Lesson 10: What is Legal Reasoning?

Lesson Objectives:

- Students will integrate information from text and video sources.
- Students will describe legal reasoning.

2 Types of Reasoning

Reasoning is a way of coming to a new, justified belief. It works by combining *premises*-- things you already believe to be true-- to get to a conclusion. The premises support the conclusion, so as long as your premises are true and your reasoning is sound, your conclusion should also be true.

Broadly speaking, there are 2 types of reasoning: inductive and deductive. Inductive is *in*creasing-- it starts with lots of little, specific premises, and ends with a bigger, general conclusion that comes from recognizing a pattern in the premises. Fact A + fact B + fact C = Conclusion. For example: This ladybug has six legs; This grasshopper has six legs; This firefly has six legs. →So all insects must have 6 legs

On the other hand, deductive reasoning takes an broad, accepted principle-- called a *major premise*-- and applies it to facts about a specific situation-- *minor premises*-- to get a conclusion specific to the situation. Deduction is *de*creasing, drawing from the big major premise to get a new little conclusion. For example: I know that adult insects have six legs, therefore I bet if I go into the yard and catch a ladybug-- which I know is an adult insect, it will have six legs.

Science depends most on inductive reasoning. Scientists observe and test the world around them to gather evidence to make theories. Legal reasoning, on the other hand, is mainly deductive. Deductive reasoning works best in legal situations because there are laws that have been accepted through a democratic process. These laws serve as the 'big' accepted principles that can be applied to a specific situation.

This deductive process of applying the law to a situation has some specific steps:

Steps in Legal Reasoning

Legal reasoning follows 5 specific steps:

1) Issue - What specifically is being debated?
2) Rule - What legal rule governs this issue?
3) Facts - What are the facts relevant to this Rule?
4) Analysis - Apply the rule to the facts.
5) Conclusion - Having applied the rule to the facts, what's the outcome?

Let's look at these with some more detail:

Define the Issue

The first thing that happens is that a person comes to a lawyer with a problem. The lawyer has to figure out if the client's problem has anything to do with the law. Let's say you go to a lawyer because your English teacher is really mean to you. Your lawyer would have to find out more details about the situation to figure out if any part of your teacher's meanness is in violation of the law.

Situation 1: You go to a public school. You have a learning disability and an IEP on record. Your teacher is pointedly not following your IEP. In fact, she even makes fun of your disability to the other students. All of your attempts to deal with the problem with the school principal and the board of education have not changed the situation. You may have a legal issue!

Situation 2: You go to a private online school. Your teacher asks you to revise your assignments so many times that you think she hates you. She never actually said she hates you, but you're just *sure* she does. All the school's policies regarding revising lessons are available to the public on their website. The objectives and grading rubrics for each lesson are stated in the lesson. You probably *don't* have a legal issue here. (phew!) You should write to your teacher and if necessary, talk to the principal.

THE QUEENSLAND FIGARO.   JULY 28, 1888.

KERR ON THE CANE; OR CANE AND CURE.

This is NOT a picture of me!

Let's go with Situation 1 where the student has a disability and the teacher's meanness is directly related to that.

State the Rule

This is where we quote and cite any applicable rule that we believe has been violated in the issue. The Americans with Disabilities Act states, "Subject to the provisions of this sub-chapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."   We could make a case that this rule is being violated by the public entity (school) in our issue.

This is also were we could cite past court cases that dealt with failures to follow an IEP. This is called citing "precedent." Precedent helps us show that our interpretation of the law is an established interpretation. For example-- has it been shown in other court cases that following a student's IEP is an essential part of providing the public service or is this an off-the-wall interpretation of the law?

Gather the Facts

Here we are only interested in "material facts." These are the facts that are relevant to the 'rule' cited above. We don't care that your teacher is ugly and has a hideous wart on her nose. We do, on the other hand, need to gather all the evidence that shows how each aspect of the rule is met. We need to show:

1. That you are a qualified individual with a disability

2. That you are being denied the benefit of the public service (education) or subjected to discrimination from a public entity.

3. That this denial and/or discrimination is by reason of your disability.

So some relevant evidence would include your IEP document, evidence it isn't being followed by your teacher, evidence that your family has attempted to correct the situation by the normal means (with the school and the school board) but that the problem is continuing, and evidence that this constitutes a denial of services. Hopefully your family has kept good records so we have plenty of material facts.

Analysis

This is just where we apply the material facts to the law. Here's your IEP signed by the school officials, the teacher in question, and your parents; here's your psychologist's diagnosis of your learning disability; here's an independent psychologist's confirmation of your diagnosis.....Therefore, you are a qualified individual with a disability. And so forth...

Conclusion

Here we state that since all the elements of the rule are met, this school is in violation of the Americans with Disabilities Act.

The Nitty Gritty

All that seems pretty simple, doesn't it? So why do lawyers have to go to school so long and get paid so much money? One reason is that there are thousands of laws and each one has multiple significant court precedents.

Another reason is that interpreting the law is no easy task. It would be pretty cut and dry if the public school said to the student, "You can't come to school here because you have a disability!" But that's not what happened in our example. We had to make an interpretation that a specific act of meanness from the teacher constituted a denial of public services because of a disability. The law doesn't say explicitly "every teacher must follow every aspect of the agreed upon Individualized Education Plan every day." In fact, the law doesn't say anything about an Individualized Education Plan. We have to *interpret* the law to apply to that.

This interpretation of the law is the nitty-gritty of legal reasoning. This is where contention enters our judicial system and the public starts an outcry about "activist judges." People disagree about how to go about interpreting the law. And let me just say for good measure that it is this very disagreement, contention, and public outcry that makes our democratic federation so cool.

Grading Rubric:

To get a 10: All answers are correct, complete, and written with conventional grammar, spelling, and punctuation.
To get a 9: One answer is slightly lacking in precision, completeness, spelling, punctuation, or grammar.
To get an 8: Two or three answers are slightly lacking in the categories just described.
To get a 7: One answer is incorrect, and one or two answers are lacking in the way described above.
To get a 6: One answer is incorrect, and three or four answers are lacking in the way described above.
To get a 5: Reserved for cheating, plagiarism, or incomplete lesson (with administrative approval).

Assignment:

Do not submit text that you have copied from sources, including websites. All of your work should be in your own words. Using copied text would be considered plagiarism. For more information, review our page on Plagiarism and Citation

Answer the questions below.

1. Why would a lawyer want to define the issue before doing anything else?

2. Which of legal reasoning's five steps provides the major premise for deduction?

3. What's the difference between "material facts" and other kinds of facts?

4. What pieces of information are put together in analysis to yield a conclusion?

Read this article and answer the questions below:

Legal Reasoning by Judge Richard Poland

5. What does it mean to "reason by analogy," and which of five steps of legal reasoning uses this method the most?

6. What does linguistic analysis mean?

7. What two factors influence judicial discretion?

Watch this video and answer the questions below:

8. What are the two tools that Justice Breyer values and uses a lot more than Justice Scalia?

9. What does Justice Scalia think is the big problem with using those two tools?

10. When looking at history to inform his constitutional interpretations, what does Justice Scalia focus on?

11. What does Justice Breyer mean by a "pragmatic" approach to interpreting the Constitution?

12. Which Justice do you think uses more of what Judge Poland calls "judicial discretion"? What kind of judicial discretion do you think they use?

13. Justice Scalia and Justice Breyer clearly have a number of differences in their approach to legal reasoning. For which of the five steps described above do you think their approaches differ the most? Why do you think that?