Chapter 1

Critical Thinking and Legal Reasoning

**Introduction**

Chapter One is the most important chapter in the text. This chapter is important because it presents the framework for studying the legal environment of business that not only increases students’ understanding of significant legal ideas, but also promotes critical thinking. This chapter addresses these questions:

* Why is critical thinking important?
* What is the critical thinking model the text asks instructors to apply throughout the book?
* What are the various steps involved in the critical thinking process?
* How does critical thinking invigorate legal reasoning?
* How should the critical thinking approach be used while dealing with cases?

**Achieving Teaching Excellence**

***Understanding the Importance of Evaluation***

Kubasek, Brennan & Browne begin their book by defining critical thinking. They tell instructors that critical thinking means the ability to recognize the structure of an argument and apply a set of evaluative criteria to assess the merits of the argument. This section of the *Instructor’s Manual* explains how critical thinking relates to Bloom’s *Taxonomy of Educational Objectives*. This explanation will emphasize the skill of evaluation.

Bloom developed a hierarchy of six cognitive operations. The operation at the higher level subsumes all those levels below. Here is a presentation of Bloom’s *Taxonomy*, from the lowest level to the highest level:

* **Knowledge**: This is the lowest level of learning and is a prerequisite for all operations to follow. This level relies primarily on the intellectual processes of recall and memory.
* **Comprehension**: The learner must go beyond knowledge and show understanding. Students can paraphrase or explain something they have heard or read.
* **Application**: The learner can apply what he or she has comprehended. Students can use information or principles in a specific situation.
* **Analysis**: The learner can break down into parts the knowledge applied and comprehended. Students can show the ability to take apart information to discover the underlying structure and hidden meanings and assumptions.
* **Synthesis**: The learner must be able to creatively combine knowledge analyzed from several domains. Students can reassemble component parts into a new structure not previously apparent.
* **Evaluation**: This is the highest level. The learner must be able to critically appraise the knowledge she has analyzed and synthesized. Students can make critical judgments.

The first three levels are often called lower-order thinking skills. Here are some questions that would encourage students to develop lower-order thinking skills. The questions are related to *United States of America v. Martha Stewart and Peter Bacanovic* [hereinafter *Martha Stewart*], the case Chapter One studies.

1. Was the *Martha Stewart* case a state or a federal case? [Knowledge]

2. What did the court decide in *Martha Stewart*? [Comprehension]

3. Given the court’s decision in the *Martha Stewart* case, what would happen if a witness’s perjured testimony had been a key factor in the conviction of a defendant? [Application]

The last three levels are often called higher-order thinking skills. Here are some questions that encourage students to develop higher-order thinking skills.

1. Explain why the court discounted Lawrence F. Stewart’s [hereinafter Lawrence] testimony. [Analysis]

2. Explain how Lawrence’s testimony about the “$60” notation relates to the broader case against the defendants. [Synthesis]

3. Point out inadequacies in the court’s reasoning in the *Martha Stewart* case. [Evaluation]

How does the critical thinking model Kubasek, Brennan & Browne present in Chapter One relate to Bloom’s taxonomy? Let’s look at the two:

Steps 1 through 4 of the critical thinking model correspond to the skills of knowledge, comprehension, application, analysis, and synthesis. Steps 5 through 8 correspond to the highest thinking skill—Evaluation. That means that when instructors ask students to evaluate legal arguments, they are pursuing the highest thinking skill. Critical thinking asks students to evaluate. If students can engage in critical thinking and succeed, they have shown that they have mastered all the skill levels below evaluation in the hierarchy—knowledge, comprehension, application, analysis, and synthesis. Working with students on the highest level of thinking is rewarding. Teaching using a critical thinking approach is also helpful to our students.

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| **The Critical Thinking Model**  The first four help us understand how the court’s argument fits together.  1. What are the facts?  2. What is the issue  3. What are the reasons and conclusion?  4. What are the relevant rules of law? | **Bloom’s Taxonomy**  The first three are lower-order thinking skills.  1. Knowledge  2. Comprehension  3. Application  The second three are higher-order thinking skills.  4. Analysis  5. Synthesis |
| The last four steps help us **evaluate** legal **arguments**.  5. Does the legal argument contain significant ambiguity?  6. What ethical norms are fundamental to the Court’s reasoning?  7. How appropriate are the legal analogies?  8. Is there relevant missing information? | 6. **Evaluation** |

***References***

* Thomas R. McDaniel, “Designing Essay Questions for Different Levels of Learning,” 27 IMPROVING COLLEGE AND UNIVERSITY TEACHING 120 (Summer 1979).
* Robert J. Kloss, “Toward Asking the Right Questions,” 61 THE CLEARING HOUSE 245 (1988).
* Benjamin S. Bloom, ed., TAXONOMY OF EDUCATIONAL OBJECTIVES (1956).

**Chapter Overview, Case Summary and Topic Outline**

***Chapter Overview***

This chapter begins by defining critical thinking, then explains the critical thinking model used throughout the book. The final section of the chapter parallels the second section, but presents the material in more depth. To prepare well, instructors should make sure to read this last section of the chapter more than once. Encourage students to read it several times. Understanding this material will help instructors use the textbook.

It will be worth the time to study Chapter One more than instructors might have originally planned. Instructors might want to choose an additional case and work on the case in class the way the text authors worked with the critical thinking model using the *Cook* case.

***Topic Outline***

I. The Importance of Critical Thinking

II. A Critical Thinking Model

*United States of America v. Martha Stewart and Peter Bacanovic*

III. The Critical Thinking Model: A Quick Reference

A. Facts

B. Issue

C. Reasons and Conclusion

D. Rules of Law

E. Ambiguity

F. Ethical Norms

G. Analogies

H. Missing Information

III. Using Critical Thinking to Make Legal Reasoning Come Alive

A. Legal Reasoning

IV. Applying the Critical Thinking Approach

***Summary***

To extend the critical thinking model to essays, instructors would ask:

* What Is the Issue?
* What Are the Reasons and Conclusion?
* Does the Argument Contain Significant Ambiguity?
* What Ethical Norms Are Fundamental to the Author’s Reasoning?
* How Appropriate Are the Analogies? (This step will not always be relevant.)
* Is There Relevant Missing Information?

**Remember**: An instructor’s goal will be to first understand an argument, then decide whether it can accept the author’s conclusion given the evidence and reasoning the author provides.

***Case Summary—United States of America v. Martha Stewart and Peter Bacanovic***

In this case Martha Stewart and Peter Bacanovic were convicted of conspiracy, making false statements, and obstruction of an agency proceeding after they sold over 3,928 shares of ImClone stock on December 27, 2001. Stewart sold all her stock before Bacanovic, who was Stewart informed her that Samuel Waksal had attempted to sell his stocks when the news that the FDA had not approved their drug, Erbitux. Following this an investigation was conducted by the United States Attorney’s Office for the Southern District of New York and the Securities and Exchanges Commission. The court found in favor of the United States of America based on the facts presented in this case.