will be denied

it is clear therefore that the injunction issue is one of mere form and that the substantive question on appeal is a legal question over which the CtApp has appellate jurisdiction

Graham v. Tallent 235 Ga. 47 (218 SE2d 799) (1975)

defendant prayer that plaintiff be enjoined from proceeding with foreclosure amounts to a prayer by defendant that the relief sought be plaintiff be denied

if this prayer were treated as making this case in equity, then every case could be made a case in equity be adding a prayer to the answer that plaintiff be enjoined from obtaining that relief sought in the complaint -- appellate jurisdiction is not so easily manipulated

Hudon v. North Atlanta 219 Ga. 179 (132 SE2d 74) (1963)

this case falls within the jurisdiction of the CtApp since it is one for a declaration of the rights of the parties and shows that the status of the respective parties pending adjudication should be maintained be the issuance of a temporary injunction

while there is a prayer for permanent injunction, the allegations are insufficient to authorize the grant of such relief, and if such a prayer alone determined jurisdiction, litigants could require this Ct to review every case as being within the jurisdiction of the Ct as an equity matter by adding such a spurious prayer

Fulford v. Johnson 221 Ga. 338 (144 SE2d 526) (1965)

equitable feature has been removed; thus case transferred to CtApp

Motels Inc. v. Shadrick 213 Ga. 434 (99 SE2d 107) (1957)

since petition only sought legal relief after amendment, CtApp has jurisdiction

Milwaukee Mechanics Ins. Co. v. Davis 204 Ga. 67 (48 SE2d 876) (1948)

grant of injunction to maintain status quo was purely incidental and ancillary relief

no permanent equitable relief was sought

B. **"GOOD/BAD EQUITY"**

Dept. of Transportation v. Claussen Paving Co. 246 Ga. 807 (273 SE2d 161) (1980)

The claims on which Claussen recovered judgment against DOT arose out of a contract btw DOT and Claussen for the widening of a portion of a road

Assuming arguendo, that the DOT is correct in its contentions that Claussen's recovery is limited by the terms and conditions of the contract, the case nonetheless properly is pending here since this court hears such equity cases whether "good" or "bad." *citing State Hway Dept v. Hewitt*

Our equity jurisdiction is not invoked, however, by the demands in this case for temporary and permanent injunctive relief ancillary to the demand for declaratory judgment. *citing Bowery Savings v. DeKalb County*, 239 Ga 398 (1977)

Providential Life & Accidental Ins. Co v. United Family Life Insur. Co. 233 Ga. 540 (212 SE2d 326) (1975)

Action for declaratory judgment and equitable relief against defendant

This appeal was originally filed in the Court of Appeals. It transferred the appeal to this court because the case involved equity

We conclude this court has jurisdiction of the appeal under the so-called rule of "bad equity cases"

Aetna Finance Co. v. Pair 141 Ga.App. 243 (233 SE2d 218) (1977)

appellee filed a motion under cases holding that the jurisdiction of bad as well as good equity cases is in the SCt

but Aetna has not alleged any facts putting itself within the ambit of equity jurisdiction. It does not claim to have a good defense of which it was ignorant at the time , or that it was prevented from making its defense because of fraud or other acts of the adverse party unmixed with negligence on its own part. It alleges that failure to file defenses was due to accident, mistake and oversight on the part of its own agents, and through error and oversight...no defensive pleadings were filed. This raises no claim to equity jurisdiction such as to justify a transfer of this appeal to the SCt since it must be shown among other things, that failure to enter a defense was not due to any negligence or fault on the part of the complainant

Hawes v. Bibb Manufacturing Co. 224 Ga. 141 (160 SE2d 355) (1968)

action to enjoin assessment and collection of taxes because no full, adequate and complete remedy at law

case sounds in declaratory judgment and contains pleadings which could require the application of constitutional clauses to a given situation both of which come within the jurisdiction of the CtApp on review

however, since the above would not give this court jurisdiction, yet the case may be one of equity jurisdiction, and since we take jurisdiction of "bad equity " cases as well as good, we move without further discussion to a decision on the merits

Sams v. McDonald 223 Ga. 53 (153 SE2d 538) (1967)

survivor of joint savings and loan seeks funds after death of co-tenant; administrator of estate to declare agreement null and void

Court held that "this is in fact a "bad equity" case of which this court has jurisdiction even though intervention fails to allege sufficient equitable averments to declare the contract null and void

Norbo Trading Co. v. Wohlmuth 115 Ga. App. 69 (153 SE2d 727) (1967)

present petition, contains a prayer for a permanent injunction and alleges , in addition to the plaintiff's right to a declaratory judgment, that a permanent injunction is necessary to prevent the defendant from interfering with or acting contrary to the plaintiff's exercise of his rights and powers under an alleged power of attorney

these allegations are sufficient to show that the prayer for a permanent injunction is not spurious and hence, to extend the SCt jurisdictional power to this case, even if it should be considered a "bad equity case" which is defined in Hewitt Constr. Co.

State Highway Dept. v. Hewitt Contracting Co. 221 Ga. 621 (146 SE2d 632) (1966)

contractor contended that Hway dept did not pay full compensation for work and materials; five counts were for monetary damages; sixth count damage due to mutual mistake and therefore contract should be rescinded

constitution rests in this court the power to review equity cases and this jurisdictional power extends to "bad equity cases"

Bad equity cases =those cases where the pleadings of the party who invokes the aid of equity, while for some reason not sufficient to set forth a cause in equity, allege facts and contain prayers raising a substantial question as to whether the pleader is entitled to relief in equity

the phrase "bad equity cases" obviously does not extend to cases where the pleadings show no semblance of an equitable action and affirmatively reveal the only relief is such as can be obtained in a court of law; here, rescission is not necessary...remanded

Victoria Corp v. Atlanta Merchandise Mart Inc. 215 Ga. 568 (111 SE2d 374) (1959)

the appeal contained a prayer for injunction against the bldg inspector to prevent him from granting a permit...it is readily apparent that this is strictly a law case, and the fact that there is a prayer for injunction that has never been acted upon does not make the case anything but a law case

where the equitable features are sought to be injected solely by the appeal, the case is transferred to the CtApp

O'Rear v. Lamb 194 Ga. 455 (22 SE2d 74) (1942)

where the trial court judgment striking the portions of the amended petition containing the contract which the petition seeks to have specifically performed is excepted to, the petition does not become a case in law, it is still an action in equity

Berry v. Travelers Insur. Co. 190 Ga. 772 (10 SE2d 753) (1940)

a petition for construction of an insurance certificate in connection with a master-group policy presented an action at law

no facts suggest remedy in equity such as fraud, mistake transferred to the CtApp

Candler v. Bryan 189 Ga. 851 (8 SE2d 81) (1940)

when from the allegation and the prayers, it appears that a complainant is seeking equitable relief, the suit should be considered a case in equity,, even though it may not state a valid and subsisting cause of action for such relief

this is true because the jurisdiction of this court is not limited to good cases in equity, but extends to bad ones also, citing Callaghan

here, petition prayed for an injunction and equitable lien

O'Callaghan v. Bank of Eastman 180 Ga. 812 (180 SE2d 847) (1935)

it is apparent that the plaintiff in this case is seeking equitable relief and her petition therefore should be considered as a case in equity, even though it may not state a valid and subsisting cause of action for such relief

the jurisdiction of this court is not limited to good cases in equity, but will embrace both good and bad equity cases

where a suit is brought in a superior court, and it is apparent from the allegations and prayers that the plaintiff is seeking equitable relief, the question whether the petition states a subsisting cause of action for such relief...should be decided by the court sitting as a court in equity and not as a court of law

in such cases, appellate jurisdiction is vested in the SCt not the CtApp

Sutker v. Pennsylvania Insur. Co. 114 Ga. App. 627 (152 SE2d 578) (1966)

action for reformation of a contract

amendment of petition seeking reformation of the contract converted the action from one at law to one in equity and hence the SCt rather than the CtApp has jurisdiction of the appeal

SCt has jurisdiction over "good and bad equity"

Consequently, even though the amended petition may not state a valid and subsisting cause of action for equitable relief it is within that court's jurisdiction

transferred to SCt

Sutker 223 Ga. 58 (153 SE2d 540) (1967)

where reformation of a contract is prayed for but the allegations of the petition fail to allege fraud or mutual mistake, the action seeking a monetary judgment is one at law and not equity

CtApp has jurisdiction -- transferred

C. CONTRACT PROVISIONS / COVENANTS NOT TO COMPETE

Frazier v. Deen 221 Ga. App. 153 (SE2d) (1996)

plaintiff's brought the underlying action seeking an injunction; plaintiffs contend that defendants improperly changed a restrictive covenant governing their subdivision

Based on the undisputed facts, the trial court did not err in granting defendants' motions for summary judgment

this case involved the request for an injunction; therefore we do not address the plaintiffs' ability to obtain monetary damages should they be requested and proven

Saxton v. Coastal Dialysis & Medical Clinic, Inc 220 GaApp 805 (SE2d) (1996)

complaint against defendant to enforce a non-compete covenant; plaintiff sought interlocutory and permanent injunctions against breach of the covenant

defendant filed an application for interlocutory review in the SCt

The St transferred the application to this court on the basis that "the grant of equitable relief was merely ancillary to an underlying issue of law, i.e., whether the trial court properly construed the employment agreement, [so that, in the opinion of the SCt] jurisdiction is properly in the CtApp" citing Pittman

The aspect of the defendant's case which was directly reviewable, i.e., the grant of interlocutory injunction, was found to be "merely ancillary to an underlying issue of law...

