

DECISION WRITING

Ann Somerville
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WHAT ARE REASONS?

- More than a bare conclusion
- An analysis of how and why, not simply what
- Let parties know in a meaningful way why the decision was reached

COMPONENTS OF A DECISION

1. Issues
2. Findings of Fact
3. Identification of Relevant Law to Facts
4. Application of Law to Facts → Conclusion
5. Order

ISSUES

Issues are the fundamental questions which need to be decided

- Identify the issues before you start writing
- Be precise about the issues – this defines and focuses what you have to decide
- Issues have a legislative context – identify relevant Acts, Regulations etc.
- Address only the issues which you need to decide – explain briefly why any others are not addressed (e.g. not determinative)
- Organize the issues e.g. - break into sub-issues
- put main ones first
- Consider stating conclusions here.

FINDINGS OF FACT

- Select evidence which is relevant to the issues.
 - relevant means there is a logical connection to issue
- Address difficulties in evidence head on
- **Reasons should be given for findings of fact made from conflicting, contradictory evidence concerning significant matters**
- **Reasons should be given for rejecting significant evidence which supports a case which you are disallowing**

FINDINGS OF FACT

Credibility

- **Reasons must be given for rejecting sworn testimony**
 - can't reject evidence on basis of a witness's appearance alone
 - consider whether witness's evidence is internally consistent, consistent with other evidence
- Courts rarely interfere with factual findings, but error of law if evidence totally disregarded or if findings not substantiated by evidence.

ORGANIZE YOUR DISCUSSION OF EVIDENCE

(TELL THE “STORY” WELL)

- Good organization improves the clarity and readability of the document
- Make your organization explicit and visible to the reader
- Organize evidence to correspond with logic of whole analysis
- Usually the discussion tracks the way you characterized the issues.

ORGANIZE YOUR WRITING

(TELL THE “STORY” WELL)

- Use headings
- Often chronological order aids clarity
- Could proceed by issue or incident
- Divide into disputed, undisputed evidence
- Use white spaces

ORGANIZE YOUR WRITING

(TELL THE “STORY” WELL)

- Be concise – use summaries, lists, avoid detailed recitations
- “Point first writing” – findings of fact first followed by review of evidence
- Final findings of fact should relate to the issues identified at outset.

IDENTIFY THE RELEVANT LAW

- Identify the law precisely – give name of applicable legislation, section numbers
- If parties disagree about which law applies, summarize their arguments and explain what you concluded about which law applies and why

IDENTIFY RELEVANT LAW

DEALING WITH CASELAW

- Don't reinvent the wheel – if the issue is well-settled and you agree, adopt existing caselaw concisely
- If law is not well settled and there are various interpretations in the caselaw – explain which one you prefer.
- **If you disagree with existing caselaw: identify that caselaw and explain why.**
 - Avoid strings of cases – choose one good case to illustrate the point. Put others in footnotes.

IDENTIFY THE RELEVANT LAW QUOTING
FROM STATUTES AND CASES

- Avoid long questions – summarize
- If you quote, provide a context for the question.

APPLY LAW TO FACTUAL FINDINGS ® **CONCLUSIONS**

- Explain how and why the law is being applied to the facts
- Briefly and selectively refer to factual findings, don't simply repeat them
- References to factual findings should be accompanied by an explanation of how factual findings relate to conclusions drawn.
- Conclusions should relate to issues originally identified.
- Should conclusions go at beginning of decision or end?

ORDER

- Wording is important
- Be precise, clear
- Make sure you have covered all issues
- Repeat any directions to assist in implementation