A NOTE ON PROCEDURE IN LITIGATION AND ON READING CASES

In this class we will from time to time read reports of litigated cases dealing with aspects of law (mainly contract law) that are of concern to us. Judicial opinions are a rich yet frustrating way to learn about the legal system in operation. Judicial opinions are a rich because they deal with the details of real disputes. These disputes will include disputes about just what are the facts of the matter. Moreover they are rich because there are often several possible concepts of just what the most relevant legal issues are between two parties. Plaintiff may insist that one body of law should be the referent for determining this dispute, while defendant frames the relevant issues in terms of a somewhat different set of legal doctrines.

Judicial opinions can be a bit frustrating for several reasons. First quality of opinions ranges over a pretty broad spectrum. Second (and related to the first point) sometimes courts appear to be motivated by an instinct about the “fair” outcome of a case and will push a particular conceptualization further than dispassionate expertise would suggest. Third they can be frustrating because they occur in a context of procedural rules that may affect the way the court opinion is structured or its outcome. This memo will give a short outline of some of the procedural aspects of a case report that will affect the court’s approach to the case at that moment.

Generally at the trial court level opinions will be written may be written at one of four procedural settings or stages of a case. Appellate opinions will often be reviewing an aopion written at one of these stages. The procedural constraints that affect a court at each of these stages may be important to understanding the opinion. The list below briefly identifies the four most often encountered motions and states the core of the legal constraint that the motion imposes on the court.

Motion to Dismiss a Complaint: A litigation is commenced by the filing of a complaint (which is suppose to be a short statement of the facts that show plaintiff is entitled to judicial relief). In practice Complaints are often extremely long argumentative documents. The first stage for a defendant to attack the charge made against it is a Motion to Dismiss the Complaint. That motion in effect says to the court “so what”? That is, on such a motion the court assumes that everything that the complaint alleges is true (and all inferences that can be drawn from it favorable to the plaintiff are drawn in plaintiff’s favor). The motion to dismiss states in effect that nevertheless the complaint does not state a legal wrong and therefore defendant should be dismissed from the case.
Such a motion will be briefed and argued based entirely on the Complaint and any opinion by the court will be required to assume all facts in plaintiff’s favor.

**Motion for a Preliminary Injunction:**

Sometimes the first motion that will be brought is a motion for a Temporary Restraining Order. This is an emergency motion brought when plaintiff is faced with imminent, irreparable injury. The facts that the court will consider will be represented by affidavits or other sworn statements of plaintiff. Typically defendant will not have an opportunity to submit evidence. If a TRO is granted it can only last for 10 days (renewable once). Such an order is designed simply to preserve the existing status quo.

If Plaintiff is threatened with irreparable injury as a result of an alleged breach of duty by defendant and seeks longer term relief (that is injunctive relief that will last until the trial is completed) it well bring a motion for Preliminary Injunction relief. This motion will follow some abbreviated discovery. There will be a short evidentiary hearing (or in some jurisdictions, simply opposing sets of affidavits). The Court will not make final findings of disputed facts (these can be made only after a full trial) but will make provisional determination sufficient to determine whether the 1) Plaintiff has a reasonable change of recovery after trial; 2) whether Plaintiff is faced with irreparable injury before a trail may be had; and 3) whether the threat to plaintiff “outweighs” any threat to defendant that granting the preliminary injunction may occasion.

**Motion for Summary Judgment:**

If a motion to dismiss is denied the case moves into a Discovery phase. In this phase the parties are permitted to use a wide range of tools to uncover the relevant facts of the case (that is the facts that may relate to any theory that either party may plausibly advance as a claim or a defense). They may demand that documents be produced and that witness be deposed. Thus a factual record is built up. At some point in this process one of the parties may feel that the record of evidence created in the discovery phase indisputably establishes facts that constitute either the elements of the plaintiff’s claim or that plainly negate some essential element of plaintiff’s claim.

At this point that party may move for a Summary Judgment. If it is the Defendant that so moves she will seek a judgment of dismissal. If it is the plaintiff, she will seek a judgment in her favor.

In deciding a motion for Summary Judgment the court is directed by the Rules of Procedure to deny the motion if there is any material fact in dispute. Thus Summary Judgment, which avoids the time and expense of a trial, is only appropriate where it is quite clear that there is no point in having a trial.

**Judgement after Trial:**

Where the plaintiff’s complaint does state facts which if true constitute a wrong and evidence exists supporting the complaint, a trial is necessary (unless a settlement occurs – which
is the outcome of most litigation). At the trial – if it is a jury trial – the conflicting evidence will presented to the court and the jury. At the conclusion the court will instruct the jury concerning both its duty to determine the facts on the evidence that it believes and will instruct the jury on the applicable law. The jury will then give its verdict. There will be no judicial opinion at this stage.

Sometimes (not very often) a motion will be made to the court to set aside the jury determination as against the clear weight of the evidence and order a new trial. Such a motion is granted but rarely and is made in a judicial opinion.

There are other types of motions that can generate judicial opinions at the trial court level but the foregoing list of motions and the assumptions that courts are required to make in ruling on them provide the core of the rules that affect litigation in trial courts.

As you read cases try to keep in mind the procedural context within which the courts are working in the particular case. It is easy to overlook the fact that the procedural posture can sometimes be quite important in understanding the outcome and the reasoning of the opinion.