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Teaching Legal Reasoning in Law School

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Teaching Legal Reasoning in Law School: The University of Richmond Experience

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INTRODUCTION

The concept of legal reasoning is often discussed in law school but seldom explained. From the first day of class, for example, the typical law student is taught that s/he must now "think like a lawyer" and must carefully analyze "the law" through the medium of legal reasoning as applied to a multitude of judicial casebooks, legislative codes and legal briefs.

However, the actual teaching of a skills technique approach to legal reasoning — as a *process* as well as a *principle* — has seldom been clearly articulated in many law schools today. This unfortunate situation has resulted from at least two interrelated causes:

(1) Many legal scholars are still at odds as to what, exactly, constitutes "legal reasoning"[1] and

(2) Due to these philosophical problems inherent in the concept of "legal reasoning," it is a subject that allegedly "can't be taught," and must be learned by experience.[2]

Admittedly, pure logic may play a limited role in many judicial decisions and the most persuasive attorney or judge may not always be the most logical arguer. An activist judge, for example, may want a penniless widow to prevail in a contested life insurance action and then he may subsequently develop the reasoning behind this decision. But he must nevertheless present his supporting reasons.

So assuming *arguendo* that logic is *not* always the primary basis for a legal decision, logic nevertheless often serves as its *justification*:

> . . . a skilled lawyer may be able to persuade a judge that a claim which he himself does not regard as a good one is justified in law; a judge may give a decision in favour of a pursuer with a pretty face or a given class background, really because he likes the face or class (yet more insidiously,

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[1] *See e.g.* TWINING AND MIERS, HOW TO DO THINGS WITH RULES 140 (1976). ("Very general questions of the kind 'what is the role of logic in legal reasoning?' are ambiguous and misleadingly simple.") *See also* A.G. Guest's *Logic in the Law* in OXFORD ESSAYS IN JURISPRUDENCE (1961) which is criticized by Robert Summers in *Logic in the Law*, 72 MIND 254-8 (1963) which, in turn, is likewise criticized by Phillip Mullock in *The "Logic" of Legal Reasoning*, 75 MIND 128-130 (1966). *And see* the criticism of Gottlieb's LOGIC OF CHOICE (1968) by Neil MacCormick in LEGAL REASONING AND LEGAL THEORY 34 (1978). ("I find the whole argument from p. 66 to p. 77 entirely opague.")

[2] *See e.g.* O. W. HOLMES, THE COMMON LAW 1 (1881). ("The life of law has not been logic, it has been experience.") *But see* Twining and Miers, *supra* note 1, at 141. (". . . even a cursory reading of Holmes reveals that he was concerned to show that logic is only one of a number of factors in 'determining the rules by which men should be governed.'")

> because of an unconscious prejudice in favor of the face or class), but ostensibly because the reasons for his decision are such and such . . . (and here follows a carefully articulated and ostensibly flawless chain of [logical] legal reasons for his decision).
>
> [So] insincerity is even more revealing than sincerity. Why is it that a lawyer who wants to win a case in order to be sure of his fee, rather than because he really believes in it, does not say so? Why does a judge not make his reason explicit by granting Mrs. McTavish her divorce just because she has a ravishingly pert retrousse nose? Because such are not accepted as good logical reasons for sustaining claims or granting divorces . . . Hence . . . the process which is worth studying is the process of argumentation as a process of justification.[3]

Any study of legal reasoning is therefore an attempt to explain the logical criteria as to what constitutes a good or bad, acceptable or unacceptable, legal argument.[4]

With the understanding that reasonable scholars and critics may differ, it is nevertheless this article's contention that law schools today must still strive to teach the basic logical principles—and process—of legal reasoning. By analogy, a swimmer must learn at least a few basic strokes in order to survive in his new environment. The same is true with law students and legal reasoning. An elementary foundation in legal reasoning skills, limited though it may be, is still better than nothing at all—especially when the latter alternative offers only confusion and misunderstanding.

The purpose of this article is to discuss one such approach in teaching the principles and process of legal reasoning to first year students at the University of Richmond Law School. Although the author realizes that this is only one of many approaches to the subject in question, it is hoped that some of the fundamental assumptions within this discussion may serve as a catalyst for teaching legal reasoning techniques in other schools as well.

