An ELEMENTary Approach to Legal Reasoning

FIRAC: *An* ELEMENT*ary Approach to Legal Reasoning*

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1.3 Words count

One, two, three, four,
a definition you ignore,
five, six, seven, eight,
may decide your client's fate.

I lived in the Law Quad during my first year of law school. Shortly after moving in I met my next door neighbor, John, another freshman. When it turned out that we had been assigned the same classes, we joined with several other classmates to form a study group.

John's and my mid-year and final grades were almost identical. While that may seem reasonable, since we studied together, I found it frustrating. I studied many more hours than John. I felt that I understood the material better and that my reasoning skills were superior. Yet, despite my supposed advantages, our exam scores were about the same.

It took me a while to figure out why. John was a much better wordsmith.

My undergraduate degree was in Business Administration; John's was Journalism. On aptitude tests, such as the SAT and LSAT, my lowest scores were on the verbal sections; that's where he scored the highest. The disparity in our language abilities handicapped me. When writing an exam case analysis, I was not able to communicate my knowledge and thoughts as well as he. John was able to make more efficient use of his study time because his reading comprehension surpassed mine. My reasoning suffered because I overlooked

nuances he was able to detect. Overall, our respective advantages offset each other, resulting in equivalent grades.

Thanks to the unwitting example set by John, I began to truly appreciate how much my success as a law student, and eventually as a lawyer, depended upon my mastery of words. Previously, my verbal abilities had been good enough to learn what I needed to know to identify, solve, and, when necessary, explain my solution to management problems, physics problems, psychology problems, and car problems. But, while words played a role in these problems, the questions and answers were about management, physics, psychology, and cars.

Legal problems are different. They are word problems about *words*. From start to finish – from becoming aware of a law to deciding whether it has been violated, words dominate one's attention and thinking.

Let me show you what I mean. Here is **an example** of a legal problem -- an actual lawsuit brought before a court. Since courts use the FIRAC approach to decide lawsuits, all the FIRAC steps – Facts, Issue, Rule, Application, and Conclusion – are illustrated in this example.

William McBoyle operated a commercial airport in Galena, Illinois. He induced A.J. Lacey, one of his aviators, to steal an airplane from an air field in Ottawa, Illinois and fly it to McBoyle's airport in Galena. After changing the serial number and servicing and fueling the airplane, McBoyle instructed Lacey to fly it to Amarillo, Texas. Lacey had gotten as far as Guymon, Oklahoma when McBoyle directed him to sell or store the airplane and return to Galena. [This paragraph states the ***facts***.]

McBoyle was charged with violating the National Motor Vehicle Theft Act which made it a felony to "transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen . . . ." [This paragraph states the ***law issue*** – Did McBoyle violate the National Motor Vehicle Theft Act? – and the ***rule*** – the words beginning with "it [is] a felony" and ending with "stolen ."]

McBoyle is guilty (i.e., he has committed a felony) **IF** his conduct (described by the facts) and the conduct prohibited by the law (the quoted text in the previous paragraph) are the same. Are they? If you are uncertain whether McBoyle violated the act, what particular words created that doubt?

McBoyle's attorney picked up on the words "motor vehicle." He contended the stolen airplane was NOT a "motor vehicle." The prosecutor argued it was. ["Motor vehicle" is one of the ***elements*** of the law.]

What do you think? Was the airplane a "motor vehicle?" [This is an ***element issue***.]

Do you feel the answer is obvious or clear-cut? If so, you are missing something. The answer was so debatable the dispute went all the way to the U.S. Supreme Court. The first two courts to hear this case – the U.S. District Court for the Western District of Oklahoma and the 10th Circuit Court of Appeals – reached one conclusion. The Supreme Court reached the opposite conclusion. Why the different conclusions? Because the courts defined "motor vehicle" differently.

The 10th Circuit Court of Appeals' ***application*** and ***conclusions*** are *quoted* below. [See

McBoyle v. United States, 1930 10Cir 118, 43 F. 2d 273] Note how the court uses multiple sources of definitions and a rule of statutory construction called *ejusdem generis* to determine what "motor vehicle" means and to decide whether an airplane comes within that meaning.