By transferring the application to this court, the SCt eliminated from review the foundation for direct appeal status under OCGA § 5-6-34(a)(4), that is, the injunctive nature of relief granted

It {SCt] also left for this court the question of whether an application was the proper path for appeal. This court held that it was not, for the same reason the SCt had used in concluding that it did not have jurisdiction of the matter

Thus we have a puzzle: the action is not an equity case for the purpose of invoking appellate jurisdiction because the issue raised on appeal is a legal one. That is the SCt's view, the reason given for the transfer. On the other hand, the action was ruled to be an equity case for the purpose of access to appellate review by direct appeal to the CtApp, even though the CtApp does not have jurisdiction of "equity cases" That was this court's view in ruling on the application. We are bound to it because it is the law of this case. That is so even though the application and this direct appeal are technically two separate cases. We cannot close our eyes to the reality that they are in fact the same appeal

However, in the future we will follow Auto Cash v, Hunt, 216 Ga. App. 239 (1995), which held that since this court only had jurisdiction over the efficacy of the summary judgment denials and not over the equitable relief, compliance with the interlocutory appeal procedure was required under OCGA 5-6-34(b) and 9-11-56(h). That direct appeal, which had been transferred to this court by the SCt , was dismissed on that basis

Although the trial court's ruling on the validity on the non-compete covenant was expressly interlocutory, requiring application appeal, we must now proceed with the direct appeal because this court had earlier dismissed the interlocutory application. We cannot rule that both paths are the wrong ones, leaving the appellant with no avenue for appellate review for want of jurisdiction in the SCt and the CtApp by any paths provided by statute. In accordance with Auto Cash, supra, future potential appellants must follow the method for appealing in the ruling complained of. Until and unless the SCt changes its view of the scope of the Constitution's coverage "of all equity cases," the nature of the order containing the underlying contested issues of law will govern the appellate path in the CtApp

Grange Mutual Casualty Co. v. Riverdale Apartments 218 Ga. App. 685 (463 SE2d 46) (1995)

Casualty Co. directly appeals from the superior court's denial of its motion, filed in a declaratory judgment action, for a temporary restraining order, interlocutory injunction, and stay of proceedings

Originally this appeal was directed to the SCt, but it was transferred to this court on the strength of Milwaukee Mechanics Co. v. Davis, 204 Ga. 67 (1948). That case held that the statutory provision for incidental and ancillary relief to maintain the status quo until the determination of rights and liabilities is made in an existing controversy, as authorized by what is now OCGA § 9-4-3(b), is not a provision for equitable relief over which the SCt has jurisdiction under the constitution

See discussion in case pp686-87

the order being appealed simply denied a stay, and thus the interlocutory appeal procedure of OCGA 5-6-34(b) applies. The appeal must be dismissed for lack of jurisdiction.

Paul Robinson, Inc. v. Haege 218 Ga. App. 578 (462 SE2d 396) (1995)

plaintiff sought to enjoin defendant from violation of a non-compete covenant through a temporary restraining order as well as by interlocutory and permanent injunctions

it appears that this case is an "equity case" within the meaning of Beauchamp v. Knight, 261 Ga. 608. Under Beauchamp, "'equity cases' are those in which a substantive issue on appeal involves the legality or propriety of equitable relief sought in the superior court--whether that relief was granted or denied. Cases in which the grant or denial of such relief was merely ancillary to underlying issues of law, or would have been a matter of routine once the underlying issues of law were resolved, are not 'equity cases'"

the substantive issue in this appeal involves the propriety of the superior court's denial of injunctive relief on the ground that the covenant sought to be enforced is unreasonable. This involves both the trial and appellate resolution of equitable issues as well as the grant of equitable relief *cites omitted*

accordingly, we transferred this case to the SCt, but the case was transferred back to us, thus we must decide the case because the SCt binds us

Arkon Pest Control v. Radar Exterminating Co 216 Ga. App. 495 (455 SE2d 601) (1995)

The party seeks a determination in this court that an injunction under OCGA § 10-1-370 should not issue against them. That issue, however is not before us

This court is without jurisdiction to consider a claim sounding in equity unless the relief sought is merely incidental to an underlying legal question. Beauchamp. In this case the parties argue that by undisputed evidence, their logos have been shown not to be confusingly similar as a matter of law. That issue of similarity is clearly a "substantive issue of equity in this interlocutory appeal"[Beauchamp] and therefore a matter within the jurisdiction of the SCt. This is illustrates by the fact that the eight cases discussed in the parties' briefs on appeal are all SCt decisions...cites omitted

this case is therefore remanded for such further proceedings as may be necessary to resolve appellee's remaining claim for equitable relief

Cotton States Mut. Ins. Co. V. Woodruff, 215 Ga. App. 511 (451 SE2d 106) (1994)

party seeks equitable reformation of an insurance policy on the grounds of mutual mistake

SCt transferred to CtApp

West 80 Investors v. Chequers Investment Assoc. 214 Ga. App. 673 (448 SE2d 735) (1994)

the case was originally filed in the SCt which transferred it to this court . . . for

while the case facially involves injunctions, we construe the SCt's ~~remand~~ as a ruling that the instant case involves no substantive issues on equity , but rather resolution of whether letter constitutes an enforceable novation, a question sounding in contract law

the grant or denial of a temporary injunction is directly appealable to the SCt as a final judgment under OCGA § 5-6-34(a)(4); an appeal from the dissolution of a temporary injunction is not included in these provisions

However, the trial court reached the core issue in this case whether the letter constituted a novation. Therefore, it constitutes a final judgment within the meaning of the statute where no issue remains for resolution and leaves the parties with no final recourse in the trial court, making this case appropriate for consideration on direct appeal

Miami Valley Fruit Farm v. Southern Orchard Supply Co. 214 Ga. App. 624 (448 SE2d 482) (1994)

party granted an interlocutory injunction

appeal filed in SCt -- which transferred the case to this court pursuant to an order finding that, "any equitable relief is ancillary to the underlying issue of enforceability of the oral contract" Pittman

King v. Baker 214 Ga. App. 229 (447 SE2d 129) (1994)

appellants enumerate the rulings as error, along with the enforcement of restrictive covenants as racial discrimination and the grant of equitable relief without jury trial -- filed appeal in the SCt which transferred the case here -- see Pittman, Beauchamp

(1) this case is in the nature of a declaratory judgment action involving legal issues and framing equitable remedies

City of Brunswick v. AJC 214 Ga. App. 150 (447 SE2d 41) (1994)

newspapers sought injunctive relief to compel access to reports

SCt transferred under Pittman

Dougherty v. Greenwald 213 Ga. App. 891 (447 SE2d 94) (1994)

Defendant answered denying enforceability of the agreement and moved for SJ which was granted

this appeal was filed in SCt which transferred it to this court under Pittman

the sole issue presented by this appeal is the enforceability of terms in an agreement

Firearms Training Systems v. Sharp 213 Ga. App. 566 (445 SE2d 538) (1994)

generally the SCt has exclusive jurisdiction over equity issues...however, although the case presented involves injunctive relief, "no substantive issues of equity are involved in this appeal

resolution turns on validity and enforceability of a contract provision Pittman

Klein v. Williams 212 Ga. App. 39 (441 SE2d 270) (1994)

Klein filed appeal in the SCt, which transferred it to this court pursuant to Pittman v. Harbin, noting that the appeal...and the injunction did not give the SCt jurisdiction

the primary question to be answered in this appeal concerns the existence of the alleged covenant not to compete, and if it exists, its interpretation

Smith v. H.B.T. Inc. 211 Ga. App. 560 (445 SE2d 315) (1994)

TCt temporarily enjoined party from contacting customers on opposing party's customer list -- party appealed TCt's order to SCt

SCt transferred to this court for appellate review

Pittman v. Harbin Clinic Professional Association 263 Ga. 66 (428 SE2d 328) (1993)

B/c equitable relief is ancillary to the underlying issue of construction of the contract, case should be transferred cites Beauchamp, see below

The primary question to be answered in each of these cases is whether the trial court properly construed the contracts. Although parties sought equitable relief, both the orders enjoining the partners from violating their contract and the orders denying injunctive relief were secondary to the principal issue of the construction of the 'K'

Pittman v. Harbin 210 Ga. App. 767 (437 SE2d 619) (1993)

we note initially these appeals were filed originally in the SCt which transferred them to this court

although nominally involving injunctions, no substantive issues of equity are involved in these appeals

resolution instead turns on the question of the validity and enforceability of the contract provisions

Roberts v. Tifton Medical Clinic, P.C. 206 Ga. App. 612 (426 SE2d 188) (1992)

