Legal argument is a form of practical argument. Unlike logical argument, it does not seek the absolute truth but the relative truth, namely it seeks to establish one side's claim as more probable than the other's. Legal argument is resolved when a judge or jury accepts one claim as being more reasonable than the competing claim. Consequently, the persuasive power of the argument and hence the rhetoric is all important in legal argument.

Toulmin divides argumentation into analytical and substantial arguments. The former do not extend beyond the information contained in the premises. The latter involve inferences from the evidence. Legal argument, an example of substantial argument, is further divided into the claim, the grounds and the warrant. The claim is the conclusion to be proven, the grounds represent the facts on which the argument is based and the warrant is the part of the argument that authorises the movement from the grounds to the claim. First, this model helps to identify the component parts of the pretrial case, the determination of the desired relief, the collection of facts and the generation of a supporting legal theory. Second, the model helps us to understand that this process is a reverse engineering process.

Perelman's theory of legal argumentation begins with two starting points, the real and the preferable. The real is the facts, truth and presumptions. The preferable includes values, hierarchies and lines of argument. The real and the preferable can be used by the lawyer to identify the claim or issues of fact or law that are in dispute. Once the starting points have been established, then through the use of the techniques of association or dissociation attempts are made to drive a wedge between them.

Toulmin and Perelman's heuristics are field-invariant in that they can be used in any area of doctrinal law. Their focus on case building, fact analysis and construction and use of proof would be particularly useful in trial and appellate advocacy and clinical courses.

On teaching professional judgment
P Brest & L Krieger
69 *Wash L Rev* 3, Summer 1994, pp 527-560

The gap between legal education and the legal profession has widened in recent years, largely because the world in which lawyers practise has changed so much whilst legal education has changed relatively little. One significant change is that today's law graduates are entering a society that views them with hostility and suspicion and regards their impact on our national culture and economy as often negative. Within the bar there is a sense that law as a profession is declining and devolving into a business. Unhappy lawyers are changing jobs at an increasing rate.

The ABA is urging law schools to provide more clinical instruction and skills training in an attempt to close the legal education/legal profession gap. However, this makes little sense when the gap has not yet been understood. The goal today should be to give law students the skills and values to reclaim the profession's ideals so as to gain the trust of clients and the larger public.

At best lawyers are society's general problem solvers, skilled in the avoidance of disputes as well as in resolving them. Although legal education cannot create good judgment or a commitment to the public good, it can reinforce those traits and attitudes and teach the counselling, deliberative, and communicative skills and attendant values that are part of the exercise of judgment. The authors have responded by developing a new course, entitled "Problem Solving, Decision Making and Professional Judgment".

For this course the relevant domains of skills and knowledge have been divided into three general categories: the lawyer's communications with clients, professionals and others; the decision making process; and the world in which decision making takes place.

The lawyer must work with the client to solve the client's problem. A client-centred approach is called for as this is premised on the client's autonomy, intelligence, dignity and basic morality. Lawyers should work collaboratively with clients. Almost all collaboration involves negotiation and so students must be aware of the various roles that lawyers play in negotiation. Lawyers will inevitably encounter ethical issues and the client's directions may conflict with the lawyer's conception of what is ethical in the circumstances. Students should be prepared for the complex issues/ethical dilemmas that await them in practice. The non-professional style of law school writing must be redressed so as to prepare the student for lawyering activities, in particular the drafting of contracts and other documents peculiar to legal practice.

The second step, the process of decision making and problem solving, requires law students to be

taught to think beyond the boundaries of rights and liabilities. Law students should be made aware of schemes for decision making and problem solving. The framing of problems and identifying client objectives is a fundamental skill as often people solve the wrong problem. Divergent and creative thought should be encouraged in the solution of legal problems. Law students must be taught to assess the solutions to the client's problems and predict the effects of alternative courses of action. In making decisions the lawyer should be aware of and act in the knowledge of the client's attitude towards risk and not in accordance with the lawyer's own.

The third step is the realisation that all legal decisions involve relationships among individuals or organisations. An appreciation of economics, psychology and sociology is required properly to contextualise legal decision making in a client-centred regime. Often the client will possess industry-specific knowledge which should be employed in decision making. However, there are approaches to thinking about relationships and organisations that apply across many contexts and therefore should be part of a lawyer's repertoire of skills.

"Legal education can neither compensate for character defects nor substitute for experience, but it can help develop the habits of thought and analysis conducive to problem solving and good judgment."

STATISTICS

[no material in this edition]

STUDENTS

[no material in this edition]

TEACHERS

REVIEW ARTICLE

Today's law teachers: lawyers or academics?
P Leighton, T Mortimer & N Whatley
Cavendish Publishing Limited, London, 1995

This report canvasses the findings of a widely distributed 1994 survey of law teachers located in all sectors of higher education throughout the United Kingdom. The back cover of the book announces that "As well as providing valuable statistical information on law teachers, the survey also gives useful insights into the aspirations of law teachers, how they view their role, and their feelings about their profession". The claim is also made that "For the first time ever, a clear picture emerges, and it reveals a number of surprises and startling contrasts."

The authors list three factors which instigated the research: the need for effective policy development at a time when legal education is being subjected to considerable change, debate and review; the desire to supplement the data collected in a recent UK survey of law teaching which covered courses, student numbers and resources, but left law teachers largely untouched; and the fact that there is a paucity of existing research on law teachers and law teaching.

They pose what they define as the central question addressed by the project, which in turn reflects a dilemma that has long plagued legal education, going back to the Ormrod Report in 1971 and beyond.

"Are [law teachers'] primary concerns academic enquiry and debate, the exploration of ideas, intellectual challenge and establishing a broad context? Is, perhaps, the pinnacle of their work research and research students? Or do they mainly see themselves as key providers of a stage towards a vocational qualification and therefore emphasising professional legal skills?"

From this broad aim, the authors have derived a number of research questions and presumably have deliberately chosen their research design to best answer these questions. First, they proposed to collect the usual demographic data about law teachers as an occupational group. Second, they planned to ascertain how important to their population are teaching, teaching qualifications and educational matters generally. Next, they posed the rather abstruse question "What makes up a law teacher's professional life?" The final question is "What do law teachers feel most strongly about and what changes would improve the quality of their professional experience?" Predictably, they also announce their intention of exploring the relationships that exist between the demographic variables and the dependent variables generated by the last three questions.

The research methodology described in chapter 2 includes a brief account of the steps taken to develop the questionnaire and to identify the population of law teachers, as well as the procedures followed to distribute the questionnaire and maximise responses. A response