> The primary question is whether an airplane comes within the purview of the National Motor Vehicle Theft Act. This act defines the term "motor vehicle," as follows:
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> > "The term 'motor vehicle" when used in this section shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails."
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> The Century Dictionary gives the derivation of the word "vehicle" as follows: "F. Vehicule, L. Vehiculum," meaning a "conveyance, carriage, ship." * * *
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> It will be noted that the Latin word "vehiculum" means a ship as well as a carriage.
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> Webster defines the word "vehicle" as follows:
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> > "(1) That in or on which any person or thing is or may be carried, esp. on land, as a coach, wagon, car, bicycle, etc.; a means of conveyance.
> > "(2) That which is used as the instrument of conveyance or communication."
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> Corpus Juris, vol 42, p. 609, §1, defines a motor vehicle, as follows:
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> > "A 'motor vehicle' is a vehicle operated by a power developed within itself and used for the purpose of carrying passengers or materials; and as the term is used in the different statutes regulating such vehicles, it is generally defined as including all vehicles propelled by any power other than muscular power, except traction engines, road rollers, and such motor vehicles as run only upon rails or tracks."
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> Both the derivation and the definition of the word "vehicle" indicate that it is sufficiently broad to include any means or device by which persons or things are carried or transported, and it is not limited to instrumentalities used for traveling on land, although the latter may be the limited or special meaning of the word. We do not think it would be inaccurate to say that a ship or vessel is a vehicle of commerce.
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> An airplane is self-propelled, by means of a gasoline motor. It is designed to carry passengers and freight from place to place. It runs partly on the ground but principally in the air. It furnishes a rapid means of transportation of persons and comparatively light articles of freight and express. It therefore serves the same general purpose as an automobile, automobile truck, or motorcycle. It is of the same general kind or class as the motor vehicles specifically enumerated in the statutory definition and, therefore, construing an airplane to some within

> the general term, “any other self propelled vehicle,” does not offend against the maxim of *ejusdem generis*. [In other words, the Court of Appeals’ ***conclusion to the element issue*** is that an airplane comes within the meaning of “motor vehicle.”]
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> The judgment is therefore affirmed. [This is the Court of Appeals’ ***conclusion to the law issue***. The District Court concluded that McBoyle had violated the National Motor Vehicle Theft Act. The Court of Appeals agreed.]

The U.S. Supreme Court’s ***application*** and ***conclusions*** are *quoted* below. [See McBoyle v. United States, 283 U.S. 25, 51 S.Ct. 340, 75 L.Ed. 816 (1931)] Note that the Supreme Court also determines whether the meaning of “motor vehicle” includes an airplane. But the court uses different reasoning techniques which result in a different conclusion.

> The question is the meaning of the word "vehicle" in the phrase "any other self-propelled vehicle not designed for running on rails." No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air, and sometimes legislation extends the use in that direction . . . . But in everyday speech, "vehicle" calls up the picture of a thing moving on land. * * * [H]ere, the phrase under discussion calls up the popular picture. For, after including automobile truck, automobile wagon, and motor cycle, the words "any other self-propelled vehicle not designed for running on rails" still indicate that a vehicle in the popular sense -- that is, a vehicle running on land -- is the theme. It is a vehicle that runs, not something . . . that flies. Airplanes were well known in 1919 when this statute was passed, but it is admitted that they were not mentioned in the reports or in the debates in Congress.
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> It is impossible to read words that so carefully enumerate the different forms of motor vehicles and have no reference of any kind to aircraft, as including airplanes under a term that usage . . . more precisely confines to a different class. The counsel for . . . [McBoyle] have shown that the phraseology of the statute as to motor vehicles follows that of earlier statutes of Connecticut, Delaware, Ohio, Michigan, and Missouri, not to mention the late Regulations of Traffic for the District of Columbia, Title 6, c. 9,§ 242, none of which can be supposed to leave the earth.
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> Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world, in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible, the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies, or upon the speculation that, if the legislature had thought of it, very likely broader words would have been used. United States v. Thind, 261 U. S. 204, 261 U. S. 209. [In other words, the Supreme Court’s ***conclusion to the element issue*** is that an airplane does NOT come within the meaning of “motor vehicle.”]
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> Judgment reversed. [This is the Supreme Court’s ***conclusion to the law issue***. The Court of Appeals concluded that McBoyle had violated the National Motor Vehicle Theft Act. The Supreme Court disagreed.]

