

LGS 210: INTRODUCTION TO THE LAWS OF IRAQ AND IRAQI
KURDISTAN

Forms of Legal Reasoning



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Topic Overview

Forms of legal reasoning are the methods that lawyers use to apply laws to facts in order to answer legal questions. The meaning of a legal rule and how it should be applied are often subject to multiple interpretations. When the meaning of a legal rule is ambiguous, lawyers use legal reasoning to argue for the interpretation that they find most convincing or that is most favorable to their client. The forms of legal reasoning are the tools of the lawyer's trade. In this section, we learn about these tools and practice using them creatively.

The first step in effective legal reasoning is the ability to read a legal rule – such as an article in a code – and figure out how it works. Laws are often written in a way that makes them difficult to understand. Interpretation of the text of a law requires a systematic approach. Although laws take a number of different forms, all laws have the same fundamental “if/then” structure: if the facts of a case satisfy a set of criteria (the elements), then the law imposes consequences (the results). Below we discuss some common types of rule structures.

A rule establishes a **conjunctive test** when it sets out a list of elements, each and every one of which must be satisfied before consequences result. The easiest way to identify a conjunctive test is to look for the word “and.” Civil Code Article 133(1) is an example of a conjunctive test.

Civil Code Article 133(1)

A valid contract is a lawful contract . . . which is concluded by parties of full capacities *and* has an object susceptible of its legal consequences *and* its attributes are valid (proper) free of any defects.

A rule establishes a **disjunctive test** when it lists multiple elements, but only one of those elements must be satisfied to invoke the rule's consequences. Disjunctive tests are “either/or” tests. Penal Code Article 411(1) provides an example.

Penal Code Article 411(1)

Any person who accidentally kills another *or* causes him to be killed without premeditation so that it is the result of negligence, thoughtlessness, lack of due care and attention *or* lack of regard for any law, regulation or decree is punishable by detention plus a fine or by one of those penalties.

A rule establishes a **multi-factor test** when it lays out a flexible standard that requires a decision maker to consider several criteria. In contrast to the conjunctive test, the multi-factor test does not simply ask decision makers to determine if each of the listed criteria is present, it also requires them to exercise their discretion in determining the significance, or weight that should be assigned to each factor. Penal Code Article 137 is an example. Such rules may also be structured as **balancing tests**. When applying a

balancing test, a decision maker weighs competing values or factors against each other and determines which factor is more important. The balancing test in Penal Code Article 137 is emphasized.

Penal Code Article 137

If there exists any aggravating circumstances in conjunction with mitigating excuses or circumstances which call for leniency, the court *shall take into consideration firstly the aggravating circumstances, then the mitigating excuses and finally those circumstances which call for leniency.*

The elements of rules might also include **exceptions**, or factual circumstances specifically removed from the consequences of the law.

Penal Code Article 46

The right of legal defense does not permit any person to resist a member of the public authorities in the execution of his duties even though he has overstepped the bounds of that duty while acting in good faith, *unless* it is reasonably feared that death or serious injury will result.

Results can also be divided into different categories. Results are **mandatory** when they require an action. They are **prohibitory** when they forbid an action. They are **discretionary** when they empower a government official to exercise their judgment on whether or not to take a particular action. Results are **declaratory** when they simply state what is and is not legal.

It is not important to memorize the names of the types of elements and results described above. The key skill is to learn how to break a legal rule into smaller pieces, to understand its logical structure, and to determine if and how it applies to the facts of a particular case.

Once lawyers have identified the structure of a legal rule, they can then deploy the forms of legal reasoning to interpret its meaning. Lawyers engage in five types of legal reasoning. Lawyers base their arguments on rules, analogies, policies, principles, and customs.

Rule-based reasoning relies on the use of syllogisms, or arguments based on formal logic. A syllogism consists of a major premise, a minor premise, and a conclusion. This structure is explained in the Scalia and Garner reading.

Analogical reasoning compares (or contrasts) the facts of a yet-to-be-decided case with the facts of a previously decided case and argues that the current case should be decided in a manner similar to (or different from) the previous case. This type of reasoning often involves the use of prior judicial decisions. For instance, an attorney arguing for a particular interpretation of a statute might point to a previous case involving the same rule and similar facts in which the court had adopted the interpretation for which the attorney is now arguing. Analogical reasoning is less important in civil law jurisdictions than it is in common law jurisdictions because civil law systems place less reliance on judicial precedent than

common law systems. Analogical reasoning may also be difficult for Iraqi lawyers to use because written copies of Iraqi judicial decisions may not be widely or publicly available.

