Engineering Management & Society

Legal Method (RevD)

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Legal Method

- **Techniques** for lawyer and those involved in legal matters
- Not merely
  - **finding** the right page of the right law
  - **Applying** the laws
- A **Creative Process**
  - More than **argument** centering around words of legal text
  - Need to use **Extrinsic Materials**:
    - **Pre-legislative** materials
    - **Legislative** materials
    - **Post-legislative** materials
  - Depends on **interpretation** (reference to legislative materials?)
- **Reasoning** to achieve practical results

Other Factors

- Other factors
  - **American Realism**: **Oliver Wendell Holmes** (1841 – 1935)
    - What really matters are **what actually happens in the court**
      - Emphasis on "**law in action**" rather than "**law in book**"
      - "*the life of the law has not been logic, it has been experience*"
      - "an inarticulate and unconscious judgment" – *inarticulate major premise -* i.e. *implicit attitude on the part of the judge.*
  - **Ronald Dworkin** (b. 1931)
    - Same starting point as Holmes; but
    - Emphasis on "standards"
      - i.e. **policies** and **principles**

The form of Legal Reasoning

- **Syllogism** – i.e. **Syllogistic Reasoning**
- Example:
  - If A = B (**Major Premise**)
  - And B = C (**Minor Premise**)
  - Then A = C (**Conclusion**)

ROAD TRAFFIC ORDINANCE - SECT 40 Cap 374

- **Speed limit** (Past version on 01/10/2000). (Past version on 30/06/1997).
- (1) Subject to subsections (2) and (5), the maximum speed at which a vehicle may be driven on any road shall be **50 km** an hour.
- http://www.hklii.org/hk/legis/en/ord/374/s40.html

ROAD TRAFFIC ORDINANCE - SECT 41 Cap 374

- **Driving in excess of speed limit**.
- (1) A person who drives a **vehicle** on a road at a speed exceeding- (Amended 80 of 1988 s. 9)
- (a) 50 km an hour or such other speed limit as may be in force on that road under section 40; **or**
- (b) 70 km an hour as provided for in section 40(**5**), commits an offence and is liable to a fine of **$4000**.
- http://www.hklii.org/hk/legis/en/ord/374/s41.html

Syllogistic Reasoning – Legal Example

- Major Premise (What the law says):
  - It is an **offence** to:
  - **drive** at
  - **speed exceeding the speed limits**
    - (Given (by Section 41 Cap374)

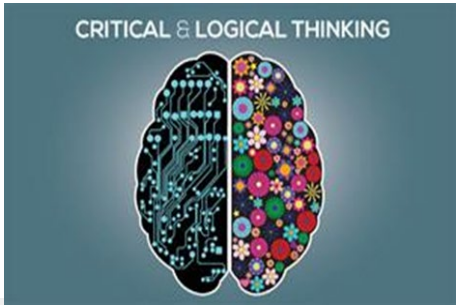
Syllogistic Reasoning – Legal Example

- Minor Premise (What are the facts):
  - John drove at speed exceeding the limit (Given by ??)
  - Conclusion: John has **committed** the offence, i.e. John is **convicted**
  - John will be **sentenced**:
    - Imprisonment; or
    - Fine; or
    - Driving License suspended, etc.

Syllogistic Reasoning – Legal Example

- But what about if John has put forward defence?
  - Compelled to drive at high speed (e.g. pointed by a gun)
  - Conclusion: John has committed the offence?
  - Sentencing ?

Introduction



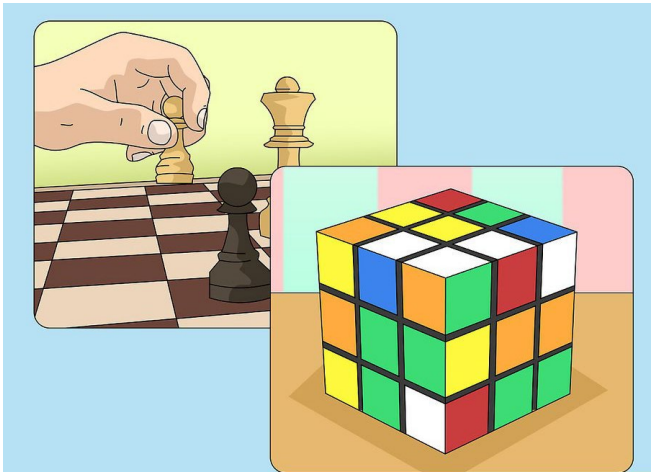
What is Logical thinking?

- act of **analyzing** a **situation** and
- coming up with a **sensible solution**.