I. LEGAL REASONING: THE PRINCIPLES

The philosophical context of logic as the "dictate of reason" is as old as the writings of Plato and Aristotle and has exercised a profound influence upon the development of Western legal thought, where it has been stated and restated many times. The primacy of "pure reason" has not gone unchallenged, however, and the philosopher David Hume, for one, has argued that there are limits to reason in practical experience.[5]

Basically, Hume's argument, reduced to its essentials, is that our faculty for reasoning can operate *only upon given premises* and assuming certain premises, we can then by reason reach certain *conclusions* which follow from these premises. Indeed, reason can guide us in seeking to *verify* or *falsify* certain premises concerning matters of fact generally.[6]

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[3] N. MACCORMICK, LEGAL REASONING AND LEGAL THEORY 14-15 (1978).

[4] *Id.* at 12-13.

[5] *See, supra* note 2.

[6] *See* HUME, ENQUIRY CONCERNING THE PRINCIPLES OF MORALS (many editions) Appendix I and A TREATISE OF HUMAN NATURE Books I and II. *See also* N. MacCormick, *supra* note 3, at 1-4.

The correctness of a deductive syllogism stripped of any empirical component, can be easily established:

All Xs are Y.
This thing is an X.
Therefore, this thing is a Y.

This syllogism is logically correct but factually uninformative. The empirical content, or what Hume would call "what reason operates upon," is therefore critical to logicial reasoning in advancing our knowledge of matters of fact generally. Take, for example, the following syllogism with a major premise, a minor premise and a conclusion:

Major Premise:	Whosoever, while married, shall go through another marriage ceremony recognized by law, shall be guilty of bigamy.
Minor Premise:	Allen, while married, went through another marriage ceremony recognized by law.
Conclusion:	Allen is guilty of bigamy.

(Expressed in this way, the major premise and the conclusion are normative; and the minor premise is a proposition of fact.)

This method of deductive legal reasoning can also be expanded to include other premises as well. For example:

Premise 1:	Murder is the unlawful killing of a human being with malice aforethought.
Premise 2:	Joseph shot and killed Henry.
Premise 3:	Joseph had no lawful justification or excuse to kill Henry.
Premise 4:	Henry is a human being.
Premise 5:	Joseph killed Henry with malice aforethought.
Conclusion:	Therefore Joseph is guilty of murder.

Legal reasoning is therefore a process of *inference*— the process of passing from certain premises which are assumed to be true, to other premises distinct from the first but deemed to follow from them, to reach a logical conclusion.[7]

This type of legal reasoning is known as *deductive reasoning*. In deductive legal reasoning, the conclusion must follow from the premises as a matter of logical necessity; if one accepts the premises, then one must also accept the conclusion, since it is logically compelling or *conclusive*. Reasoning is conclusive where the conclusion follows from the premises; it is *inconclusive* where the premises support, but do not compel, the conclusion.[8]

Inductive reasoning, on the other hand, is *inconclusive reasoning*, because it encompasses all kind of reasoning where the premises *may* support, but *do not compel*, the conclusion.[9] For example:

Premise 1:	In case A, elements X, Y and Z were present and plaintiff won.

[7] T. GREENWOOD, THE DICTIONARY OF PHILOSOPHY 264-5 (1942).
[8] TWINING AND MIERS, *supra* note 1, at 139-40.
[9] *Id.* at 143-4.

Premise 2:	In case B, elements X, Y and Z were present and plaintiff won.
Premise 3:	In case C, elements X, Y and Z were present and plaintiff won.
Conclusion:	In all cases where elements X, Y and Z are present, plaintiff should win.

In the above example, if elements X, Y and Z were provable elements of negligence—such as breach of duty, causation, and damages—then the conclusion would be supportable. If elements X, Y and Z were a bailiff, a judge and the flag, then this inductive conclusion would not be supportable. Clearly, *deductive logic*, being *conclusive*, is much more desirable for purposes of legal reasoning than inductive logic although both approaches have been used in various legal problems.[10]

Although deductive reasoning is superior to inductive reasoning in terms of its conclusiveness, its forcefulness depends on the truth of its premises. For example:

> All contracts are legally binding.
> Jake contracted with a prostitute.
> Therefore, Jake's contract is legally binding.

This deductive syllogism is logically correct but its conclusion, though necessarily true if the premises are true, has no force since the major premise is false.

Likewise, the truth of the observations which form the premises of an inductive argument is equally important to the forcefulness of its conclusion. Thus, an important step in legal reasoning is to *test* these premises *arguing by analogy or arguing by distinguishing*, since "the finding of similarity or difference is the key step in the legal process."[11] What is argument by analogy?