The medical center filed complaint in equity to enjoin a doctor from violating restrictive covenants contained in employment agreements

the doctor appeals the trial court's denial of his motion to dismiss and its grant of plaintiff's request for an interlocutory injunction

this case was appealed to the SCt which, citing Beauchamp, transferred the appeal to this court, "inasmuch as appellant raises no substantive issues of equity in this appeal"

But see, Glosser 209 Ga 149 (3) & Rakestraw 104 Ga 188

Both actions of the court involve the question of whether the restriction in the contract is enforceable; if it is, the restriction neither blocks pursuit of the complaint nor precludes the grant of equitable relief ordered

20/20 Vision Center Inc. v. Hudgens 256 Ga. 129 (345 SE2d 330) (1986)

appellant filed the present complaint against the appellee, alleging that the various writings between the parties constitute a lease agreement and that the appellee breached this agreement

the trial court entered an order dismissing the complaint. In this order, the court initially noted that the appellant's request for specific performance was an "alternative count" in the complaint and that in order to determine whether the plaintiff was entitled to such equitable relief, it was necessary for the court to decide "whether a lease did in fact exist, thus deciding the issues on the merits"

the appellant's prayers fro damages and specific performance are not couched as alternative requests for relief in the pleadings. However, it is axiomatic that one cannot obtain specific performance if damages recoverable at law would be an adequate compensation for non-performance of the contract, and it is also true that the appellant could not obtain both a decree or specific performance and damages which would result from non-performance

[Court analysis of alleged contract]

court held that the trial court erred in dismissing the complaint in that there do exists triable issues of fact on the question of whether the appellant is entitled to relief under the doctrine of promissory estoppel

Atlanta Paper Co. v. New York, New Haven & Hartford RR Co. 211 Ga. 185 1954

where petitioner brought an action ex contractu against a resident of this state for the collection of freight charges owing the petitioner and by cross action the defendant set off an action ex delicto for negligence, a Ct of Equity [SCt] will take jurisdiction

D. ACCOUNTING

Faircloth v. A.L. Williams and Assoc. 219 Ga. 560 (465 SE2d 722) (1995) **Judge Pope**

plaintiff alleges that defendant breached his employment agreement by wrongfully terminating him and withholding various commission owed him

we also note that we transferred this case to the SCt due to plaintiff's request for equitable relief, and the SCt transferred it back to us

SCt cited Universal Garage Co. v. Fowler, 184 Ga. 604 1937

suit for accounting transferred from the SCt to CtApp because the transaction involved were not unusually complicated

Accordingly, the trial court did not err in granting summary judgment on plaintiff's accounting claim.

E. BOUNDARY DISPUTES

Hatcher v. Hatcher 211 Ga. App. 869 (440 SE2d 755) (1994)

party filed this appeal in the SCt which transferred it to this court without opinion

(1) boundary disputes are within the jurisdiction of the CtApp Beauchamp, rarely does a boundary dispute exist in which equitable relief is not sought, but such relief is incidental to and secondary to the principal issue -- the location of the line

Beauchamp v. Knight 261 Ga. 608 (409 SE2d 208) (1991)

CtA transferred -- equity case

whether an action is an equity case for the purpose of determining jurisdiction depends on the issue raised on appeal, not upon how the case is styled nor upon the kinds of relief which may be sought be the complaint

that is "equity cases" are those in which a substantive issue on appeal involves the legality or propriety of equitable relief sought in the superior court -- whether that relief was granted or denied

cases in which the grant or denial of such relief was merely ancillary to underlying issues of law, or would have been matter of routine once the underlying issues of law were resolved, are not equity cases

cites Krystal supra at 44(2); Baranan supra at 123

there is no substantive issue of equity is this interlocutory appeal

boundary line cases: rarely does a boundary line dispute exist in which equitable relief is not sought, but such relief is incidental to and secondary to the principle issue which is the location of the line

see footnote last page, explains why the court is not transferring the case

Ward v. Jones 259 Ga. 259 (379 SE2d 519) (1989)

the judgment appealed from having established the proper location of the boundary line, the injunction against the maintaining of any fence inconsistent with said line is merely ancillary, and does not afford a basis for jurisdiction of this court citing Krystal 256 Ga 43

Fulford v. Johnson 221 Ga. 338 (1965); (144 SE2d 526)

Court granted the motion of the defendants in error for a temporary injunction to preserve the status quo of the disputed land; error is not assigned on the order granting the temporary injunction

Nor is the instant case one in equity. Since no assignment of error is made on the order granting the temporary injunction, that question is eliminated from the case

F. NUISANCE ABATEMENT

Stutts v. Moore 218 Ga. App. 624 (463 SE2d 30) (1995)

dispute about the right to use a portion of a farm road

It appears this case is properly characterized as a petition for removal of an obstruction of a private way, since it began as such in the probate court and was appealed as such to the superior court. The SCt has held that jurisdiction of such cases lies in this Court. citing Carter v. Kinman, 231 Ga. 759 (1974). Consequently, we have exercised it. *Cites omitted*

The underlying issue in such cases is essentially the same as here, i.e., whether the plaintiff has acquired the right to use such private way by prescription. The fact that the case also concerns whether plaintiffs had an easement likens it to other cases in which this court has addressed the issue of whether an easement for ingress and egress was created. *cites omitted*

With respect to the equity issue, the SCt has determined that cases in which the grant or denial of equitable relief in which the grant or denial of equitable relief is merely ancillary to the underlying issues of law or would be a matter of routine once the underlying issues of law are resolved are not equity cases Beauchamp

The controlling issue in this case was whether the plaintiffs had an easement, prescriptive or otherwise, across the defendant's property; the question of whether the plaintiff's were entitled to injunctive relief to enforce their right , if any, is ancillary to that issue

Jurisdiction is in the CtApp

Yield, Inc. v. City of Atlanta 239 Ga. 578 (238 SE2d 351) (1977)

This case was originally filed in the CtApp; it was transferred here, that court being of the opinion that the case was one involving equity so as to be under the exclusive appellate jurisdiction of the SCt; we do not agree; the case is not an equity case and should be transferred to the CtApp

Appellee in this case proceeded under Code Ann. § 72-401 which authorizes a municipal court to determine the existence of and abate nuisances. It is the settled las in Ga. that where a party elects to proceed under this Code section, it is an action at law. Attaway v. Coleman, 213 Ga. 329 (1957).

Code Ann. § 72-301 served as an evidentiary standard only, and its application did not convert the proceeding into an equitable one

Yield Inc. 145 Ga. App. 172 (244 SE2d 32) (1978)

The SCt held...see above

Accordingly, the enumeration of error raising the constitutional and equitable issues and contending that equitable relief has not been conferred upon "the City Courts' (municipal) of this state is not meritorious

G. FRAUD AND UNJUST ENRICHMENT

Smith v. McClung 215 Ga. App. 786 (452 SE2d 229) (1994)
even though complaint styled "complaint in equity" and seeks the superior court order party to deed real estate to opposing party...however although in the case presented involves injunctive relief, no substantive issues of equity are involved
since resolution involves only underlying legal issues concerning fraud and unjust enrichment - juris in CtApp

Time Insur. Co. v. Fulton Dekalb Hospital Authority 211 Ga. App 34 (438 SE2d 149) (1993)
an action for $ had and received... although legal in form, ...is founded on the equitable principle that noone ought to unjustly enrich himself at the expense of another, and is a substitute for a suit in equity(2)
(2) such an action is not, however, an equity case within the meaning of the 1983 Ga Const.
cites Folsom 256 GA 400 & Orient 193 Ga 241

Denny v. D.J.D. Inc. 257 Ga. 493 (361 SE2d 162) (1987)
this case involves a breach of contract fraud and was transferred here from the CtApp presumably b/c an injunction was sought to prevent action
the jury returned a verdict and the appeal is only from the money judgment, which did not include an injunction
this being so, the appeal lies in the CtApp
cites Krystal 256 Ga 43 "legal issue..."

Central Soya 234 Ga. 133 (214 SE2d 556) (1975)
the only issues presented in the receivership case involve the priorities of the parties' claims against the fund in the hands of the receivers
the case as originally brought was one in equity seeking the appointment of an receiver, to which there is not objection, nor is there any complaint as to anything he has done -- the case before us does not involve any equitable relief, or the application of any rule of equitable procedure -- the question in issue is one of law, and is not such as to confer jurisdiction upon the SCt
the mere fact that he alleged appellant's participation in a fraudulent scheme does not inject equitable issues in the case
while it is true that, in all cases of fraud, equity has concurrent jurisdiction with the law, equity takes jurisdiction only where the operation of the general rules of law would be deficient in protecting the rights of the complaining party

II. EQUITABLE RELIEF DEEMED RESOLVED AND REMOVED

Fernandez v. Bank of Dahlonega 217 Ga. App. 739 (459 SE2d 424) (1995)
the transfer of this appeal to this court by the SCt is tantamount to a ruling eliminating and resolving the equity and injunctive issues which lie only within the jurisdiction of that court to determine

Kelly v. Atlanta 217 Ga. App. 365 (457 SE2d 675) (1995)
Party appeals from the dismissal of his petition for declaratory judgment seeking to enjoin appellee from imposing alleged illegal property taxes
Further, the transfer of this appeal to this court by the SCt is tantamount to a ruling eliminating and resolving the equity and injunctive issues which lie only within the jurisdiction of that court to determine

King v. Board of Education of Buford 214 Ga. App. 325 (447 SE2d 657) (1994)

we assume that there is no substantive issue here whether a writ of mandamus was the legal or proper relief to be sought in the superior court, as opposed to an administrative remedy, a writ of cert, declaratory relief or some other remedy at law

citing: Swicegood and Beauchamp

Ryles v. First Oglethorpe Co. 213 Ga. App. 327 (444 SE2d 578) (1994)

appellees filed a civil action in superior court in essence alleging that they did not act improperly and challenging the legality of the issued order and seeking a temporary restraining order and permanent injunctive relief

appellant filed his appeal with the SCt, perceiving this to be an equity case within that court's jurisdiction; the SCt issued a terse order transferring the case to this court

At the outset we find that setting aside the cease and desist order issued by the Commissioner was necessary and inextricably linked to the grant of permanent injunction "from issuing or causing to issue an cease and desist order against the plaintiffs herein in contravention of the laws of the State of Georgia."