- Similar to **critical thinking**:
  - logical thinking requires the use of **reasoning skills** to **study** a problem **objectively**
  - It allows you to make a **rational conclusion** about how to proceed

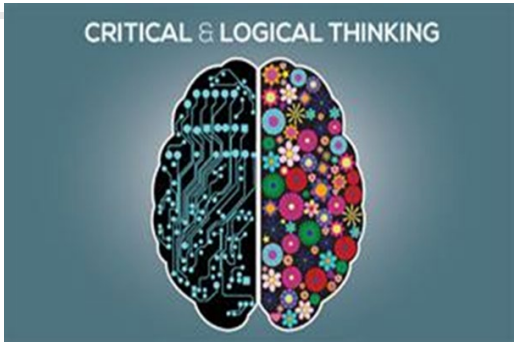
What is Logical thinking?

- Logical thinking is to **make decision** based on **facts**
- solve the **difficult problem** through **logical reasoning**.



Concept of logical thinking:

- Mainly conducted by the **left side of the brain**
- **Left Brain** handles **math and science**, and logic
- It is the ability to processes information and **draw inference** from the bits and pieces of information



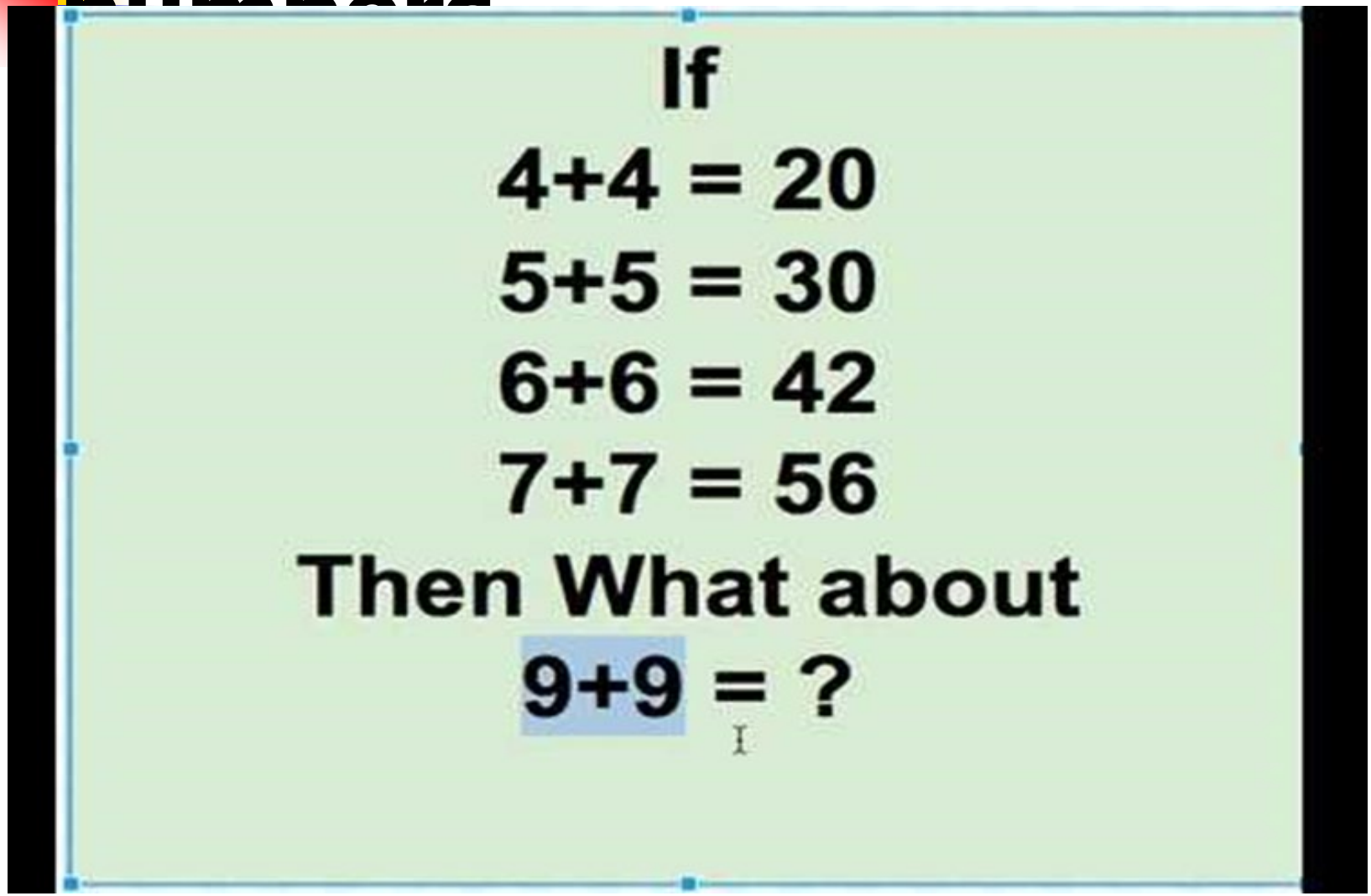
Let’s play a game on numbers

- I say 1 + 2 = 3
- What do you think would be
  - 3 + 4 = ?