> An analogy is simply a comparison, and an argument from analogy is an argument from comparison. An argument from analogy begins with a comparison between two things, *X* and *Y*. It then proceeds to argue that these two things are alike in certain respects, A, B and C, and concludes that therefore they are also alike in another respect, D, in which they have not [previously] been observed to resemble one another . . . It will be apparent at once that an argument from analogy is never conclusive.[12]

Arguing by analogy has also been described this way:

> The basic pattern of legal reasoning is reasoning by example. It is reasoning from case to case. It is a three-step process described by the doctrine of precedent in which a proposition [premise] descriptive of the first case is made into a rule of law and then applied to a next similar situation. The steps are these: similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule is made applicable to the second case.[13]

Arguing by distinguishing, on the other hand, is demonstrating the

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[10] *See e.g.*, N. MACCORMICK, *supra* note 2, chapters II and III where the author argues that in order to fully justify legal arguments and conclusions, deductive legal reasoning must be applied. *Id.* at 52.

[11] E. LEVI, AN INTRODUCTION TO LEGAL REASONING 2 (1949).

[12] J. HOSPERS, AN INTRODUCTION TO PHILOSOPHICAL ANALYSIS 476 (1970).

[13] E. LEVI, supra note 11, at 1-2.

dissimilarities in judicial cases and other premises. It is the antithesis of arguing by analogy.

Arguing by analogy and arguing by distinguishing are thus two important elements in testing the premises and conclusions of deductive and inductive legal reasoning, since the facts and law of legal precedent are seldom identical to any subsequent legal issues.[14]

II. LEGAL REASONING: THE PROCESS

The process of teaching legal reasoning at the University of Richmond Law School begins in the first year Legal Research and Writing Course.[15]

Prior to preliminary lecture-discussions on legal reasoning, including comparisons of deductive and inductive logic,[16] each student is provided with an introductory outline of general principles, as well as a glossary of basic terminology related to legal reasoning.[17] Examples of deductive and inductive legal reasoning are then discussed and analyzed in class.[18]

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[14] ". . . [T]here are few areas of the law in black and white. The grays are dominant and among them the shades are innumerable." Estin v. Estin, 334 U.S. 541, at 545 (1948).

[15] This two-credit hour course in the fall term begins with an Introduction to Legal Reasoning, followed by a "Closed Memorandum" legal reasoning and writing problem, then a number of weeks with legal research exercises in the law library and culminating in a final "Open Memorandum" problem which utilizes the combined skills of legal reasoning, writing and research. The second semester Legal Research and Writing course is a one-credit hour Moot Court program requiring the writing and oral argumentation of an appellate brief.

[16] See *supra* notes 2-11 and related discussion.

[17] The following glossary was used in the fall term Legal Research and Writing course.

Legal reasoning may be defined as the *analysis* and *synthesis* of *factual information* and *legal precedent* [the premises] through the *medium of legal argument*, to reach a logical *conclusion*.

Before this process can be discussed, the following definitions must be understood:

1) *Law* —	certain rules of human conduct and behavior with sanctions or penalties for noncompliance
2) *Facts* —	occurrences or events; things done
3) *Issue* —	a matter that is in dispute between two or more parties; a point of debate or controversy
4) *Precedent* —	something that serves as an example or rule to authorize a subsequent act of the same or analogous kind; a rule established by long practice
5) *Legal Precedent* —	precedent created by constitutions, legislative statutes, judicial cases, administrative regulations and executive orders that establish the basic laws of a particular society
6) *Premise* —	a proposition inferred as a basis of argument
7) *False Premise* —	a proposition that appears to be true but on closer analysis is found *not* to be true.
8) *Inference* —	the act of passing from one premise considered to be true, to another whose truth is believed to follow from the former premise
9) *Argument* —	the process of testing premises, applying them to a specific problem and drawing conclusions
10) *Arguing by Analogy* —	testing the inference that if two or more things agree in some respects, they may also agree in other respects; similarity between things that are otherwise unlike; argument that different things are governed by the same general principle
11) *Arguing by Distinguishing* —	pointing out an essential difference; argument that authority cited as applicable to a particular problem is really inapplicable

Once the students have become familiar with the "premise-to-conclusion" concept of legal reasoning,[19] a new mnemonic is introduced as a mental aid to the legal reasoning process — IRAC.[20] The IRAC mnemonic is a familiar concept in many law schools and basically follows a deductive form of legal reasoning.[21]

