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| Paper Code: LL.B. 112 | L | T | Credit |
|---|----------|----------|----------|
| Paper: Communication, Client Interviewing and Counselling Techniques | 2 | 1 | 3 |

1. This paper is to develop in the students art of communication, client interviewing and counseling advocacy skill in them.
2. **Pattern of Question Paper:** The question paper shall have Parts 'A' and 'B'. In part 'A' there shall be one compulsory question based on objective or short answer type questions carrying 25 marks and covering the entire course. In part 'B', two questions of 12.5 marks each shall be asked from every unit asking the candidates to attempt one question from each unit.

I Communication

- a. Meaning
 - b. Types and Directions to Communication
 - c. Approaches to Communication
 - d. Barriers to Communication
 - e. Communication Process
 - f. Channels of Communication
- (Number of hours – 10)

II. Client Interviewing

- a. Meaning and significance
 - b. Different Components: listening, types of questions asked, Information gathering, Report formation, Ethical consideration
- (Number of hours – 10)

III. Legal Counselling

- a. Definition and its differentiation from general counseling
 - b. Different types of counselling
 - c. Approaches to Counseling
 - d. Training Skills: Simulated exercises
- (Number of hours – 10)

IV. Legal Reasoning

- a. Legal Reasoning: Definition, Components of Legal Reasoning, Deductive and Inductive Reasoning, Levi's and Bodenheimer's Model of Legal Reasoning
 - b. Law and Logic: Aristotelian logic and Syllogism
 - c. Significance of mootings to law students
- (Number of hours – 10)



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Techniques of Communication, Client Interviewing and Counseling

Paper Code: 112

Unit-I: Communication

(a) Meaning of Communication

The word “communication” derived from the Latin word ‘communicare’ that means to impart, to

Participate, to share or to make common. It is a process of exchange of facts, ideas, and opinions and as a means that individual or organization share meaning and understanding with one another. In other words, it is a transmission and interacting the facts, ideas, opinion, feeling and attitudes.

It is the ability of mankind to communicate across barriers and beyond boundaries that has ushered the progress of mankind. It is the ability of fostering speedy and effective communication around the world that has shrunk the world and made ‘globalization’ a reality.

One definition of communication is “any act by which one person gives to or receives from person information about that person's needs, desires, perceptions, knowledge, or affective states. Communication may be intentional or unintentional, may involve conventional or unconventional signals, may take linguistic or nonlinguistic forms, and may occur through spoken or other modes.”

Communication requires a sender, a message, and a recipient, although the receiver doesn't have to be present or aware of the sender's intent to communicate at the time of communication; thus communication can occur across vast distances in time and space. Communication requires that the communicating parties share an area of communicative commonality. The communication process is complete once the receiver has understood the message of the sender.

Definitions of Communication

Communication may be defined as interchange of thought or information between two or more persons to bring about mutual understanding and desired action. It is the information exchange by words or symbols. It is the exchange of facts, ideas and viewpoints which bring about commonness of interest, purpose and efforts.

American Management Association defines, ‘Communication is any behavior that results in an exchange of meaning’.

Peter little defines communication as, ‘Communication is the process by which information is transmitted between individuals and/or organizations so that an understanding response result’.

Newman and Summer Jr. state that, ‘Communication is an exchange of facts, ideas, opinions or emotions by two or more persons’.

According to Keith Davis, ‘The process of passing the information and understanding from one person to another. It is essentially a bridge of meaning between the people. By using the bridge a person can safely across the river of misunderstanding’.



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Louis A. Allen defines, 'Communication is the sum total of all the things that a person does, when he wants to create an understanding in the mind of another. It involves a systematic and continuous process of telling, listening and understanding'.

Therefore, the main purpose of communication is to inform, or to bring around to a certain point of view or to elicit action.

Importance of Communication

1. for instruction: The instructive function unvarying and importantly deals with the commanding nature. It is more or less of directive nature. Under this, the communicator transmits with necessary directives and guidance to the next level, so as to enable them to accomplish his particular tasks. In this, instructions basically flow from top to the lower level.
2. for integration: It is consolidated function under which integration of activities is endeavoured. The integration function of communication mainly involves to bring about inter-relationship among the various functions of the business organization. It helps in the unification of different management functions.
3. for information: The purposes or function of communication in an organization is to inform the individual or group about the particular task or company policies and procedures etc. Top management informs policies to the lower level through the middle level. In turn, the lower level informs the top level the reaction through the middle level. Information can flow vertically, horizontally and diagonally across the organization. Becoming informed or inform others is the main purpose of communication.
4. for evaluation: Examination of activities to form an idea or judgement of the worth of task is achieved through communication. Communication is a tool to appraise the individual or team, their contribution to the organization. Evaluating one's own inputs or other's outputs or some ideological scheme demands an adequate and effective communication process.
5. for direction: Communication is necessary to issue directions by the top management or manager to the lower level. Employee can perform better when he is directed by his senior. Directing others may be communicated either orally or in writing. An order may be common order, request order or implied order.
6. for teaching: The importance of personal safety on the job has been greatly recognized. A complete communication process is required to teach and educate workers about personal safety on the jobs. This communication helps the workers to avert accidents, risk etc. And avoid cost, procedures etc.
7. for influencing: A complete communication process is necessary in influencing others or being influenced. The individual having potential to influence others can easily persuade others. It implies the provision of feedback which tells the effect of communication.
8. for image building: A business enterprise cannot isolate from the rest of the society. There is interrelationship and interdependence between the society and an enterprise operating in the society. Goodwill and confidence are necessarily created among the public. It can be done by the communication with the different media, which has to project the image of the firm in the society. Through an effective external communication system, an enterprise has to inform the society about its goals, activities, progress and social responsibility.



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9. for employee's orientation: When a new employee enters into the organization at that time he or she will be unknown to the organization programs, policies, culture etc. Communication helps to make people acquainted with the co-employees, superior and with the policies, objectives, rules and regulations of the organization.

10. Other: Effective decision-making is possible when required and adequate information is supplied to the decision-maker. Effective communication helps the process of decision making. In general, everyone in the organization has to provide with necessary information so as to enable to discharge tasks effectively and efficiently.

Communication Scope

1. Communication in personal life: The entire life form birth to death of any person involves communication. No one can spend any moment without communication. A man interacts with his family members, fellow friends or colleagues involve communication. Even when he enjoys a T.V. program or reads newspaper, he is engaged in communication.

2. Communication in social life: Man is a social being. So, people live in a group in the society. To live in a society a man is to take part in the social functions and to maintain relations with the other members of the society. He is to play different roles in the society activities.

3. Communication in organizational life: Communication is most important in business organization. No organization exists without communication. Communication is used in the following organization activities.

(A) Planning and decision making: Managers are to take decisions and make plans for the business. For these purposes they are to collect information and consult with others, which involve communication.

(B) Selection and training: For selecting employees for the organization is needed advertisement, and take interview. Which involves with communication? Giving training to the employees also involves communication.

(C) Directing: To implement a plan managers are to give orders and to issue instructions to the subordinates-which requires effective communication.

(D) Coordination: Managers are to use communication to coordinate the activities of various work groups or departments.

(E) Distribution and Marketing: In marketing activities communication plays a very vital role. Without use of communication, no organization can promote its products in the market.

(F) Establishing relations: Communication helps in establishing harmonious relationship between labor and management.

(G) Controlling: All controlling functions involve communication. Managers can effectively control the activities of the subordinates by using downward and upward communication.



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4. Communication in political life: Political parties give special emphasis on communication. Success of any political party depends on mass communication system.
5. Communication in state affairs: Various Government department used communication to run the administration and to inform people about development programs and other issues.
6. Communication in religious life: For the spread of religion communication is used. Religious leaders inform different aspects of religion to the people. So, in the religious life communication is used comprehensively.
7. Communication in foreign trade and international affairs: Today every country of the world is dependent on other countries in different affairs. That's why every country is to establish and maintain international relations. Improved communication system helps to establish good relations with other countries.

(b)Types of Communication

Communication

Communication is a process of exchanging information, ideas, thoughts, feelings and emotions through speech, signals, writing, or behavior. In communication process, a sender (encoder) encodes a message and then using a medium/channel sends it to the receiver (decoder) who decodes the message and after processing information, sends back appropriate feedback/reply using a medium/channel.

Types of Communication

People communicate with each other in a number of ways that depend upon the message and its context in which it is being sent. Choice of communication channel and your style of communicating also affect communication. So, there is variety of types of communication.

Types of communication based on the communication channels used are:

1. Verbal Communication
2. Nonverbal Communication

1. Verbal Communication

Verbal communication refers to the form of communication in which message is transmitted verbally; communication is done by word of mouth and a piece of writing. Objective of every communication is to have people understand what we are trying to convey. In verbal communication remember the acronym keep it short and simple.

When we talk to others, we assume that others understand what we are saying because we know what we are saying. But this is not the case. Usually people bring their own attitude, perception, emotions and thoughts about the topic and hence creates barrier in delivering the right meaning.



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So in order to deliver the right message, you must put yourself on the other side of the table and think from your receiver's point of view. Would he understand the message? How it would sound on the other side of the table?

Verbal Communication is further divided into:

■ Oral Communication

■ Written Communication

Oral Communication

In oral communication, Spoken words are used. It includes face-to-face conversations, speech, telephonic conversation, video, radio, television, voice over internet. In oral communication, communication is influenced by pitch, volume, speed and clarity of speaking.

Advantages of Oral communication are:

It brings quick feedback.

In a face-to-face conversation, by reading facial expression and body language one can guess whether he/she should trust what's being said or not.

Disadvantage of oral communication

In face-to-face discussion, user is unable to deeply think about what he is delivering.

Written Communication

In written communication, written signs or symbols are used to communicate. A written message may be printed or hand written. In written communication message can be transmitted via email, letter, report, memo etc. Message, in written communication, is influenced by the vocabulary & grammar used, writing style, precision and clarity of the language used.

Written Communication is most common form of communication being used in business. So, it is considered core among business skills.

Memos, reports, bulletins, job descriptions, employee manuals, and electronic mail are the types of written communication used for internal communication. For communicating with external environment in writing, electronic mail, Internet Web sites, letters, proposals, telegrams, faxes, postcards, contracts, advertisements, brochures, and news releases are used.

Advantages of written communication include:

Messages can be edited and revised many times before it is actually sent.

Written communication provides record for every message sent and can be saved for later study.

A written message enables receiver to fully understand it and send appropriate feedback.



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Disadvantages of written communication include:

Unlike oral communication, written communication doesn't bring instant feedback.

It takes more time in composing a written message as compared to word-of-mouth and number of people struggles for writing ability.

2. Nonverbal Communication

Nonverbal communication is the sending or receiving of wordless messages. We can say that communication other than oral and written, such as gesture, body language, posture, tone of voice or facial expressions, is called nonverbal communication. Nonverbal communication is all about the body language of speaker.

Nonverbal communication helps receiver in interpreting the message received. Often, nonverbal signals reflect the situation more accurately than verbal messages. Sometimes nonverbal response contradicts verbal communication and hence affects the effectiveness of message.

Nonverbal communication has the following three elements:

Appearance

Speaker: clothing, hairstyle, neatness, use of cosmetics

Surrounding: room size, lighting, decorations, furnishings

Body Language

Facial expressions, gestures, postures

Sounds

Voice Tone, Volume, and Speech rate

Types of Communication Based on Purpose and Style

Based on style and purpose, there are two main categories of communication and they both bears their own characteristics. Communication types based on style and purpose are:

1. Formal Communication

2. Informal Communication

1. Formal Communication

In formal communication, certain rules, conventions and principles are followed while communicating message. Formal communication occurs in formal and official style. Usually professional settings, corporate meetings, conferences undergoes in formal pattern.

In formal communication, use of slang and foul language is avoided and correct pronunciation is required. Authority lines are needed to be followed in formal communication.



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2. Informal Communication

Informal communication is done using channels that are in contrast with formal communication channels. It's just a casual talk. It is established for societal affiliations of members in an organization and face-to-face discussions. It happens among friends and family. In informal communication use of slang words, foul language is not restricted. Usually Informal communication is done orally and using gestures.

Informal communication, unlike formal communication, doesn't follow authority lines. In an organization, it helps in finding out staff grievances as people express more when talking informally. Informal communication helps in building relationships.

(c) Approaches of Communication

We divide the different types of communication medium into two different categories:

1. Physical media
2. Mechanical media

Physical media

With physical media we mean channels where the person who is talking can be seen and heard by the audience. The whole point here is to be able to not only hear the messages but also to see the body language and feel the climate in the room. This does not need to be two-way channels. In certain situations the receiver expects physical communication. This is the case especially when dealing with high concern messages, e.g. organizational change or downsizing. If a message is perceived as important to the receiver they expect to hear it live from their manager.

- Large meetings, town hall meetings
- Department meetings (weekly meetings)
- Up close and personal (exclusive meetings)
- Video conferences
- Viral communication or word of mouth
- Large meetings

Large meetings have got great symbolic value and should be used only at special occasions. This channel works very well when you need to get across strategic and important messages to a large group of people at the same time, creating a wide attention, get engagement or communicate a sense of belonging. Large meetings are excellent when you want to present a new vision or strategy, inform about reorganization or share new values. The opportunity for dialogue is limited at large meeting, of course but you can create smaller groups where dialogue can be performed.

Weekly departmental meetings

In the weekly meetings you and your group communicate daily operative issues, gives status reports and solves problems. Weekly meetings are also used to follow up on information from large meetings, management team meetings etc from a "what's-in-it-for-us-perspective". This type of smaller group meetings gives good opportunities for dialogue. This channel is often the most important channel you have as a manager, because that's where you have the opportunity to build



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the big picture, you can prepare for change, you can create ownership of important strategies and goals etc. This is a favorite among the types of communication medium.

Up close and personal

This is a form of meetings where, often, a senior manager meets with a “random” selection of employees to discuss and answer questions. Some managers use this as a on going activities on a monthly basis. It can also be used in specific projects or campaigns e.g. launching new strategies.