A third type of reasoning argues for a particular interpretation of a legal rule because it would result in sound **public policy**, or the best outcome for society at large, not just the parties to the dispute. An argument from public policy might claim that a particular outcome would promote the efficient, fair, and predictable operation of the courts. It might be based on institutional competence, or the idea that decisions should be left to the branch of government (executive, legislative, or judicial) that has the skills and expertise to best resolve a dispute. Public policy may also rely on economic reasoning, arguing that a one outcome would promote economic growth, efficient resource allocation, or appropriate balancing of costs and benefits better than another outcome.

Arguments from **principle** draw on common social values, such as morality, justice, fairness, equality, democracy, or personal freedom.

Finally, lawyers may argue that a law should be interpreted so as not to conflict with **social custom**.

Although the forms of legal reasoning may seem unfamiliar at first, most people already use elements of this type of thinking when they solve problems in their daily lives. Sound legal reasoning requires attorneys to pay attention to detail, to provide evidence for every conclusion, and to exercise creativity. These are skills that lawyers spend all of law school learning and the rest of their careers cultivating.

Discussion Questions

Can you think of examples in your daily life or from other non-law classes in which you've used the forms of legal reasoning?

Overview of Reading Assignments (appended to manual)

1. *Legal Writing and Analysis* (2nd Edition) by Linda H. Edwards, pages 77-82 regarding rule structure.
2. *Legal Writing and Analysis* (2nd Edition) by Linda H. Edwards, pages 55-62 and 117-119 regarding forms of legal reasoning.
3. *Making Your Case: The Art of Persuading Judges* by Antonin Scalia and Bryan A. Garner, pages 41-43 regarding syllogism.

Application Exercises

1. Hazing hypothetical
Use the forms of legal reasoning to argue whether or not a university table tennis club has violated the university's rule against hazing.
2. Contract Law hypothetical: Shafiq assignment #1
Use the forms of legal reasoning to argue whether or not a contract signed by 16-year-old Shafiq is valid under the Civil Code of Iraq.

Checklist of Key Concepts

- Structure of rules**
 - Elements**
 - Conjunctive Test**
 - Disjunctive test**
 - Multi-factor test**
 - Balancing test**
 - Exceptions**
 - Result**
 - Mandatory**
 - Prohibitory**
 - Discretionary**
 - Declaratory**
- Forms of legal reasoning**
 - Rule: Syllogism**
 - Analogy**
 - Policy**
 - Judicial administration**
 - Institutional competence**
 - Economic**
 - Principle**
 - Custom**

Application Exercise 1

Hazing Scenario

First, consider the following rule from the United University (“United”) Student Handbook’s section on Violations:

It is the duty of all the members of the campus community to report the existence of any acts which may violate university policy. . . .

Hazing: All forms of hazing such as any action taken or situation created, intentionally, to produce mental or physical discomfort, embarrassment, ridicule, or possibly cause mental or physical harm or injury to any person on or off the university campus.

Next, consider the following facts:

The United Table Tennis Club requires new members to undergo a “training period” before they become full members of the club. During this training period, new members must carry the lunch trays of existing members during lunch in the cafeteria. They are required to carry senior members' trays from the food line to the tables and carefully clean the tables before and after the senior members eat.

New members are also told to memorize the names of every person who has ever won an Olympic medal in singles table tennis - 42 names in total. At the end of the training period, new members are required to recite all 42 names from memory at an induction ceremony in front of the entire club. If they do so successfully, they become full members of the club.

Hisham is a new member who feels disrespected when he carries the existing members' trays and cleans their tables. He also has a test the night before the induction ceremony and is extremely stressed about memorizing the Olympic medalists when he needs to study for his test. He complains to an administrator that the Table Tennis Club is hazing him.

You are an assistant to the administrator. Help the administrator decide if the Table Tennis Club has violated the Handbook’s rule on hazing.

(Proceed to the next page to answer questions about the scenario)

Answer the following questions about the rule and scenario:

1. What is the structure of the rule in the United Student Handbook quoted above? Describe its elements and its result.

2. Use each of the five forms of legal reasoning to argue either that the Table Tennis Club violated the rule or did not violate the rule. You may choose to argue for either side. Argue the same side for each of the forms of legal reasoning.
 - a. Rule. Label the three parts of your syllogism.