We further find that the findings of fact with which appellant takes issue likewise were linked to that grant of injunction. As to these issues, "the transfer of the appeal to this court by the SCt is tantamount to a ruling eliminating and resolving the equitable and injunctive issues which lie only within the jurisdiction of that court to determine." *Swicegood*

Thus by virtue of said transfer, these issues have been resolved against appellant

Brooks v. Boykin 194 Ga. App. 854 (392 SE2d 46) (1990)

appeal was transferred by SCt to this court

while we believe the paramount issue in this case is specific performance of a contract for sale of land, a category by constitution reserved to the SCt

the SCt's transfer of the appeal, "is tantamount to a rule eliminating and resolving the equitable...issues which lie only within the jurisdiction of that court to determine

cites Swicegood 183 Ga.App 319

Swicegood v. Heardmont Nursing Home Inc. 183 Ga. App. 319 (359 SE2d 3) (1987)

appellee filed a complaint against defendant seeking (1) injunctive relief against the removal or other disposal of certain records from the leased premises prior to the inspection thereof; (2) money alleged owed; and (3) an accounting. Supreme Court transferred to this court without opinion

None of the grounds urged for reversal can be sustained in this court for several reasons

1. issues raised in pleadings are equitable in nature ... 3. the transfer of the appeal to this court by the SCt is tantamount to a ruling eliminating and resolving the equitable and injunctive issues which lie only within the jurisdiction of that court to determine

Johnston v. Atlanta Humane Society 173 Ga. App. 416 (1985) (326 SE2d 585) analogous case to Swicegood

the case was transferred to the SCt b/c of the asserted unconstitutionality of the ordinance-- the case was returned as being wholly within the jurisdiction of this court

the SCt refusal to review the appellant's constitutional challenge mandates the finding that appellant's contentions of error on constitutional grounds are without merit

III. NO EQUITABLE RELIEF SOUGHT / NOT ISSUE ON APPEAL

Banks v. Ga. Power 220 Ga. App. 84 (469 SE2d 218) (1996)

party attempted to appeal the judgment of taking to the Supreme Court by interlocutory and direct appeal, but both were dismissed. after trial party appealed the final judgment to the SCt which transferred the appeal to the CtApp under Law, 219 Ga. 583 1964 and Jones, 224 Ga. 796 1968

Jones: St found no allegations or prayers for equitable relief; it held that a prayer for declaratory judgment does not give the SCt exclusive jurisdiction

Smith v. Dept of Human Resources 214 Ga. App. 508 (448 SE2d 372) (1994)

party seeks equitable relief b/c wants to be restored to position

SCt transferred b/c it found no equitable issues on appeal

Clay v. Dept. of Transportation 198 Ga. App. 155 (400 SE2d 684) (1990)

Maj: jurisdiction lies in CtApp

the only request for equitable relief made by the appellants in their complaint was for an injunction to halt construction

as denial of that request was not appealed it follows that there is not currently any claim for equity pending in the case

Min: jurisdiction lies in SCt

central issue is whether the trial court correctly denied the equitable relief setting aside the right-of-way deed

although the majority notes that the appellants did not seek equitable relief, the equitable relief of setting aside the deed is essential to recovering the damages sought

...the majority opinion plainly relies on equitable authorities in reaching its holding

therefore as the issue of whether the trial court properly denied the equitable relief of setting aside the right-of-way deed

it is my view that this court lacks jurisdiction over this appeal and the case should be transferred to the SCt

Hatfield v. Great American Mgmt & Invest Inc. 258 Ga. 640 (373 SE2d 367) (1988)

Any basis for this Court's jurisdiction of these appeals could only come about if the injunctive relief sought at the trial court level becomes an issue on appeal. However, the issue in this appeal in no way deals with injunctions or equity

The issue on appeal in this case is whether the trial court erred in dismissing Hatfield's original notice of appeal and also whether the trial court erred in refusing to dismiss Hatfield's second notice of appeal which sought to appeal the dismissal of the original notice of appeal

Only if the court's dismissal of the notice of appeal is case no. 46202 is overturned or its refusal to dismiss the notice of appeal in case no. 46201 is upheld could any questions dealing with injunctive relief be brought to an appellate court

Issues on appeal, not what is in the complaint determine jurisdiction

Hatfield 190 Ga. App. 534 (379 SE2d 544) (1988)

while the complaint seeks affirmative injunctive relief in addition to other remedies, jurisdiction is properly in this court since the issues on appeal do not involve injunctions or equity citing SCt above

Coe v. Greenville Credit & Investment Co. 164 Ga. 521 (298 SE2d 36) (1982)

Appellants seek equitable relief in connection with a number of loans they alleged were fraudulent or usurious

Appellee contend that the appeal should be dismissed because this court lacks jurisdiction, since appellants seek primarily equitable relief. This contention is without merit. The equitable relief prayer for by appellants is not in issue on appeal, and the enumeration of errors raises no equitable issues

The only issue on appeal is a question of law over which this court has jurisdiction

Dehler v. Setliff 239 Ga. 19 (235 SE2d 540) (1977)

Appellants filed suit seeking to recover the purchase price of certain securities alleged issued in violation of the Ga. Securities Act and purchased in reliance on false representations

Although one cause of action set forth in plaintiff's complaint is equitable in nature, the equitable relief prayed for in the petition is not in issue on this appeal

Transferred to the CtApp

Smith v. Republic Land & Invest Corp. 234 Ga. 307 (215 SE2d 683) (1975)

(2) appellants prayer for cancellation of the note does not vest jurisdiction of the appeal in this court on the ground that it is an equity case

cites Loftis 180 Ga. 480

'a ct of equity will not assume jurisdiction of a suit merely to cancel promissory notes on the ground that they have been paid or otherwise satisfied"

(3) moreover, appellant has not urged any independent equitable ground for cancellation of the security deed -- his action is therefore based solely on a legal claim for damages and is not an equity case

a mere prayer for specific equitable relief does not convert an action at law to one in equity so as to vest jurisdiction of the appeal in this court where the complaint affirmatively shows that the appellant is not entitled to the equitable relief prayed for

(4) other equitable issues involving temporary injunctive relief having been removed from the case, jurisdiction is in the CtApp

Kingsbury v. Exxon Co. USA 234 Ga. 144 (215 SE2d 1) (1975)

This case was transferred by CtApp b/c petition among other things prays for a permanent injunction. The appellant in his enumerations of error states, "the Court of Appeals has jurisdiction of this cause, it being an action to recover money damages in tort caused by wilful and wanton acts on behalf of the Defendant, and is an action at law which does not involve any question or cause of which the Supreme Court of Georgia has jurisdiction." This is declaration that the equitable relief prayed for in the petition is not in issue on this appeal -- accordingly case is returned to the CtApp

Kingsbury 136 Ga. App. 146 (220 SE2d 481)

The SCt [above] holds that the equitable relief claimed in the petition is not longer an issue in this case

Fulford v. Johnson 221 Ga. 338 (144 SE2d 526) (1965)

motion to transfer to CtApp granted since no assignment of error is made on the order grating the temporary injunction, that question is eliminated from the case

when the equitable feature of a case has been removed this court does not have jurisdiction on the grounds or equity

Transfer of cases between Supreme Court and Court of Appeals

ICTION CONSIDERATIONS

approximately 75 cases were transferred the Court of Appeals.[1] A majority of sues of constitutionality or equity.

given exclusive appellate jurisdiction the construction of a treaty or of the of Georgia or of the United States and nstitutionality of a law, ordinance, or has been drawn into question" Ga. Sec. VI, Par. II

ourt will not take jurisdiction where it s the *application*, not the *construction*

Second, the Supreme Court has found that some issues do not involve questions of *constitutionality*. For example, the Supreme Court has jurisdiction over the "law of the State," but has limited the concept to include only enactments of the General Assembly and constitutional provisions; the following are not included: administrative regulations, court decisions, and rules of the court. Under Art. VI, Sec. VI, Par., II, the Supreme Court now has exclusive jurisdiction over constitutional attack on ordinances as well.

