

Legal Analysis

Anthony Munene

Critical issues

- ▶ Why lawyers analyse legal questions.
- ▶ How legal analysis is based on a way of thinking that is used every day in decision-making.
- ▶ What legal analysis is.

Why do lawyers analyse legal issues?

- ▶ Lawyers are problem-solvers.
- ▶ Lawyers are called upon to answer questions.
- ▶ Most questions come from clients.
- ▶ Others come from the court.
- ▶ Others are raised by the lawyer to achieve a certain result for the client.

- ▶ Some questions have unequivocal answers.
- ▶ They can be answered definitively (the law's meaning is clear).
- ▶ Not all questions have definitive answers.
- ▶ Solution?
- ▶ First, finding the applicable law.
- ▶ Second, understanding how that law applies to the client's issue.

- ▶ Where there is no definite answer?
- ▶ Form a reasoned opinion about how the law applies to your client's issue.
- ▶ Reasoned opinion is best based on precedent.
- ▶ These are decisions by judges resolving similar legal issues but not necessarily identical.

- ▶ What does this mean?
- ▶ Your opinion is a prediction of how a court might apply the law to your client's situation based on how courts have applied it in similar situations.

- ▶ Legal analysis is the process a lawyer uses to make those predictions.
- ▶ This is a highly structured approach for making predictions about how courts are likely to resolve legal questions.

Is legal analysis alien thinking?

- ▶ The way lawyers analyse legal issues is not different from the way people analyse everyday questions.
- ▶ Qn:
 - A husband wants to know whether the wife will like a scarf as a birthday present.
 - A teenager wants to know whether her parents will let her stay out late to attend her best friend's 16th birthday. The party on Saturday will be chaperoned by her friend's mother

- ▶ How are both the husband and the teenager likely to process the issues?
- Past experiences?
- Commonalities in those experiences?
- Forming a rule for the commonalities?
- Applying the rules to their situations to predict an outcome?