TRASH ON THE BEACH
“What Is Legal Reasoning?”

PLEASE TAKE ALL TRASH WITH YOU WHEN LEAVING THIS AREA

An Exercise in Legal Reasoning
First-year students are often told by their law professors that they will be taught “to think like lawyers.”

What is it to think like a lawyer?

Indeed is there a way, one way, that lawyers think or several? Or more to the point is thinking about the law all that different than thinking about any other subject. The subject matter may differ, but the thinking is more or less the same.

Is legal thinking special and, if so, what’s special about it?

Many believe legal reasoning is special. There are books and law review articles on the subject and many a law school class is devoted to teaching students to learn to think to a point where they earn the right to the compliment:: “now you’re thinking like a lawyer.”

What is legal reasoning and what, if anything, is distinctive about it?

The very idea of reasoning suggests something more than merely the giving of reasons or the making of arguments. It suggests a method with steps. Reasoning about this or that, whether it be about the law or how to build a bridge or a house is not just thinking, but a way of thinking, an approach or a method that will help you get from one place to another, from the idea for a house, for example, to a construction of a house.

Legal reasoning, too, however, we characterize it, ought to get us from here to there, from a disputed question of law in a case that a court is seeking to resolve to a ruling in the case.
Judges issue opinions or rulings but in order to issue an opinion or a ruling a judge must first take several steps. A judge must . . .

a. determine the facts of the case;
b. identify the relevant rule of law;
c. resolve whether the rule applies, if the facts “fit” the rule, and
d. then and only then, issue a ruling.

If reasoning take place, it takes place somewhere in-between “a” and “d.”

Lawyers are engaged in a similar sort of process. Once they take on a case, they set about determining what the facts are and then look for and try to find the relevant law.

The process appears to be simple enough and among many first-year law students as well as in the popular imagination, so it does. But during the first year of law school and from even a mild acquaintance with the workings of the courts and the law, it becomes evident that this process – fact-finding plus law – is not nearly so straight-forward. This absence of straightforwardness, of course, is what makes law simultaneously frustrating and fun.

Many legal disputes turn on the facts, especially in the early stages of a case and in particular, right out of the gate at the trial court level. Then again, there are also disputes about the relevant law. One side will argue that one law applies; the other side may argue that, no, some other law is relevant. But you'll see even in those cases and a surprisingly good number of cases are just like this, but even in those cases where there is no disagreement over the facts and no disagreement over the law that applies under the given circumstances, there remains a legal issue to resolve before the court over “fit,” whether the circumstances do or do not “fit” the law.

One way to address the question whether there are special methods or forms of thinking that are distinctive of legal reasoning is to begin by looking closely at a fairly simple and straight-forward case and see how the process of “fit” unfolds, how the process of fitting the facts to the law and the law to the facts develops.

So, consider the following:
TRASH ON THE BEACH

Imagine members of the city council of a small town on the Island of Martha’s Vineyard discover that “No Litter” signs like the one above on the first page of the Study Guide, asking residents to take their trash with them when they leave the local beach are not effective. Trash is accumulating. The council meets to discuss the matter and decides that a stronger measure is needed and decide to pass an ordinance imposing a $50 fine on those residents who leave trash on the beach. Imagine the ordinance is passed and signs are posted on the beach in plain view announcing a $50 fine for anyone who leaves trash on the beach. So now there’s local city ordinance (a law) and signs which read:

$50 Fine for Leaving TRASH on the Beach.

Now imagine that the city places several surveillance cameras on the beach. Imagine they do this for some independent reason, for example, to determine beach erosion. Imagine, the cameras are trained on the beach for three weeks in summer and run 24 hours a day. Imagine that it is within the city’s authority to do so and imagine, after three weeks of recording, the videotapes are examined and it is discovered that several people have left items on the beach.

Imagine, too, that the video equipment is sufficiently sophisticated so it is able to recognize not only the items but the faces of those who left them. Imagine, too, that the items have been retrieved and now serve as potential exhibits, exhibits A, if a trial or hearing need be held. So the police have the items that were left and are able to identify from the videotape who, in each instance, left them. So what do the police have? Here’s what they have on tape and in their possession:

1. A Bunch of Grapes
2. A Diamond Ring

3. Graffiti Spray-Painted on Rocks on the Beach

4. A Crushed, Empty Coke Can
5. Clam Shells from Another Beach

6. A Used, Marked-Up. Paperback Book

7. A Spiral of Stones Gathered from the Beach
So the following seven items have been discovered on the beach.

And from the videotape, remember, the police can identify the persons who left these items on the beach.

(1) A Bunch of Grapes  
(2) A Diamond Ring  
(3) Graffiti Spray-Painted on Rocks on the Beach  
(4) A Crushed, Empty cCoke Can  
(5) A Pile of Clam Shells from Another Beach  
(6) A Used Paperback Book.  
(7) A Spiral of Stones Gathered from the Beach.

Who is subject to the $50 fine?

Here it may help if everyone took out a piece of paper and made a list of the items in police possession and identified from 1 to 7 which items they thought were the easiest to prosecute and convict and which the hardest.

What goes at the top of your list; what goes at the bottom?