Third, the Supreme Court will not review a case with a constitutional issue if the jurisdiction of the claim is insufficient. For example, the statute and constitutional provisions in question and the manner of their inconsistency must be pled. Further, the claim will be insufficient if the issue is not raised in the trial court or the trial court has not ruled on the issue.

Finally, if the Supreme Court has already ruled on the constitutionality of a statute on the same grounds as presented in a new case, the Supreme Court will not take jurisdiction.

Transfer of 23 Constitutional Issue Cases from 1994 to the Present

A majority of the cases were transferred with the Court of Appeals following Ryals. v. State, 215 Ga. App. 51, 52 (449 SE2d 865) (1994), which states that the transfer is a "final determination that no constitutional question was in fact properly raised or, if so raised, that it was not meritorious." Other cases state that the claims involve well-settled constitutional principles, not a determination of constitutionality. Some cases were transferred with no reason provided.

In two cases between 1994 and 1996, the Court of Appeals held that it was without jurisdiction to decide the constitutional issues and therefore the issues were not addressed.

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[1]This is the number of reported Court of Appeals decisions only. Many transfers occur by order with no mention of it in the eventual opinion. These have not been counted.

Mock v. Darby 219 Ga. 597 (134 SE2d 805) (1964)

the petition does not pray for equitable decree of cancellation of the note and deed to secure debt or for any other equitable relief, and the allegations of the petition are not such as would authorize the grant of any under the prayer for granted relief

Columbus Plumbing & Heating & Mill Supply v. Home Federal Savings and Loan 216 Ga. 706 (119 SE2d 48) (1961)

whether the powers of equity are called into play depends on the pleadings and the relief sought

question as to whether the garnishee is indebted to the defendant and whether the funds are subject to garnishment are issues to be determined by a court of law

distinguished from Cromley 169 Ga 16 & Bowman 212 Ga 261

Universal CIT Credit Corp v. Pritchett 217 Ga. 52 (121 SE2d 17) (1961)

there is nothing in the entire amended complaint that even hints at a claim that the defendant wants or is entitled to equitable relief against the debt -- case is one of law

see paragraph quoting the CtApp for reasons for transfer to SCt -- nothing said when transferred back to CtApp

Motels, Inc v. Shadrick 213 Ga. 434; 99 SE2d 107 (1957)

When the petition in this case was filed in the superior Court of Cobb County, it prayed for both legal and equitable relief, but by an amendment to the petition, all prayers for equitable relief were stricken

The trial judge overruled a general demurrer to the amended petition, and sustained four of the seven grounds of special demurrer with leave to amend in ten days. The defendants excepted to that judgment and sued out a writ of error to the CtApp

That court transferred the case to this curt for decision, on the theory that it was without jurisdiction. Since the petition, after being amended, sought only legal relief --a money judgment--the CtApp and not this court has jurisdiction to decide the case

Refrigeration Appliances v. Atlanta Provision Co. 210 Ga. 475 (80 SE2d 683) (1954)

the case as originally brought was one in equity seeking the appointment of a receiver , to which there is not objection, not is there any complaint as to anything he has done -- the case before us does not involve any equitable relief, or the application of any rule of equitable procedure -- issue is one of law therefore juris, in CtApp

CtApp: said nothing

IV. SPECIFIC PERFORMANCE

Engram v. Engram 265 Ga. 804 (463 SE2d 12) (1995)

this case is before this court from the grant of summary judgment to the defendants on plaintiff's claims for specific performance of an alleged oral option agreement to purchase real property, and, alternatively, for unjust enrichment

Stephens v. Trotter 205 Ga. App. 497 (422 SE2d 568) (1992)

Appellant seeks specific performance of an alleged agreement for the sale of real property...

We first determine whether we have jurisdiction to consider this appeal. "An action seeking specific performance seeks equitable relief and an appeal from a judgment rendered pursuant to a request for equitable relief is within the jurisdiction of the SCt" *Lemke v. Southern Farm and Ins Co,* 182 Ga.App. 700 (1987)

Although appellant has included in her complaint an alternative prayer for damages, "damages in lieu of specific performance cannot be recovered unless [appellant] can prove her right to the latter remedy" *Lemke*

Accordingly, this appeal from a judgment rendered pursuant to a request for equitable relief is transferred to the SCt

Piedmont Property Inc. v. Sims 195 Ga. App. 353 (393 SE2d 496) (1989)

This case arises from a dispute about the validity of a contract for the sale of real property. Appellants sued appellees for specific performance, or in the alternative, damages. This appeal follows the trial court's grant of summary judgment to appellees.

We first consider whether we have jurisdiction to consider this matter. An action seeking specific performance seeks equitable relief and an appeal from a judgment rendered pursuant to a request for equitable relief is within the jurisdiction of the SCt

Lemke, see below

Lemke v. Southern Farm Bureau Life Insur. Co. 182 Ga. App. 700 (356 SE2d 739) (1987)

action seeking specific performance of provisions of insurance policy

see 20/20 Vision Center 256 Ga. 130 & Morgan 209 Ga 348

an action seeking specific performance seeks equitable relief and an appeal from a judgment rendered pursuant to a request for equitable relief is within the jurisdiction of the SCt

cites Ianecelli 169 Ga.App 155

appellee urges CtApp jurisdiction b/c should appellant succeed on appeal $ damages could be ascertained to adequately compensate appellant thereby giving him an adequate remedy at law

however, "damages in lieu of specific performance cannot be recovered unless the plaintiff can prove his right to the latter remedy

Ct is for the SCt to determine whether any of appellant's enumerations are meritorious

Johnson v. Sackett 256 Ga. 552 (350 SE2d 419) (1986)

Defendant attempted to disavow a contract and the plaintiff filed suit for specific performance, or damages, or both. The trial court granted the defendant's motion for summary judgment on the basis that the sales contract lacked a sufficient legal description of the property

SCt has jurisdiction

V. EQUITABLE DEFENSE

Capitol Fish Co. v. Tanner 192 Ga. App. 251 (384 SE2d 394) (1989)
the posing of an equitable defense in response to a motion for SJ in a case in this Ct's jurisdiction, clearly does not make this a case in equity
cites Rogers 199 Ga. 835 & Equitable Society 179 Ga. 255

Mitchell v. Mitchell 191 Ga. App. 139 (381 SE2d 84) (1989)
although enforcement is an equitable remedy, this Ct has jurisdiction over equitable defenses
cites Alderman 208 Ga. 71 & Wiley 233 Ga. 824
thus CtApp may consider whether family settlement agmt provided consideration for the later notes [so as to constitute novation releasing notemaker form obligation on earlier note]

VI. CLASS ACTION

Herring v. Farrell 234 Ga. 620 (216 SE2d 862) (1975)
jurisdiction of appeals in class action brought pursuant to Code Annot. § 81A-123 is to be determined by the nature of the relief sought -- the questions raised on appeal -- as opposed to automatically treating class actions as equitable cases appealable to this Court
here, relief sought are questions raised are w/i jurisdiction of CtApp

Herring CtApp 137 Ga. App. 156 (223 SE2d 213)
inasmuch as the SCt [above] ruled that the instant case did not involve equity, the trial judge did not have discretion to apportion the cost

Atlanta v. Ga. Society of Professional Engineers 220 Ga. 62 (134 SE2d 592) (1964)
this case is in this court for review b/c the petitions seek relief for themselves and the members of the class they represent and is therefore a suit in equity

VII. PERMANENT INJUNCTION

Frazier v. Deen 221 Ga. App. 153 1996
Plaintiffs claim that defendants improperly changed the restrictive covenants governing their subdivision
The case involved request for an injunction, therefore, we do not address the plaintiffs' ability to obtain monetary damages should they be requested and proven

Doe v. Board of Regents of Univ. System of Georgia 215 Ga. 684 (452 SE2d 776) (1994)
The plaintiff, using the pseudonym Jane Doe, filed a complaint against the Board of Regents seeking a temporary restraining order and preliminary and permanent injunctive relief against disclosure
Plaintiff originally filed this appeal, which is solely from the denial of injunctive relief in the SCt... SCt transferred it here

Caring Hands v. Dept of Human Resources 214 Ga. App. 853 (449 SE2d 354) (1994)
Defendant appeals the trial court's order granting plaintiff a permanent injunction that prohibits defendant from continuing to operate a personal care home or other heath care facility above its licensed capacity, and which compels defendant to take immediate steps to relocate residents
The appeals were transferred by this court to the SCt, this court being of the opinion that ... the trial court's order granting a permanent injunction involves questions of equity,,and therefore, falls within the SCt's jurisdiction...The SCt, however, transferred the cases back to this court

Kleber v. Cobb County 212 Ga. App. 441 (442 SE2d 296) (1994)

(1) appellee has moved to transfer this case to the SCt on the ground that it is an equity case b/c appellant is seeking reversal of the order holding him in contempt for violating the permanent injunctions issued in the earlier case

cites Beauchamp, jurisdiction depends on the issues raised on appeal

the issue on appeal is whether the TCt erred in dismissing appellant's appeal from the contempt order = issue of law

