

2.2. USING CASES FOR IMPROVING LEGAL REASONING SKILLS

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2.2.1 Introduction

‘Teaching methodology’ implies pondering on the adequacy of the teaching activities, the exercises, and the evaluation methods to achieve the learning objectives. In most cases, the aim of introducing practical cases in Law courses is to improve the legal reasoning skills of students. However, some teachers do not think about the concrete skills that they would like to develop through each practical exercise. Instead, they tend to design complex cases attached to some point of the theoretical content, focusing on the theory rather than the necessary capabilities that the student should attain.

On the other hand, most Law professors have acquired their legal reasoning skills in practice, as ‘[tacit knowledge](#)’, which is not codified, nor explicit. Therefore, they cannot explain how they solve practical legal cases: they just do it. In that vein, they could take for granted these abilities in their students, without giving them technical advice for improving them.

The problem is that the skill level of the students is usually low and learning in practice tends to take a lot of time. In this context, sometimes it is difficult to give them proper feedback, especially when the number of students is high. Complex cases, which include all the necessary abilities, are usually long and difficult to correct. Also, when the students do not have a high level, there are so many mistakes that it is extremely hard to focus on all of them at a time.

This technique is primarily aimed at students with a low level of skills and, therefore, it is designed to be carried out over a large number of sessions (typically seven). However, as students have a higher level, the number of sessions can be condensed or reduced. Therefore, the difficulty and duration of this task have an inversely proportional relationship.

2.2.2 The method: Dividing the process of solving practical legal cases into several steps

The idea that we propose is to identify different steps in the process of solving practical legal cases. In each phase, we can identify a small and limited number of skills. This division helps us to:

³ Point 2.2.4 is written by Carlos Varela Gil, University of Cádiz.

- a) give students technical advice on each of the steps in advance
- b) give them more focused feedback once the assignment is delivered

Certainly, we can give the students previous advice about the techniques and procedures needed for solving each one of the steps. There are many possibilities: verbal explanations in the classroom, teaching videos, written materials, etc. In these materials, you can try to codify or make explicit your tacit knowledge. For example, you can think about what you really do in order to find relevant case law and create some ‘tips’ for the students.

One possibility is to prepare different exercises or practical cases for each one of the steps. For example, you can design an exercise in which the students only have to ‘identify the legal problems’. These kinds of exercises are shorter and easy to correct if you have a lot of students and also, the students can internalize the explicit advice that you have given them in advance. Also, you can give them more and better feedback when you focus on only one of the steps.

The other possibility, usually for more advanced students, is to give them only one complex case, but instead of solving it from the beginning to the end, you work the case with the students sequentially, step by step, in one or more sessions.

2.2.3 The steps that we propose

We propose to divide the process of case-solving into SEVEN different steps



Of course, you should adapt these steps to your subject and the characteristics of your students. Perhaps the outline of phases should be completely different. Anyway, you could add, remove, or change steps or you could choose to group some steps into one phase or to divide one of these steps into more phases. For example, with advanced students, you could work on the steps 1, 2 and 3 at the same time.

1) *Identifying legal problems*

Even if there are concrete questions for the students in the case, they usually refer to the interests of the parties involved. Beyond these questions, the student must identify abstract problems related with these interests. This could be relevant for the steps 2, 4 and 5.

2) *Finding the relevant theory and legislation*

It is very important for the student to be able to relate the practical case with the theoretical material that he/she has studied. Also, the student should be capable of finding applicable legislation and basic bibliography if necessary.

3) *Writing up simple case resolutions*

Some practical cases are 'simple' in the sense that they do not need complex argumentation. They are just useful for demonstrating the ability to do simple legal research. In these cases, although the answer tends to be brief, the students should avoid responses that are too short. On the contrary, a simple case is an opportunity for students to demonstrate their knowledge and technical skills.

4) *Finding arguments*

In more complex cases that require argumentation, students should be able to find arguments that could be relevant in the courts. It is important to find arguments both for and against the position that they would like to assume.

5) *Searching case-law*

Generally, students should be able to look for court decisions in order to elaborate advanced arguments, although the relevance of case-law could vary on each domestic legal order.

6) *Organizing legal arguments*

Before starting to write, it is essential to plan the structure of the argumentation. The order of the ideas should be adequate, with emphasis on clearness and persuasiveness.

7) *The final draft*

In the end, students should be able to write a proper text, using correct and adequate language. They also should be able to demonstrate their knowledge and skills in their writing.

2.2.4 Evaluation system

The learning process based on practical cases is completed with a good evaluation system. An evaluation system that makes possible properly grade both the acquired knowledge and the competences achieved.

The evaluation, therefore, fulfills a primordial function. It allows us to determine the degree of knowledge and competences obtained by the student. And that is not all, the evaluation system also contributes to stimulating student's effort, motivating him or her to work harder in order to succeed. Therefore, if we want the student to adopt all of the proposed steps with determination, we must establish some form of evaluation for each one. As an example, when approaching the first step (“identifying legal problems”), the professor can evaluate the degree of precision that the students have achieved. Similarly, the step that consists in looking for the relevant doctrine and legislation will be graded based on the level of accuracy in finding bibliographic materials or legal sources.

Therefore, the suggested evaluation system is in direct relation to continuous evaluation, in which the student is examined on each of the steps proposed for his learning (detection of legal problems; looking for applicable regulations in the case and his doctrinal interpretation; case law research; determination of arguments in favor and against; writing of the draft; etc.). On the other hand, this serves the student and the teacher to verify the learning level in each of the phases -and to be able to establish corrective measures in case they prove to be necessary from the beginning-, which also supposes a stimulus for the work of the student, who will undoubtedly make an effort to carry out each of the steps that he/she is graded on correctly.

Nevertheless, the separate evaluation of each one of the steps would offer a fragmented and partial view of the knowledge and skills acquired. It is necessary that once the steps in which the learning process has been divided have been completed,

the student is asked to solve a complex case, following all the steps that he/she has been learning during the continuous evaluation. This resolution should be evaluated taking into account the degree of agreement that has been taken in each of the steps that must be followed to resolve a practical assumption (identifying the main legal problems, determining applicable regulations, looking for relevant case law, etc.).

The final grade of the student should include both the partial results obtained in each one of the tasks carried out during each step, and the result of the final test in which the result is obtained in the complex case.

Further Materials

University of Cadiz, Cómo hacer un caso práctico en materia jurídica: una aproximación secuencial, available at: <https://ocw.uca.es/course/view.php?id=101> (21 July 2023)

Level of difficulty: ★★★★★ **(may be designed for any level of difficulty and duration)**

Duration: ★★★★★

Main teaching objectives: To develop the necessary skills for legal argumentation, such as identifying legal issues, conducting research, constructing and organizing arguments, and writing in a clear and precise manner, we propose breaking down the process of solving a practical case into a series of successive steps. This approach allows for a focused and separate emphasis on different skills.