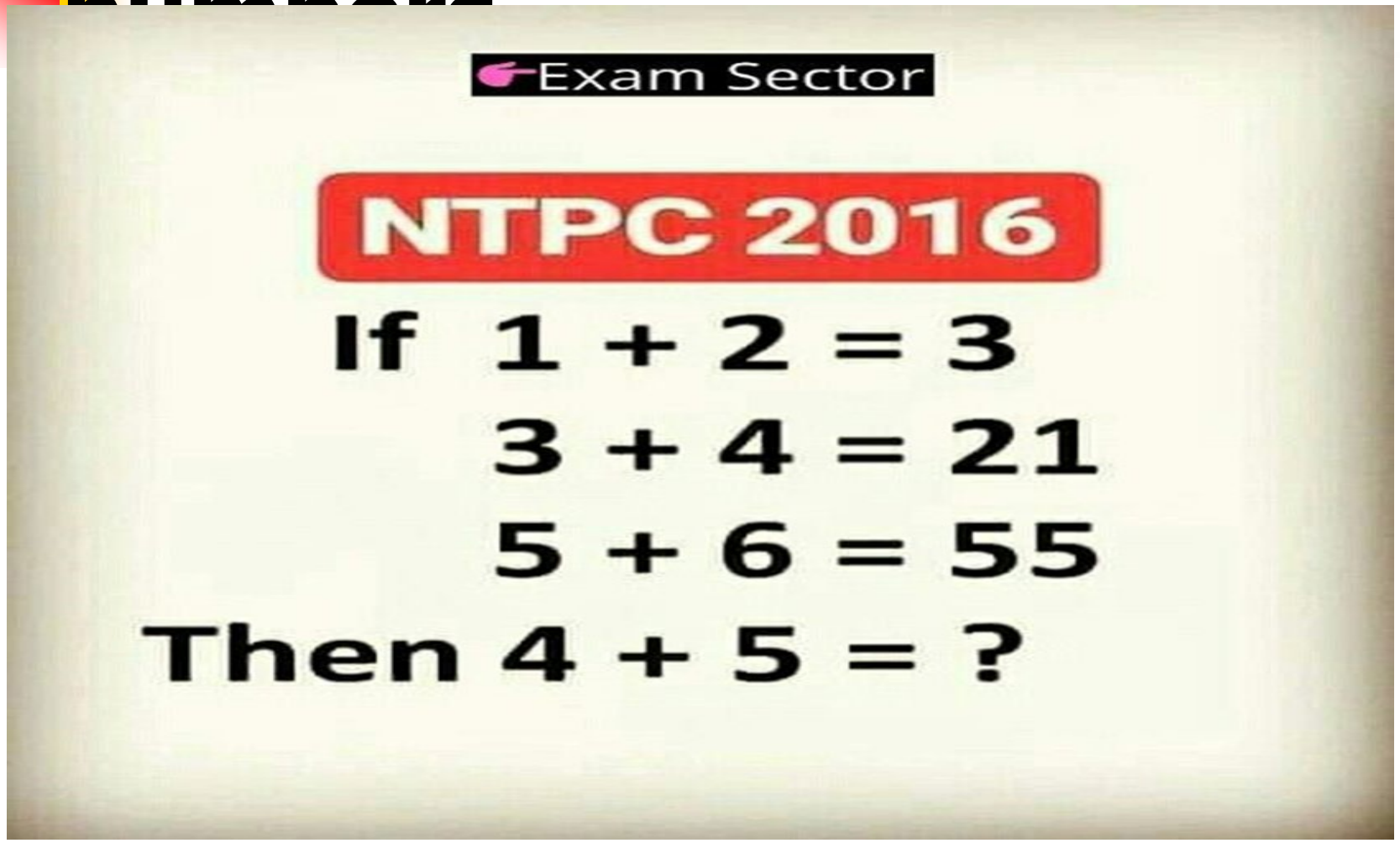
Let's play a game on numbers

- What about if I say:
  - I say 1 + 2 = 3
  - And that 3 + 4 = 21
  - Then what would be 5 + 6 = ??

