Legal Reasoning:
An Art Not a Science

- Legal reasoning is the way a legal actor combines five elements to produce an explanation of a decision or an argument in support of a desired decision
  - Case facts
  - The relevant rules in
    - Legal text(s)
    - Precedential cases
    - Social background facts
  - Shared values
- Ascertaining the relevant rule involves
  - The "plain meaning" of the legal text
  - The intent of the authors of the legal text
  - The purpose of rule
  - Analytic frameworks and categories
  - Canons of statutory construction
  - The "golden rule"

Planned Parenthood v. Casey

- What are the facts involved in this case?
- What are the broader social background facts raised in the decision?
- What is the political/policy issue to be decided in the case?
Analyzing Planned Parenthood v. Casey  

Planned Parenthood v. Casey  
continued

- What is the question of law to be resolved?
- What are the central legal issues?
- What is the holding?
  - What parts of Roe are discarded?
  - What rules are established?

Rationale I:  
Reaffirming Right to Abortion

- There are two central questions the majority considers in upholding right to abortion:
  - What is the basis for the original ruling?
  - Under what circumstances should the Supreme Court consider reversing a prior ruling?

What Does the Opinion Say Is the Basis for Roe v. Wade?

- What do the justices describe as the “controlling word”?
  - Where is this from?
- What “due process” would be denied?
- What is the connection between “due process” and “fundamental rights”?
- What are some “fundamental rights”?
- How does one determine whether something is a fundamental right?
Analyzing Planned Parenthood v. Casey September 22, 2002

How Does the Opinion Evaluate this Rationale?

- Are there important analogous issues that the opinion refers?
- What distinguishes abortion from those cases?

When Should the Court Violate the Norm of Stare Decisis?

- Why is stare decisis important?
- What should the Court consider when deciding whether to overrule a precedent?
- Are there any other things you might add, or that you think the Court may have left out?

Assessment

- Has Role been unworkable?
- Is there substantial reliance on the availability of abortion?
- Have related principles of law developed in a way that brings Roe into question?
- Have facts changed, or come to be seen differently, so as to bring into question the application or justification of the central holding in Roe?
- Are there any special reasons to overrule Roe?
Section IIIC

- What is all this about?

Reassessing the Trimester Framework

- What did *Roe* say about regulation during first trimester?
- Has anything changed?
- What has changed regarding third trimester?

What Is the Casey Framework?

- Why viability?
- Are there any distinctions before viability?
- What standard applies to pre-viability regulation?
- What is an undue burden?
How Does the Court Assess the Pennsylvania Regulations?
- Information/informed consent?
- Waiting period?
- Spousal notification?
- Parental consent?
- Recordkeeping and reporting

Blackmun’s Concurrence
- In what two ways do restrictions on abortion violate a woman’s right of privacy?
- Gender equality
  - What level of scrutiny applies?
  - Is gender a “suspect” classification?
- In terms of the Pennsylvania statute, where would you suppose Blackmun would differ?

Rehnquist’s Dissent
- What does it mean: “Concurring in the judgment in part and dissenting in part”
- What level of scrutiny would Rehnquist apply?
  - Why is this important?
- What purposes would be legitimate bases for regulation?
- In terms of the provisions of the Pennsylvania statute, where does Rehnquist differ from the majority?
Scalia’s Dissent

- What is the difference between a liberty and a protected liberty
- How does one distinguish between the two?

Texas v. Lawrence

- Exam case
- Briefing
- Analysis