

A first insight into practical legal case-solving

A. Practical legal case-solving - the daily work of a lawyer

I. Description

- Lawyers must not only know the law but also be able to *handle individual cases exactly and correctly in practice*, to find for every occurring case the correct solution under the given law in a transparent, comprehensible way.
- In many European states the *methods and techniques of legal case-solving* form an *important part of legal education*. Numerous rules and customs are taught. Some originate from national legal *tradition* or are necessitated by the *dogmatics* of the relevant field of law but most derive from the *laws of logic and legal argumentation* and therefore apply universally.
- This approach is particularly highly developed in the German legal tradition. In Common Law countries it does not exist but the tradition of legal mootings shows similarities and serves the same purpose. However, in a moot court, the participants represent one side only while in legal case-solving they take the neutral position of an expert or judge.

II. Examples

- simple cases illustrating the structuring of the case solution, introductory and concluding sentences and the analytical style of writing
- 1) Protection against islamophobia - a fictitious administrative law and human rights case from Germany
 - from the course Administrative Law
- 2) The "New Believers" - a fictitious human rights case from Vietnam
- 3) The size of the bicycle wheels - a fictitious case in the European internal market
- 4) The dysfunctional beer garden software - a fictitious case in international sales law

B. The methods and techniques of legal case-solving

- see for a thorough presentation my *Introduction to legal case-solving* from a course at Hanoi Law University

I. The analysis of the facts and question of the case

- 1) The apprehension of the facts of the case
- 2) The working out of the question of the case
- 3) Brainstorming and comprehension test

II. The drawing up of a draft outline

- even more important than for other legal papers because the quality of the case solution will strongly depend on a strictly logically and dogmatically consistent structure, which may be complicated and must be designed carefully

III. The systematic solving of the case on the basis of the draft outline

- 1) Early focusing on the main topics, examination of the case, time management
- 2) Examination schemes
 - checklists as auxiliary means for a thorough, dogmatically consistent examination of classical legal issues in the right order
 - example: diagram on the prospects of success of a legal action before the administrative court in Germany from the course administrative law
 - example: diagram on the violation of an economic fundamental freedom of an EU citizen in the European internal market from a course on European Union Law in Chişinău
- 3) Auxiliary expertises
- 4) Literature research

IV. The writing down

- 1) No start of the writing down before the case is completely solved
 - the case must first be completely solved in headlines and keywords in the draft outline
- 2) Rigorous focusing on the main problems in the final product
- 3) Exact reasoning, comprehensible line of thoughts, analytical style of writing
- 4) Case-oriented discussion of scientific disputes
- 5) Objective style of writing

V. The final check

C. The formal design of the case solution

I. General aspects

- in particular no faulty reference to legal norms, orthographic or grammatical mistakes

II. Special features of course papers

- 1) Structure and table of contents
- 2) Bibliography
- 3) Index
- 4) The art of citing
- 5) The formatting