

Session 3

Toolkit 1



Legal Issue

ACTIVITY: When does a legal issue arise?

It arises when

- There is a dispute
- What was agreed is not performed
- Someone commits an act that society considers reprehensible

A legal issue is a question that the parties ask the court to decide upon (2004: 350)

Legal Issue (cont.)

ACTIVITY: Why is it important to identify the legal issue?

Knowledge of the legal issue

- Determines the type of court to be addressed
- Helps parties organize arguments and evidence to defend their position
- Gives continuity to jurisprudence
- Facilitates research

ACTIVITY: consider the case *R v. Latimer* (2004: 325-327) to re-word the legal issue.

Cases

The systematic investigation of specific real-life instances allowing an in-depth exploration of phenomena.

They can be seen as isolated experiments, which are:

- Particularistic: focusing on individual issues.
- Descriptive: seeking to explore and incorporate as many variables as possible.
- Heuristic: generating new ways of thinking about problems.
- Inductive: generating conclusions from fact .

Cases (cont.)

There are two types of cases:

- The cases which report events and facts relative to a series of arguments submitted to defend a position according to a legal issue; such cases are analyzed
- The cases that are constructed in order to bring together a) a series of arguments b) events and c) facts – the latter two supported by evidence

Considering a case to be a narrative about past events used to pass judgment about a current event, the facts of the case that are considered relevant (i.e. to take a decision) need to be singled out from those that are of lesser use (2004: 185).

Cases (cont.)

ACTIVITY: read the case *Eaton v. Brant County Board of Education* (2004: 185-186) to determine which facts could be relevant; how does relevance change if the court's decision is known?

- relevant facts here include, medical condition, IPRC conclusions, laws (?), decision of the Court of Appeals
- knowledge of the Supreme Court's decision changes the emphasis concerning equality rights (educational context vs. social context) as well as the perspective to view the problem (from adult-centered to child-centered) – the latter however remains problematic: Emily cannot talk!

Cases (cont.)

Legal case brief: a summary of the essential points of a court decision (2004: 315); the following components are to be included:

- Facts: relevant circumstances; court's opinion to determine; facts crucial to decision; *consider facts that are agreed upon (by both parties) or proven.*
- Issue: the legal question the court must address.
- Arguments: those made by each party with respect to how the issue should be answered (to reflect the legal precedent).
- Holding: the decision arrived at.
- Rationale: the reasons why the court have decided the case as they did.

Cases (cont.)

Case comment involves the critical appraisal of a case (2004: 406); it includes the following:

- Introduction: area of law concerned; issue at stake.
- Background: context of analysis and evaluation.
- Facts: cause of action or alleged offence (theory of proceedings); a chronological order of facts.
- Disposition: decision of the court and the rationale sustaining it.
- Discussion: detailed account of courts rationale inclusive of extralegal issues; justified agreement or disagreement with the decision; implications of the court's decision for other future cases, society as a whole and the promotion of justice.