 - b. Analogy. Use the following facts to craft your argument:
Last year, a student complained to United administrators that prospective members of the United music club were not allowed to join the club until they participated in the club's version of Music Idol. Every new member had to sing a song in front of the rest of the club, who then voted on the best singer. Everyone who participated became a member of the club. The student who protested felt embarrassed and uncomfortable being judged on his singing. The United administration did not find the music club in violation of the hazing rule because they believed that the competition was a legitimate training exercise that helped participants develop musical skills, even if some were made uncomfortable by participating.

 - c. Policy. In forming your answer, it may be helpful to consider the possible purposes of the hazing rule and the consequences of interpreting the rule narrowly or broadly.

 - d. Principle

 - e. Custom. "Custom" is a very vague term. How will you argue to the administrator which customs are relevant to this decision? Customs shared by all Iraqis? By all Iraqi universities? Customs internal to United?

Instructor's Guide to Application Exercise 1

Note that the possible answers presented below are not intended to be the only correct way to approach the questions. They are intended to provide one example of how a student might correctly answer.

- 1. What is the structure of the rule in the United Student Handbook quoted above? Describe its elements and its result.**

The elements are

- 1) an action OR situation
 - 2) intentionally created
 - 3) to cause mental OR physical discomfort, embarrassment, ridicule, harm, OR injury
 - 4) to any person on or off university campus
- No exceptions

The result is that students are prohibited from certain actions and are affirmatively required to engage in other actions. The rule prohibits hazing. The rule also mandates, or requires, that students report violations.

- 2. Use each of the five forms of legal reasoning to argue either that the Table Tennis Club violated the rule or did not violate the rule. You may choose to argue for either side. Argue the same side for each of the forms of legal reasoning.**

- a. Rule. Label the three parts of your syllogism.**

Major Premise: Hazing is an act that intentionally produces embarrassment.

Minor Premise: The table tennis club's training period is designed to embarrass new members.

Conclusion: The table tennis club is hazing.

OR

Major Premise: Hazing is an act that intentionally produces embarrassment.

Minor Premise: The table tennis club's training period is not designed to embarrass new members.

Conclusion: The table tennis club is not hazing.

- b. Analogy. Use the following facts to craft your argument:**

Last year, a student complained to United administrators that prospective members of the United music club were not allowed to join the club until they participated in the club's version of Music Idol. Every new member had to sing a song in front of the rest of the club, who then voted on the best singer. Everyone who participated became a member of

the club. The student who protested felt embarrassed and uncomfortable being judged on his singing. The United administration did not find the music club in violation of the hazing rule because they believed that the competition was a legitimate training exercise that helped participants develop musical skills, even if some were made uncomfortable by participating.

Similarities: Both are tasks required to join student clubs; public singing is similar to public recitation of Olympians' names; at least one student feels embarrassed.

Differences: Singing is more closely tied to the skills used in the music club than cleaning trays and memorizing names is to playing table tennis; it's possible that new table tennis members could participate in the cleaning and memorizing but still not be admitted if they performed inadequately.

c. Policy. In forming your answer, it may be helpful to consider the possible purposes of the hazing rule and the consequences of interpreting the rule narrowly or broadly.

Possible purposes: to protect the health and safety of members of the United community; to prevent student groups from erecting unreasonable barriers to new members

A broad interpretation of the rule in which many actions and circumstances are found to constitute hazing might flood the administration with complaints so that they didn't have time for their other responsibilities. It might also prevent student groups from engaging their members in legitimate, voluntary activities.

A narrow interpretation in which it is hard for a complaining student to prove that hazing has occurred might leave some hazing practices in place and discourage students from joining clubs

d. Principle

Potential principles:

1. Free speech / academic freedom:

Hazing occurred: Joining clubs is an important part of students' education, so they should be free to join clubs of their choosing

Hazing did not occur: If the administration applied the hazing rule to situations like this where students' participation is voluntary and any harm is minimal, the administration would be censoring the activity of student groups. It would open the possibility that the administration could use the hazing rule as a pretext for limiting the activities of student groups that expressed views with which it disagreed.

2. Individual dignity

Hazing occurred: The Table Tennis's activities demean new members. Student groups should respect the dignity of every person.

- e. Custom. “Custom” is a very vague term. How will you argue to the administrator which customs are relevant to this decision? Customs shared by all Iraqis? By all Iraqi universities? Customs internal to United?**

Perhaps carrying dishes and cleaning tables violates cultural notions of honor. Students might discuss how other student groups treat new members.