Viral communication

Or viral marketing as it is also called works external as well as internal and refer to marketing techniques that use pre-existing social networks to produce increases in awareness or knowledge through self-replicating viral processes. It can be word-of-mouth delivered or enhanced by the network effects of social media.

Mechanical media

The second of the two types of communication medium is mechanical media. With mechanical media we mean written or electronic channels. These channels can be used as archives for messages or for giving the big picture and a deeper knowledge. But they can also be very fast. Typically though, because it is written, it is always interpret by the reader based on his or her mental condition. Irony or even humor rarely travels well in mechanical channels.

- E-mail
- Weekly letters or newsletters
- Personal letters
- Billboards
- Intranet
- Magazines or papers
- SMS
- Social media
- E-mail

E-mail is a good channel for the daily communication to specific target groups. It is suitable mainly for up-to-date and “simple” messages and where there is no risk of misunderstanding; E-mail is an important supplement to weekly meetings and the Intranet. Invitation to and agenda for meetings can with advantage be sent out with e-mail before the meeting, while background facts and minutes from meetings is well suited to be stored on the Intranet.

Some short e-mail tips:

Write short and to the point.

Target your messages to the audience and avoid sending unnecessary all-employees-e-mails.

Set up your subject line to describe what the e-mail is about.

Clearly state if the message is for information or for action.



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Avoid attaching large documents if possible. Post a link or direct to the source instead.

Weekly letters

Managers that have large groups of employees and who has difficulties in meeting all of them often choose to publish a personally weekly letter. It is sort of a short summary of news with personally reflections. Many employees often appreciate it because it has the potential to give the “what’s-in-it-for-us” angle. They can also contain summaries and status in tasks, projects or issues – yesterday, today and tomorrow.

Personal letters

At special occasions it can be justified to send a personal letter to employees in order to get attention to a specific issue. E.g. pat on the back letter after extra ordinary achievements. Or it can be a letter with your personal commentary on an ongoing reorganization that affects many employees. One other example is a letter that summarizes the past year and wishes all the best for the holidays.

Billboard

One of the most forgotten types of communication medium is clearly the billboard. Especially today, when everything is about social media, the good thing with the billboard is that you can use billboards to inform people who do not have computers and/or access to the Intranet or to reach people that work part time and does not attend weekly meetings.

- News summary
- Weekly letters
- Minutes from meetings
- Schedules
- Holiday lists

You can also use the billboard to gather ideas e.g. for items for upcoming meetings

Intranet

The Intranet is of course one of the most used types of communication medium and a very important communication channel and work tool for you as a manager, but it is also your job to help your employees priorities and pick out the information on the Intranet, as well as translating messages into local consequences. Ask yourself: what information concerns you employees? In what way are they concerned? How do I best communicate this to my employees? Weekly meeting or your weekly letter can be a suitable channel to discuss or inform of information found on the Intranet.

Employee magazine

A Magazine offers the opportunity to deepen a specific issue, explain context, describing consequences or tell a story. It also has the opportunity to reach many employees. If you want to create a broad internal understanding of strategic messages the magazine can be a good vehicle to use e.g. by writing an article based on an interview with you. As were the case with the Intranet you also have to “translate” the information in the magazine to your employees. You can ask yourself: What does the content in a specific article mean to us? How shall I best communicate it to the employees?

SMS



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Or text messaging to the mobile phone is one of the new types of communication medium and not a very widely used channel but where it is used it is proven very effective. Some companies use it as an alert system e.g. for giving managers a head start when something important will be published on the Intranet. The advantage with Sms is that it is fast. But it should be used rarely as an exclusive channel. Some companies use it as a subscription tool where you can subscribe to e.g. press-releases.

Social media

Wikipedia describe social media as “Media designed to be disseminated through social interaction, created using highly accessible and scalable publishing techniques. Social media supports the human need for social interaction, using Internet- and web-based technologies to transform broadcast media monologues (one to many) into social media dialogues (many to many). It supports the democratization of knowledge and information, transforming people from content consumers into content producers. Businesses also refer to social media as user-generated content (UGC) or consumer-generated media (CGM).”

Push or Pull

You can also divide the different types of communication medium in Push or Pull channels.

Push channels are channels where the senders are pushing the message to the receiver. Meaning it is up to the sender to control the communication.

- E-mail
- Newsletters and letters (if sent out)
- Magazines (if sent out)
- Meetings
- Telephone
- SMS

Pull channels on the other hand is when the receiver is pulling the message from the sender. It is up to the receiver when he or she wants to take in the message.

- Intranet
- Billboards
- New letters and letters (if not sent out)
- Magazines (if not sent out)
- Social media

Push channels are often regarded as having higher reliability than pull channels because of the fact that it is more active in the communication.

Theories of Communication



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Bull's Eye Theory:

Bull's Eye Theory Action view is the basis for the theory of communication. The whole process of communication is based on one-way action doing something to someone. The sender plays an important role who encodes the message with the help of arbitrary symbols. The demonstration or doing skills of the sender is for the purpose to change the behavior of receiver.

Ping-Pong Theory:

Ping-Pong Theory this theory is also called interaction or interpersonal view. Ping-Pong is the game of table tennis, represents the interaction theory of communication. In communication process, the turns take place between the sender and receiver. In this theory, there is linear cause and effect.

Spiral Theory:

Spiral Theory the spiral theory of communication is also called as transactions view of communication. It recognizes more than one interaction between sender and the receiver. A transaction implies independence, mutual and reciprocal causality. Communication is not static but dynamic and life time experience.

(d) Barriers to effective communication

Barriers to effective communication can retard or distort the message and intention of the message being conveyed which may result in failure of the communication process or an effect that is undesirable. These include filtering, selective perception, information overload, emotions, language, silence, communication apprehension, gender differences and political correctness

This also includes a lack of expressing "knowledge-appropriate" communication, which occurs when a person uses ambiguous or complex legal words, medical jargon, or descriptions of a situation or environment that is not understood by the recipient.

1. Physical barriers

Physical barriers are often due to the nature of the environment. An example of this is the natural barrier which exists if staff is located in different buildings or on different sites. Likewise, poor or outdated equipment, particularly the failure of management to introduce new technology, may also cause problems. Staff shortages are another factor which frequently causes communication difficulties for an organization. While distractions like background noise, poor lighting or an environment which is too hot or cold can all affect people's morale and concentration, which in turn interfere with effective communication.

2. System design

System design faults refer to problems with the structures or systems in place in an organization. Examples might include an organizational structure which is unclear and therefore makes it confusing to know who to communicate with. Other examples could be inefficient or inappropriate



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information systems, a lack of supervision or training, and a lack of clarity in roles and responsibilities which can lead to staff being uncertain about what is expected of them.

3. Attitudinal barriers

Attitudinal barriers come about as a result of problems with staff in an organization. These may be brought about, for example, by such factors as poor management, lack of consultation with employees, personality conflicts which can result in people delaying or refusing to communicate, the personal attitudes of individual employees which may be due to lack of motivation or dissatisfaction at work, brought about by insufficient training to enable them to carry out particular tasks, or just resistance to change due to entrenched attitudes and ideas.

4. Ambiguity of words/phrases

Words sounding the same but having different meaning can convey a different meaning altogether. Hence the communicator must ensure that the receiver receives the same meaning. It is better if such words are avoided by using alternatives whenever possible.

5. Individual linguistic ability

The use of jargon, difficult or inappropriate words in communication can prevent the recipients from understanding the message. Poorly explained or misunderstood messages can also result in confusion. However, research in communication has shown that confusion can lend legitimacy to research when persuasion fails.

6. Physiological barriers

These may result from individuals' personal discomfort, caused—for example—by ill health, poor eyesight or hearing difficulties.

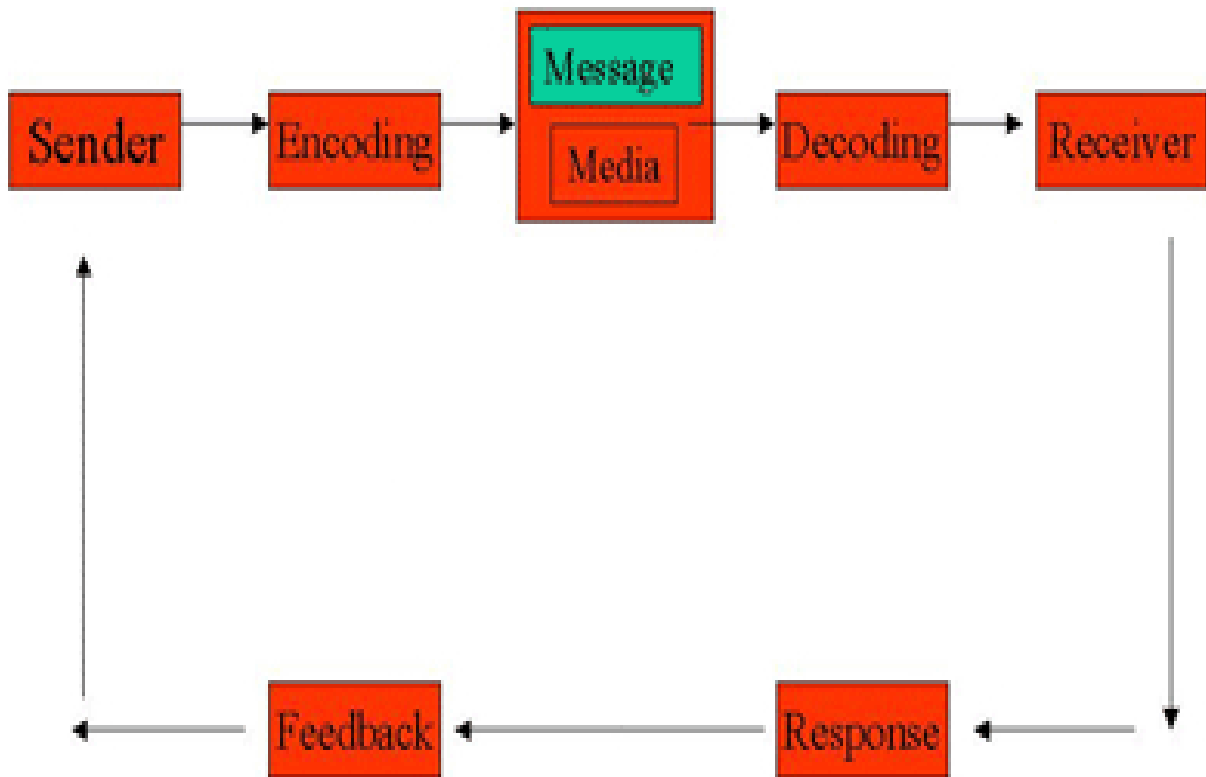
7. Presentation of information

Presentation of information is important to aid understanding. Simply put, the communicator must consider the audience before making the presentation itself and in cases where it is not possible the presenter can at least try to simplify his/her vocabulary so that the majority can understand.

(e) Communication Process

Communication is a process of exchanging verbal and non verbal messages. It is a continuous process. Pre-requisite of communication is a message. This message must be conveyed through some medium to the recipient. It is essential that this message must be understood by the recipient in same terms as intended by the sender. He must respond within a time frame. Thus, communication

is a two way process and is incomplete without a feedback from the recipient to the sender on how well the message is understood by him.



Communication Process

The main components of communication process are as follows:

1. Context - Communication is affected by the context in which it takes place. This context may be physical, social, chronological or cultural. Every communication proceeds with context. The sender chooses the message to communicate within a context.

2. Sender / Encoder - Sender / Encoder are a person who sends the message. A sender makes use of symbols (words or graphic or visual aids) to convey the message and produce the required response. For instance - a training manager conducting training for new batch of employees. Sender may be an individual or a group or an organization. The views, background, approach, skills, competencies, and knowledge of the sender have a great impact on the message. The verbal and non verbal symbols chosen are essential in ascertaining interpretation of the message by the recipient in the same terms as intended by the sender.

3. Message - Message is a key idea that the sender wants to communicate. It is a sign that elicits the response of recipient. Communication process begins with deciding about the message to be conveyed. It must be ensured that the main objective of the message is clear.



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4. Medium - Medium is a means used to exchange / transmit the message. The sender must choose an appropriate medium for transmitting the message else the message might not be conveyed to the desired recipients. The choice of appropriate medium of communication is essential for making the message effective and correctly interpreted by the recipient. This choice of communication medium varies depending upon the features of communication. For instance - Written medium is chosen when a message has to be conveyed to a small group of people, while an oral medium is chosen when spontaneous feedback is required from the recipient as misunderstandings are cleared then and there.

5. Recipient / Decoder - Recipient / Decoder is a person for whom the message is intended / aimed / targeted. The degree to which the decoder understands the message is dependent upon various factors such as knowledge of recipient, their responsiveness to the message, and the reliance of encoder on decoder.

6. Feedback - Feedback is the main component of communication process as it permits the sender to analyze the efficacy of the message. It helps the sender in confirming the correct interpretation of message by the decoder. Feedback may be verbal (through words) or non-verbal (in form of smiles, sighs, etc.). It may take written form also in form of memos, reports, etc.

(f) Communication Channel

Introduction

In an organization, information flows forward, backwards and sideways. This information flow is referred to as communication. Communication channels refer to the way this information flows within the organization and with other organizations.

In this web known as communication, a manager becomes a link. Decisions and directions flow upwards or downwards or sideways depending on the position of the manager in the communication web.

For example, reports from lower level manager will flow upwards. A good manager has to inspire, steer and organize his employees efficiently, and for all this, the tools in his possession are spoken and written words.

For the flow of information and for a manager to handle his employees, it is important for an effectual communication channel to be in place.

The Working of a Communication Channel

Through a medium of communication be it face to face conversations or an inter-department memo, information is transmitted from a manager to a subordinate or vice versa.

An important element of the communication process is the feedback mechanism between the management and employees.



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In this mechanism, employees inform managers that they have understood the task at hand while managers provide employees with comments and directions on employee's work.

Importance of a Communication Channel

A breakdown in the communication channel leads to an inefficient flow in information. Employees are unaware of what the company expects of them. They are uninformed of what is going on in the company.

