Definition

- Legal reasoning is the way a legal actor (judge or lawyer) combines four elements to produce an explanation of a decision (an “opinion”) or an argument in support of a desired decision
  - Case facts as established at trial
  - The rules that bear on the case
  - Social background facts
  - Shared values

Case Facts

- Determination of case facts at trial
  - Facts may be in dispute
  - Facts may be “objective” or “subjective”
- Stipulation of facts
- Determination of facts in pretrial processes
  - “Discovery”
- Facts may differ in relevance
  - Determinative facts may not be in dispute
Social Background Facts

- The undisputed factual context that governs how we see and interpret the world around us
- Expectations of behavior
- Social background facts may change over time
  - Presumption of heterosexuality
  - A & B are married
- Social background facts vary across regional cultures

Widely Shared Values

- Freedom
- Privacy
- Fairness
- Shared values can change
  - Sanctity of the family
  - Immorality of sex outside of marriage
  - A woman’s place is in the home

Rules of Law

- Statutes
- Constitutions
- Administrative rules
- Precedents (prior cases)
Legal Reasoning Is NOT Determinative
- Reasonable people can disagree
  - No one way to fit together the four elements
- Legal reasoning involves choices, and those choices are ultimately political
  - Informed people can disagree with a decision or argument
- Legal reasoning does not involve a formulaic process in the head of the judge or lawyer
- Choices involved in legal reasoning require simplification and distortion

Reasoning Through a Case
- “Determine” the “relevant” facts
- Does the law speak clearly to the set of facts that has been determined?
  - How detailed is the law?
  - Is there a precedental case with the same set of facts?
- If law is unclear, reason “by example”
  - “Analogic reasoning”

Unpredictability in Law
- Ambiguity of language
- Human behavior defies categorization
- Fact freedom
- Multiplicity of law
  - Precedent for every purpose
  - Laws conflict
    - Statutes and precedents
  - Laws are inconsistent
    - Statutes and precedents
Uncertainty vs. Unpredictability

- Is unpredictability overstated?
- Law IS predictable within a certain range
- Most disputes never go to court because parties can predict, to a reasonable degree, what would happen
- Many disputes never arise because potential disputants know likely outcome

Why Is Some Degree of Predictability Important?

- Essential for reasonable level of stability
- Reduces disputes
- Deters some kinds of behavior
- Allows planning
- Gives meaning to agreements
- Facilitates choice making

Would Absolute Predictability Be Better?

- Presumes certainty of language
- Assumes ability to categorize behavior
- Allows adjustment in the wake of inevitable change
- Creates incentives to look for better answers
- Encourages participation in social life
Legal Reasoning in Common Law Cases
- No legislative intent to consider
- Core principles derived from precedential cases
- Judges differ in the weight they give to precedent

Legal Reasoning In Tort
- Goals of tort law
  - Compensation for harm
  - Deterrence by allocating costs of injury to those who cause them
- Some general principles in tort law
  - Negligence
  - Duty
  - Trespass
  - Battery
  - Reasonable "man"
- Cases in text

Changing Principles of Tort
- Horizontal *stare decisis*
- Obsolete principles
  - Fellow servant rule
  - Contributory negligence
  - Privity
  - Charitable immunity
- New principles
  - Strict liability
  - Comparative negligence
How Far Should Judges Go

- Should gun manufacturers be held responsible for how their product is used?
- Should tobacco companies be held liable for the voluntary actions of smokers?
- Should tavern owners be held liable for injuries caused by patrons who leave and drive under the influence?
- What about injuries to the patron?

Reading Cases

1. What are the facts in the case?
2. What, if any, significant social background facts does the Court explicitly consider?
3. What is the general question the Court is deciding?
4. What is the specific legal question the Court is deciding?
5. What is the legal rule the Court enunciates?
6. What is the Court's explanation of why that is the correct legal rule?