

Procedural Limits in Intellectual Property Criminal Appeals

An Educational Analysis of False Marking, Forgery, and Retrial Admissibility

**Taiwan Supreme Court, Criminal Ruling
112-Tai-Kang-740 (2023)**



*Focus: Criminal Procedure Code Arts.
376 & 405; Pre-amendment
Trademark Act Arts. 62 & 77.*

The Collision of the Parties



The Appellant (Retrial Applicant)

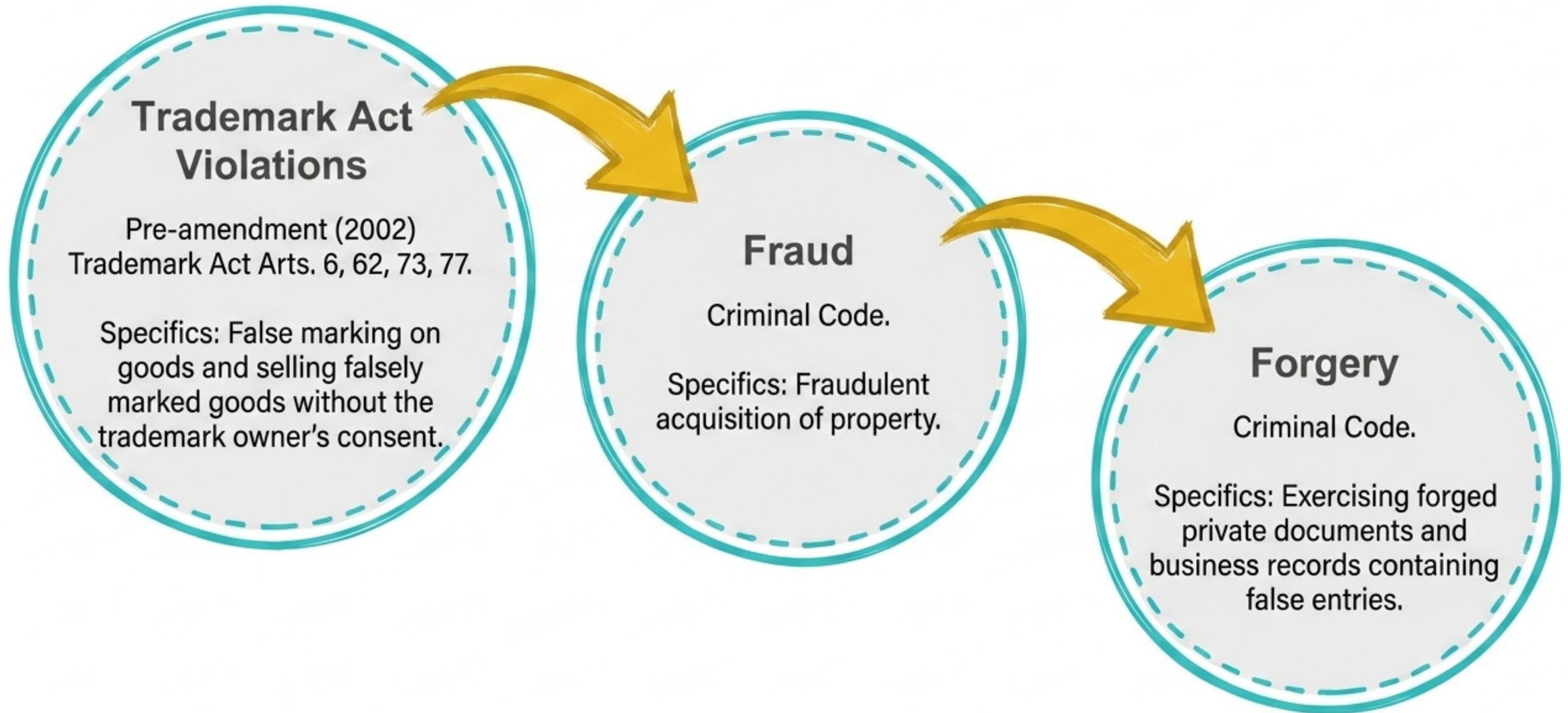
- **Action:** Files for a Retrial under Criminal Procedure Code Art. 422.
- **Claims:** The previous judgment relied on forged evidence, false testimony, and compromised judges.
- **Objective:** Overturn the final verdict.