This will cause them to become suspicious of motives and any changes in the company. Also without effective communication, employees become department minded rather than company minded, and this affects their decision making and productivity in the workplace.

Eventually, this harms the overall organizational objectives as well. Hence in order for an organization to be run effectively, a good manager should be able to communicate to his/her employees what is expected of them, make sure they are fully aware of company policies and any upcoming changes.

Therefore, an effective communication channel should be implemented by managers to optimize worker productivity to ensure the smooth running of the organization.

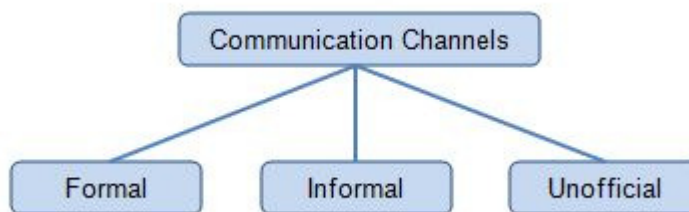
Types of Communication Channels

The number of communication channels available to a manager has increased over the last 20 odd years. Video conferencing, mobile technology, electronic bulletin boards and fax machines are some of the new possibilities.

As organizations grow in size, managers cannot rely on face to face communication alone to get their message across.

A challenge the manager's face today is to determine what type of communication channel should they opt for in order to carryout effective communication.

In order to make a manager's task easier, the types of communication channels are grouped into three main groups: formal, informal and unofficial.



Formal Communication Channels

- A formal communication channel transmits information such as the goals, policies, and procedures of an organization. Messages in this type of communication channel follow a



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chain of command. This means information flows from a manager to his subordinates and they in turn pass on the information to the next level of staff.

- An example of a formal communication channel is a company's newsletter which gives employees as well as the clients a clear idea of a company's goals and vision. It also includes the transfer of information with regard to memoranda, reports, directions, and scheduled meetings in the chain of command.
- A business plan, customer satisfaction survey, annual reports, employer's manual, review meetings are all formal communication channels.

Informal Communication Channels

- Within a formal working environment, there always exists an informal communication network. The strict hierarchical web of communication cannot function efficiently on its own and hence there exists a communication channel outside of this web. While this type of communication channel may disrupt the chain of command, a good manager needs to find the fine balance between the formal and informal communication channel.
- An example of an informal communication channel is lunchtime at the organization's cafeteria/canteen. Here, in a relaxed atmosphere, discussions among employees are encouraged. Also managers walking around, adopting a hands-on approach to handling employee queries is an example of an informal communication channel.
- Quality circles, team work, different training programs are outside of the chain of command and so, fall under the category of informal communication channels.

Unofficial Communication Channels

- Good managers will recognize the fact that sometimes, communication that takes place within an organization is interpersonal. While minutes of a meeting may be a topic of discussion among employees, sports, politics and TV shows also share the floor.
- The unofficial communication channel in an organization is the organization's 'grapevine'. It is through the grapevine that rumors circulate. Also those engaging in 'grapevine' discussions, often form groups which translate into friendships outside of the organization. While the grapevine may have positive implications, more often than not information circulating in the grapevine is exaggerated and may cause unnecessary alarm to employees. A good manager should be privy to information circulating in this unofficial communication channel and should take positive measures to prevent the flow of false information.
- An example of an unofficial communication channel is social gatherings among employees.

Conclusion

In any organization, three types of communication channels exist: formal, informal and unofficial.

While the ideal communication web is a formal structure in which informal communication can take place, unofficial communication channels also exist in an organization.

Through these various channels, it is important for a manager to get his/her ideas across and then listen, absorb, glean and further communicate to employees.

Unit-II: Client Interviewing



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(a) Client Interviewing

The ability to interview a client effectively is one of the most important skills a solicitor must possess. When representing a client it is vital to ensure that you have all the relevant details and the first few consultations with your new client will provide you with the foundation for your lawyer/client professional relationship.

Each team of two has a set amount of time to ascertain all information necessary to allow you to represent your client effectively and then some time will be set aside for you to reflect on your interview.

Competitors must cover all the formalities of an interview, take note of the personal details of the client, the intricacies of the problem and suggest possible courses of action.

An interview as described in this book is a meeting between a lawyer or legal adviser and a client for the purpose of dealing with a client's work, needs or problems. This chapter begins by exploring the importance of the interview in the context of legal work. It then goes on to discuss how a lawyer might prepare for the interview. The centrality of the interview in legal work

An interview is usually the first step taken by a lawyer in handling any legal matter. It has two main functions. It is the first and most important fact-finding exercise which enables the lawyer to ascertain a good overview of the facts and issues of the client's problem or requirements. It is also the beginning of a working relationship between lawyer and client in which both parties need to develop confidence and trust in each other if the lawyer's work is to be carried out effectively.

Clients are especially concerned about such good communication. The figures from the Royal Commission on the Provision of Legal Services headed by (now Lord) Benson show that poor communication is the largest reason for dissatisfaction with their solicitors and good communication one of the most important reasons for satisfaction. Similar findings appear in the research carried out by the Consumers' Association and many of the complaints that arrive at the Law Society and the Lay Observer share similar concerns. Where clients are satisfied with their relationship with their lawyers it also appears that their legal cases are run more effectively.

Such consumerism; in terms of complaints about professionals generally, has grown in recent years. Lawyers are by no means the only profession to have received criticism, for example much criticism has also been leveled at the medical profession. There appear to be a number of possible reasons for this. The professional disciplines have become more specialized, more fragmented and more complex and detailed in the last few decades.

There is more medical knowledge and more law which it is necessary for the professional to learn. As the disciplines grow so does the new terminology develop in order to cope with its intricacies? This often causes further barriers between professionals and lay people.

The market economy generally both encourages and enables consumers to compare and criticize the goods and services they are offered. People are less likely simply to accept without question the treatment they are given. The large growth in home ownership since the war has also brought a greater number of people in contact with lawyers. The legal intricacies of the Welfare State have



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also involved lawyers in issues to do with the less financially privilege. Lawyers have therefore come into contact in their working lives with people with whom they may not otherwise have mixed socially. The law, rather than being merely the preserve of the propertied elite, has come to be used by wider groups in society. It has therefore become more important to understand the preconceptions and feelings of such clients.

Analogy-A visit to the doctor."I've set as my task the unmasking of medicine. It isn't that I think there's something sinister behind the mask. But I do detect a sense of curiosity, of concern, if not disquiet. The practice of medicine has changed. There's a feeling a broad that all may not be well. This feeling grows out of a sense of distance, out of a sense that medicine is in the hands of experts and sets its own path."

Ian Kennedy, Q. c, The Reith Lectures: Unmasking Medicine It is sometimes difficult to understand specifically what is meant by complainants about poor communication. Most young lawyers will not have been to a solicitor's office as a client and may know little of the inside of such an office before they start work there. It is therefore useful to envisage and compare a more familiar situation of which most have some experience--a visit to the doctor.

Both situations involve a professional and a lay person coming to that professional for advice or work. It will be easier to discuss the difficulties of other professionals before attempting to be objective about the lawyer 'sown work. .

Intuitively, one can recall a recent visit to the doctor, or at least the popular image of such a visit. Most people have sat as a prospective patient with some anxiety in a waiting room at a doctor's surgery, having been "screened" in some fashion by a receptionist.

The patient glances at the table of magazines and a little furtively at the other patients wondering what their complaints might be, and whether they may be infectious. Finally, by some means or other the patient is called into the doctor's surgery, often knowing little more about the doctor who will see them than the doctor's name, and sometimes not even that.

The doctor, burdened by a long surgery list, looks up at the 'patient from a pile of notes and record cards invites the patient to sit down and asks what the problem is. One' can recall that feeling, as a patient, of knowing that this is the important opportunity which should not be mishandled. All the partly rehearsed statement of symptoms that has been going through the patient's mind since telephoning for the appointment begins to come out. The patient reacts as the doctor nods understandingly and listens to the speech sometimes looking through notes of previous consultations." Then come the questions. How long has that pain been causing difficulty? Where exactly is it felt? How has the patient been sleeping? The doctor appears to be going through a rehearsed pattern of symptoms in order to fit the patient's particular problem into a diagnosis known to medical science, or at least to that doctor.

Sometimes the questions seem a little off-beam, irrelevant to the patient's understanding of what is wrong. Sometimes they are directly to the point.'- The questioning stops and perhaps a physical examination takes place. With some slight embarrassment the doctor asks the patient to remove or pull aside some article of clothing and the patient is asked to take some deep breaths or react to different' pressures on different parts of the body. Very soon the patient is back in a sitting position and face to face with a doctor fast scribbling in the record card and dating a prescription.



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With a little persuasion, the doctor tells the patient what is probably wrong, how often the medicine should be taken and perhaps when to return for further consultation. The patient receives the clear message that the consultation is at an end and leaves, thanking the doctor and gratefully clutching the magic prescription in one hand.

Afterwards, the patient may ponder-over how he/she might have preferred the visit to the doctor to have gone. What things could the patient have done to make it a more successful visit? What might the doctor have done? What other factors are there that made it a worthwhile (or not so worthwhile) and pleasant (or unpleasant) experience?

Back to the lawyer's office

Later in this chapter the analogy of the visit to the doctor will be used as a scenario to which can be related the basic parts of a legal interview. For the present it may serve as a different lesson. Doctors and all helping professionals should perhaps be trained, or trained better, in how to conduct a consultation. Newer generations of doctors are receiving such training. Lawyers on the other hand, without the benefit of training, may use the experience of having been a patient going to a doctor, to understand what it might be like for a client coming to see a lawyer.

Preparation for the Interview

Mental preparation

"The horrible thing about all legal officials, even the best, about all judges, magistrates, barristers, detectives and policemen, is not that they are wicked (some of them are good), not that they are stupid (some of them are quite intelligent), it is simply that they have got used to it."

Chesterton'

For most lawyers in practice it is difficult to remember what it was like on the first day that they walked into the university or college to begin the study of law. It is easy to forget just how it felt to be a complete newcomer to all the heavy legal language, the different way of thinking and the books, people and paraphernalia of the law. Yet new clients have to enter the same portals and catch up with all those years of legal education every time they enter a, solicitor's office.

Legal education is partly to blame. Like medical education it teaches its students to address themselves more to the professional 'problem than to the people behind it. With the doctor's surgery analogy still in mind it is worth remembering exactly what used to happen on the first day of medical education. The new entrant to the profession would attend, full of zeal, intent to cure illness, stop disease and help humanity and be met by the cold eeriness of a dead body. Traditionally, the first class of any medical training would be the anatomy lesson. It is difficult to expect doctors to see their patients as real people when their whole view of medicine starts with a dead body which the doctor cannot help any further, "but can only learn from as an academic exercise." Fortunately, medical schools are changing and many students now meet a live patient on their first day, in the company of their supervising teacher. The process of finding out a live patient's problems is after all rather different from that used to discover what was wrong with a corpse.



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How do lawyers fare on this score? On the first day of legal education students are faced usually with the legal equivalent of a dead body-something that the law has done all it can with and now cannot help those people involved any more: a reported case.

All they can do with it is cut it up for analysis, criticize it and learn from it. Is it little wonder that lawyers see the people who bring their lives and their problems to them as "divorce cases," "unfair dismissals" and "convincing jobs?" What if on the first day of their legal studies law students were given the opportunity to experience law through the needs of a client rather than from reading a textbook or law report? There is probably only one law school in the world where anything like this occurs (Antioch School of Law in Washington). It is difficult even to contemplate such an idea, but the consumer research suggests that lawyers are often even worse than doctors in communicating with their clients.

It is therefore necessary to overcome the barriers that exist. The first step is obviously to recognize that these barriers cause problems to clients, and the task of interviewing clients must be approached with this in mind. Secondly, any of the unnecessary trappings of the legal world which could interfere in the lawyer-; Client relationship should be removed. A very good place to start with this is the simple physical surroundings of both the reception area and the room in which the interview will be conducted.

Physical preparation

The reception area

Most lawyers will have noticed the reception area of their office on the first few days of working there, but soon have grown used to it. The older hands and more senior lawyers in the office, having passed through that area so many times will by now not even notice what is there. New clients, however, may have to spend much anxious waiting time there and it is well worthwhile taking stock of what it will look like to them, and consequently, what their first impressions will be.

The problem is therefore how to develop a strategy which allows a lawyer who works in an office periodically to review what the reception looks like to an outsider. The results, though obvious to each newcomer, tend to be forgotten quickly with accustomed usage. A few examples of such a "catalogue of the obvious" include:

- (i) It would be a strange clientele that was really interested in two year old copies of Punch on the table, together with all the latest editions of The Law Society's Gazette.
- (ii) Ways in which a dowdy reception area can be tidied up without breaking the office account are almost too obvious to mention but appear to be ignored in many offices. A little redecoration, a few posters or reproduction paintings and a couple of potted plants can work wonders. The provision of coffee or tea, even by machine if necessary, will also make a big difference to the atmosphere as it will in the interview room itself.
- (iii) Where clients tend to bring their children with them a corner might be set aside for them with a few toys or children's' books.



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(iv) New rules permit firms to have available for existing clients a brochure about the firm or office and the sort of work it carries out, giving the names of all the staff and even pictures and short curricula vitae.

(v) When the client comes in some system of indicating about how long they will have to wait reduces their anxiety and will help their relationship with their lawyer thereafter.

(vi) Clear indication of the existence and direction of toilets also makes a substantial difference to a client's well-being.

On the one hand, a relative newcomer to work in the office will be in the best position to review its appearance. On the other hand, newcomers and more junior staff may have more difficulty putting these ideas across and getting them accepted. Whatever, such issues appear so obvious once they are pointed out that it is surprising how many offices suffer from the lack of them.

