

Applying Law

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Bradley J. Charles

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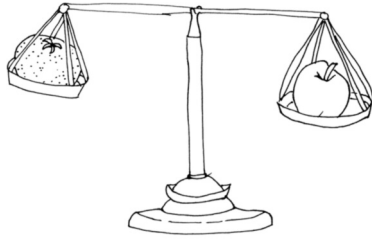
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To God and Diana



Spencer Charles

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Introduction

Applying law will resolve the most pressing issues of the 21st Century: whether gays can marry, how the border states will regulate immigration, and how the war on terror will be carried out. Day-to-day, though, applying law orders our society. It delivers justice and corrects injustice. Each attorney's contribution is based largely on his or her ability to apply law. Because students are attorneys in the making, law school is the time to learn this skill.

Throughout any given term, a law student learns the law in class. The student takes that law into the exam where the professor provides a new factual scenario in the exam booklet. The student then reasons—creating on the spot the only thing that cannot be brought into the exam. And that is largely how a professor grades the student. Spotting the issue, writing the law, and coming to the right conclusion (if there is one) are worth 30 to 40% of the points. The bulk of the points, however, come from applying law to facts: reasoning. To that end, this book teaches students how to apply law.

Applying law explains whether and how the facts satisfy the law. For example, a law states that anyone driving over 25 miles per hour on a certain road is guilty of a civil infraction. There's the law. You're driving along at 28 miles per hour. There are the facts. Is the law satisfied? Yes. 28 miles per hour is over 25 miles per hour. Thus, you are guilty of a civil infraction.

Not much skill is required when the law is so clear and the facts are so simple. But true skill at applying law is needed with vague law or complex facts. For instance, the law requires most people to act as a “reasonably prudent person” would.¹ What is reasonable or prudent is a moving target as people and situations change. Despite the vagueness, an attorney must reason by explaining whether a person's conduct satisfies this rule.

Each reason in applying law is an argument. We are all looking for golden nuggets—those arguments that are powerfully persuasive. Some will come without invitation when first thinking about a problem. But other arguments will take work. Using just a gold pan to find nuggets will yield some over time, but using heavy machinery will yield more and better gold nuggets.



In Context

The U.S. Supreme Court will likely apply the Constitution to the gay-marriage issue. Border-state judges apply state immigration rules. Judges apply law to stay or allow an execution. A prosecutor applies law to put criminals behind bars. A judge applies law to restore a victim's loss.



Words Are Tools

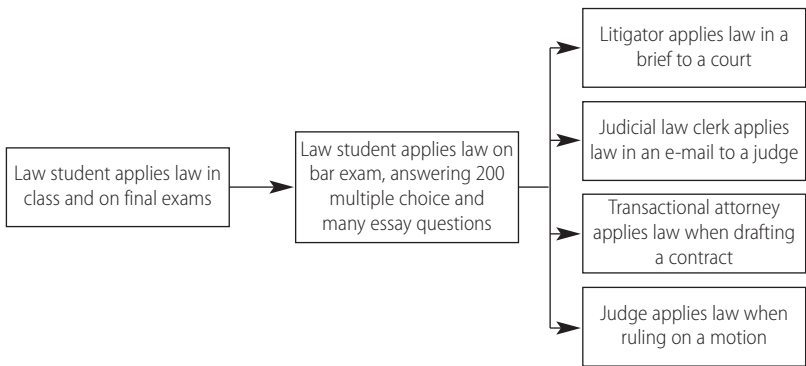
Applying law
This goes by many names, including reasoning, application, justification, analysis, and explanation. They are synonyms for explaining whether the facts satisfy the law.



Visualize

Law students apply law in class, on final exams, and then on the bar exam. Attorneys and judges apply law in a variety of contexts

Figure 1



Words Are Tools

Litigator

An attorney who primarily tries cases in court.

Transactional attorney

An attorney who primarily facilitates business, e.g., drafts contracts and advises businesses.

Brief

A brief accompanies a motion in court. The motion is the document that requests the court to do something, e.g., request to dismiss the case for lack of grounds. The brief is the document, usually longer, that explains why the relief should, or should not, be granted. The brief explains the law and applies it to the case at hand.

I have been teaching research, writing, and reasoning since 2006. Most textbooks teach that arguments are made by applying the law’s language and by analogizing to past cases. But few books teach the mechanical details of *how* to create arguments. I would compare most texts to giving students a gold pan.

The United States Supreme Court justices, on the other hand, can teach students to use this heavy machinery to find a treasure trove of golden nuggets. Whether or not you agree with the philosophy that colors their opinions, the justices reason masterfully. I studied every sentence in an entire year’s worth of opinions to identify their primary reasoning techniques. Those techniques are taught in this book. To emphasize that these are the reasoning techniques consistently used, the illustrations come exclusively from one term.

This book is divided into three parts. Part One prepares you to apply law. Part Two explains the techniques of applying law and gives you practice creating arguments. And Part Three puts the arguments into cohesive writing. I recommend reading from the beginning to the end. If you read this book later as a refresher, you can then pinpoint a section and read that in isolation.

Just like Tiger Woods did not perfect his swing by reading a book, you will not improve your reasoning skills by just reading this book. You must practice. Throughout this book, you will have the chance to practice the skills on one case. Beginning at the end of Chapter 1.2 and at the end of each reasoning chapter, you will find a False Imprisonment Exercise. These exercises are as much a part of the book as each chapter’s content. In Appendix A, you will find a chart to help you organize the reasoning that you will do at each chapter’s end. After completing each exercise, you will find sample reasoning statements in Appendix B. Separate from the False Imprisonment Exercises, there are a few additional practice opportunities throughout the book. The sample answers to these are in Appendix C.

To give you a proper send-off on the journey of applying law, consider what one of America's greatest inventors said: "Opportunity is missed by most people because it is dressed in overalls and looks like work."² Thomas Edison certainly knew something about hard work. He and his associates made over 6,000 attempts at perfecting the light bulb.³ Reading about and practicing the reasoning techniques is hard work, but your efforts will lead to prosperous opportunities.

Notes

1. See e.g. *Placek v. City of Sterling Heights*, 275 N.W.2d 511 (Mich. 1979).
2. Julia Wall, *Lighting Up the World: A Biography of Thomas Edison* 8 (Learning Media Limited 2005).
3. Louise Egan, *Thomas Alva Edison: Great American Inventor* 132 (Barron's Educational Series, Inc. 1987).