

# Critical Thinking and the Law

## PLE 350/AJU 350



### CRITICAL THINKING: CONSIDER THE VERDICT

CLASS LECTURE #2  
CHAPTERS 3-6

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# Chapter 3 – What’s the Question?



- Determining an argument’s conclusion
  - In the creation of a legal argument, it is absolutely essential to determine the **exact** conclusion one is attempting to prove
- A defense attorney’s argument conclusion is...?
  - ~~...that the defendant (D) is innocent~~
    - **WRONG**
  - ~~...that the D is not guilty~~
    - **WRONG**
  - That the defendant has **not** been **proved** guilty
    - “Oooo! That’s a BINGO!” - Hans Landa

# Chapter 3 – What's the Question?



- A prosecuting attorney's argument conclusion is...?
  - ...that the D is guilty.
- **TRIAL STRATEGY:**
  - A defense argument might fail to prove that a D is innocent but still succeed in establishing that a D's guilt has not been proved
    - ✦ For instance...
      - a defense attorney may attack the credibility or reliability of the prosecution's key witness(es), which might convince a jury to return a verdict in the D's favor
        - See Federal Rules of Evidence

# Chapter 3 – What's the Question



- **Determining EXACT Conclusions**
  - Conclusions in legal arguments are often very complex and multi-layered.
  - It cannot be stressed enough that one creating a legal argument must determine exact conclusions within their own arguments, as well as understand, and in some cases, predict the conclusions of opposing counsel

# Chapter 4 – Relevant and Irrelevant Reasons



- **Some notes on relevance:**
  - Premises, reasons, and facts are not in themselves relevant or irrelevant; rather, a premise, fact, or reason is relevant or irrelevant relative to a specific conclusion
    - ✦ Therefore, you cannot determine the relevance of a premise until you have determined the exact conclusion
  - The same premise, used to support two different conclusions, may be relevant to one conclusion and completely irrelevant to the other
  - A premise can be relevant without being conclusive

# Chapter 4 – Relevant and Irrelevant Reasons



- In determining relevance, ask:
  - Would the truth of this premise make the conclusion more likely?
  - Would the falsity of this premise make the conclusion less likely?
    - ✦ If the answers to these questions are “yes” – the premise is relevant
    - ✦ A true premise may be irrelevant. Also, a false premise may be relevant. Don’t ask whether the premise is true or false. Instead, ask if it *matters* if it is true or false.

# Chapter 4 – Relevant and Irrelevant Reasons



- **Irrelevant Reason Fallacy:**

- An argument that uses premises that have no bearing on the conclusion, but only distract from the real issue. Also known as the *red herring* fallacy.
  - ✦ The premises in a red herring argument may be true, false, or undeterminable
  - ✦ Watch out for arguments that focus on the nature of a crime or wrong committed rather than the factual evidence that a D committed the crime.
    - Crime scene photos are often irrelevant. In fact, many are excluded from evidence based on The Federal Rules of Evidence

# Chapter 4 – Relevant and Irrelevant Reasons

- Exercise 4-2:

- *Consider the Verdict*

- Cast:

- ✦ Judge (1)–
    - ✦ Defense Attorney (1)–
    - ✦ Professor Winston (1)–
    - ✦ District Attorney (1)–
    - ✦ Nathan Jackson (1)–
    - ✦ Defense team (4)–
    - ✦ Prosecution team (4) –
    - ✦ Jury (11)–

- Judge presents case
- Defense Attorney questions Professor Winston
- Defense Team argues that testimony is relevant
- Judge makes his determination
- Continued testimony of Professor Winston
- D.A. cross-examines Nathan Jackson
- Defense Team and Prosecution Team prepare closing arguments
- Jury deliberates
- Jury makes ruling

# Chapter 5 – The Burden of Proof



- **Step 1** in analyzing (or constructing) an argument is to...
  - ...determine the exact conclusion
- **Step 2** in analyzing (or constructing) an argument is to...
  - ...determine who bears the burden of proof
    - ✦ Anyone making an argument or claim bears the burden of proving it true

# Chapter 5 – The Burden of Proof



- **Appeal to Ignorance Fallacy:**
  - A fallacious argument that attempts to shift the burden of proof from the person making the claim or assertion, by asserting that a claim should be believed because no one has been able to prove it false.
    - ✦ Ben Cross is an unprofessed Golden Girls fan who has the most extensive collection of Bea Arthur memorabilia in the Western Hemisphere stored in a secret cave near Hood Mountain overlooking Fountaingrove Lake
    - ✦ In a legal context, one might create an argument that a D is guilty simple because the defense cannot prove that he/she did not commit the crime.

# Chapter 5 – The Burden of Proof



- A presumption of innocence is important because:
  - It is simply the correct manner of reasoning
  - But for the presumption of innocence, appeals to ignorance would dominate our courts. This would result in the “proving” of most anything, regardless of its absurdity.
    - ✦ Imagine having to prove that you are innocent of a strangling murder that occurred at 11:00 P.M. 3 years ago.

# Chapter 5 – The Burden of Proof



- In America, we believe that the rights and freedom of the individual are fundamental, and we oppose sacrificing individual rights and autonomy for the benefit of the state. Any denial of individual liberty requires powerful overriding reasons and the strongest and most conclusive proof.
  - ✦ Therefore, regarding criminal defendants,
    - The D does not have to prove anything
    - The full burden of proof rests on the prosecution
    - If the prosecution leaves a reasonable doubt after the presentation of its case, the defense need do nothing at all
      - (Summary Judgment)
    - If the prosecution has managed to make a strong argument for the guilt of the D, the D need not totally shatter that argument. Instead, the defense need only show that the prosecution's argument is not quite convincing

# Chapter 5 – The Burden of Proof



- When the D does not testify
  - A D has a right to testify on his/her own behalf, but is not forced to exercise this right.
  - How might this affect a jury's determination of guilt?
  - How might this influence an attorney's **TRIAL STRATEGY**?
    - ✦ See pages 56-59

# Chapter 6 – Analyzing Arguments



- **Argument Structure**

- **Convergent Argument:**

- ✦ An argument in which each premise supports the conclusion independently of the other premises; if one premise fails, the other premises may still offer significant reasons for accepting the conclusion
  - If one premise of a convergent argument is false, the argument may still be successful. The truth or falsity of a premise in a convergent argument affects only the argument's strength.
  - It is important to consider the merits of each premise in a convergent argument
- ✦ For obvious reasons, this type of argument is commonly used in defense strategies

# Chapter 6 – Analyzing Arguments



## ○ **Linked Argument:**

- ✦ An argument in which the premises link together in such a way that if one premise fails, the entire argument fails.
- ✦ Example from the text (page 72):
  - White Jaguar automobiles are quite unusual in this area. The D owns a white Jaguar, and the car from which the fatal shots were fired has been identified by several witnesses as a white Jaguar. Therefore, there is some reason to think that the D is guilty of the drive-by murder.
- ✦ For obvious reasons, this type of argument is often employed in prosecution strategies