The interview room

The appearance of the lawyer's office or other interviewing room should also be assessed. In some offices interviews are conducted in a separate room set aside for the purpose. In others interviews will take place across a desk or table which is also used by the interviewing lawyer for general work. A major factor in the appearance of many lawyers' offices relates to the manner in which work is ordered and arranged. Many solicitors learn a particular way of working in which files is left out on a desk, on the floor or somewhere in the room when it is necessary to do some work on them. An alternative method is to make a list of such files or necessary work, but instead the files themselves are left out to act, as a reminder that they need attention. Often cases which need daily attention are left out for long periods. Because of the importance of the papers and documents inside the files, cleaners are carefully instructed not to move anything which looks like it might be important. The result is that desks are piled high with waiting work, as well as telephones, cups of coffee, ash trays and other office paraphernalia, all gathering varying degrees of dust.

Many solicitors manage to keep an entirely empty desk and only bring out the papers they are actually working on at the moment.

However the general ethos in the legal profession suggests that a busy lawyer needs a "busy" desk. Accepting this mode of work as fixed, it should be realized it may be somewhat difficult to communicate with a person across a table laden in such a manner.

Preparing for the particular client

This book largely hypothesizes the case of a new client on a new 'matter. Where the lawyer, or the office, has some prior knowledge of the client, full advantage should be taken of this in order to be as well prepared as possible. It is more advisable however to, find out about the client and previous problems, than to try to jump to any conclusions about the nature and extent of the present matter.

Often reception personnel or secretaries will take a message, from a new client with a short description of the issue when the, client makes an appointment. Such descriptions are rarely helpful and often misleading. It would not usually be sensible to spend, time researching an area of law, before hearing from the client's own mouth what the client regards as the details of the case.

Client collection procedure



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Some lawyers' offices have the luxury of a receptionist or secretary who can meet the client in the reception area and bring them along to the lawyer's office or interviewing room. It certainly adds to the lawyer's sense of importance and is clearly reminiscent of an age gone by, when household staff would show visitors into the reception rooms of houses. Nowadays, it seems something of a discourtesy to allow clients to make a journey along poorly signposted corridors in order to find a (usually unmarked) room. The defining rule of this process, as with the interview itself, should be for the lawyer to consider how best he or she would prefer to be met stand brought in under similar circumstances, and to act accordingly with the client.

With these ideas in preparation for the interview in mind, the interview itself can be analyzed.

The Three Stages

An interview may be divided into three parts or stages based upon the relative activities at each stage of the two participants. Returning to the scenario of the visit to the doctor these stages, although perhaps not well performed there, can be seen quite clearly.

In the first, "Listening," stage the client (like the patient above) tells the lawyer what the problem is and what the client feels is necessary. This stage is therefore characterized by much talking from the client, who is often poised on the edge of the chair, and listening or note-taking by the lawyer.

At the second, "Questioning," stage the lawyer begins to take a more clearly active role, questioning the client on details, ironing out ambiguities and filling-in on gaps that have appeared from the silent's telling of the story. The lawyer might even carry out a 'physical examination' of a letter or her document. The lawyer, like the doctor above, is trying to sort out a view of the facts which 'falls as easily as possible within the framework of legal subject matter. This stage may be rounded off by the lawyer's summary of the major facts and the client's wishes, to check with the client, they have been properly understood. Lawyer and client generally participate about equally at this stage, with the lawyer gaining the edge on involvement.

, In the final, "Advising," stage the lawyer either: (i) advises the, client on the practical and legal effects of the client's problem and, sets out a solution or some alternative solutions and their consequences; or (ii) suggests a plan of action which may include carrying out legal research on the problem (if the lawyer is not well versed in that particular area) or finding out more facts before coming to a decision. The lawyer then sets the next contact before terminating the interview. In this stage the activity comes more from the lawyer and it is the client who does the listening.

Breaking down what happens in an interview into these three stages helps inform an understanding of the interview. The beginnings and ends of the different stages may be a little blurred in reality, but this is an adequate description for the purpose of an overview. It also conforms quite closely as a model to experiences at the doctor's surgery, or with any other helping professional: This is because the work involved in professional consultation snaturany tends to fan into these sequential stages. This overview is presented as a helpful model through which one can begin to look with more detail at the legal interview.

One other point is worth noting here. The scenario of the visit to the doctor was presented largely from the point of view of a prospective patient, not from the professional's eye view of the doctor. From here onwards the text will be working from the lawyer's standpoint. But it should not be forgotten what it feels like to be a patient, and by analogy what it might feel like to be a client. ..."



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Working in the framework of the stages

The three basic stages in an interview outlined above have evolved out of research both empirical and theoretical into the way lawyers and other helping professionals carry out their interviews or consultations. The fun importance of this framework can best be appreciated by what occurs when the stages are either taken in the wrong sequence or stages are missed altogether.

The' framework appears to conform to a common sense notion of what should take place in an interview. However, in practice, many professionals jumble the stages or do' not give particular stages sufficient attention. For example, the listening stage is often very short in lawyers' interviews. Lawyers often jump to the questioning stage before a client has told their fun story. The effect of this is that the area of enquiry is narrowed down too quickly to matters which appear to the lawyer immediately to be legally relevant, but which may not necessarily be the most relevant material, legal or otherwise, to the whole problem. Similarly, in some cases a short listening stage is followed by an advice stage without sufficient questioning in between. The result here is that the lawyer, or other professional, may jump to a conclusion not warranted by all the facts, but only by the facts which the client has, so far told.

A last example is of a professional who misses out the final advising stage. This appears to happen quite often in doctor-patient consultations. A patient is sent away with very little hint of diagnosis, prognosis or explanation for any medication. This can sometimes occur in a legal interview as well, where a lawyer not fully conversant with a particular area of the him may send a client away unsatisfied as to what the case is about and what the lawyers going to do to help.

The Thirteen Tasks

Whilst the three stages form the basic outline of the interview it is necessary to break down what happens in an interviewing to more detail in order to adapt this learning to practice.

The 13 tasks have evolved through experience from work in researching and training lawyers. They are useful as a training schedule because they are designed to underline for lawyer's some of the aspects of interviewing which can most easily be missed. As .headings they are not all immediately understandable I-First Interview: the Thirteen Tasks by Stages:

I Listening

1. Greet, seat and introduce.
2. Elicit story with opening question etc.
3. Listen carefully to basic outline of personalities and case from client's own unhindered words.

II Questioning

4. Question on facts for gaps, depth, background, ambiguities and relevance.
5. Sum up and recount lawyer's view of facts, and check for client's agreement or amend.



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6. Note taking

III Advising

7. State advice and/or plan of action and deal with question of funds. .
8. Repeat advice/plan of action and check for client's agreement or amend.
9. Recount follow-up work to be done by client.
10. Recount follow-up work to be done by lawyer.
11. State next contact between lawyer and client.
12. Ask if "Any Other Business and deal with it.
13. Terminate, help out and goodbye.

Conclusion

In this chapter it has been shown that interviewing is important; because it is the first and often the most crucial fact-finding exercise in the handling of any client matter. It also forms the basis of the relationship between the lawyer and client. Consumer research, and complaints about solicitors have also shown that clients place great store in the communication abilities of their lawyers.

It is helpful to try and see what coming to a lawyer's office for an interview might feel like to a prospective client. By analogy a visit to the doctor was considered, in which the visit was viewed from the perspective of the patient.

Some steps to be taken in both mental and physical preparation were then outlined which might help to overcome some of the barriers experienced by many clients. Lastly the legal interview was broken down into the three stages of listening, questioning and; advising. These were then divided further into 13 tasks, to be examined in subsequent pages, which form the framework of a first meeting between lawyer and client.

(b) What is listening?

There is a difference between hearing and listening. Hearing is a passive process. We will naturally hear sounds within human hearing range unless there is some hearing impairment. Listening, however, is an active process. When listening, we direct attention to the act of hearing. Listening involves an intention both to hear and to understand what is heard. Hearing may be natural, but listening is a skill.

The skill of listening can be developed when you know what to do and practice specific behaviors. The skill of listening requires:

A state of mind

Your mind must be free of other distractions so that you can truly focus in on what you are hearing.

An intention to listen



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You must have the desire to hear and understand what the other person is saying.

A method of tracking

You must be able to track what the person is saying and how it all fits together.

A process of clarifying or verifying

When appropriate, you must be able to verify that you are getting the person's message correctly and clarify any confusion or missing information.

Listening is a skill in a sense that it's a related but distinct process than hearing which involves merely perceiving sound in a passive way while listening occupies an active and immediate analysis of the streams of sounds. This correlation is like that between seeing and reading. Seeing is a very ordinary and passive state while reading is a focused process requiring reader's instrumental approach. Listening has a "volitional component". Tomatis' (2007) view is, while listening; the desire to listen, as well as the capability to listen (comprehension) must be present with the listener for the successful recognition and analysis of the sound.

Active Listening

People who are considered excellent listeners typically use the skill of "active listening."

Active listening requires a definite intention to listen.

Active listening requires that you focus on the speaker and limit or eliminate internal and external distractions.

Active listening includes all of the appropriate non-verbal and verbal cues that indicate you are listening.

Active listening provides a feedback loop that ensures you are getting better and more accurate information.

Active listening reduces misunderstandings and encourages open communication.

The Skill of Active Listening

The goal of active listening is to go beyond listening to understanding. People have a strong desire to be understood. Words are simply a vehicle to convey a meaning. Active listening allows you to make sure that you hear the words and that you understand the meaning behind the words.

All too often, we simply assume that we understand what someone means by what he or she says. We make an educated guess about his or her meaning and then act as if that guess is the truth. This is fine when we guess correctly, but can be disastrous when we guess wrong. This results in a lot of miscommunication. Active listening encourages you to feedback what you hear in order to check for accuracy and to keep you on track with the person's meaning. You do this by paraphrasing back to



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the speaker what you heard him or her say, which gives the speaker a chance to affirm or correct your understanding.

When to Use Active Listening

Active listening is a valuable skill. But, like all skills, it works best in certain situations. A hammer works great for driving in nails but you don't use a hammer to kill a fly or a flyswatter to drive in a nail. What times or situations would be appropriate to use active listening?

How to set it up. Active listening may seem odd unless it is introduced properly. What might you say to make the speaker more receptive to active listening?

When not to use active listening. There are times when it is inappropriate to use active listening. List some times when active listening will put a damper on the conversation.

Asking Questions

As a customer service representative, you will run into situations when you will need to gather more information in order to understand another person and provide the desired service. You will need to ask questions in order to do so. Many times, your question will be appropriate given the caller's request and the situation. At other times, you may need to explain the reason for the question.

Here are some guidelines:

1. Keep questions simple and to the point

A man calls explaining that his daughter has gotten her driver's license and he wants to add her name onto his auto insurance policy. You are ready to enter her name into the system, but he hasn't given you her name yet.

2. Ask politely

Adding please or framing the question softly will make the customer more comfortable responding than asking it bluntly. This means that you soften the question by saying "May I..." or "Could I..." For example, you might ask: "May I have your daughter's name, please?"

3. Provide a rationale for any question that is not obvious

Many people value their privacy or may even be suspicious when you ask them for information. If the question you are asking is not obvious, tell them why you need the information. This should be a brief one- or two-sentence explanation.

"For security purposes, we will need your daughter's social security number. We can then verify that it is her should she call us about the policy."



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Types of Questions

1. Open-ended questions

Open-ended questions are questions that cannot be answered with "yes," "no," or a simple fact (such as a date). An open-ended question is used to get the customer talking. "O.K Mr. Jones, what happens when you turn the machine on?"

Open-ended questions "open up" the conversation.

Open-ended questions begin with:

How...?

Why...?

When...?

Who...?

What...? (As in what is the problem?)

Where...?

2. Closed-ended questions

Closed-ended questions are asked to get a yes/no answer or a very specific piece of information, such as a date. Closed-ended questions include status questions, such as the customer's name, phone number, serial number, etc.

Closed-ended questions "close in" on a fact.

Closed-ended questions begin with:

Did...?

Can...?

Have...?

Do...?



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Is...?

Will...?

Would...?

What...? (As in what is your address?)

a. Processing sound/ Perception skills:

As the complete perception doesn't emerge from only the source of sound, listeners segment the stream of sound and detect word boundaries, contracted forms, vocabulary, sentence and clause boundaries, stress on longer words and effect on the rest of the words, the significance of intonation and other language-related features, changes in pitch, tone and speed of delivery, word order pattern, grammatical word classes, key words, basic syntactic patterns, cohesive devices etc.

b. Processing meaning/ Analysis skills:

It's a very important stage in the sense, as researches show, that syntax is lost to memory within a very short time whereas meaning is retained for much longer. Richards (1985:191) says that, 'memory works with propositions, not with sentences'. While listening, listeners categorize the received speech into meaningful sections, identify redundant material, keep hold of chunks of the sentences, think ahead and use language data to anticipate what a speaker may be going to say, accumulate information in the memory by organizing them and avoid too much immediate detail.

c. Processing knowledge and context/ Synthesis skills:

Here, 'context' refers to physical setting, the number of listener and speakers, their roles and their relationship to each other while 'linguistic knowledge' refers to their knowledge of the target language brought to the listening experience. Every context has its individual frame of reference, social attitude and topics. So, members of a particular culture have particular rules of spoken behavior and particular topic which instigate particular understanding. Listening is thought as 'interplay' between language and brain which requires the "activation of contextual information and previous knowledge" where listeners guess, organize and confirm meaning from the context.

However, none of these micro-skills is either used or effective in isolation or is called listening. Successful listening refers to 'the integration of these component skills' and listening is nothing but the 'coordination of the component skills'.



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Nature of listening as a skill:

Besides the division of the skills as 'receptive' and 'productive', another subdivision focuses on 'one-way reception' and 'interactive reception' in this age of active learning. Reading and writing are one-way skills where learners don't get direct feedback. But in speaking and listening, learners may have their understanding and reproduction checked instantly. Thus active and self-learning takes place.

Moreover, there is a traditional labeling for reading and listening as "passive" skills. But linguists believe that a listener is involved in guessing, anticipating, checking, interpreting, interacting and organizing by associating and accommodating their prior knowledge of meaning and form.

