

THE VIRTUES OF AN ORDERED MIND; After Hours; Books, Arts, Leisure

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After Hours

Books, Arts, Leisure

At a time when legal academics are churning out reams of turgid, unintelligible critlit dismissing our legal system as a farce, Judge Ruggero Aldisert's **Logic for Lawyers: A Guide to Clear Legal Thinking** is a breath of fresh air. Judge Aldisert's thesis is that law and logic are not enemies and that success in the law can be achieved only through clear legal thinking. Not at all a bad message from a distinguished judge to a legal profession and public becoming convinced that legal reasoning is an oxymoron.

The life of the law has not been logic; it has been experience, proclaimed the soon-to-be Justice Oliver Wendell Holmes in his 1881 handbook on the common law. Plucked from context and stripped of Holmes important qualifications, this phrase has become the battle cry for legal nihilists of every stripe who argue that the law does not/cannot should not depend on logic because it is really only what judges say it is.

As Justice William Brennan Jr. observes in his elegant foreword. Judge Aldisert does not challenge Justice Holmes' classic statement, but offers telling argument that legal reasoning or legal logic may play an equal or even more significant role in the life of the law. Logic and experience. Judge Aldisert tells us, are not antithetical: they are complementary components of the legal process. When either is emphasized to the exclusion of the other, the law suffers.

While much has been written about the function of experience in the law. Judge Aldisert's book may be the first serious work to focus on logic. In language accessible to the intelligent layman, Judge Aldisert speaks to lawyers, law professors, law students, and fellow judges. He explains the various methods of logical reasoning and illustrates their use with cogent examples drawn from real cases.

Having served as a federal judge for more than two decades--including as chief judge of the U.S. Court of Appeals for the 3rd Circuit--as well as a state judge, practitioner, and adjunct professor of law, Judge Aldisert draws on his vast experience to make his legal points clearly, persuasively, and humorously. Discussing the legal fallacy, **petitio principii**, he laments that [t]his fallacy is really a first-class rascal because it sneaks up on us so often. He continues: The rascal bears many names ... arguing in a circle,

circular reasoning, putting the bunny in the hat, failing to prove the original proposition asserted, and using the original premise as proof of itself. Indeed, I can't count how often I've caught lawyers putting the bunny in the hat.

Despite his light touch, Judge Aldisert has a serious message for judges: Avoid being result-oriented: use logic to arrive at a conclusion based on sound reasoning. What we should expect from our judges, at a minimum, is a willingness to consider alternative solutions to a problem, he writes. We can also expect that judges will be intellectually interested in an outcome based on sound reason.

Judge Aldisert does not miss the opportunity to speak his mind: We lawyers and judges write and talk too much, he chides his colleagues. We fill our argument with declarative sentences that are not the necessary positions of our argument.... Thus it is necessary always to identify the precise structure of the argument by stripping away explanatory materials. In other words: Cut the fluff and focus on the heart of your argument; that's what wins or loses cases.

For a book so tightly focused on the intricacies of the legal profession, it has much to say to non-lawyers as well. The broad array of case and other materials excerpted provides a piquant sampling of some of the law's least well-known tidbits.

One example, apropos of the distinction between opinion and fact, is drawn from Abraham Lincoln's days as a trial lawyer. On cross-examination, Lincoln asked. How many legs does a horse have?

Four, replied the witness.

Right. Now. if you call the tail a leg, how many legs does a horse have?

Five.

Nope, said Lincoln. Callin' a tail a leg don't make it a leg.

Other insights--decidedly more disturbing--may be drawn from two 19th century cases cited by Judge Aldisert. In the divorce action of **Joyner v. Joyner**, 59 N.C. 322, 324-26 (1862), the court upheld the right of a husband to horsewhip his wife under certain circumstances. The court reasoned that [t]he wife must be subject to the husband. Every man must govern his household. Continuing this enlightened trend. **In re Goodell**, 39 Wise. 232, 244 (1875), held it proper to exclude women from the practice of law. The court observed that women are destined by nature to bear children: therefore, for a woman to defy nature and pursue the legal profession would be treason.

As Judge Aldisert notes, such reprehensible treatment of women by the highest courts of the states should serve as a reminder, or perhaps an impetus, to say. Never again! to the abandonment of clear thinking in favor of prevailing prejudices.

But the book's greatest significance may well be in the message it sends to legal academics and the thousands of law students they hold under their sway. That a jurist of Judge Aldisert's prominence and experience takes pains to emphasize the methods and fallacies of legal reasoning ought to put the lie, once and for all, to the silly but widespread notion that judges make up the law by reading tea leaves or contemplating their bellybuttons. Law is serious business and deserves to be treated seriously. If Judge Aldisert's teachings are followed, it surely will.

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