Hendley v. Housing Authority of Savannah 160 Ga. App. 221 (286 SE2d 463) (1981)

plaintiff sought injunctive relief to prevent present or future condemnation

because the appeal contained as enumeration of error the dismissal of the complaint in equity, the appeal was transferred to the CtApp

GA. Real Estate Commission v. Accelerated Courses in Real Estate 234 Ga. 30 (214 SE2d 495) (1975)

appellee has suggested that this court lacks jurisdiction -- although, the appellant seeks a declaratory judgment, it also alleges that [party] is without an adequate remedy at law -- the prayer is not for injunctive relief to preserve the status quo, but is for permanent as well as temporary injunction

whether interlocutory or final, the order granting the injunction is appealable at this time

being an equity case it is appealable to this court notwithstanding the fact that the constitution validity of administrative rules would be appealable to the CtApp

Durham v. Stand-By Labor of Georgia 230 Ga. 558 (198 SE2d 145) (1973)

This is an action to enforce restrictive covenants in a contract of employment and for damages

Because substantial equitable relief sought by way of injunction, the present appeal from an order overruling a motion to dismiss for failure to state a claim with proper certification will lie to this court and not to the Court of appeals

Pinkard v, Mendel 216 Ga. 487 (117 SE2d 724) (1960)

where judgment and decree includes grant of permanent injunction, jurisdiction lies in the SCt

Status Quo

Jones v. Van Vleck 224 Ga. 796 (164 SE2d 724) (1968)

Controversy is over an affidavit of indebtedness against the appellant executor which the appellee has recorded in the office of the clerk of the superior court

Jurisdiction is not in this court

Nor is this an equity case for the jurisdiction of this court. The rules is that "to make a case one for equity jurisdiction it must contain allegations and prayers for equitable relief.

The allegations of the complaint are deficient in this respect. Although the complaint prays that the appellee be restrained and enjoined from proceeding with said affidavit, there are no allegations as to any such need and it is apparent that the injunction thus sought is merely one to maintain the status quo pending determination of the primary relief sought, which is a declaration that the affidavit is invalid

Likewise, the portion of the prayer, to be cancelled by order of the court, is obviously also ancillary to that determination.

Neither of these prayers, under the allegation here, makes this case an equitable one. Case must be transferred to the CtApp

Stone v. First National Bank of Atlanta 223 Ga. 804 (158 SE2d 382) (1967)

this case falls within the jurisdiction of the CtApp since it involves a declaratory judgment and TRO to maintain the status quo btw the parties until the accounting may be had, and the prayer for permanent injunction without alleging facts which it is claimed would support the prayer, is insufficient to place jurisdiction in this court

CtApp transfer = nothing on jurisdiction

Dinkler v. Jenkins 233 Ga. 807 (158 SE2d 381) (1967)

declaratory judgment

(1) while the petition prays for a TRO and interlocutory injunction, it is apparent that the sole purpose of the plaintiff in seeking such orders was to maintain the status pending the adjudication of the questions -- not a case in equity

(2) while a class action is a suit in equity [City of Atl], the mere statement contained in the interlocutory paragraph of a petition that plaintiffs named in the petition bring the suit "on behalf of themselves and all others similarly situated" does not without more make the action a class action

Milwaukee Mechanics Ins. Co. v. Davis 204 Ga. 67 (48 SE2d 876) (1948)

grant of injunction to maintain status quo was purely incidental and ancillary relief

no permanent equitable relief was sought

VIII. MISC.

Kappers v. DeKalb County Board of Health 214 Ga. App. 117 (446 SE2d 794) (1994)

party seeks isolation and involuntary outpatient treatment; SCt transferred to this court

Liniado v. Alexander 199 Ga. App. 256 (404 SE2d 602) (1991)

(2) jurisdiction of this case is proper in the court -- this is an action at law for damages, equitable relief was not sought not was it available

cites Regal Textile 189 Ga 581 & Capitol Fish 192 GaApp 251

Atlantic States Constr. Inc v. Beavers 250 Ga. 828 (301 SE2d 635) (1983)

This is a dissenting shareholders rights case arising under OCGA § 14-2-251. The construction co. appeals from an order of Fulton superior Court and challenges the trial court's method for determining the value of Beaver's stock. Beavers has filed a motion claiming that jurisdiction to hear this appeal lies in the CtApp. We agree and, accordingly, transfer this case to the CtApp

general test for "equity": the pleader must allege or seek to allege such a cause of action as is cognizable in a court of equity, according to the historical jurisdiction of such courts as modified by statute...and seek equitable relief in the particular situation

Two reasons why this is not an equitable proceeding:

1) the only relief available under the statute is money damages, a legal remedy

2) any equitable issue is ancillary to the main issue of damages

Thus, an OCGA § 14-2-251 appraisal proceeding is legal, not equitable, in character; no right of direct appeal to the SCt lies from such a proceeding

Transferred to the CtApp

Juris Com 9/13

Court of Appeals

Memorandum

To: Judicial Committee Members

From: Chief Judge Beasley

Subject: List of Transfer Cases

Date: September 10, 1996

The attached list includes 75 cases that were transferred from the Supreme Court to the Court of Appeals from 1994 to the present. Cases included in the list were used to draw conclusions in the document entitled, "JURISDICTION CONSIDERATIONS," which was distributed in the meeting of the Committee on August 23, 1996. The 62 cases designated with an asterisk in the margin were used to make observations in the document entitled "Observations of 'Transfer Cases' 1994-96," which was also distributed on August 23, 1996.

Attachment

CASES USED FOR "JUDICIAL CONSIDERATIONS" DISTRIBUTED 8/23/96 [1]

* 221 Ga. App. 762 (--SE2d --)(1996) BD. OF TRUSTEES OF FULTON COUNTY EMPLOYEES RETIREMENT SYST. v. MABRY

221 Ga. App. 153 (470 SE2d 914)(1996) FRAZIER v. DEEN

* -- Ga. App. -- (A96A0659). Decided June 14, 1996. BRANDEN v. BELL

220 Ga. App. 805 (470 SE2d 252) (1996) SAXTON v. COASTAL DIALYSIS & MEDICAL CLINIC, INC.

* 220 Ga. App. 415 (469 SE2d 258) (1996) TIDWELL v. WHITE

* 220 Ga. App. 134 (469 SE2d 318) (1996) KEEF v. STATE

* 220 Ga. App. 84 (469 SE2d 218) (1996) BANKS v. GEORGIA POWER CO.

265 Ga. 37 (456 SE2d 50) (1995) COLLINS v. AMERICAN TELEPHONE & TELEGRAPH CO.

* 219 Ga. App. 560 (465 SE2d 722) (1995) FAIRCLOTH v. A. L. WILLIAMS & ASSOCS.

219 Ga. App. 408 (465 SE2d 517) (1995) CROTTY v. CROTTY

* 219 Ga. App. 268 (464 SE2d 865) (1995) IN THE INTEREST OF I.B.

* 219 Ga. App. 152 (464 SE2d 390) (1995) PHILLIPS v. MACDOUGALD

* 219 Ga. App. 90 (464 SE2d 237) (1995) COHEN v. FELDMAN

* 218 Ga. App. 872 (463 SE2d 502) (1995) ANDERSON v. STATE

* 218 Ga. App. 685 (463 SE2d 46) (1995) GRANGE MUT. CAS. CO. v. RIVERDALE APTS.

218 Ga. App. 624 (463 SE2d 30) (1995) STUTTS v. MOORE

218 Ga. App. 578 (462 S.E.2d 396) (1995) PAUL ROBINSON, INC. v. HAEGE

* 218 Ga. App. 484 (462 S.E.2d 158) (1995) COLLINS v. KIAH

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[1] All cases designated by an asterisk were used in developing "Observations of 'Transfers Cases,'" dated Augsut 23, 1996.

* 218 Ga. App. 475 (462 S.E.2d 423) (1995) POYTHRESS v. WILKINS

218 Ga. App. 360 (461 S.E.2d 555) (1995) CRUTCHFIELD v. STATE

* 218 Ga. App. 104 (460 SE2d 822) (1995) KESLER v. WATTS

* 217 Ga. App. 876 (460 SE2d 100) (1995) MILLER v. GEORGIA PORTS AUTHORITY

* 217 Ga. App. 739 (459 SE2d 424) (1995) FERNANDEZ v. BANK OF DAHLONEGA

* 217 Ga. App. 669 (458 SE2d 499) (1995) MCALPIN v. COWETA FAYETTE SURGICAL ASSOCS

* 217 Ga. App. 384 (457 SE2d 273) (1995) ACTION FOR A CLEAN ENVT v. STATE

* 217 Ga. App. 365 (457 SE2d 675) (1995) KELLY v. ATLANTA

* 217 Ga. App. 337 (457 SE2d 226) (1995) ASHTON v. STATE

216 Ga. App. 495 (455 SE2d 601) (1995) AKRON PEST CONTROL v. RADAR EXTERMINATING

* 216 Ga. App. 411 (454 SE2d 554) (1995) DALTON v. STATE

216 Ga. App. 389 (455 SE2d 293) (1995) MCKIBBONS v. STATE

216 Ga. App. 292 (454 SE2d 155) (1995) BARTON v. BARTON

* 216 Ga. App. 239 (454 SE2d 162) (1995) AUTO CASH v. HUNT

* 216 Ga. App. 76 (453 SE2d 746) (1995) OLIVER v. STATE

264 Ga. 125 (441 SE2d 754) (1994) BRYANT v. EMPLOYER RETIREMENT SYSTEMS OF GA.

215 Ga. App. 786 (452 SE2d 229) (1994) SMITH v. MCCLUNG

215 Ga. App. 684 (452 SE2d 776) (1994) DOE v. BOARD OF REGENTS

* 215 Ga. App. 629 (452 SE2d 172) (1994) DICK v. WILLIAMS

* 215 Ga. App. 511 (451 SE2d 106) (1994) COTTON STATES MUT. INS. CO. v. WOODRUFF

* 215 Ga. App. 51 (449 SE2d 865) (1994) RYALS v. STATE

* 214 Ga. App. 853 (449 SE2d 354) (1994) CARING HANDS v. D.H.R.