The McBoyle case is neither unusual nor an exception. On the contrary, it is a representative example of what attorneys and judges do – they ponder, debate, and decide issues about words. What are the words of a law? What do those words mean? Do the facts (one set of words) come within the meaning of the law's words (another set of words)?

The average person is not particularly fussy about his or her choice of words. Who cares if murder is not the same as homicide? If a stockholder is not the same as a partner? If a credit union is not the same as a bank? If a human being is not the same as a person? If a statue is not the same as a statute? "You know what I mean." "Don't be so picky."

Really? I bet you would be picky if you were charged with murder after killing an assailant in self-defense (which is homicide.) Or if creditors tried to hold you personally liable for debts incurred by a business that you co-own. (The answer depends upon whether you are a stockholder or a partner.)

Legal professionals don't have the luxury of sloppy language. They are "picky" because they appreciate that how a word is defined can make a huge difference – like the difference between guilty or innocent, which is sometimes the difference between life and death. The words of a law specify the conduct it prohibits or permits. Being able to determine whether a person has violated the law depends upon knowing *exactly* what its words mean.

The problem is that language is intrinsically imprecise. The *same* word may mean different things. *Different* words may mean the same thing. Uncertainty may exist even when the meaning of a word seems clear-cut. Thus, no matter how carefully a law is drafted, disagreements about its meaning may arise.

Take the term "human being." In the abstract, its definition may appear unequivocal. But add details and context and questions emerge. Does a law that prohibits the killing of a "human being" prohibit the killing of a dog which the owner considers to be "my child"? Of a lawyer? Of a man who is brain dead but whose bodily functions are maintained by artificial life support? Of a nine week old fetus in its mother's womb? Of a woman's egg that has been fertilized in a laboratory but not yet implanted into her uterus?

In casual conversation it may be good enough to assert "I believe life begins at conception so, yes, I think a woman's egg becomes a human being at the moment it is fertilized in a lab" and blithely dismiss contrary viewpoints as ridiculous, immoral, or sacrilegious. For a lawyer involved in a wrongful death lawsuit against a fertility clinic that accidently destroyed a frozen "pre-embryo," such a simplistic argument is not going to be even close to adequate. Whether a pre-embryo is a "human being" is an extremely difficult and complex question that raises important emotional, practical, moral, religious, ethical, social, economic, political, scientific, and legal issues that need to be addressed and thoughtfully considered.

Words matter. People who possess the attitude that they don't are, in my experience, at a significant disadvantage when it comes to learning and practicing law. It's not, as you might think, because they have inferior verbal abilities. When it comes to language or any other skill, there is always going to be someone who, at the moment, is better. But that only means everyone is starting at a different point. By studying and practicing, it is possible to move up the scale and even pass those who began ahead.

Rather, the biggest disadvantage of a “words don’t count” mindset is the mindset itself. People who don’t believe words are important pay little attention to specific words and their accurate use. As a result, they have not developed an eye for detail and subtlety and are therefore less likely to recognize ambiguities and distinctions. They are less inclined to learn the technical vocabulary and master the techniques used by members of the profession to determine the meaning of a word. And they are less able to express themselves clearly and persuasively. When presented with a task beyond their current abilities, their reaction is self-defeating – instead of accepting what must be done and figuring out how to do it (which may necessitate admitting deficiencies and adopting a different approach or developing new skills), they reject the task or the means of accomplishing it and come up with rationalizations to justify their response. The not surprising consequence is that, while others progressively improve, they keep falling farther behind.

Words cut across all aspects of the study and practice of law – from doing homework and research; to communicating with clients and colleagues; to taking classroom and bar exams; to drafting memoranda and briefs; and to presenting oral arguments to juries and judges. It follows that your success as a law student or legal professional depends upon your attitude about and skills with words. The following sections will help you acquire the frame of mind, perspectives, vocabulary, and techniques required to do your job.

Continue to Section 2.1