

CAPÍTULO III

RECURSO DE APELACIÓN

1.- CONCEPTO:

La Apelación constituye el mas importante recurso de los ordinarios, teniendo por fin la revisión por el órgano judicial superior de la sentencia o auto del inferior⁷⁰.

Etimológicamente la palabra apelación deriva de la voz latina “appellatio” que quiere decir citación o llamamiento y cuya raíz es “apello”, “appellare”, habiendo conservado dicho origen en la mayoría de los idiomas. Así, en francés se dice “appel”, en ingles “Appeal”, en italiano “Appello”, en alemán “Appellation”, en portugués “apellacao”.

Acerca de este recurso Rafael GALLINAL, apunta que:

*“...por **apelación**, palabra que viene de la latina **appellatio**, llamamiento o reclamación, es un recurso ordinario que entabla el que se cree perjudicado o agraviado por la resolución de un juez o tribunal, para ante el superior, con el fin de que la revoque o reforme”.*⁷¹

⁷⁰ Eduardo J. Couture, en el “Prólogo a la obra póstuma de Agustín A. Costa, *‘El recurso ordinario de apelación en el proceso civil’* (Buenos Aires, 1950, pg. 3-4), escribió “Decía el viejo precepto que la apelación era una forma de sustituir el alzar por sublevarse por el alzar por apelar. La apelación es un impulso instintivo, dominado por el derecho; una protesta volcada en moldes jurídicos; un “pega pero escucha” de quien se siente poseído de razón y privado de asistencia. En su mismo nombre castizo, “alzada”, la apelación es una forma de clamor y de rebeldía; es el grito de los que creyéndose agraviados, acuden a mayor juez. Por supuesto que esta manera de mirar las cosas no omite el hecho de que hay apelaciones infundadas y hasta maliciosas; pero a este mal atiende el derecho con otros remedios. Lo sustancial es dar al justiciable, mientras la justicia sea hecha por otros hombres, la seguridad de que al proclamarse su sinrazón, ha sido luego de habérsele escuchado en su protesta...la historia de la apelación se halla, así ligada a la historia de la libertad”.

⁷¹ GALLINAL, Rafael *Manual de Derecho Procesal Civil T.II*. Unión Tipográfica Editorial Hispano-Americana, Buenos Aires, pg. 229

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