The Defendant (Chen O-hsueh) & IPC Court

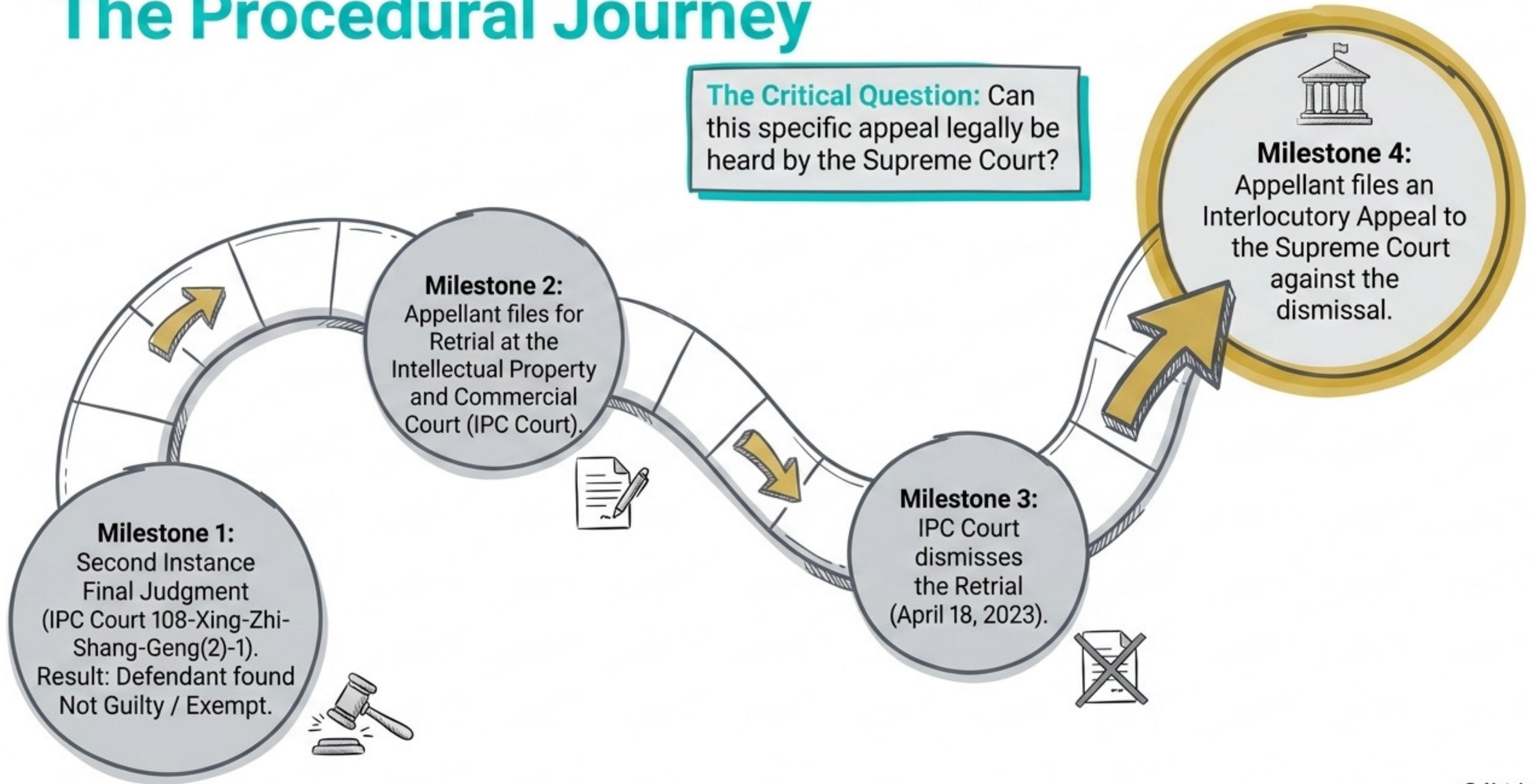
- **Action:** Retrial application officially dismissed via IPC Court Criminal Ruling 111-Xing-Zhi-Sheng-Zai-6 (April 18, 2023).
- **Status:** Original judgment from IPC Court 108-Xing-Zhi-Shang-Geng(2)-1
108-Xing-Zhi-Shang-Geng(2)-1 stands (Not Guilty / Exempt from prosecution).