Report

Definition: A report may be defined as a formal document based on collection of facts, events and opinion and usually expresses a summarized and interpretative value of information. It can be defined as communication in which a person, who is assigned the work of report making, gives information to some individual or organization because it is his or her responsibility to do so. The word 'report' is derived from the Latin word – 'report are' – means to bring back

Types of Reports

Types of Reports: Reports can be classified as follows:

- (1) Formal and Informal Reports
- (2) Routine and special Reports
- (3) Oral and written reports
- (4) Reports Informational and Analytical



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Formal Report

A formal report is prepared in a prescribed form.

It is lengthy reports with length of hundred pages.

Annual Reports, reports of companies, project reports and thesis are examples of formal reports.

Routine Report

Routine reports are prepared and presented at regular intervals.

They may be submitted annually, semi-annually, quarterly, monthly, weekly and daily.

Sales and production report, cost report are examples.

Oral Report

It is presentation of data in the form of face to face to communication

Reports of accidents, sales production, joining are example of oral reports.

Informal Report

An informal report is generally in the form of a person to person communication.

It is brief report of a specific business.

Laboratory reports, daily production reports, trip reports are informal reports.

Special Report

Special reports is prepared and presented to convey special information related to an individual, occasion or problem.

Enquiry report, research reports, thesis, dissertation are special reports.

Written Report

It is presentation of data/information in written form.

They can be kept as permanent record / can be edited, reviewed and stored.



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Informational Reports

It is presentation of data/information without any analysis or interpretation or recommendations.

Conference report, seminar report and trip report are example.

Analytical Reports

It is presentation of data/information with analysis or interpretation or recommendations.

Project reports, Feasibility reports, market research report are examples.

Guidelines for report writing

1. Know your purpose

This is the major aim: the reason you're writing the report in the first place. Because it determines the *kind* of report you write, it's a critical (and often neglected) first step.

Give it a think. Are you writing a factual, instructional or leading report? Remember:

- Factual reports aim to inform.
- Instructional reports aim to explain.
- Leading reports aim to persuade.

Once your major aim has been defined this way, your subsidiary aims will fall into place - you inform in order to *explain*, and inform and explain in order to *persuade*. This starting point gives you vital focus, and drives absolutely everything else.



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2. Know your readers

Before you start writing your report, consider its audience. Why? Because you can't hit the nail on the head if you can't see the bleeding nail. In short, to be successful, a report must ensure that its target readers can:

- Read it without delay;
- Understand everything in it without much effort;
- Accept its facts, findings, conclusions and recommendations; and
- Decide to take the action recommended.

3. Know your objective

By matching the purpose to the reader, you are ready to set your objective. In other words, what do you want the reader to think and do after reading your report? (People are not brainiacs - often, you have to make it explicit. 'Do *this*...!')

4. Choose an approach

I recommend a top-down approach to writing a report. This starts with the thesis statement (pretentiously also called the "terms of reference"), follows with the information-gathering and continues into three stages of ongoing refinement.

- Thesis - the thesis of a report is a guiding statement used to define the scope of the research or investigation. This helps you to communicate your information clearly and to be selective when collecting it.



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- Info-gathering - there are a number of questions to ask at this stage:
 - What information do I need?
 - How much do I need?
 - Where will I find it?
 - How will I collect it?
- Refinement - there are three stages in the refinement process; namely:
 - Write the section-level outline.
 - Write the subsection-level outline.
 - Write the paragraph-level outline.

Tip: The paragraph-level outline is like a presentation with bulleted points. It incorporates the flow of ideas. Once you have the paragraph-level flow of ideas, you can convert it into a full report by writing out the flow of ideas in full sentences. Like I said, hardly rocket science. But sometimes you just need someone to show you...

5. Decide on structure

Here are 11 basic elements of a standard report. I'm not a masochist, so this structure does not need to be rigidly adhered to. Instead, bring your own circumstances, needs and creativity to the mix, and use whatever's appropriate.

1. Title page
2. Index (or Contents)
3. Thesis (or Terms of Reference or Abstract)
4. Introduction (or Executive Summary)
5. Background
6. Procedure
7. Implications (or Issues)
8. Solutions (or Recommendations)



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9. Conclusion
10. Appendices
11. Bibliography (or References)

6. Use the right style

Use hard facts and figures, evidence and justification. Use efficient language - big reports with too many words are awful. The best reports are simple and quick to read because the writer has interpreted the data and developed viable recommendations.

Here are some tips:

1. Write as you speak.
2. Avoid empty words.
3. Use descending order of importance.
4. Use the active voice.
5. Keep sentences short.
6. Don't try to impress; write to express.
7. Get facts 100% right.
8. Be unbiased and open.

7. Consider layout

- *Fonts*

remember that reports are conservative and often formal documents, so your font choices should not be cutesy, clever or sexy. For the body of the document, choose a serif font such as Times Roman or Cambria with a point size of 11 or 12. You can use a sans serif font such as Arial or Calibri for bolded headings to complement the body text.



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- *Visuals*

Spend time thinking about the pictures. Wherever necessary, explain all aspects of a visual and don't leave the reader wondering about the connection between the figure and the text. Write good captions, and choose *the type of visual* with careful consideration. (Bar graphs, pie charts and tables do different things, for example.)

8. Leave time to refine

No report is perfect, and definitely not when it's still Draft 1. Unfortunately, well-written reports are those that have gone through the mill a couple of times, either with your gimlet eye or under the skeptical gaze of someone else. Leave as much time as you can afford to check, check and double-check, and then ask yourself:

1. Overall, does the report fulfill its purpose?
2. Does it do what I was asked to do?
3. Does it do what I said I'd do in my introduction?
4. And bottom line: Am I pleased with it?

Ethical Consideration

Ethics are codes or rules which govern those practices of a profession. It dictates how information and client's relationships should be managed. Code of ethics and the laws are mutually exclusive. An action may be legal but unethical. However some acts are both illegal and unethical. Ethical considerations occur when you are required to use these rules to better serve your clients.



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Unit-III: Legal Counselling

(a) An Introduction to Legal Counseling

Definition: Legal Counseling is the process of helping a client to make a decision. As part of that process, the lawyer may give her opinion about the matter and may draw on moral, social, economic and other considerations in so advising. Provides that “a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by shall consult with the client as to the means by which they are to be pursued.”

Legal advice is generally defined as the assessment and application of principles of law to a particular factual situation. It involves the application of legal principles to facts in a manner that

- (1) In effect predicts a specific resolution of a legal issue or
- (2) Directs, counsels, urges, or recommends a course of action by a disputant or disputants as a means of resolving a legal issue.

Merely providing legal information is not considered legal advice. Legal advice generally involves suggesting or predicting a course of action based upon the evaluation of a person’s or entities particular legal situation.

In the common law, legal advice is the giving of a formal opinion regarding the substance or procedure of the law, usually received from a solicitor, barrister or lawyer, ordinarily in exchange for financial or other tangible compensation. Advice given without remuneration is normally referred to as being *pro bono publico* (in the public good), or colloquially, *pro bono*.

The UK's Legal Services Act 2007 includes the giving of legal advice within the definition of unreserved legal activities, which means that it can be provided by any person not just an officer of the court. However, if it is provided by a lawyer or another person authorized by one of the front line legal services regulators, then this activity is included within their regulatory reach.

Legal advice is distinguished from legal information which is the reiteration of legal fact. Legal information can be conveyed by a parking meter, sign or by other forms of notice such as a warning by a law enforcement officer. Printed legal materials, such as directions and how-to manuals, are generally not considered legal advice. Accordingly, directions on how to fill in a motion form and other court documents do not constitute legal advice. On the other hand, application of legal rules and principles to a specific set of facts is almost always held to constitute legal advice.



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- In civil matters, the lawyer must abide by the client's decision regarding settlements, and, in criminal matters, the lawyer must abide by the client's decision regarding pleas, jury-trial waivers, and testifying. (The ABA's Standards for Criminal Justice also give the client decision-making authority over whether to appeal.)

If a client has or might have diminished capacity, requires the lawyer to treat the client as normally as possible.

Legal Counseling and differentiation from general counseling

Legal counseling and General counseling are two separate terms that should be used with difference. They are certainly not the words that have the same meanings. Legal counseling is the advice given on legal matters or matters related to law and its proceedings. It is important to know that legal counseling is given by lawyers or advocates who are in need of help regarding matters of dispute, controversy and the like.

Legal counseling is given as part of law suits or cases pending on the defendant. Plaintiffs also get legal counseling from their lawyers in matters relating to the case. They are advised as to how to proceed with the case. Legal counseling is given in the professional mode. In other words it can be said that legal counseling is looked upon as a part of the profession of a lawyer. It is quite natural that a lawyer is paid fees for imparting legal counseling to his client.

General counseling on the other hand is counsel or advice given on matters related to general interest such as education, job placement, career building and the like. It is of two types, namely, the professional and the service-oriented. In the professional type of general counseling the practitioner collects fees for guiding a student or a person as to how to build a career, secure a job overseas or plan for higher studies. General counseling also aims at solving problems of the people related to psychology such as anxiety, depression, anger, stress, lack of self confidence, conflict between couples and the like.

In the service-oriented type of general counseling the cell forms a part of an educational institution like a college or a university and it collects no fees since it becomes a part of the institution. This is the difference between legal and general counseling.

(b)Types of Counseling

1. Directive or Counselor-centered
2. Non-Directive or Client-centered
3. Eclectic

Directive or Counselor-centered



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Steps Involved

- Analysis: Collecting information from sources & understanding the counselee.
- Synthesis: Summarizing & organizing the data so that they reveal the counselee's assets, liabilities, adjustments & maladjustments.
- Diagnosis: Formulating conclusions regarding the nature and the cause of the problems exhibited by the counselee.
- Prognosis: Predicting the future development of the counselee's problems.
- Counseling: Counselor taking steps with the counselee to bring about adjustment and readjustment for the counselee.
- Follow-Up: Helping the counselee with the new problems or with recurrence of the original problem and determining the effectiveness of the counseling provided to him.

Non-Directive Counseling

- The client-counselee is the pivot
- He takes on an active part in counseling
- He takes decisions regarding the actions to be taken
- Counselor is a facilitator
- Counselor creates an atmosphere

Eclectic Counseling

- Considers both Directive and Non-Directive counseling are at extreme ends.
- Counselor deliberately tries to incorporate both Directive & Non-Directive counseling methods.
- Counselor first studies personality & needs of the counselee, then he selects the methods that would be most helpful for the individual.
- Counselor can select Non-directive method & then switch over to the directive method & vice-versa.

(c) Approaches to counseling:

These are normative issues that reflect different views of the relationship between lawyer and client, with consideration to power and authority, role, and culture.

1. Directive: the lawyer, as the professional, uses her expertise to guide the decision-making, perhaps offering advice whether solicited or not. The advice might be from the perspective of the lawyer or of the client.



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2. Client-centered: the lawyer is nondirective and neutral in counseling, respecting the client's autonomy, expertise in substantial non-legal factors and contexts, and the fact that the client must live with the consequences of the decision.

3. Collaborative: the lawyer seeks to work with the client as an equal, with the shared goal of solving the client's problem; the lawyer might not be neutral in this process.

Elements of effective counseling

1. Relationship with client – nonjudgmental acceptance, sincere care, patience, empathy

2. Clear context – understanding and assessment of the legal problem; clarity of client's goals, values, priorities (fact gathering); sufficient information (legal and non-legal) about the options

- a. Beware premature counseling
- b. Often need to engage in ongoing fact gathering about goals, values, priorities, context

3. Organized decision making process

General model for non-directive counseling

1. Description of legal problem

a. Assessment – summarize the issue and the decision to be made; include client's narrative, applicable law, and client's goals, values, and priorities

- i. Ask for update since last discussion

b. Identification of alternatives

- i. Might be list generated independently by lawyer and/or client or jointly
- ii. Need not provide assessment of alternatives yet

2. Discussion

- a. Agreement of alternatives to discuss: those that meet the client's goals; are acceptable to the client personally; and are legitimate (legal, procedurally available, etc.)
- b. Agreement on criteria to evaluate alternatives: which will advance the client's goals? What are the priorities within these criteria?
- c. Systematic application of the criteria to the alternatives

- i. Let the client determine where to start
- ii. Identify consequences of each alternative

1. The client may then determine whether a consequence is a pro or a con.

2. Consider importance of consequence and likelihood of occurrence.



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3. Decision

- a. Which alternative is the optimal choice (best improvement over the status quo)?
 - i. Suggested questions for client:
 1. Which looks best in light of your goals?
 2. Is this choice just “good enough”?
 3. Does this satisfy most/all of your goals?
 4. Does it feel right?
 - a. If not, what is missing?
 5. Does it seem fair?
 6. Do you want to talk to anyone else about your decision?
 7. Are you prepared to implement this decision?
 8. Are there any contingencies to plan for?
 - c. Test the choice: compare the optimal choice against the others
 - d. Make a final decision

(d) Training skills: Simulated Exercises

A training simulation is a virtual medium through which various types of skills can be acquired. Training simulations can be used in a wide variety of genres; however they are most commonly used in corporate situations to improve business awareness and management skills. They are also common in academic environments as an integrated part of a business or management course.

The word simulation implies an imitation of a real-life process, usually via a computer or other technological device, in order to provide a lifelike experience. This has proven to be a very reliable and successful method of training in thousands of industries worldwide. They can be used both to allow specialization in a certain area, and to educate individuals in the workings of the sectors as a whole, making training simulations incredibly versatile. It is important to emphasize that training simulations are not just games; their aim is to educate and inform in an exciting and memorable way, rather than purely to entertain.

Companies across the world regularly use simulations as a tool to teach employees. With the enormous range of simulation-based activities available across the world, it is unsurprising that the specific aims of the sessions vary widely. Some simulations are focused on making decisions in a particular area of the business, such as personnel or product design, and these are called *Functional Simulations*. Others give a general overview of a company and give experience of



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making executive management decisions, and are called *Total Enterprise Simulations*. In recent years, however, this classification has become somewhat impractical, as increasing numbers of training simulations are involving both elements, and combining both an overall view of the industry with some decisions relating to specific sectors.

