

THE GOVERNING PRINCIPLE IN WRITING A FACTUM:

WRITE FOR YOUR READER

YOUR READER IS:

- a person who has no prior knowledge of the case

start with a brief overview explaining what the appeal is about including the issues on appeal

choose a sentence which makes it clear why this information is needed

use headings and sub-headings to assist comprehension

- a person who operates under significant time constraints

be clear, simple and short

refer to the parties by name or by a meaningful descriptive, particularly in cases involving multiple parties i.e. the borrower, the lender, the father, the owner, ect . . . NOT as the “respondent by cross-appeal”, the “third party” etc . . .

state facts, don't recount what the witnesses have said

gear your facts to the points in issue

use plans, charts, photos to explain and abbreviate the statement of facts

relate the propositions of law to your facts

limit quotations, but where quotes are used, give specific page references

advise the court before the hearing if you are abandoning any ground of appeal

- a person whose knowledge of the case will be based mainly on your advocacy

be honest, candid and scrupulously accurate with the facts

differentiate between clear findings of fact and findings that were open on the evidence and consistent with the result but never explicitly made

ensure all references to the transcript are accurate and carefully selected

never overstate your case

- a person who has a certain degree of legal expertise

be thorough in your legal research

cite only the most relevant authorities

accurately state the principles of law

cite opposing authorities and state why the issue should be resolved in your favour

never overstate your case

- a person who has a limited jurisdiction to interfere with the result at trial

show where the court below went wrong and explain why the error matters

in order to avoid diluting the strength of your case, limit the issues to the important ones that can affect the result

- a person who will render judgment on your appeal

gear your factum to assist in the delivery of oral reason or to the writing of the judgment

be specific on the order requested