The Underlying Criminal Offenses

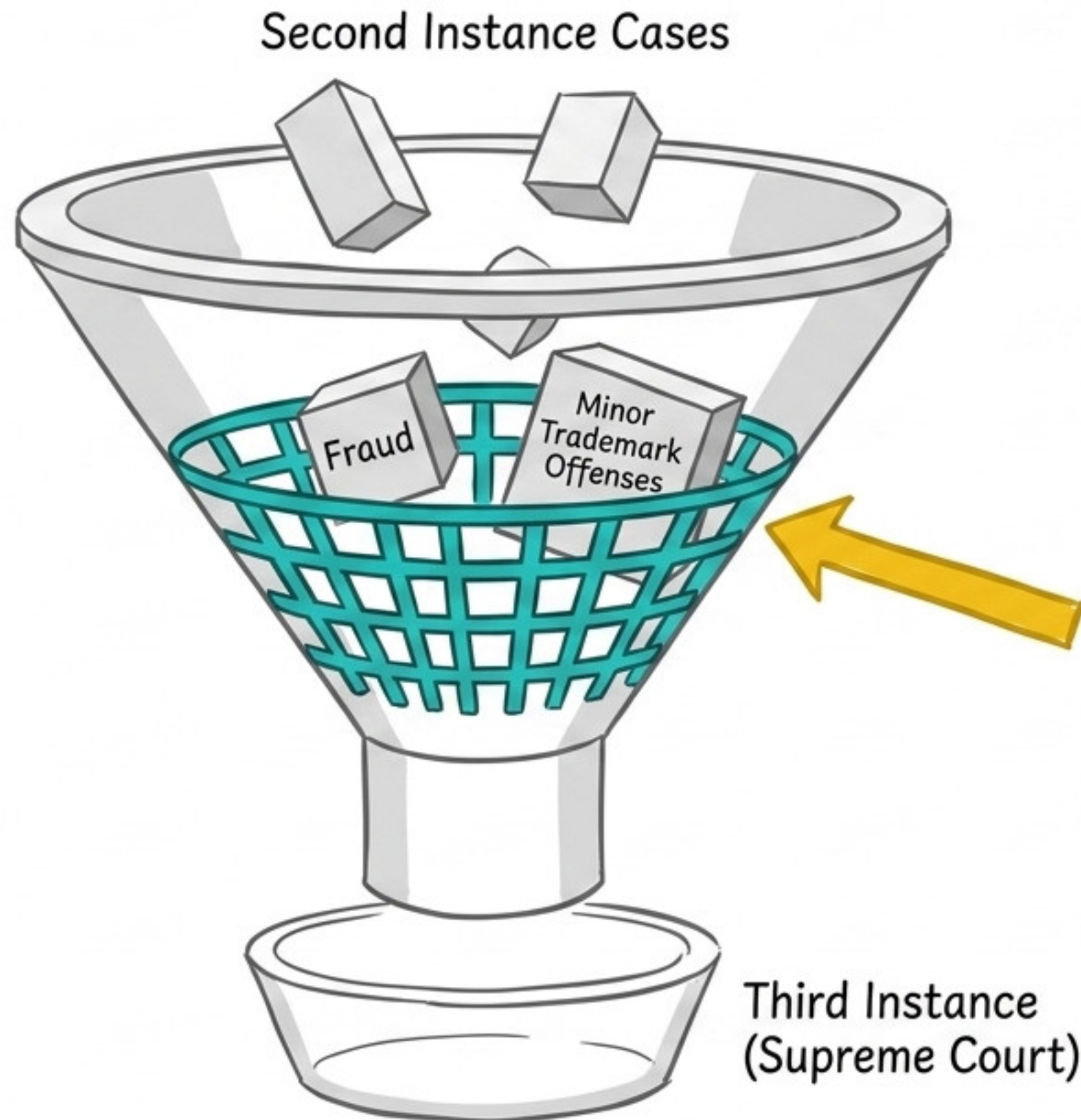


The Procedural Journey

The Critical Question: Can this specific appeal legally be heard by the Supreme Court?



