

CLINICAL LEGAL TEACHING

First Session: From thought to action. The analysis of a case

1. Thought

→ Analysis of factual elements.

- Squeeze the case extracting everything you can
 - List all the facts
 - Select the facts on the basis of their relevance
 - Identify factual difficulties: *e.g.* not enough information; irrelevant information; disorganized presentation
 - Identify the lacking documents

→ Legal analysis

- Identify and qualify the legal issue
 - The case is a consumer law issue. The first step is to qualify the parties (consumer/trader)
 - Identify the legal relationship: contractual or extracontractual
 - Identify the applicable norms, taking into account also rules other than consumer law
 - Identify the issues of evidence and proof

2. Action

- Cross-exam
 - What solution do you have at law?
 - What solutions can satisfy your client?

One has to cross the two aspects in order to be sure that the legal approach is the one that is the most appropriate for the interest of your client. It may be that the best solution is not a legal one.

- From theory to practice
 - What one can envisage from a theoretical point of view not necessarily corresponds to what one can do in practice.
 - Legal actions depend always on the available evidence
 - Take action, but always after having thought about its consequences. Do not act without having prepared and presented a written text
- *Ad impossibilia nemo tenetur*

Sometimes there is no viable solution. The consumer does not have a case; there are no factual elements on which to ground his case, etc.