ELEMENTS OF A CIVIL PROCEDURE DECISION BRIEF

(PARTS I – IX: THE BASIC BRIEF)

I. IDENTIFICATION AND DECISION MAKER
   A. CASE NAME
   B. COURT: The weight of a decision and its relationship to other decisions cannot be analyzed without knowing what court in what jurisdiction decided it.
   C. DATE: Again, to analyze a decision's significance it must be placed in a historical context.
   D. TEXT PAGE NUMBER: At this point, you do not need to be able to find the decision in the Reporters but you do need to be able to find it in your textbook. Do not waste your time copying citations.

II. PARTIES: When briefing a substantive law case, the parties need to be identified not simply as the plaintiff and the defendant but rather as their respective identities are significant to the decision, e.g., as employee and employer, surety and principal, landlord and tenant, promissor and promissee. As you study more and more cases, you learn that the characterization of the parties is not objectively determinate. Instead, it is part of the decision-making process. The court must decide what facts about the parties and their relationships are significant.
   In civil procedure cases, it is almost always the parties' procedural relationship that is most important. For example, if the case deals with the sufficiency of a complaint that has been challenged by a Rule 12(b)(6) motion to dismiss, the parties might be characterized as "D - 12(b)(6) movant vs. P - 12(b)(6) opponent." If the case deals with a motion for summary judgment, the parties might be characterized as "SJ movant without burden of proof vs. SJ opponent w/bop."

III. RELIEF SOUGHT AND DEFENSES ASSERTED
   A. PRECISE RELIEF SOUGHT BY MOVANT: Be sure you know exactly what the moving party has asked the court to do. In some cases, what appears to be a holding that the movants are not entitled to relief is really just a holding that they are not entitled to the particular relief that they sought.
   B. DEFENSES RAISED BY OPPONENT

IV. PROCEDURAL STATUS AND THE DECISION BELOW
   A. PROCEDURAL STATUS: In civil procedure, even more than in substantive courses, the procedural status in the court below is absolutely crucial. Be sure you understand what papers the various parties had filed and what stage the case had reached.
   B. DECISION BELOW: What precisely did the trial court do? What action by the trial court is being challenged by the appellant/petitioner?
V. FACTS: The facts are all. There is nothing more important than mastery of the facts. Remember that the facts of an appellate decision are not the same as the “truth” or even the evidence admitted in the trial court. The facts in an appellate decision are those facts that the appellate courts treats as true for purpose of its decision. Much of your study of civil procedure is the study of the rules for what counts as a “fact” at various procedural stages of litigation.

VI. ISSUE OR ISSUES PRESENTED TO THE APPELLATE COURT: If you have mastered the facts, the procedural status and the decision below, identifying the issue presented to the appellate court should be relatively easy. Nonetheless, it is crucial to be certain that you can concisely state the issue in at least three ways:

A. The way the plaintiff would want to state it.
B. The way the defendant would want to state it.
C. The way the appellate court actually perceived it.

VII. HOLDING: The holding is what the appellate court did – not what it said. It is the rule implicit in its actions not necessarily the one explicit in its words. While one can make a more or less educated guess at the holding of a single case, that guess is just that – a guess – until the decision has been placed in the context of other decisions. But a case never has one holding. It always has many. For example:

A. BROADEST HOLDING: The broadest holding is the most general rule which can be used by a lawyer trying to convince a court to reach the same result in a subsequent, minimally similar case.

B. NARROWEST HOLDING: The narrowest holding is the most specific rule which can be used by a lawyer trying to convince a court to reach a different result in a subsequent, minimally different case.

Much of the practice of law depends on a lawyer’s judgment as to how broadly a decision can be stretched or how narrowly it can be confined.

VIII. THE REASONING OF THE APPELLATE COURT: While dictum is not holding, it is also not air. The fact that a court said something – even if it did not hold it – is an indication of what it will hold when it is faced with the issue in the future. It provides an argument for that court (or some other court) to do what it previously has said it would or should do. The court’s explanation of why it reached its decision may be of particular predictive force.

IX. MISCELLANEOUS: You will frequently find something interesting or important in a case that just does not seem to fit in any of the points described above. It may be the definition of a term with which you are not familiar (but beware of definitions), or the explanation of a procedural point, or a glimpse into history. It is worthwhile recording these points for two reasons. First, they come in handy in general. Second, sometimes – it may be two weeks or two months later – after reading many more cases, the miscellaneous point which seemed unrelated or incidental suddenly becomes self-evidently crucial to the holding.
X. CONFLICTS

A. INTERESTS: Cases necessarily involve the struggle between litigants having conflicting interests. At the most basic level, plaintiff may want money and the defendant moving for summary judgment does not want to pay. However, the conflicting interests are always more complex than that. A motion for summary judgment may present a conflict between an illiterate debtor's desire to feed his family and a large bank's desire to maximize its dividends. But the same motion may also present the conflict between the banking industry's interest in having simple, inexpensive, uniform procedures so that it can minimize the cost of extending credit and the interest of illiterates as a group in not being bound by documents they cannot read.

In Civil Procedure, the conflicts are somewhat different. The motion described above may present a conflict between a personally appealing plaintiff's interest in having a jury resolve a particular issue and a less sympathetic defendant's interest in having a judge decide it. A discovery issue may present a conflict between plaintiffs' interest in being able to get remedies for wrongs where the crucial evidence is controlled by the defendants, and defendants' interest in not having to spend their resources defending cases where there is no evidence to support plaintiffs' claims. A class action question may present a conflict between consumers' interest in banding together to obtain a remedy for small but widespread harms, and manufacturers' interests in not being subjected to groundless suits that nonetheless "have" to be settled because of the costs involved in defense.

Hone your ability to recognize the various types of interests in conflict in a particular case. You should try to analyze the conflicts at each of the following three levels, finding the interests on each side at each level:

1. Individual Interests
2. Institutional Interests
3. Group Interests

B. PRINCIPLES: Frequently, generally-stated legal principles lead to differing results when applied to the facts of a particular case. Identify the principles to try to see if there is a hierarchy among the rules or some other basis for predicting which principles prevail over which.

XI. EFFECTS: What difference does the decision make to:

A. The particular parties
B. Various groups and institutions
C. Society as a whole

XII. META-RULES: Meta-rules will be the subject of considerable discussion as the year goes on. Courts have implicit rules about their own decision-making processes – about what arguments in support of a decision are legitimate or illegitimate. For now, do not spend a great deal of time worrying about those rules, but do keep your eyes open for obvious examples.
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II. PARTIES

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   A. PRECISE RELIEF SOUGHT BY MOVANT
   B. DEFENSES RAISED BY OPPONENT

IV. PROCEDURAL STATUS AND THE DECISION BELOW
   A. PROCEDURAL STATUS
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V. FACTS

VI. ISSUE OR ISSUES PRESENTED TO THE APPELLATE COURT
   A. The way the plaintiff would want to state it.
   B. The way the defendant would want to state it.
   C. The way the appellate court actually perceived it.

VII. HOLDING
   A. BROADEST HOLDING
   B. NARROWEST HOLDING

VIII. THE REASONING OF THE APPELLATE COURT

IX. MISCELLANEOUS

----------(PARTS X – XII: THE ADVANCED BRIEF)----------

X. CONFLICTS
   A. INTERESTS
      1. Individual Interests
      2. Institutional Interests
      3. Group Interests
   B. PRINCIPLES

XI. EFFECTS
   A. The particular parties
   B. Various groups and institutions
   C. Society as a whole

XII. META-RULES