The Legal Filter: Criminal Procedure Code Art. 376

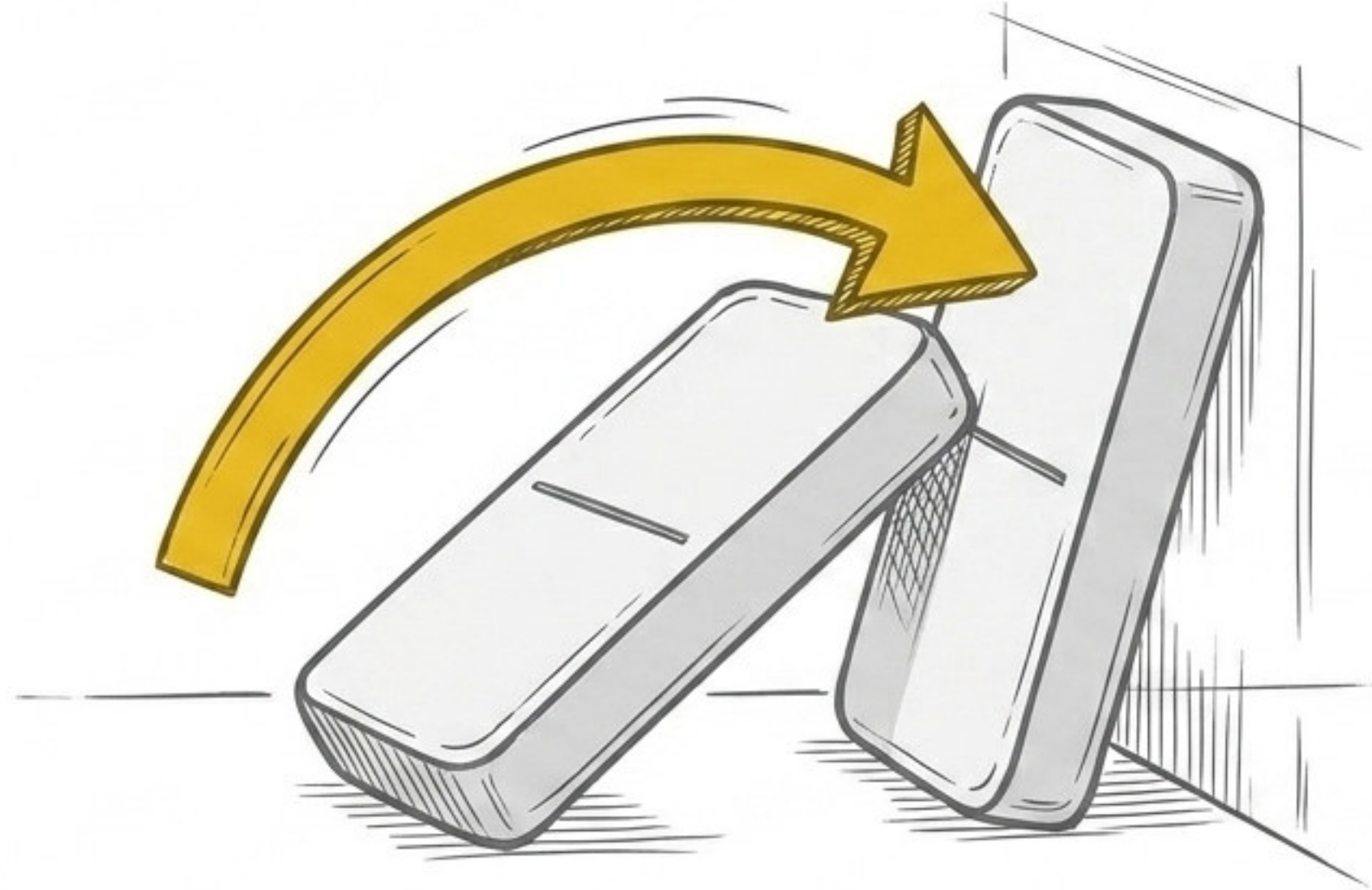


The Rule: Criminal Procedure Code Art. 376(1) explicitly restricts certain classes of cases from being appealed to the Third Instance court after a Second Instance judgment.

The Exception: Appeals are only permitted if the Second Instance reversed a "Not Guilty" verdict to "Guilty".

Case Application: Fraud (under pre-amendment Art. 376(1)(4)) and the specific Trademark Act violations fall strictly under these restrictions. They are permanently blocked from Third Instance review.

The Procedural Domino Effect: Criminal Procedure Code Art. 405



Case Blocked by Art. 376.

Because the underlying Fraud and Trademark charges cannot be appealed to the Supreme Court...

Interlocutory Rulings Blocked by Art. 405.

...any procedural rulings made by the Second Instance court for that specific case (such as dismissing a Retrial) inherently cannot be appealed.

The IPC Court's ruling to dismiss the Retrial is strictly unappealable.

Interpreting the Appellant's Intent



The Ambiguity

The Appellant's filing did not specify whether they were appealing the entire ruling or just a specific part of it.

The Statutory Guideline

Criminal Procedure Code Arts. 348 and 419 dictate how courts must interpret appeals and interlocutory appeals.

The Court's Pro-Appellant Stance

