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O case metodologiji u studiju prava?



Jedan od ciljeva **TEMPUS PROJEKTA** je upoznavanje s case metodom, značajem i primjenom te metodologije u pravnom studiju. Iako ona prije svega obilježava američki studij prava, ista se više počinje koristiti i drugdje. Ta se metodologija može definirati na sljedeći način. Riječ je o sustavu studiranja ili izučavanja prava koje se ponajprije temelji na analizi sudskih odluka, a manje na predavanjima i udžbenicima. Taj sustav studiranja prava dominira u SAD.

Što je *case metoda* u studiju prava?

As opposed to statutes - legislative acts that proscribe certain conduct by demanding or prohibiting something or that declare the legality of particular acts - case law is a dynamic and constantly developing body of law. Each case contains a portion wherein the facts of the controversy are set forth as well as the holding and dicta - an explanation of how the judge arrived at a particular conclusion. In addition, a case might contain concurring and dissenting opinions of other judges.

Since the U.S. legal system has a common-law system, higher court decisions are binding on lower courts in cases with similar facts that raise similar issues. The concept of precedent, or stare decisis means to follow or adhere to previously decided cases in judging the case at bar. It means that appellate case law should be considered as binding upon lower courts.

CHRISTOPHER COLUMBUS LANGDELL, a law professor, often receives credit for inventing the case method, although historians have found evidence that others were teaching by this method before him. Regardless, Langdell by all accounts popularized the case method.

Langdell viewed the law as a science and believed that it should be studied as a science. Law, he said,

consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law.

Each doctrine, Langdell said, arrived at its present state by slow degrees, growing and extending through centuries. Langdell's beliefs differed from those of his law professor colleagues. Throughout the 1800s, the prevalent approach for teaching law school classes was the lecture method. Although professors and textbooks interpreted the meaning of various court decisions, they did not offer a significant opportunity for students to do so on their own. The case method, on the other hand, forced students to read, analyze, and interpret cases themselves. It was Langdell's opinion that law students would be better educated if they were asked to reach their own conclusions about the meaning of judicial decisions.

Langdell's ideas were, at first, overwhelmingly rejected by students, other law professors, and attorneys alike. These critics viewed the case method as chaotic compared with organized lectures. They believed that instead of soliciting law students' opinions regarding cases, professors should simply state their own interpretations. Law students, afraid that they were not learning from Langdell's method, dropped out of his class, leaving him with only a few pupils. Enrollment in the Harvard Law School decreased dramatically because of concern over Langdell's case method and alumni called for his dismissal.

But the president of Harvard University, Charles W. Eliot, supported Langdell and his case method. This backing allowed Langdell to withstand the criticism long enough to prove the case method's success: Langdell's students



were becoming capable, skilled attorneys. In 1870 Langdell became law school dean. As time passed he replaced his critics on the Harvard faculty with professors who believed in his system of teaching and the case method soon became the dominant teaching method at Harvard. Other U.S. law schools took note. By the early 1900s, most had adopted the case method, and it remained the primary method of legal instruction throughout the twentieth century and beyond.

The case method is usually coupled with a type of classroom teaching called the Socratic method. Through the Socratic method students orally respond to an often difficult series of questions designed to help them gain further insight into the meaning of the law. Students learn the skill of critical analysis this way: they learn to discern relevant from irrelevant facts; they learn to distinguish between seemingly similar facts and issues; and they learn to analogize between dissimilar facts and issues.

The case method offers certain benefits. For one, cases are usually interesting. They involve real parties with real problems and therefore tend to stimulate students more than do textbooks with only hypothetical problems.

The case method also helps students develop the ability to read and analyze cases, which is a crucial skill for attorneys. Students learn to reduce cases to four basic components: the *facts* of the controversy; the legal *issue* that the court decides; the *holding*, or legal resolution, that the court reaches; and the *reasoning* that the court uses to explain its decision. Students, especially in their first year of legal study, often outline these components in written case briefs, to which they can refer during classes and while they prepare for exams.

Another advantage of the case method is that it teaches, by example, the system of legal precedence. By reading cases, students learn how and why judges adhere, or do not adhere, to law developed in previous cases. Students also learn how judges have the discretion to create law by construing statutes or constitutions.

The case method continues to have critics. One criticism focuses on law school examinations. Typically, law students are tested only once in

each class. They face enormous pressure to perform well on this examination since their single score on it usually constitutes their entire grade for the class. It is difficult to test analysis skills, so often these examinations test the students' ability to spot legal issues and apply legal rules. Therefore, although professors try to teach case analysis skills, students tend to focus on simply learning **RULES OF LAW** in the hope of getting good grades. This diminishes the case method's intended result.

The case method may be unpopular with law students owing to the amount of reading it requires. It is not uncommon for law professors to assign twenty to thirty pages of reading, containing excerpts from four or five cases, each night for each class. Some law professors have argued that pupils learn to analyze cases within the first few months of law school, and that thereafter the case method becomes ineffective because students lose enthusiasm and interest in reading cases.

Another complaint concerns the role of casebooks. Casebooks commonly contain cases or case excerpts as well as some explanatory text. They are most often compiled by law professors, who arrange the cases to show legal development or illustrate the meaning of legal principles. These casebooks provide only a small sample of cases, the vast majority of them appellate-level decisions. Thus, law students usually receive little or no exposure to decisions of trial courts. Some commentators suggest that students therefore miss critical elements of a lawyer's initial role: discovering and shaping facts and determining legal strategies to present to the court at the trial level.

Frequently, students do not see legal conflicts in their undeveloped form until they graduate and begin practicing law. Law schools increasingly are trying to remedy that problem by offering instruction in basic lawyering skills. For example, classes in trial advocacy allow students to conduct mock jury trials. Other courses teach client-counseling skills, document-drafting skills, and oral argument skills. The idea is not to abandon the case method entirely but to balance it with other teaching methods.

(v. <http://law.jrank.org/pages/5049/Case-Method.html>)