Training Simulations normally form part of a programme designed to educate employees or students about the skills needed to operate a business, as well as persuade them to think outside the box and see the bigger picture. This can make for a better organized, more fluid system in which all employees understand their part in making the company successful.

Although the most common use for training simulations is in a corporate setting, simulation games are increasingly being used to educate young people about the importance of business. From secondary school age all the way up to MBA students, anyone can benefit from the first-hand experience of running a company and making decisions that directly affect performance. This will allow the participants to gain an overall understanding of the business world, and give some insight into the type of skills that are necessary to succeed. It is also important to note that 'beating the game' should not be a primary aim for anyone taking part in a simulation; the focus should be directed towards everyone gaining some useful and relevant knowledge that they can take away and use in their daily lives. If the simulation does have a competitive element, it is to motivate and inspire, rather than encourage any malpractice. Some training activities are non-competitive to avoid this, however many noted experts in the field state that the rivalry between teams or individuals improves the learning experience and adds a sense of fun and drama into the simulation. This is particularly important when working with young people such as students, as they often require an extra boost to keep them entertained, especially when a simulation is run over an extended period.

The concept of training employees to have a wider perspective on their position within the workplace has been around for hundreds of years, but it is only relatively recently that the idea of creating a simulated environment for trainees to test their abilities and skills has been developed. The first commercially available training simulation was in 1956, and was called *The Top Management Decision Game*, and was created by the American Management Association. Since then, the market has expanded hugely, with thousands of simulations available based upon hundreds of different industries. Initially very simple with just a few choices to make, some simulations have become extremely complex with many different interlinking decisions. When



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training simulations were first used, they involved paper forms that were filled in by the participants and then compared by the organizer of the exercise. Nowadays, nearly all simulations are computer based, and involve multi-stage algorithms that calculate performance based the decisions entered. Most simulations are based around a real industry, and hence they use real data to be as accurate as possible and to provide a realistic experience. However, some remain generic and do not model a particular industry, although these tend to be more useful for younger players or those with absolutely no business knowledge.

Most corporations and academic courses that contain a training simulation integrate it into an existing or completely new training programme. This allows the participants to get the maximum value from the experience, as well as review the sessions in order to improve them for future use. The structure of a training session would normally be as follows:

- Introduction - the organizer of the programme (plus sometimes a specialist in the training simulation) will meet the participants and give them a brief explanation of the purposes behind the training and what they should hope to achieve.
- Lectures - sometimes the trainees will also receive one or more lectures around the topics that the simulation will be based on, in order to give them an idea of the type of skills they will need. This is especially important within academia, when the students will often be examined on this section after the event.
- The simulation - the simulation will then be played, allowing newly-acquired knowledge to be tested and skills practiced. A positive atmosphere is vital here to maintain enthusiasm.
- Evaluation - once the simulation has been completed, it is very important to summarize what has been learnt and the effectiveness of the training. Presenting results to others may provide a means of internal assessment, as well as showcasing the players' achievements.

This integrated training will allow everyone taking part in the simulation to get the maximum experience possible, as well as being entertaining, exciting and giving them a new perspective on the business world. Many companies that specialize in training simulations also offer to create a special integrated plan unique to the client, to make the process as streamlined and efficient as possible.



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Since training simulations are available based on such a wide range of different industries, and with thousands of different aims and objectives, it is difficult to outline a specific skill-set that will be improved by taking part in a training simulation. However, skills that every good training simulation should build on include:

- Business awareness - before participating in the training programme, many players will have little idea of how to run a business or what it involves. Simulations allow them to temporarily have control over a virtual company, to see whether their decisions lead them to success or failure!
- Time management and organization - most simulations contain timed sessions, which will test the candidates' skill in submitting decisions within the allotted time slot. This is an excellent skill for any employee or graduate.
- Team coordination - the majority of training simulations involves working in groups or teams of people; improving the abilities to communicate effectively, delegate tasks and diplomatically resolve any situations.
- Problem solving - simulations will often present tricky circumstances that must be thought through logically to be solved. Successful resolution of these shows good management skills.

If every participant improves in these four key skill areas, the training programme will be a success, and any business should notice an improvement in efficiency and motivation, and students will be inspired and animated.

- Business_game
- Business simulation
- Business simulation game
- Simulations and games in economics education
- Microsoft Flight Simulator
- Experiential learning
- Web-based simulation
- Project management simulation



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Unit-IV: Legal Reasoning

(a) Legal Reasoning

Legal reasoning is the particular method of arguing used when applying legal rules to particular interactions among legal persons. While particularly relevant to the tasks of lawyers and judges, the requirements of legal reasoning also affect the legislator because addition of new rules or modification of existing ones needs to be done in ways that permit effective functioning of the entire ensemble of legal rules. Thus legal reasoning appears in two forms, legislative drafting and application of rules to cases. While each has its own distinct character and function in a legal system, both draw on the same set of reasoning skills.

The process of legal reasoning in law-application begins by accepting the relevance of the law and proceeds to work within the existing legal system. This acceptance and spirit of working within does give legal reasoning some bias towards maintaining the existing rules; however that bias does not amount to an unthinking assumption that the law as it stands is always just, fair, or practical. History contains many examples of judges using the “margins of appreciation” allowed within the law to avoid applying the existing rules in ways that would likely result in unfair or otherwise undesirable outcomes. It also contains many examples of efforts to change the legal system by moving away from law-application and returning to the law-making process to secure revisions of the rules.

Both legislative drafting and application of rules to cases require awareness of the different types of legal rules in a complete legal system. A complete legal system has four types of rules. The first, what Ronald Dworkin called the “rules of recognition,” specify how legal rules are made, rescinded, or amended. In national legal systems these are typically found in constitutions or basic laws. In international law, they are specified in the doctrines about sources of evidence for international law and the law of treaties. The others are what Dworkin called “rules of law” because they specify the particular content of the legal system at any time, and he divides them into the constitutive, the . Dworkin then divided them into constitutive, regulatory, and consequential rules.



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Constitutive rules provide definitions of actors, things, and situations. They are “constitutive” (creating) because they specify what counts as a particular actor, object, relation, or situation.

What Do Legal Theorists Mean By ‘Legal Reasoning’?

This may seem like an easy question, for surely legal reasoning is simply reasoning about the law, or about how judges should decide cases. On closer inspection, however, our ease may evaporate, for both of these formulations are ambiguous, at least according to some ways of thinking about the law. Some legal theorists regard the questions, ‘what is the law?’, and ‘how should judges decide cases?’ as distinct questions with distinct answers (see e.g. Hart 1994; Kelsen 1967; Raz 1979 & 1994). That is to say, their accounts of law and their accounts of adjudication are not one and the same, and they contend that in settling disputes which come before them, the remit of judges is wider than merely trying to establish what the law is as regards the issues in the case at hand. In adjudication, such theorists claim, extra-legal considerations can come into play, and judges may have discretion to modify existing law or to fill in gaps where existing law is indeterminate. This being so, for some legal theorists, the first formulation above, that legal reasoning is reasoning about the law, is ambiguous between: (a) reasoning to establish the content of the law as it presently exists, and (b) reasoning from that content to the decision which a court should reach in a case which comes before it.

Moreover, the second formulation of the ambit of legal reasoning given above, i.e. that legal reasoning is about how judges should decide cases, is also ambiguous on some approaches to legal theory. This is because the answer to the question, “how should a court decide a case, reasoning from the existing law applicable to it?” (i.e. legal reasoning in the sense given in (b) above) and the answer to the question, “how should a court decide a case, all things considered?”, may sometimes come apart. A particular instance might be the kind of situation which could arise for a judge in a ‘wicked’ legal system where the law on some issue is so morally odious that, all things considered, the judge should not decide the case according to the law at all, but rather should refuse to apply the law (see Hart 1958; Hart 1994, chapter 9, section 3; Raz 1994, essay 14. This possibility is also noted by Dworkin 1986, chapter 3, 101–108, in discussing whether the Nazis had law).

There are thus three things (at least, there may be others) which legal theorists could mean by legal reasoning: (a) reasoning to establish the existing content of the law on a given issue, (b) reasoning from the existing content of the law to the decision which a court should reach in a



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case involving that issue which comes before it, and (c) reasoning about the decision which a court should reach in a case, all things considered.

It should be noted that some legal theorists, most notably for present purposes Ronald Dworkin, do not carve up the questions and issues on this topic in the way outlined above. For Dworkin, when judges decide a case according to law, they do no more than ascertain the content of the law and apply it to the facts of the case. In other words, judges never resort to extra-legal considerations in deciding cases according to law: all the considerations which they are entitled to take into account are part of the law. This means that, according to Dworkin, when judges reason about the law in sense (b), what they are doing amounts to no more nor less than reasoning about the law in sense (a), i.e. reasoning to establish the content of the law (see Dworkin 1977 & 1986).

This entry is concerned with legal reasoning in senses (a) and (b), and with sense (b) in particular. It should be noted that the discussion does not directly address the different accounts of the nature and limits of law which are revealed by those varying views mentioned above regarding what it is that judges do when they reason about the law in sense (b). Where such differences have a bearing upon issues pertaining to the role of interpretation and coherence in legal reasoning, they will be mentioned in the text. For further discussion of the nature and limits of law, see various entries under *nature of law* in this volume.

Components of Legal Reasoning

Many pre-law students and others are curious about the differences between legal reasoning and other styles of reasoning. When undergraduates begin law school, law professors will tell these new law students that they need to learn how to “think like a lawyer.” What is legal reasoning and what does it really mean to “think like a lawyer”?

Legal scholars generally agree that legal reasoning is the thinking process by which lawyers argue and judges decide actual cases. According to Brian Porto and others, legal reasoning is a process comprised of three separate components. Those components are reasoning by Analogy, Linguistic Analysis, and Judicial Discretion.

It has been my experience as a lawyer and a judge that the first component, reasoning by Analogy, is the most common method of reasoning used by the legal profession. (Eg The case at bar is like the previously decided case of Smith v. Jones.) It involves finding cases or principles that courts have already decided and arguing that the case under discussion is similar to that prior case (*stare decisis*) or principle.

For example, in *Texas v. Johnson* the defendant Johnson burned the American flag to protest President Reagan's re-nomination. The question became whether this act of burning the flag was speech protected under the First Amendment. The argument is that this action is political speech



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just as writing a letter to the editor of a newspaper decrying the President's foreign policy is political speech. Both are examples of speech protected by the First Amendment. The first is a form of speech that is known as expressive conduct, "sufficiently imbued with a communicative element." The latter is simply written speech. Because both forms of speech send a political message which is readily understandable by others, both are protected from governmental interference under the First Amendment.

Similarly, in *Tinker v. Des Moines* the Supreme Court stated that wearing a black armband to protest U.S. hostilities in Vietnam is "akin to pure speech" and therefore falls under the protection of the First Amendment just as oral or written protestations of the war are speech which cannot be proscribed. So if we reason by analogy, speech can be expressive conduct as well as it can be the spoken or written word.

Also in *Griswold v. Connecticut*, the Court inferred an individual Right to Privacy from various provisions in the U.S. Constitution (1st, 3rd, 4th, 9th Amendments, etc.) The Court then extended this right to privacy to include married couples by asserting that a State cannot interfere with the right of a married couple to practice contraception. Reasoning by analogy, this right to privacy was later extended to unmarried couples in *Eisenstadt v. Baird*. However, the Court later found in *Bowers v. Hardwick* that this same right of privacy in the bedroom did not extend to homosexual couples. Thus, reasoning by analogy has its limitations. Nevertheless, the Court is now reconsidering *Bowers* and may come to a different conclusion.

Linguistic Analysis is the second component of Legal Reasoning. The question is what does the words used by the legislatures or the judges really mean. The legal community uses often contradictory tools like plain-meaning, context, canons of construction, legislative intent, statutory purpose or spirit of the law in a creative fashion to find the true meaning. The result which you want to obtain may affect which linguistic tool you select. For example, what does the word "parent" mean in The Federal Kidnapping Act as passed into law by the U.S. Congress. Does it mean just the biological parents or does it include, for example, adoptive parents, grandparents, step-parents, parents whose rights have been terminated, or legal guardians. The Congress may have given us some guidance, but lawyers and judges need to decide what words really mean when they argue and decide cases.

Judicial Discretion is the last component. This refers to the public policy involved and/or personal views by a judge about the court's role or a legal concept.

For example, in *Roe v. Wade* the right to privacy was extended to a pregnant woman. It was held that the right to terminate her pregnancy through the 1st trimester (now until the point of viability under *Planned Parenthood v. Casey*) was a privacy right of a woman with which the government could not interfere.



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Do future Supreme Court justices have the judicial discretion to change this? Yes. Will they? Probably not. The Court's role in establishing this right was pre-eminent. The Court would lose a great deal of legitimacy, credibility, and authority with the American people if it eliminated by a 5-4 vote that which has been a fundamental constitutional right of all women for 30 years. This Court will be especially cautious in the future because of its loss of esteem in much of the public eye as a result of the Bush v. Gore decision. Chief Rehnquist will be especially cognizant of the legacy of his Court.

Succinctly, this is what constitutes Legal Reasoning. It is not easily mastered, even by those of us who think that we use this process on a daily basis.

Deductive reasoning

Deductive reasoning, also called deductive logic, is reasoning which constructs or evaluates deductive arguments. Deductive arguments are attempts to show that a conclusion necessarily follows from a set of premises or hypotheses. A deductive argument is valid if the conclusion does follow necessarily from the premises, i.e., if the conclusion must be true provided that the premises are true. A deductive argument is sound if it is valid and its premises are true. Deductive arguments are valid or invalid, sound or unsound, but are never false or true. Deductive reasoning is a method of gaining knowledge. An example of a deductive argument:

1. All men are mortal
2. Ram is a man
3. Therefore, Ram is mortal

The first premise states that all objects classified as 'men' have the attribute 'mortal'. The second premise states that 'Ram' is classified as a man - a member of the set 'men'. The conclusion states that 'Ram' must be mortal because he inherits this attribute from his classification as a man.

