



Point Headings and Subheadings in the Appellate Brief's Argument Section*

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* This presentation is adapted from your Coughlin textbook and from Richard K. Neumann, Jr. & Sheila Simon, *Legal Writing* (2d ed. 2011), and Linda H. Edwards, *Legal Writing & Analysis* (3d ed. 2011).

In a Nutshell . . .



Today You Will Learn

- I. What Point Headings (“PH”) and Subheadings (“SH”) Are, and What They Do, in a Persuasive Document;
- II. How to Make Them Persuasive; and
- III. How to Format Them.

I. What PH and SH Are, and What They Do, in a Persuasive Document





PH and SH: the Purposes

- Allow preview of your position
 - Note: appear *both* the Table of Contents (TOC) *and* Argument Section.
- Relied upon by judges and court attorneys

PH: the Basics (Edwards)

- **Point heading** = usually statement of “dispositive legal issue”
 - *I.e.*, “independent, freestanding ground” on which your client is entitled to relief
- Note: not all PHs must be on dispositive legal issue.

PH: the Basics

- Generally, 1 PH for each Issue Presented.
 - PH gives nutshell answer to Issue Presented.
- See TWEN, Class 6, “Class 6--RESOURCE--Edwards on identifying PH S2016.pdf.”

PH: the Basics

- PH should identify two things, expressly or implicitly (Newmann, Edwards, Coughlin):
 1. **Action** or **conclusion** you want court to take or to adopt and
 2. Main **reason(s)** in support
 - a. **Rule**
 - b. **Key supporting fact(s)**

SH: the Basics

- **Subheading** = individual argument supporting position/argument asserted in PH.



➤ Practice pointer: it should be immediately clear from each SH's language how it

➤ **relates to** and

➤ **supports**

its PH!

II. How to Make [PH and SH] Persuasive



Persuasive (Argumentative) PH and SH: the Characteristics

■ Strong PH or SH:

1. Positive assertion
2. Assertion + support
3. Specific (including relevant fact(s), if applicable)*
4. Easy to read/understand
5. States desired holding/action

* Whether specificity is needed, and to what extent, depends on various things. More below.

1. “Positive assertion”

- Negative: The Trial Court **Did Not Act Properly** when It Denied Smith’s Motion for Summary Judgment Because . . .
- Positive: The Trial Court **Erred** when It Denied Smith’s Motion for Summary Judgment Because . . .
- Negative: The Trial Court **Did Not Err** when It Denied Smith’s Motion For Summary Judgment Because . . .
- Positive: The Trial Court **Properly Denied** Smith’s Motion For Summary Judgment Because . . .

2. “Assertion + support”

■ Common pattern:

Assertion + **because/when** + **support for assertion**

■ Example:

The trial court properly determined that Findoil’s negligent-misrepresentation claim was barred by the statute of limitations because Findoil failed to sue within two years of having signed the contract that it claimed contradicted earlier negotiations.

3. “Specific (including relevant fact(s), if applicable)”

- Generally, tailor PH/SH to your case.
 - Only facts favorable to client
 - Adverse facts reserved for other § §
 - Compare:
 - **General**—“The trial court erred when it denied Defendant’s motion to suppress because there was a show of authority.”
 - **More Specific**—“The trial court erred when it denied Mr. Strong’s motion to suppress because the officer’s use of a spotlight was a show of authority.”

3. “Specific (including relevant fact(s), if applicable)”

■ Exceptions (i.e., omitting case-specific facts):

- PH or SH: **Abstract question of law**
 - But still give reasoning.
- PH: when covers **multiple elements or legal components**
 - Move facts to element-specific SHs.
 - Can't do this w/o SHs!

Example: Specific PH without SHs

- I. The Trial Court Properly Rendered Partial Summary Judgment on Limitations Because Findoil's Claim Accrued, Untolled by the Discovery Rule, When Findoil Read and Signed the Agreement Containing the Complained-Of Limitation on Which Its Suit Was Based.

Example: General PH with specific SH

- I. The Trial Court Properly Granted Land Survey Inc.'s Motion for Partial Summary Judgment on the Basis of Limitations.
 - A. The statute of limitations had expired because Findoil waited more than two years after signing the Agreement to sue Land Survey, Inc. for negligent misrepresentation.
 - B. The discovery rule does not toll limitations because Findoil failed to exercise reasonable diligence to confirm the meaning of the Agreement's future-partner provision despite having read it.

Example: Specific PH with specific SHs

- I. Under the Fourth Amendment, the Trial Court Erred in Denying Mr. Strong's Motion to Suppress Because the Spotlight Shined on Mr. Strong Was a Show of Authority and Mr. Strong Submitted to the Authority.
 - A. The spotlight was a show of authority because a reasonable person would not have felt free to leave.
 - B. Mr. Strong submitted to the show of authority when he did not leave the spotlighted area and he stopped before being ordered to do so.

4. “Easy to read/understand”

- **Format:** single sentence, single-spaced
- **Length:** no more than 2-3 lines
- **Content:** 1 thought
- **Rules of thumb**—Neumann, p. 248:
 - “If two point headings resemble each other, you might have only one point to make.”
 - “If a point heading seems impossibly complicated, . . . you might need to divide the point into two or more points.”

III. How to Format [PH and SH]



Format: Number

- Number

- PH: 1 or more (1 = OK)
- SH: at least 2 (or none)

Format: Capitalization, Font, Etc.

- In law school:
 - BB Rule 8(a), p. 91: “Capitalize words in a heading . . . , including the initial word and any word that immediately follows a colon. Do not capitalize articles, conjunctions, or prepositions when they are four or fewer letters, unless they begin the heading . . . , or immediately follow a colon.”
 - No other format rules for headings.
- In real life practice:
 - More flexibility
 - Just be consistent at each heading level.

Format: Capitalization, Font, Etc.—Example of Acceptable Format

ARGUMENT

I. First (or only) point heading

[Thesis paragraph]

A. First subheading

[Thesis paragraph]

1. Argumentative sub-point

[argument]

2. Argumentative sub-point

[argument]

B. Second subheading

[argument]