



Foggy, Fluid, Conflicted & Confused

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From Syllabus § 5-3

Questions to always be prepared to answer: I urge you to read to reflect on your reading so that afterward you have answers to these questions about primary-source readings (cases, for example):

- What is something interesting/compelling/instructive about this case (or other reading)?
- What is your best argument against or critique of the court's opinion (or author's view)?
- What is a question you are left with?

Those ... are questions I want you to be prepared to answer [for] cold-calling.

From Syllabus § 5-3

Here's two more that I think are useful that you might consider:

- What is a strength in the analysis or presentation?
- What is a potential weak point in the analysis or presentation?

I'd suggest you use these questions as a checklist to make sure you are reading deeply.

**The law is “foggy,
fluid, conflicted,
and confused.”
— Prof. Richard Parker**

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?

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Make arguments.

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

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.)

ons
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.**

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- What is a question you are left with?
- What is a strength in the analysis or presentation?
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All of these questions are ways to work on argument-making with regard to the case (or other reading).

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- What is something interesting/compelling/instructive about this case (or other reading)?
- What is your best argument against or critique of the case (or other reading)?
- What is your best argument in support of the case (or other reading)?
- How would you present this case (or other reading) in a courtroom presentation?

Because argument-making is what you are here to do—in law school in general and with regard to this particular stuff for this particular course.

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This question—the broadest of the bunch—is really just asking you, *what is one product of your critical thinking about this case?*

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For copyright law, the cases are the law, and the cases are foggy, fluid, conflicted, and confused. If you are going to get really good at the subject, you have to be able to make something of the cases. That’s why asking Student X the question isn’t just for the benefit of Student X. It’s for all of us. That’s because it is part of all of us trying to see what arguments can be made—i.e., what may be brought out of the fogginess, the fluidity, the conflict, and the confusion.