Deductive reasoning happens when a researcher works from the more general information to the more specific. Sometimes this is called the "top-down" approach because the researcher starts at the top with a very broad spectrum of information and they work their way down to a specific conclusion. For instance, a researcher might begin with a theory about his or her topic of interest. From there, he or she would narrow that down into more specific hypotheses that can be tested. The hypotheses are then narrowed down even further when observations are collected to test the hypotheses. This ultimately leads the researcher to be able to test the hypotheses with specific data, leading to a confirmation (or not) of the original theory and arriving at a conclusion.

An example of deductive reasoning can be seen in this set of statements: Every day, I leave for work in my car at eight o'clock. Every day, the drive to work takes 45 minutes I arrive to work on time. Therefore, if I leave for work at eight o'clock today, I will be on time.



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The deductive statement above is a perfect logical statement, but it does rely on the initial premise being correct. Perhaps today there is construction on the way to work and you will end up being late. This is why any hypothesis can never be completely proved, because there is always the possibility for the initial premise to be wrong.

Deductive reasoning is one of the two basic forms of valid reasoning. It begins with a general hypothesis or known fact and creates a specific conclusion from that generalization. This is the opposite of inductive reasoning, which involves creating broad generalizations from specific observations. The basic idea of deductive reasoning is that if something is true of a class of things in general, this truth applies to all members of that class. One of the keys for sound deductive reasoning, then, is to be able to properly identify members of the class, because incorrect categorizations will result in unsound conclusions.

Truth and Validity

For deductive reasoning to be sound, the original hypothesis or generalization also must be correct. A logical deduction can be made from any generalization, even if it is not true. If the generalization is wrong, though, the specific conclusion can be logical and valid but still can be incorrect.

Examples

One can better understand deductive reasoning by looking at examples. A generalization might be something such as, "All wasps have stingers." The logical conclusion of a specific instance would then be, "That is a wasp, so it has a stinger." This is a valid deduction. The truth of the deduction, however, depends on whether the observed insect is, indeed, a wasp.

People often use deductive reasoning without even knowing it. For example, a parent might say to a child, "Be careful of that wasp — it might sting you." The parent says this because he or she knows that wasps have stingers and, therefore, that the observed wasp has a stinger and might sting the child.

Inductive reasoning



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Inductive reasoning, also known as induction or inductive logic, is a kind of reasoning that constructs or evaluates inductive arguments. The premises of an inductive logical argument indicate some degree of support (inductive probability) for the conclusion but do not entail it; that is, they suggest truth but do not ensure it.

Induction is employed, for example, in the following argument:

Every life form we know of depends on liquid water to exist.

All life depends on liquid water to exist.

Inductive reasoning allows for the possibility that the conclusion is false, even where all of the premises are true. For example:

All of the swans we have seen are white.

All swans are white.

Note that this definition of inductive reasoning excludes mathematical induction, which is considered to be a form of deductive reasoning.

Though many dictionaries define inductive reasoning as reasoning that derives general principles from specific observations, this usage is outdated.

Inductive reasoning works the opposite way, moving from specific observations to broader generalizations and theories. This is sometimes called a “bottom up” approach. The researcher begins with specific observations and measures, begins to then detect patterns and regularities, formulate some tentative hypotheses to explore, and finally ends up developing some general conclusions or theories.

An example of inductive reasoning can be seen in this set of statements: Today, I left for work at eight o'clock and I arrived on time. Therefore, every day that I leave the house at eight o'clock, I will arrive to work on time.

While inductive reasoning is commonly used in science, it is not always logically valid because it is not always accurate to assume that a general principle is correct. In the example above, perhaps ‘today’ is a weekend with less traffic, so if you left the house at eight o'clock on a Monday, it would take longer and you would be late for work. It is illogical to assume an entire premise just because one specific data set seems to suggest it.

Inductive reasoning would work in the opposite order. The specific observation would be that a particular wasp has a stinger. One could then induce that all wasps have stingers. Many scientific tests involve proving whether a deduction or induction is, in fact, true.



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Deductive Versus Inductive Reasoning

Inductive and deductive reasoning are two methods of logic used to arrive at a conclusion based on information assumed to be true. Both are used in research to establish hypotheses.

Deductive reasoning arrives at a specific conclusion based on generalizations. Inductive reasoning takes events and makes generalizations

Deductive reasoning is reasoning that involves a hierarchy of statements or truths. Starting with a limited number of simple statements or assumptions, more complex statements can be built up from the more basic ones. For example, you have probably studied deductive geometry in mathematics; in it you start with a few principles and prove various propositions using those principles. To prove more complicated propositions, you may use propositions that you have already proved plus the original principles. In more formal logic terms deductive reasoning is reasoning from stated premises to conclusions formally or necessarily implied by such premises.

Deductive reasoning can be described as reasoning of the form if A then B. Deduction is in some sense the direct application of knowledge in the production of new knowledge.

If-then deductive reasoning is how scientists (and other people!) can test alternate hypotheses. Making deductions is important when we cannot directly observe a cause, and can only observe its consequences. This kind of reasoning can be modeled by the following:

If ...

Then...

But...



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Therefore...

For example, we might hypothesize that "The color of a mineral is determined by its crystal structure."

And so we could test this hypothesis using deductive reasoning:

If the color of a mineral is determined by its crystal structure; then all purple minerals should have the same crystal structure. But purple amethyst has a hexagonal structure and purple

fluorite has an isometric structure (determined by observations). Therefore, the hypothesis is not supported or strengthened.

Inductive reasoning is essentially the opposite of deductive reasoning. It involves trying to create general principles by starting with many specific instances. For example, in inductive geometry you might measure the interior angles of a group of randomly drawn triangles. When you discover that the sum of the three angles is 180° regardless of the triangle, you would be tempted to make a generalization about the sum of the interior angles of a triangle. Bringing forward all these separate facts provides evidence in order to help support your general statement about the interior angles.

This is the kind of reasoning used if you have gradually built up an understanding of how something works. Rather than starting with laws and principles and making deductions, most people collect relevant experience and try to construct principles from it.

Again the distinction between the two types of reasoning is not always sharp. In mathematics it is important to know which kind of formal system you are using and to stick to it. Inductive proofs are not allowed in a deductive system.

Inductive reasoning progresses from observations of individual cases to the development of a generality. (Inductive reasoning, or induction, is often confused with deductive thinking; in the



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latter, general principles or conditions are applied to specific instances or situations.) If a child puts his or her hand into a bag of candy and withdraws three pieces, all of which are red, he or she may conclude that all the candy is red. Inductive reasoning, or induction, is the process by which a general conclusion is reached from evaluating specific observations or situations.

Many people distinguish between two basic kinds of argument: inductive and deductive. Induction is usually described as moving from the specific to the general, while deduction begins with the general and ends with the specific; arguments based on experience or observation are best expressed inductively, while arguments based on laws, rules, or other widely accepted principles are best expressed deductively.

Inductive reasoning is the process of coming up with a conclusion based on a series of events that repeat. An example would be to push a light switch up turns on the light and pushing it down turns the light off. If you do this over and over, say 1000 times, you could conclude that the light goes on when the switch is up and it is off when the switch is down. Unfortunately, the conclusion may not always be true because other circumstances may cause the light to not go on when the switch is up. The light may burn out; the electricity goes off, etc.

Now, deductive reasoning is the process of coming up with a conclusion based on facts that have already been shown to be true. Hence, your conclusion will always be true. The facts that can be used to prove your conclusion deductively may come from accepted definitions, postulates or axioms, or previously proved theorems. If you are taking geometry, proofs require deductive reasoning. Therefore, it is imperative that you know your definitions, postulates and theorems.

Levi model

An Introduction to Legal Reasoning was first published in 1949. Its language is slightly dry, not to mention stilted by contemporary standards, but it is nonetheless revealing.

Edward H. Levi addresses processes of legal reasoning the court uses relating to case, statutory, and constitutional law. For each area, he explains the reasoning process in general and then follows up each overview with involved real-world example of evolution of interpretation. In his analyses, it becomes evident that legal reasoning is in a distinct class with its own rules, seeking historical consistency while inevitably following social sentiment. In many ways its methods cannot strictly be called logical. In some cases such reasoning seems inexcusable, were it not for the fact that over time it seems to work.



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Levi sees case law as progressing in three stages: "similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case". This amounts to "reasoning by example", and Levi gives specific instances of cases involving liability from dangerous objects to trace the evolution of the very concept of an inherently dangerous object and its applicability. In the end, "the adoption of an idea by a court reflects the power structure of the community".

Levi's point is that in early cases a decision is made without regard to all-encompassing principles—or, if such principles are implied, they are inevitably short-sighted. It is through future cases that such principles are discovered and refined and eventually applied to even later cases. Through this processes, most recent cases may be decided using completely separate rules than those used in the early cases.

Such a process seems similar to the evolution of scientific theories: early theories such as that of omnipresent "ether" attempted to explain the propagation of light, until later discoveries and situations called for new theories to encompass new findings. Newer theories are therefore more far-reaching, making older ones redundant in most cases or even contradict them.

When determining similarity of difference among cases in order to establish rules, Levi claims that a judge "is not bound by the statement of the rule of law made by the prior judge even in the controlling case. The statement is mere dictum, and this means that the judge in the present case may find irrelevant the existence or absence of facts which prior judges through important. In this way, new rules can be made to replace old, although Levi does not make it clear what leeway a judge has in creating rules that contradict previous decisions that make up the precedent.

Levi's statement that the judge's "statement (of the rule) is mere dictum" seems odd to the novice, because when briefing a case a student of the law is led to believe that the very rule is precisely what is not dicta. Perhaps Levi is meaning to stress that while a particular rule might be essential to the decision, the rule remains implicit in the decision and therefore open to future reconstruction—the judge's statement concerning the rule is therefore separate from the rule itself and therefore dictum. Alternatively, Levi could simply be relegating the statement of rule to a lower status than the facts of the case in case comparison.

In describing the process of reasoning by example, Levi recalls Derrida and other linguistic philosophers who claim that meaning is found not in words, but by their usage, which immediately changes any set meaning one might erroneously assume the word to have. "Reasoning by example will operate to change the idea after it has been adopted", Levi says. "The kind of reasoning involved in the legal process is one in which the classification changes as the classification is made". For the induction-like reasoning used in reasoning by example, "the general finds its meaning in the relationship between the particulars".

Levi next examines the interpretation of statutory law, rules that have been created by legislatures, and finds that their meanings are never unambiguous. For legislation, a judge is to



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some extent forever tied to the wording of the statute, however vague. In this sense, "courts are less free in applying a statute than in dealing with case law". As Levi's examples show, however, this restriction has some room for modification not only through the limitation of language but also through the process by which legislation is enacted.

He traces the social process a statute goes through during its creation, pointing out that political climates, compromises, and conclusions mean that looking at the context of a law might not always clear up ambiguities—literal language might have indeed been used precisely to allow opposition that disagreed with the intent of the writer of the legislation. "What the legislature intended is ambiguous. In a significant sense there is only a general intent which preserves as much ambiguity in the concept used as though it had been created by case law".

For an example of the evolution of statutory interpretation, Levi presents the June 25, 1910 Mann Act, also called the "White Slave Traffic Act", which sought to criminalize the conspiracy of selling of young girls into prostitution rumored to be occurring throughout the United States. The language of the Act essentially made it a felony to transport a female across state lines for the purpose of "prostitution", "debauchery", or "any other immoral practice". Whatever the intent, such words were ambiguous as to be interpreted in forbidding many manners of what the Court might from time to time consider immoral.

Even the connection between transportation and the "immoral practice" was in dispute. In the Mortensen case, a husband and wife who operated a house of prostitution in Grand Island, Nebraska went on vacation in another state, inviting two of the prostitute girls to accompany them. The prosecution maintained that, though in the absence of prostitution occurred during the trip, the returning of the girls to their occupation at the trip's end amounted to trans-state transportation for the purpose of prostitution. This case was overruled; "...in any event the interstate commerce journey was hardly 'a calculated means for effectuating sexual immorality' since, from all that appeared, leaving the girls in Grand Island would have worked just as well". The sequence of decisions illustrate, however, that theories of statutory interpretation change over time in similar ways as does case law."

In constitutional law, the presence of a constitution strangely results in more flexibility in interpretation than its absence, Levi claims. While in case law judges try to follow previous rules or create new ones, the "influence of constitution worship... gives freedom to a court. It can always abandon what has been said in order to go back to the written document itself". The Constitution, like legislation, is inherently ambiguous. "There can be no authoritative interpretation of the Constitution. The Constitution in its general provisions embodies the conflicting ideals of the community. Who is to say what these ideals mean in any definite way? Certainly not the framers, for they did their work when the words were put down. The words are ambiguous". If the framers would have known exactly what they meant, it seems, they would have been less ambiguous.



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But likewise similar to legislation, "a written constitution must be enormously ambiguous in its general provisions." This means that "If there has been an incorrect interpretation of the words, an amendment would come close to repeating the same words. What is desired is a different emphasis, not different language. This is tantamount to saying that what is required is a different interpretation rather than an amendment." The result is that "constitutional interpretation cannot be as consistent as case-law development or the application of statutes. The development proceeds in shifts; occasionally there are abrupt changes in direction".

The ambiguity of a constitution does mean that the creation of principles is necessary for interpretation, as with case law. Using the commerce clause of the Constitution (which was shown earlier to be relevant in the interpretation of the White Slave Traffic Act) Levi shows how its interpretation has lurched and shifted as it was applied to different situations. "The simple and ambiguous commerce clause was thus interpreted by made up concepts of equal stature: direct as against indirect; transportation, a current, a flow as against local manufacture". As with the created category of inherently dangerous object in the case law examples, the commerce clause caused the fabrication of "illicit articles", leading to the concept of "anticipated evil", interacting with such concepts as "local production".

Therefore, "Legal reasoning has logic of its own", inherently reflects social theories and changes in society. Legal reasoning is imperfect, but Levi finds it necessary for progress in this area in which there are real disagreements—in his mind, it is the only method that could work.

