

Handout #1 – Critical Thinking

1. Critical Thinking: What Is It

Critical thinking is the use of reason to evaluate of *arguments* and *assertions* in everyday life. This involves a variety of different activities:

- determining the strength of an argument and comparing it to other arguments
- deciding impartially and without prejudice
- weighing evidence and evaluating claims

At the end of the day, we want to develop some very general criteria for saying *this argument is good* (and here is why) and *this argument is bad* (and here is why).

2. Playing Fair & Picking a Jury

The **first** requirement of the intelligent examination of arguments is to try to *be fair, objective, and honest* when you evaluate an argument. Intelligent examination involves the removal of *bias* and *prejudice*. One way to get clear on what it means to *play fair* is to look at the legal process of *voir dire*.

2.1 Voir Dire

<i>voir dire</i> [vuhwah deer]	the practice of examining a jury for the purpose of seating a jury.
"Voir Dire is the process by which attorneys select, or perhaps more appropriately reject, certain jurors to hear a case." – Gordon Cleary	

The **process** of *voir dire* involves asking questions to potential jurors to determine what jurors think about particular issues, their backgrounds, and if they have any potential bias. Attorneys reject potential jurors (with a *peremptory challenge* or *for cause*) who appear to be potentially biased.

Open Question: Why is the process of voir dire in place? Wouldn't random selection be a better process?

The **ideal result** of the *voir dire* is a selection of jurors who can *put aside* their prejudices and impartially weigh the evidence and arguments in a trial. We all have biases and pre-judgments. Some we can put aside, others we can't.

Example Voir Dire Question

Example #1: Corporation XYZ is on trial for certain nefarious business practices.

Question #1: Do you now or have you ever owned stock in XYZ?

Question #2: How would you rate XYZ as a business?

Example #2: Corporation XYZ is a large corporation accused of denying John (a former employee) benefits after he was injured on the job

- Have you ever been treated poorly by an employer?
- Do you feel that large corporations are better or worse to their employees than smaller corporations?
- Are there any reasons why a company might deny an employee their benefits or a severance package?

What other kinds of questions should be asked to determine whether or not an individual can be impartial?

Ex.1-1, #1

2.2. Use of Social Scientists to Pick a Jury

While the ideal result of the *voir dire* is to pick an impartial jury, the **actual result** of *voir dire* may be different. Lawyers often want a jury that is favorable to their client and so they might gather data about what jurors are likely to do based upon demographic information (e.g. age, race, background, etc.).

Question: Does help or hinder the ideal goal of picking a jury that will play fair?

Against: rig juries to reach a verdict based on biases rather than the impartial weighing of evidence, e.g. a prosecutor who picks jurors who are more likely to convict.

For: needed to detect prejudices that jurors have but won't admit to upon questioning, e.g. sexist but won't admit it.

2.3. What Does Ideal Jury Selection Tell Us About Critical Thinking?

In picking an ideal jury, we aim to pick a group of individuals who can put aside their prejudices and decide the case on the basis of the evidence and argument.

Why? Because “[t]he issue is the person’s guilt or innocence of some specific charge, and that has nothing to do with whether you like or dislike the defendant” (4).

This tells us something about critical thinking. One goal of critical thinking then is that our biases often get in the way but in evaluating good and bad arguments, one goal is to be impartial as possible.

Ex.1-2

3. Two Kinds of Critical Thinking

3.1 Adversarial Critical Thinking (One Winner, One Loser)

In *adversarial critical thinking*, the **goal** is to present your position in the most favorable light and show the weakness of all others. In an *adversarial system* of justice, science, or philosophy, what happens is that different sides present the best possible arguments for their position and the best argument wins. However, in *practice*, the adversarial system gets abused because at least one side doesn't *play fair*:

- Jurors or judges get bribed, are prejudiced, or are incompetent
- Both sides are not equally competent, e.g. your lawyer doesn't really care
- evidence is falsified

In order for an adversarial system of critical argumentative to work, both sides must play fair, present their best arguments, and be attentive to the arguments put forward by opponents.

3.2. Cooperative Critical Thinking (*Everyone's a Winner*)

In *cooperative critical thinking*, the **goal** is to *get clear* about the aims of all parties and work toward a solution that benefits all parties.

- *Not always a compromise*, e.g. one piece of cake, A & B are in conflict because both want the piece of cake
 - However, A wants the frosting and B wants the non-frosted part of the cake.
 - Both sides get what they want without giving up anything.
 - But, they need to *first* get clear about what each of the parties want. Both A & B need to be more specific about what they want.

Group Discussion Question: When might cooperative critical thinking work in the courtroom? Would it work in a jury room or should juries take an adversarial approach? What other non-legal contexts might cooperative critical thinking be beneficial?

Homework Exercises

Ex.1-1, #1

Ex.1-2

Ex.1-3, #1, #2

Ex.1-4, #1