An excellent medium for teaching this IRAC legal reasoning process at the University of Richmond Law School has been through Lon Fuller's *The Case of the Speluncean Explorers*.[22] The Case of the Speluncean Explorers is set in the mythical Commonwealth of Newgarth in the year 4300. During the previous year, five Speluncean explorers were trapped in a limestone cave that was sealed off by a landslide. Faced with the possibility of starvation in the cave, they killed and ate one of their own number, Roger Whetmore. The four survivors were ultimately convicted of murder and the case is now on appeal to the Supreme Court of Newgarth.[23]

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12) *Public Policy Argument* — argument that certain action should be taken for the public good
13) *Analysis* — a breakdown of the component parts of something in order to discover its important inner relationships; a reduction to simpler parts or divisions
14) *Synthesis* — a combination of various elements, often diverse, to form a coherent whole; an inference in which the conclusion follows from the premises
15) *Conclusion* — the necessary consequence of two or more premises; a reasoned judgment; an end of the reasoning process
16) *Reasoning* — the power of comprehending, inferring or thinking in an orderly, logical way

[18] See *supra* notes 6-7 and related discussion. (Describing the "general-to-specific" deductive approach as an "inverted pyramid" is also helpful.)

[19] See *supra* notes 4-8 and related discussion.

[20] In the fall term Legal Research and Writing course, the IRAC mnemonic was described this way: An excellent mental mnemonic to help remember the most important elements of this legal reasoning process is IRAC — which may be used in analyzing and writing case briefs, legal memoranda, appellate briefs, opinion letters and law school essay examinations:

I = Issue Presented
R = Rule of Law
A = Argument
1. Discussion (application and testing of the law and facts)
2. Defenses (if any)
C = Conclusion

There is often more than one major *Issue* in a given legal problem. A careful analysis of the problem will separate the major issues from tangential minor issues.

The *Rule of Law* is the applicable legal precedent which is the authority for the legal argument.

The *Argument* is the analysis of the important legal and factual relationships within the problem and whether or not they are analogous to or distinguishable from established legal precedent. Are there any applicable defenses in this particular situation?

The *Conclusion* is the final synthesis of the Argument: the actor is guilty or not guilty; liable or not liable; under the applicable Rule of law, for the reasons stated in the Argument.

[21] The IRAC mnemonic has been used in numerous law schools, the C.L.E.O. Program and various bar review courses. It is a deductive legal reasoning approach with the Issue Presented and Rule of Law constituting the *major premises*; the Argument being the application and testing of *minor premises* and the resulting *Conclusion*.

[22] 62 HARV. L. REV. 616 (1949). This article is also published in booklet format and may be ordered directly from the Harvard Law Review Association to comply with current copyright requirements.

[23] *Id.* at 619. The facts of this case are unusual, to say the least and there is also additional legal precedent to whet the students' appetite. *See e.g.*, Regina v. Dudley, 14 Q.B.D. 273, 15 Cox C.C. 624 (1884) (a seventeen year-old cabin boy killed and eaten in a lifeboat) and U.S. v. Holmes, 26 F. Cases 360

The legal reasoning IRAC mnemonic for the Speluncean Explorers case was presented in the following manner, with the following student assignment:

> Using the IRAC legal reasoning mnemonic, analyze and brief the applicable arguments in The Case of the Speluncean Explorers:
> I = Issue: Are the Speluncean explorers guilty of murder in the killing of Roger Whetmore?
> R = Rule of Law: "Whoever shall willfully take the life of another shall be punished by death" Newgarth Consolidated Statutes Annotated (New Series) § 12-A (4275)
> A = Argument:
> 1. Discussion (application and testing of the law and facts)
> 2. Defenses (if any)
> C = Conclusion: Guilty(?)
> [Be prepared to discuss in class the respective arguments of Chief Justice Trupenny, Justice Foster, Justice Tatting, Justice Keen and Justice Handy.]

Applied in a classroom setting, *The Case of the Speluncean Explorers* has been quite effective in teaching the various techniques of legal reasoning: it demonstrates numerous premises (and false premises) that must be thoroughly analyzed by the students; it discusses the "law of nature"[24] as opposed to "civil law;"[25] it presents numerous examples of arguments by analogy[26] and arguments by distinguishing;[27] it states the elements of murder[28] and possible defenses to murder;[29] it identifies judges who are philosophically "activist"[30] and those who are "strict constructionists;"[31] it speaks to the interrelationship of the judicial,[32] legislative[33] and executive[34] branches of government and it concludes with the surprising fact (to many first-year law students) that "reasonable judges may differ" in reaching conflicting logical conclusions through deductive and inductive legal reasoning.