* 214 Ga. App. 740 (448 SE2d 787) (1994) PENNY PROFIT v. MCMULLEN

* 214 Ga. App. 721 (448 SE2d 920) (1994) IHESIABA v. PELLETIER

* 214 Ga. App. 673 (448 SE2d 735) (1994) WEST 80 INVESTORS v. CHEQUERS INVESTMENT ASSOCIATES

* 214 Ga. App. 631 (448 SE2d 906) (1994) SMITH v. STATE

* 214 Ga. App. 624 (448 SE2d 482) (1994) MIAMI VALLEY FRUIT FARM v. SOUTHERN ORCHARD

* 214 Ga. App. 508 (448 SE2d 372) (1994) SMITH v. D.H.R.

* 214 Ga. App. 325 (447 SE2d 657) (1994) KING v. BD. OF EDUC. OF BUFORD

* 214 Ga. App. 323 (447 SE2d 320) (1994) STAHL HEADERS v. MACDONALD

* 214 Ga. App. 229 (447 SE2d 136) (1994) KING v. BAKER

* 214 Ga. App. 164 (447 SE2d 323) (1994) LEE v. STATE

* 214 Ga. App. 150 (447 SE2d 41) (1994) CITY OF BRUNSWICK v. ATLANTA JOURNAL & CONSTITUTION

214 Ga. App. 117 (446 SE2d 794) (1994) KAPPERS v. DEKALB BD. OF HEALTH

* 214 Ga. App. 1 (447 SE2d 136) (1994) IN RE T.A.W.

* 213 Ga. App. 891 (447 SE2d 94) (1994) DOUGHERTY, MCKINNON & LUBY v. GREENWALD, DENZIK & DAVIS

* 213 Ga. App. 875 (447 SE2d 302) (1994) G.M.C. v. MOSELEY

* 213 Ga. App. 790 (446 SE2d 225) (1994) SHULER v. STATE

* 213 Ga. App. 614 (445 SE2d 366) (1994) GALE v. OBSTETRICS & GYNECOLOGY OF ATLANTA

213 Ga. App. 566 (445 SE2d 538) (1994) FIREARMS TRAINING SYSTEMS v. SHARP

* 213 Ga. App. 560 (445 SE2d 315) (1994) SMITH v. HBT, INC.

* 213 Ga. App. 534, 534-35 (445 SE2d 340) (1994) BLACK v. CATOOSA COUNTY SCH. DIST.

* 213 Ga. App. 327, 327-28 (444 SE2d 578) (1994) RYLES v. FIRST OGLETHORPE

* 213 Ga. App. 327 (444 SE2d 578)(1994) TURNER v. STATE

* 213 Ga. App. 207 (444 SE2d 146) (1994) SMITH v. STATE

* 213 Ga. App. 197 (444 SE2d 114) (1994) MCKOWN v. AMER. ARBITRATION ASS'N

* 213 Ga. App. 182 (444 SE2d 133) (1994) IN RE PUROHIT

* 213 Ga. App. 20 (443 SE2d 852) (1994) GIBBY v. STATE

* 212 Ga. App. 890 (443 SE2d 642) (1994) CULPEPPER v. CORDELE

* 212 Ga. App. 830 (442 SE2d 642) (1994) DORSEY v. STATE

* 212 Ga. App. 575 (442 SE2d 860) (1994) ATLANTA GAS LIGHT v. PUB. SVC. COMM.

* 212 Ga. App. 555 (442 SE2d 468) (1994) TURNER v. AMSOUTH MTG. CO.

* 212 Ga. App. 550 (442 SE2d 9) (1994) TYSON v. BD. OF REGENTS

* 212 Ga. App. 441 (442 SE2d 468) (1994) KLEBER v. COBB COUNTY

212 Ga. App. 39 (441 SE2d 270) (1994) KLEIN v. WILLIAMS

211 Ga. App. 869 (440 SE2d 755) (1994) HATCHER v. HATCHER

* 211 Ga. App. 817 (441 SE2d 82) (1994) NULL v. STATE

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BELOW ARE TWO PIVOTAL CASES DEALING WITH EQUITABLE ISSUES

263 Ga. 66 (428 S.E.2d 328) (1993) PITTMAN v. HARBIN CLINIC PROFESSIONAL ASSOCIATION

261 Ga. 608 (409 S.E.2d 208) (1991) BEAUCHAMP v. KNIGHT

Juris Com 9/13

Court of Appeals

Memorandum

To: Commission on the Appellate Courts of Georgia

From: Chief Judge Beasley

Subject: Revised Report of Cases Transferred from Supreme Court to Court of Appeals

Date: September 12, 1996

This memorandum addresses the variance in the reports prepared by the Supreme Court and by the Court of Appeals, concerning the number of cases transferred from the Supreme Court to the Court of Appeals. (See attached copy of Supreme Court Caseload Report 1991-1994 and page 16 of jurisdiction report prepared by the Court of Appeals.)

I. Upon reviewing the divergent reports with the Court of Appeals Data Processing Specialist, additional computer searches for reports of transferred cases were undertaken, using refined transfer codes entered in the Supreme Court's computerized docket system. The results are comprehensive and reflect the Supreme Court docket records which, for the most part, confirm the statistical report that appears in the paper entitled "COURT OF APPEALS: JURISDICTION." It was distributed at the Jurisdiction Committee meeting on August 23 and to the other Commission members at the public hearing on September 5.

The new computerized searches also included transfer codes for discretionary and interlocutory applications. The attached revised

report thus also contains the data regarding those matters.

The revised report corrects two errors contained in the original Jurisdiction report:

1. The total number of direct appeals filed in the Supreme Court for 1993 was 621, rather than 611 as originally reported. Correction of that typographical error results in the percentage of direct appeals transferred for 1993 being 15.1 percent, not 15.3 percent.

2. The number of direct appeals transferred in 1995 was 90, instead of 94 as originally reported. The refined transfer codes used in the latest computer search eliminated four matters that were transferred but actually were not direct appeals. Consequently, the percentage of direct appeals transferred was changed from 17.9 to 17.1 percent.

The revised report contains the data regarding 1996 as of September 10, 1996. Docketing for 1996 in the Supreme Court closes on September 13, 1996, and some currently pending 1996 matters and other cases docketed during the last three days may eventually be transferred. The data presently available for 1996 reflects a transfer pattern consistent with recent years.

II. One explanation of some variance between the Supreme Court Caseload Report and the statistical report prepared by the Court of Appeals is the search unit. Contact with the Supreme Court Clerk's office revealed that the Supreme Court report was based upon a calendar year search, whereas the report prepared by the Court of Appeals was based on a docketing year search. That is, the Supreme Court report considered the dispositions that occurred from January 1 through December 31 of each year. The Court of Appeals report considered the cases by

their docketing year, which ranges approximately from mid-September to mid-September. That would explain a slight variance in the reported number of cases transferred, but not the 20 to 30 additional cases reported by the Supreme Court from 1992 to 1994.

In summary, the latest transfer reports of cases transferred by year were generated by the Supreme Court's computerized docket system, copies of which are available from the Administrative Office of the Courts. For that reason, it is submitted that the revised reports are accurate.

cc: AOC

REPORT OF CASES TRANSFERRED FROM SUPREME COURT TO COURT OF APPEALS: DIRECT, DISCRETIONARY, AND INTERLOCUTORY. (Rev. 9-10-96)

DIRECT AND CROSS APPEALS

Year	Appeals	Transfers	Percentage
1996*	529	90	17 %
1995	525	90	17.1 %
1994	559	120	21.4 %
1993	621	94	15.1 %
1992	513	59	11.5 %

*Current as of 9-10-96.