(b) Law and Logic: Aristotelian logic

Aristotle wrote six works that were later grouped together as the Organon, which means "instrument." These works are the Prior Analytics, Posterior Analytics, On Interpretation, Topics, Sophistical Refutations, and Categories. These texts are considered the body of Aristotle's work on logic, though there is a great deal in the Organon that we would not consider logic, and many of Aristotle's other works, most notably the Metaphysics, deal to some extent with logic. These six works have a common interest not primarily in saying what is true but in investigating the structure of truth and the structure of the things that we can say such that they can be true. Broadly speaking, the Organon provides a series of guidelines on how to make sense of things.

Our discussion of the Organon is divided into two parts. The first discusses the syllogism, the main weapon in Aristotle's logical arsenal, which he treats primarily in Prior Analytics and On Interpretation. The second discusses Aristotle's more general remarks on the structure of being, knowledge, and argument, covered primarily in the four other works that constitute the Organon.

Summary



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Aristotle's most famous contribution to logic is the syllogism, which he discusses primarily in the *Prior Analytics*. A syllogism is a three-step argument containing three different terms. A simple example is "All men are mortal; Socrates is a man; therefore, Socrates is mortal." This three-step argument contains three assertions consisting of the three terms Socrates, man, and mortal. The first two assertions are called premises and the last assertion is called the conclusion; in a logically valid syllogism, such as the one just presented, the conclusion follows necessarily from the premises. That is, if you know that both of the premises are true, you know that the conclusion must also be true.

Aristotle uses the following terminology to label the different parts of the syllogism: the premise whose subject features in the conclusion is called the minor premise and the premise whose predicate features in the conclusion is called the major premise. In the example, "All men are mortal" is the major premise, and since mortal is also the predicate of the conclusion, it is called the major term. Socrates" is called the minor term because it is the subject of both the minor premise and the conclusion, and man, which features in both premises but not in the conclusion, is called the middle term.

In analyzing the syllogism, Aristotle registers the important distinction between particulars and universals. Socrates is a particular term, meaning that the word Socrates names a particular person. By contrast, man and mortal are universal terms, meaning that they name general categories or qualities that might be true of many particulars. Socrates is one of billions of particular terms that fall under the universal man. Universals can be either the subject or the predicate of a sentence, whereas particulars can only be subjects.

Aristotle identifies four kinds of "categorical sentences" that can be constructed from sentences that have universals for their subjects. When universals are subjects, they must be preceded by every, some, or no. To return to the example of a syllogism, the first of the three terms was not just "men are mortal," but rather "all men are mortal." The contrary of "all men are mortal" is "some men are not mortal," because one and only one of these claims is true: they cannot both be true or both are false. Similarly, the contrary of "no men are mortal" is "some men are mortal." Aristotle identifies sentences of these four forms—"All X is Y," "Some X is not Y," "No X is Y," and "Some X is Y"—as the four categorical sentences and claims that all assertions can be analyzed into categorical sentences. That means that all assertions we make can be reinterpreted as categorical sentences and so can be fit into syllogisms. If all our assertions can be read as premises or conclusions to various syllogisms, it follows that the syllogism is the framework of all reasoning. Any valid argument must take the form of a syllogism, so Aristotle's work in analyzing syllogisms provides a basis for analyzing all arguments. Aristotle analyzes all forty-



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eight possible kinds of syllogisms that can be constructed from categorical sentences and shows that fourteen of them are valid.

In On Interpretation, Aristotle extends his analysis of the syllogism to examine modal logic, that is, sentences containing the words possibly or necessarily. He is not as successful in his analysis, but the analysis does bring to light at least one important problem. It would seem that all past events necessarily happened or did not happen, meaning that there are no events in the past that possibly happened and possibly did not happen. By contrast, we tend to think of many future events as possible and not necessary. But if someone had made a prediction yesterday about what would happen tomorrow, that prediction, because it is in the past, must already be necessarily true or necessarily false, meaning that what will happen tomorrow is already fixed by necessity and not just possibility. Aristotle's answer to this problem is unclear, but he seems to reject the fatalist idea that the future is already fixed, suggesting instead that statements about the future cannot be either true or false.

Analysis

Aristotle's logic is one of the most mind-boggling achievements of the human intellect, especially when we bear in mind that he invented the entire field of logic from scratch. His work was not significantly improved upon until the invention of modern mathematical logic in the late nineteenth century. Obviously, Aristotle is not the first person to make use of a syllogism in an argument, and he is not even the first person to reason abstractly about how arguments are put together. However, he is the first person to make a systematic attempt to sort out what kinds of arguments can be made, what their structure is, and how we can prove rigorously whether they are true or false, valid or invalid. His analysis of the syllogism lays bare the mechanics of rational argumentation so that we can see the truth plainly through the many layers of rhetoric, ambiguity, and obscurity. With the proper analysis, Aristotle tells us, any argument can be laid out as a series of simple and straightforward statements, and its validity or invalidity will be obvious.

Aristotle's logic rests on two central assumptions: the fundamental analysis of a sentence divides it into a subject and a predicate, and every sentence can be analyzed into one or more categorical sentences. Aristotle identifies four kinds of categorical sentences and distinguishes each by the way the subject relates to the predicate. In other words, the way in which subject and predicate are connected is what allows us to distinguish one kind of sentence from another. Furthermore, Aristotle argues that, at heart, there are only four kinds of sentences. Every variation that we see in ordinary human speech is just one categorical sentence, or a combination of several, with window dressing to make it look less plain. With these twin assumptions, Aristotle can show that there are only forty-eight possible kinds of arguments that can be made—fourteen of them are valid and thirty-four of them are invalid. In theory, he has given us a foolproof map: with sufficient analytical skill, we can reduce any argument to a series of simple subject–predicate



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sentences of four different kinds and then quickly determine whether the combination of these sentences produces a valid or an invalid inference.

Modern mathematical logic departs from Aristotle primarily by recognizing that the subject–predicate form of grammar is not the fundamental unit of logical analysis. Bertrand Russell famously uses the example of the sentence, “the present king of France is bald” to show that, on Aristotle’s logic, we are committed to accepting that the phrase “the present king of France” has a clear meaning, which leads to all sorts of difficulties. A modern logician would analyze that same sentence as being a combination of three smaller sentences: “there is a person who is the present king of France,” “there is only one person who is the present king of France,” and “that person is bald.” We know that there is no king of France, so we can immediately see that the first of these three sentences is false and don’t need to worry about the complications of accepting “the present king of France” as a subject in a syllogism.

The fundamental insight that there is more to logic than subject–predicate analysis opens the way for several other important blows to Aristotle’s logic, primarily that the categorical sentence is not the only kind of sentence and that the syllogism is not the only form of argument. There are a number of kinds of sentence that cannot be analyzed into one or more categorical sentences, most notably sentences that contain other sentences (“If you are over forty or have false teeth then you will not enjoy candy as much as a ten-year-old unless you have recently undergone surgery”), sentences that express relations (“My left foot is bigger than my right foot”), and sentences that involve more than one quantifier (“No people love all people who hate some people”). These sentences can be easily analyzed with the technical machinery of modern logic but only by accepting that they can fit into non syllogistic arguments. The first and the third examples of non categorical sentences just given contain more than two terms and so cannot fit into a syllogism. Logical deductions can be made from them in combination with other premises, but the conclusion may take many more than two steps to reach.

The Syllogistic

Aristotle's most famous achievement as logician is his theory of inference, traditionally called the syllogistic (though not by Aristotle). That theory is in fact the theory of inferences of a very specific sort: inferences with two premises, each of which is a categorical sentence, having exactly one term in common, and having as conclusion a categorical sentence the terms of which are just those two terms not shared by the premises. Aristotle calls the term shared by the premises the middle term (meson) and each of the other two terms in the premises an extreme (akron). The middle term must be either subject or predicate of each premise, and this can occur in three ways: the middle term can be the subject of one premise and the predicate of the other, the predicate of both premises, or the subject of both premises. Aristotle refers to these term arrangements as figures (schēmata):

First Figure

Second Figure

Third Figure



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| | Subject Predicate | | Subject Predicate | | Subject Predicate | |
|------------|-------------------|---|-------------------|---|-------------------|---|
| Premise | a | b | a | b | a | c |
| Premise | b | c | a | c | b | c |
| Conclusion | a | c | b | c | a | b |

Aristotle calls the term which is the predicate of the conclusion the major term and the term which is the subject of the conclusion the minor term. The premise containing the major term is the major premise, and the premise containing the minor term is the minor premise.

Aristotle then systematically investigates all possible combinations of two premises in each of the three figures. For each combination, he either demonstrates that some conclusion necessarily follows or demonstrates that no conclusion follows. The results he states are correct.

Syllogism

One of the most common and useful forms of deductive reasoning is the syllogism. A syllogism is a specific form of argument that has three easy steps: a major premise, a minor premise and a logical conclusion. For example, the premise "Every X has the characteristic Y" could be followed by the premise "This thing is X," which would yield the conclusion "This thing has the characteristic Y." The first wasp example could be broken up into the major premise "Every wasp has a stinger," the minor premise "This insect is a wasp" and the conclusion "This insect has a stinger." Creating a syllogism is considered a good way for deductive reasoning to be tested to ensure that it is valid.

Actual Practice

By nature, inductive reasoning is more open-ended and exploratory, especially during the early stages. Deductive reasoning is narrower and is generally used to test or confirm hypotheses. Most social research, however, involves both inductive and deductive reasoning throughout the research process. The scientific norm of logical reasoning provides a two-way bridge between theory and research. In practice, this typically involves alternating between deduction and induction.

A good example of this is the classic work of Emile Durkheim on suicide. When Durkheim pored over tables of official statistics on suicide rates in different areas, he noticed that Protestant countries consistently had higher suicide rates than Catholic ones. His initial observations led him to inductively create a theory of religion, social integration, anomie, and suicide. His theoretical interpretations in turn led him to deductively create more hypotheses and collect more observations.



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(c) Significance of mooting to law Students

A moot court is an extracurricular activity at many law schools in which participants take part in simulated court proceedings, which usually involves drafting briefs (or memorials) and participating in oral argument. The term derives from Anglo-Saxon times, when a moot (gmot or emot) was a gathering of prominent men in a locality to discuss matters of local importance. The modern activity differs from a mock trial, as moot court usually refers to a simulated appellate court or arbitral case, while a mock trial usually refers to a simulated jury trial or bench trial. Moot court does not involve actual testimony by witnesses or the presentation of evidence, but is focused solely on the application of the law to a common set of evidentiary assumptions to which the competitors must be introduced. In most countries, the phrase "a moot court" may be shortened to simply "a moot" and the activity may be called "mooting".

Moot court, together with law review, forms the two key extracurricular activities in many law schools. Students typically spend a semester researching and writing the memorials, and another semester practicing their oral arguments. Whereas domestic moot court competitions tend to focus on municipal law, regional and international moot competitions tend to focus on subjects such as public international law, international human rights law, international humanitarian law, international trade law, international maritime law, and international commercial arbitration.

Professor Simon Payne, Head of the Law School, said “Mooting is an important part of developing the forensic skills which lawyers need for the court room – it’s great to see our students from Plymouth competing at the highest level. The Law School is committed to teaching law in the context of the real world and mooting is part of how we prepare the lawyers of the future.”

About Mooting

The Moot, the importance of and observes that mooting has emerged as a critical component of legal education simply because it provides the skills training element for the fundamental skills necessary for a prospective lawyer. Indeed many leading law schools have either made mooting compulsory or forms an important part of the curriculum. Mooting offers a systematic training process of the essential skills of problem solving, legal analysis, drafting legal submissions and the development of public speaking. The ability to articulate one’s thoughts and arguments condensing disparate, often conflicting legal authorities into succinct and persuasive arguments is arguably the single most important weaponry in the lawyer’s arsenal.



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Some Law Schools have yet to recognize the importance of mooting where it is considered an extracurricular activity confined to and organized by the student body. Such neglect cannot be allowed to continue if we are to raise the standards of our lawyers to meet the needs of a globalised world. We recognize that the constraints of individual Law Schools and for this reason the Committee would encourage all Law Schools not only to participate but hopes that its students would be encouraged to attend the Competition.

The competitiveness and the individualistic nature of mooting and lawyers are self evident. What is less obvious but equally important are the role of coaches and the coaching assistance rendered as the teams prepare for the written submissions and the oral competition. The coaching assistance represents further opportunities for the faculty in enhancing the educational value and overall experience to the students. Often the Moot Problem posed is in an area of the law that the students have little or no substantive knowledge in or may not have adequate background in comparative law. Obviously, students have not allowed such minor issues to dampen their interest and enthusiasm. Such handicaps have often been turned into educational forays into legal worlds hereto unknown to them thus enlarging and enriching their legal education.

The networking of and the meeting of like-minded students across jurisdictions prepare them for a globalised world. Friendships are formed amongst students, relationships forged between participating law schools and useful contacts made by the stakeholders.

At its best, moot competitions are arenas where legal minds do battle under extreme conditions juggling between facts and the law where the best traditions of the Bar and Bench are simulated so as to impact young lives in preparation for their role in the cause of upholding the rule of law.

It is essential that law students are exposed to the concepts of the rule of law and an independent Judiciary. The ultimate test of such assurance is whether people believe that, in a legal contest between a citizen and a government, the judge will hold the scale of justice evenly. It is also important that people believe that judges are committed to deciding cases of all kinds, regardless of the identity of the parties, fairly and according to law.”



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Teams

Undergraduate moot court teams consist of two oral advocates. The advocates are responsible for knowing both issues – but typically are only asked about one certified question. Each team will receive 20 minutes to argue its case, and each advocate must speak for a minimum of seven minutes. Teams are judged on their forensics, knowledge of the law, demeanor, and ability to answer questions from the bench.

Judges

By involving sitting as well as retired Judges of eminence and integrity in the judging of the Competition the mooter is exposed to the names behind the personalities they only read of in law reports. In addition senior members of the Bar and general counsels from industry are also invited as judges of the Moot.

Good judges are the key to a good moot court hearing. Judges are typically lawyers or members of the state. At times, law students (especially those with past undergraduate moot court experience) are asked to judge.



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