In short, *The Case of the Speluncean Explorers* is an excellent medium to introduce first-year law students to the process of legal reasoning through a "premise-to-conclusion" approach, as well as through an IRAC legal reasoning approach.

The final step in the student's introduction to legal reasoning skills at the University of Richmond Law School is the preliminary analysis of a fact situation and related legal precedent in preparation for the writing of a law office memoran-

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(1842) (bosun's mate killed and eaten in a lifeboat). The only case in America of murder and cannibalism seems to be a Colorado case in the late 1800's where a prospector named Alfred Packer, while stranded in a winter blizzard, killed and ate his partner. Legend has it that the trial court judge, in sentencing Packer to be hanged, was heard to remark: "Damn your hide, Alf Packer—there were only three registered Democrats in this whole county, and you just ate one of them.'"

[24] 62 HARV. L. REV. 620-3 (1949).
[25] *Id.* at 626-67.
[26] *Id.* at 623-5, 629.
[27] *Id.* at 628-9, 631-6.
[28] *Id.* at 619, 632-3.
[29] *Id.* at 624-6, 641-4.
[30] *Id.* at 620-6.
[31] *Id.* at 631-7.
[32] *Id.* at 625-6, 633-4.
[33] *Id.* at 633-5.
[34] *Id.* at 619-20, 642-3.

dum. (This is called a "closed memorandum" assignment, since it requires no legal research.)

In the fall term of 1980, the students were given a fact situation and five analogous judicial opinions dealing with a hypothetical personal injury case involving Adam Caine, a high school student in St. Louis, Missouri, who was kicked in the head and seriously injured during a soccer game.[35]

The major issues were identified in class using an IRAC legal reasoning approach[36] and since the case was one of first impression in Missouri,[37] strong arguments by analogy and arguments by distinguishing had to be made in support of the plaintiff. The students were further instructed to test the premises of any possible defenses to this action.[38]

The legal reasoning process involving this particular problem thus allowed the students to review and combine the philosophical principles of legal reasoning with the IRAC mnemonic technique in order to analyze the applicable facts and law in preparation for the eventual synthesis of this legal reasoning process in the form of a law office memorandum.

CONCLUSION

A basic introduction to legal reasoning can—and should—be taught in law schools, both as a philosophical principle and as a skills technique process. Various

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[35] The applicable cases were Moore v. Jones, 120 Ga. App. 521, 171 S.E.2d 390 (1969), Gaspard v. Grain Dealers Mutual Ins. Co., 131 So. 2d 831 (La. App. 1961), Nabozny v. Barnhill, 31 Ill. App. 3d 212, 334 N.E.2d 258 (1975), Niemczy v. Burleson, 538 S.W.2d 737 (Mo. App. 1976) and Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir. 1979). Alternate problems have included a slip-and-fall case in a supermarket, a disputed contract action and a possible felony murder case.

[36] The IRAC legal reasoning mnemonic for this case was presented as follows [bracketed issues are added]:

CAINE V. BOWEN
(a personal injury case)

Issue #1: [Assault and Battery]
Rule of Law:
Argument: 1. Discussion of law and facts
2. Defenses, if any
Conclusion:

Issue #2: [Reckless Misconduct]
Rule of Law:
Argument: 1. Discussion of law and facts
2. Defenses, if any
Conclusion:

Issue #3: [Ordinary Negligence]
Rule of Law:
Argument: 1. Discussion of law and facts
2. Defenses, if any
Conclusion:

[37] *See e.g.* Note, *Tort Liability for Players in Contact Sports*, 45 U.M.K.C. L. REV. 119, at 128 (1976). ("No Missouri case has imposed tort liability on a participant in a contact sport. But neither has any Missouri case barred imposition of such liability.")

[38] Possible defenses in this particular problem included consent, assumption of risk and contributory negligence.

examples of deductive and inductive legal reasoning can be easily demonstrated, in conjunction with other related principles, within a sound legal reasoning framework.

The process of teaching legal reasoning through a skills technique method can then be demonstrated through an initial "premise-to-conclusion" aproach and may later be integrated into an IRAC approach, which serves as a useful mnemonic to aid in the overall legal reasoning process.

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[39] This does not purport to be an exhaustive bibliography on legal reasoning but it may serve as a helpful introduction. The author is indebted to Professor Neale H. Mucklow of the University of Richmond Philosophy Department for much of this source material. (The place of publishing has been added when deemed appropriate.)