DISCRETIONARY APPLICATIONS

Year	Applications	Transfers	Percentage
1996	197	18	9.1 %
1995	220	30	13.6 %
1994	216	20	9.2 %
1993	260	17	6.5 %
1992	208	12	5.7 %

INTERLOCUTORY APPLICATIONS

Year	Applications	Transfers	Percentage
1996	52	4	7.6 %
1995	55	10	18.1 %
1994	46	8	17.3 %
1993	49	9	18.3 %
1992	52	4	7.6 %

SUPREME COURT OF GEORGIA
CASELOAD REPORT
1991-1994

BY DISPOSITION	1994	1993	1992	1991
WRITTEN OPINION	401	344	305	363
AFFIRMED WITHOUT OPINION	43	127	98	134
ALLOWED WITHDRAWN	36	29	30	44
STRICKEN FROM DOCKET	8	7	*	*
TRANSFERRED TO COURT OF APPEALS	141	128	77	60
APPEALS DISMISSED	84	72	79	50
PETITIONS FOR CERTIORARI				
Granted	25	99	39	82
Denied	609	634	526	570
Other	25	19	8	6
APPLICATIONS FOR APPEAL				
Habeas corpus:				
Granted	3	1	7	3
Denied	139	93	104	171
Other	4	9	6	1
Discretionary				
Granted	41	46	34	57
Denied	140	175	142	177
Other	45[1]	30[2]	9	5

[1] Includes 27 applications transferred to the Court of Appeals.

[2] Includes 16 applications transferred to the Court of Appeals.

cases involving title to land, and appeals from decisions in mandamus actions, on that basis. (Copies of sample transfer orders attached.) As discussed above, the Supreme Court has also transferred an appeal involving the enforcement of a property settlement incorporated in a divorce decree, a type of appeal which formerly was always heard by that Court as arising from a divorce. See Crotty v. Crotty, supra at 409-10.

According to the Supreme Court's docketing records, the number of cases transferred to the Court of Appeals is not insignificant. The following chart regarding the Supreme Court's transfer of direct appeals may illustrate a growing trend in the number of cases transferred.

YEAR	Direct Appeals	Transfers	Percentage
1995	525	94	17.9 %
1994	559	120	21.4 %
1993	611	94	15.3 %
1992	513	59	11.5 %

APPELLATE PROCEDURES: DIRECT, INTERLOCUTORY, DISCRETIONARY

While the formal division of subject matter jurisdiction between the two appellate courts has not been modified extensively since 1916, the opposite is true for the procedures necessary to secure appellate review. The most significant procedural developments have been the enactments of the Appellate Practice Act of 1965 and the discretionary appeal statute in 1979 (current OCGA

TOTAL CASE LOAD

1996 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0511
CROSS APPEALS:	0018
DISC APPLS:	0197
INTER APPLS:	0052
HABEAS APPLS:	0240
CERTS. :	0726
GRANT CERT:	0035
DEATH PENALTY:	0006
EXTRA. MOTIONS:	0017
DISCIP. ACTIONS:	0147
ORIG. PETITION ACTIONS:	0004
CERTIF. QUESTIONS:	0006
JUDICAIL REVIEW:	0015
TOTAL FILINGS:	1974

SC

1996 as of 9-10-9

[0001] S96A0013[01400]

[0002] S96A0014[01400]

[0003] S96A0042[01400]

[0004] S96A0046[01400]

[0005] S96A0189[01400]

[0006] S96A0209[01400]

[0007] S96A0210[01400]

[0008] S96A0215[01400]

[0009] S96A0222[01400]

[0010] S96A0245[01400]

[0011] S96A0250[01400]

[0012] S96A0256[01400]

[0013] S96A0257[01400]

[0014] S96A0259[01400]

[0015] S96A0261[01400]

[0016] S96A0287[01400]

[0017] S96A0303[01400]

[0018] S96A0353[01400]

[0019] S96A0360[01400]

[0020] S96A0361[01400]

[0021] S96A0378[01400]

[0022] S96A0413[01400]

[0023] S96A0416[01400]

[0024] S96A0419[01400]

[0025] S96A0421[01400]

[0026] S96A0473[01400]

[0027] S96A0503[01400]

[0028] S96A0664[01400]

[0029] S96A0733[01400]

[0030] S96A0755[01400]

[0031] S96A0767[01400]

[0032] S96A0771[01400]

[0033] S96A0775[01400]

[0034] S96A0776[01400]
[0035] S96A0790[01400]
[0036] S96A0797[01400]
[0037] S96A0823[01400]
[0038] S96A0828[01400]
[0039] S96A0834[01400]
[0040] S96A0845[01400]
[0041] S96A0868[01400]
[0042] S96A0916[01400]
[0043] S96A0917[01400]
[0044] S96A0930[01400]
[0045] S96A0951[01400]
[0046] S96A0978[01400]
[0047] S96A0985[01400]
[0048] S96A1024[01400]
[0049] S96A1073[01400]
[0050] S96A1075[01400]
[0051] S96A1134[01400]
[0052] S96A1170[01400]
[0053] S96A1183[01400]
[0054] S96A1192[01400]
[0055] S96A1195[01400]
[0056] S96A1210[01400]
[0057] S96A1217[01400]
[0058] S96A1240[01400]
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TOTAL CASE LOAD

1996 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0000
CROSS APPEALS:	0000
DISC APPLS:	0000
INTER APPLS:	0000
HABEAS APPLS:	0000
CERTS. :	0000
GRANT CERT:	0000
DEATH PENALTY:	0000
EXTRA. MOTIONS:	0000
DISCIP. ACTIONS:	0000
ORIG. PETITION ACTIONS:	0000
CERTIF. QUESTIONS:	0000
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	0112

TOTAL CASE LOAD

1995 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0511
CROSS APPEALS:	0014
DISC APPLS:	0220
INTER APPLS:	0055
HABEAS APPLS:	0272
CERTS. :	0747
GRANT CERT:	0061
DEATH PENALTY:	0005
EXTRA. MOTIONS:	0018
DISCIP. ACTIONS:	0129
ORIG. PETITION ACTIONS:	0012
CERTIF. QUESTIONS:	0005
JUDICAIL REVIEW:	0004
TOTAL FILINGS:	2053

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TOTAL CASE LOAD

1995 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0000
CROSS APPEALS:	0000
DISC APPLS:	0000
INTER APPLS:	0000
HABEAS APPLS:	0000
CERTS. :	0000
GRANT CERT:	0000
DEATH PENALTY:	0000
EXTRA. MOTIONS:	0000
DISCIP. ACTIONS:	0000
ORIG. PETITION ACTIONS:	0000
CERTIF. QUESTIONS:	0000
JUDICAIL REVIEW:	0000
TAL FILINGS:	0133

TOTAL CASE LOAD

1994 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0538
CROSS APPEALS:	0021
DISC APPLS:	0216
INTER APPLS:	0046
HABEAS APPLS:	0179
CERTS. :	0671
GRANT CERT:	0068
DEATH PENALTY:	0008
EXTRA. MOTIONS:	0025
DISCIP. ACTIONS:	0158
ORIG. PETITION ACTIONS:	0009
CERTIF. QUESTIONS:	0005
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	1944

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TOTAL CASE LOAD

1994 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0000
CROSS APPEALS:	0000
DISC APPLS:	0000
INTER APPLS:	0000
HABEAS APPLS:	0000
CERTS. :	0000
GRANT CERT:	0000
DEATH PENALTY:	0000
EXTRA. MOTIONS:	0000
DISCIP. ACTIONS:	0000
ORIG. PETITION ACTIONS:	0000
CERTIF. QUESTIONS:	0000
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	0148

TOTAL CASE LOAD

1993 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0593
CROSS APPEALS:	0028
DISC APPLS:	0260
INTER APPLS:	0049
HABEAS APPLS:	0120
CERTS. :	0672
GRANT CERT:	0073
DEATH PENALTY:	0003
EXTRA. MOTIONS:	0023
DISCIP. ACTIONS:	0157
ORIG. PETITION ACTIONS:	0007
CERTIF. QUESTIONS:	0003
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	1988

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TOTAL CASE LOAD

1993 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0000
CROSS APPEALS:	0000
DISC APPLS:	0000
INTER APPLS:	0000
HABEAS APPLS:	0000
CERTS. :	0000
GRANT CERT:	0000
DEATH PENALTY:	0000
EXTRA. MOTIONS:	0000
DISCIP. ACTIONS:	0000

ORIG. PETITION ACTIONS:	0000
CERTIF. QUESTIONS:	0000
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	0120

TOTAL CASE LOAD

1992 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0493
CROSS APPEALS:	0020
DISC APPLS:	0208
INTER APPLS:	0052
HABEAS APPLS:	0118
CERTS. :	0574
GRANT CERT:	0039
DEATH PENALTY:	0017
EXTRA. MOTIONS:	0007
DISCIP. ACTIONS:	0000
ORIG. PETITION ACTIONS:	0023
CERTIF. QUESTIONS:	0007
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	1558

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[0037] S92A0810[ ]

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[0072] S92I1397[01956]

[0073] S92X0115[01301]

[0074] S92X0248[01101]

[0075] S92X0950[01411]

TOTAL CASE LOAD

1992 TOTAL ITEMS DOCKET

DIRECT APPEALS:	0000
CROSS APPEALS:	0000
DISC APPLS:	0000
INTER APPLS:	0000
HABEAS APPLS:	0000
RTS. :	0000
GRANT CERT:	0000
DEATH PENALTY:	0000
EXTRA. MOTIONS:	0000
DISCIP. ACTIONS:	0000
ORIG. PETITION ACTIONS:	0000
CERTIF. QUESTIONS:	0000
JUDICAIL REVIEW:	0000
TOTAL FILINGS:	0075