The Supreme Court adopts a broad interpretation. Without explicit limitation from the Appellant, the court assumes the appeal applies to the entire ruling, thereby protecting the Appellant's maximum legal interests and honoring the spirit of the the filing.

Statutory Mandates Override Clerical Errors

The Appellant's Final Defense: The physical copy of the IPC Court's ruling contained printed text explicitly stating the ruling "can be appealed."



The Supreme Court's Rebuttal: Dismissed under Criminal Procedure Code Arts. 411 and 412.

The Absolute Rule: The prohibition against appealing under Criminal Procedure Code Arts. 376 and 405 is a **strict statutory mandate**. An erroneous notation on a printed ruling document does not magically grant the right to appeal where the law explicitly forbids it.

Final Takeaways & Strategic Implications

The Core Admissibility Issue

Cases barred from Third Instance appeals (e.g., minor trademark/fraud offenses) cannot bypass this restriction via interlocutory appeals on retrials.

The Court's Logic Gate

Criminal Procedure Code Art. 376 acts as the primary case filter, which immediately triggers the absolute procedural block in Art. 405.

Document vs. Statute

Statutory law is absolute. A lower court's clerical error mislabeling a document as "appealable" holds zero legal weight against explicit statutory restrictions.

Strategic Lesson for IP Practitioners

When litigating pre-amendment trademark offenses or combined fraud charges, heavily invest in the First and Second Instances. The Supreme Court door is structurally locked for these categories.