



# Foggy, Fluid, Conflicted & Confused

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## from Syllabus § 5-3

[D]on't waste the case merely looking for a rule to put in your outline or to commit to memory. If a rule were the only thing to get out of a case, I would just assign the rule. The point of reading cases and other assigned materials is to help you develop a lawyerly intuition about the law. The ideal is to be able to speak in sentences like, "I'm not aware of a case exactly on point, but my sense is that in a situation like this, a court would ..." or "A case that tackled this sort of issue is \_\_\_\_\_, and it decided \_\_\_\_\_, which suggests that in this situation ..."

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Questions to be prepared to answer: I recommend that in the aims of getting the most out of the reading, you prepare an answer to these questions. And to the extent you opt in to cold calling, expect to be asked these:

- What is something interesting/compelling/instructive about this case?
  - Put differently, what is one thing you would point to as to why the case was worth reading, was worth assigning, or is worth remembering?
- When you picture yourself as a litigator arguing the law to a court, or as an attorney writing a demand letter or responding to one, how could this case be useful to the future you?

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**If you are a 3L, consider that right about now you could stop thinking about getting through law school and start thinking about kicking %&#\$ as a lawyer.**

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Questions to be prepared to answer and that in the aims of the course, you should be prepared to answer, you should be able to answer these:

- What is the interest in this case?
- What is the purpose of this case?
- What is the way to solve this case?
- When you picture yourself as a litigator arguing the law to a court, or as an attorney writing a demand letter or responding to one, how could this case be useful to the future you?

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And here are some additional questions I think it is profitable to consider:

- What is a strength in the analysis or presentation?
- What is a potential weak point in the analysis or presentation?
- What is a question you are left with from the reading?
  - (You might, for instance, decide you are left with a question you want to ask me in class!)

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Consider that, hmmm, all of these questions go to ...  
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**Even this one, if you use it that way (which you should)**

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Consider that, hmmm, all of these questions go to ...  
**kicking %&#\$ as a lawyer**

**foggy, fluid,  
conflicted, confused**

**Until you make peace with  
this—until you *embrace* this—  
you will continue to have a  
tense, uneasy relationship  
with your legal education.**

*How can you sum up the lawyer's  
job in two words?*

**Make arguments.**

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**Make arguments.**

**Give reasons.**

*is another good answer.*

*(Giving reasons is how you make arguments.)*

*How can you sum up the lawyer's job in two words?*

**Critical thinking.**

*is a decent answer too.*

*(Critical thinking is how you generate reasons and how you separate good reasons from bad reasons.)*

*ns  
you make  
arguments.)*

**Do you think  
I'm wrong?  
How so?**

**Possible objection:**

**Lawyers advise clients.  
That's not making arguments.**

**My response:**

**The law is foggy, fluid, conflicted, and confused. So you advise clients by figuring the arguments that can be made and critically evaluating those.**



## Possible objection:

**Many lawyers do transactional work, not litigation.**

## My response:

When I did transactions, I found that I was making arguments almost constantly. And the really nice thing with a transaction is, when you make an argument, you can often get the person on the other side to agree with you!

## My response, *continued*:

But fine. Let's assume there's a transaction where both sides agree on exactly what they want to do and have no conflicting interests.

*Even then* your job is constructing arguments, because you have to anticipate arguments that could be made in the future, and then you structure the transaction to preempt or prospectively defeat those arguments.