Application Exercise 2

Forms of Legal Reasoning

Consider the following facts:

Shafiq is 16 years old. For several years, he has worked at a job after school and saved money that he plans to use to support his continued education. Shafiq also likes computers, and one day he steps into an electronics store just to look at the new models. The salesperson promises Shafiq that he will give him a very good deal on a new computer. Shafiq declines, but the salesperson is very persistent. Shafiq asks if he can call his parents to get their advice. The salesperson replies that Shafiq must decide now because another customer wants to buy the computer. This is a lie; there is no other interested customer. The salesperson also says to Shafiq, “You are a grown man, and a grown man must make his own decisions”. Shafiq is quiet for a moment and then says that he will buy the computer. He signs a contract promising to pay 30,000 dinar every month until he has paid the entire cost of the computer. When Shafiq returns home, his parents are very upset. Shafiq regrets his decision and wants to invalidate the contract.

When Shafiq takes the computer back to the store, the salesperson refuses to accept it. He says that he thought that Shafiq was an adult and that Shafiq should have to pay for the computer.

Now, consider the following rules:

Because Shafiq is 16 years old, the Civil Code treats him as “incompetent,” or potentially lacking “capacity.” His incomplete capacity affects the validity, or enforceability, of his contract.

Civil Code Article 93

Every person has the (legal) capacity to conclude a contract unless the law has determined his incompetence or restricted it.

Civil Code Article 94

A minor, insane, or mentally retarded person are interdicted ipso facto.

Civil Code Article 106

The age of majority is eighteen years completed.

Civil Code Article 97

(1) Disposals by a rational (prudent) minor will be deemed valid if they are totally to his benefit even where his guardian has not permitted or allowed the disposals; a minor’s disposals will

not be valid when they are not wholly to his benefit even when the disposals have been permitted or allowed by his guardian . . .

(2) The age of rationality (prudence) is seven full years.

Civil Code Article 133(1)

A valid contract is a lawful contract . . . which is concluded by parties of full capacities and has an object susceptible of its legal consequences and its attributes are valid (proper) free of any defects.

Answer the following questions regarding Shafiq's situation:

1. What are the elements and results of the rule or rules stated in Article 133(1), immediately above?
2. Are these results mandatory, prohibitory, discretionary, or declaratory?
3. Based on the text of Articles 93 and 133(1), can Shafiq invalidate his contract? Answer in the form of a syllogism.
4. What do you think the purposes of Articles 93 and 133(1) are? Why would the legislature have included them in the law of contracts?
5. A judge in Shafiq's town invalidated a contract in which 17 year old Obaid promised to purchase a piece of property from an adult. The judge reasoned that the seller should have asked the buyer about his age and that the minor did not deceive the buyer by failing to volunteer this information. Use analogical reasoning to argue that Obaid's case is or is not a reason to invalidate Shafiq's contract.

Instructor's Guide to Application Exercise 2

Note that the possible answers presented below are not intended to be the only correct way to approach the questions. They are intended to provide one example of how a student might correctly answer.

1. What are the elements and results of the rule or rules stated in Article 550?

Rule 1:

A person with incomplete capacity
Who has entered into a contract
⇒ can invalidate the contract

Rule 2

A person with incomplete capacity
Who has entered into a contract
And deceptively concealed his incapacity
=> is not disobliged from compensating

2. Are these results mandatory, prohibitory, discretionary, or declaratory?

Declaratory.

3. Based on the text of Articles 93 and 133(1), can Shafiq invalidate his contract? Answer in the form of a syllogism.

Major premise: A person with incomplete capacity can invalidate his contract.

Minor premise: Shafiq is a person with incomplete capacity.

Conclusion: Shafiq can invalidate his contract.

4. What do you think the purposes of Articles 93 and 133(1) are? Why would the legislature have included them in the law of contracts?

Protect minors who might be taken advantage of. (For discussion: why should minors be protected?)

Protect businesses from minors who lie about their age. (For discussion: why should businesses be protected?)

5. A judge in Shafiq's town invalidated a contract in which 17 year old Obaid promised to purchase a piece of property from an adult. The judge reasoned that the seller should have asked the buyer about his age and that the minor did not deceive the buyer by failing to volunteer this information. Use analogical reasoning to argue that Obaid's case is or is not a reason to invalidate Shafiq's contract.

Similarities: both are minors, both entered into contracts, neither adult asked the minor for his age, neither minor volunteered his age

Differences: Obaid was buying land, Obaid is one year older; the adult Obaid contracted with may not have made a statement implying that Obaid was an adult; the adult Obaid contracted with may not have lied and pressured Obaid to buy land