Let's play a game on numbers



Let's play a game on numbers



What is Logic

- An interdisciplinary field which studies:
  - **TRUTH**; and
  - **REASONING**
    - **Deductive** Argument
    - **Inductive** Argument
    - **Adductive** Argument

Varieties of reasoning

- A *deductive argument* is one whose premises are intended to guarantee the truth of its conclusion. In other words, a deductive argument seeks to reach its conclusion by logical necessity.
- For instance, the following argument is deductive.
- Deductive argument:
  - *Victoria is tall.*
  - *Victoria has brown hair.*
  - *Therefore, Victoria is tall and has brown hair.*

Varieties of reasoning

- *Inductive arguments* are those in which the premises are merely evidence for the conclusion.[21]
- Inductive argument:
  - *Victoria is tall.*
  - *Tall people are generally good at basketball.*
  - *Therefore, Victoria is good at basketball.*

Varieties of reasoning

- *Abductive reasoning* involves reasoning to the most likely explanation.[22]
- Abductive argument:
  - *Victoria is tall.*
  - *Victoria has brown hair.*
  - *Therefore, Victoria must have a tall or brown-haired ancestor .*

Syllogistic Reasoning – Legal Example

- It is an **offence** to drive at speed exceeding the speed limits (As provided in Law)
- John drove at speed exceeding the limit (As a matter of fact)
- John **defense**:
  - Being compelled by robbers; or
  - Need to take his badly wounded sister to hospital
- Conclusion:
  - John has committed the offence?
  - Sentencing ?

Why Holmesian or Dworkinian matters???

- Facts and Laws, in many cases, are never straight forward
  - What facts count?
  - Which law to apply?
  - Is there any defence? What is it? Is the defence leally acceptable?
- **Conviction = Actus reus x Mens rea – Defence**
  - **i.e. Conviction = AR x MR - Defence**

Propositions and Processes: Truth and Validity

- Truth of:
  - A **proposition**
  - A **conclusion**
- Validity of:
  - The **process** of argument
- Example:
  - Given: Sun is 93,000,000 (i.e. X) miles away
  - Given: Light traveling at 186,000 (i.e. Y) mps
  - Conclusion: light from Sun takes **500 (X/Y)** seconds to reach Earth

Propositions and Processes: Truth and Validity (..cont…)

- What if the **facts are wrong**:
  - Given: Sun is **1,000,000** (i.e. X) miles away
  - Given: Light traveling at **2,000** (i.e. Y) mps
  - Conclusion: light from Sun takes **500** (**X/Y**) seconds to reach Earth
- Or what if the **process is wrong**:
  - Given: Sun is **5000** (i.e. X) miles away
  - Given: Light traveling at **0.1** (i.e. Y) mps
  - Conclusion: light from Sun takes **500** (**X * Y**) seconds to reach Earth

Legal Reasoning is therefore:

- Finding the facts: **right** and **relevant**
- Using the right **methods of reasoning** (**AID or Ida**):
  - **Inductive** reasoning **(Experimental Science Method**)
    - Making numerous observation
    - Formulate a principle
  - **Deductive** reasoning **(Mathematical Method**)
    - Stating propositions
    - Applying established principles to "Reason" you way to the conclusion
  - Reasoning by **Analogy** **(Doctrine of Precedent)**

Legal Reasoning Process – HOW in context

- **IDA**
  - **Identify** Issues: Facts and Legal Issues)
  - **Define**:
    - **What the law says** – by statutes or case laws
    - Legal principle – Equity principles
  - **Apply**: apply the **laws** and **principles** to the facts to draw **conclusions**

Legal Reasoning Process – HOW in context (Alternative)

- **IPCAC**
  - **Issues**: State the issues: parties and facts
  - **Principle**: Invoking legal principles/Rules
  - **Authorities**: 
    - **Statutes or**
    - **Case**: **Precedents**
  - **Application:** Apply the laws and principles to the facts
  - **Conclusions:** State the conclusion with grounds supporting those conclusions

Fallacies of Logic

- A fallacy is reasoning that is:
  - Logically incorrect
  - Therefore its logical validity is doubtful or unsound.

Classification of Fallacies

- Classification:
  - Classified by their structure:
    - Formal fallacies
  - Classified by content
    - Informal fallacies

Fallacies of Logic

- Many people, consciously or unconsciously use of fallacies when they wants to win their arguments over others.
- The fallacies, if undetected, can lead to the wrong conclusion and the wrong findings of facts or wrong application of laws.
- Please read:
  - https://en.wikipedia.org/wiki/List_of_fallacies