THE TOOLS OF ARGUMENT: HOW THE BEST LAWYERS THINK, ARGUE AND WIN BY JOEL TRACHTMAN

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INTRODUCTION

Although the practice of law requires specialized knowledge to function at a higher level, laypeople might nevertheless need to be familiar with some of the formalities and substantive rules to know at least their rights and responsibilities. For those who are passionate about law and have recently started law school, this book is among the best options. Joel Trachtman's book clearly and concisely explains the potent argumentation techniques that the legal profession has developed over the ages; we will discuss these tools in detail in a later article.

ABOUT THE AUTHOR

Joel P. Trachtman holds the positions of Henry J. Braker Professor of Commercial Law and Professor of International Law at The Fletcher School of Law and Diplomacy. He is a leading authority on international economic law and the author of over a hundred academic articles, book chapters, and ten books, including The Future of International Law: Global Government. The American Journal of International Law, the European Journal of International Law, and the Journal of International Economic Law have all had Professor Trachtman on their boards[1]. Author of The Tools of Argument: How the Best Lawyers Think, Argue, and Win. He graduated in 1980 from Harvard Law School, where he served as editor-in-chief of the Harvard International Law Journal, and practised in New York and Hong Kong for nine years before entering academia[2].

ANALYSIS OF THE BOOK

The author used multiple perspectives and provided a variety of tools that top lawyers employ in their courtrooms in a manner that is simple to understand. This book contains the fundamentals of how elite attorneys analyze, argue, and win cases. He provided a detailed

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[1] 'Joel Trachtman | UNESCO Inclusive Policy Lab'(UNESCO)< *https://en.unesco.org/inclusivepolicylab/users/joel-trachtman> accessed on 24 January 2024*

[2] 'Joel P. Trachtman'(*tufts university*)< https://globalbusiness.tufts.edu/experience/leadership-faculty/joel-p-trachtman/> accessed on 24 January 2024

explanation of each tool along with numerous real-world examples of how to use them to win cases. This book will help you think more critically and will give you more self-assurance. The majority of the instruments in this book are dealt with implicitly and indirectly. The book is divided into 10 parts with crucial fifteen tools to win the case like top lawyers.

HOW TO THINK LIKE ELITE

each argument in this book can be applied to support your position or that of your opponent. while also taking into account the use of rules and facts constitutes appropriate preparation. The author explained " the art of reasoned persuasion[3]" which is not adequately given importance in law school. lawyer requires an analytical comprehension of the laws, supporting data, and reasonable conclusions. Joel Trachtman contends that to comprehend every aspect of a legal issue, lawyers have to break it into its constituent parts and determine if each one constitutes the disputed crime or claim that results in the legal responsibility of the lawyer. example lawyer has to see whether there is (i) The existence of a contract(ii)Performance by the plaintiff or some justification for nonperformance(iii)Failure to perform the contract by the defendant(iv)Resulting damages to the plaintiff[4]If any condition is not satisfied there is no breach of contract.

This book exposes some of the common misconceptions that taint arguments and conceal the hypocrisy of sophists. In the next part, he writes about rules of logic and rules of influence in this part author talks about formal logics and statistics that a lawyer need to use in different circumstances. later he talked about the concept called “proof beyond a reasonable doubt” and its correlative relationship. A lawyer ought to be satisfied with understanding the "mathematical" principles of law, which encompass cases and work to implement them with rigour, guided by the insights gained from scholarly research and precedent[5]. The requirements for the student are to be willing to work toward a certain level of competency in the sister discipline and to consider the possibilities of using its insights in legally and jurisprudentially

[3] ‘The Tools of Argument: How the Best Lawyers Think, Argue, and Win’(*BooksFree)*< *https://www.booksfree.org/wp-content/uploads/2022/04/The-Tools-of-Argument-by-Joel-P-Trachtman.pdf*> accessed on 24 January 2024

[4] ‘4 Elements of a Breach of Contract Claim’(*Griffiths Law PC*)< https://www.griffithslawpc.com/resources/elements-of-a-breach-of-contract-claim/> accessed on 25 January 2024

[5] Regis Lenneau, ‘Inter-disciplinary in Law: Its Necessity & Challenges’(2018) 1(6) GNLU Journal of Law & Economics< http://gjle.in/2018/09/23/inter-disciplinary-in-law-its-necessity-challenges/> accessed on 25 January 2024

challenging situations[6]that means interdisciplinary like literature, philosophy, cultural studies, economics, history, or sociology might all provide insights into the nature of law[7]The author mentioned in the next section traditional disciplinary tools of law can be greatly enhanced by the incorporation of other social and scientific disciplines[8]The next tail that a lawyer needs to have is to think like a scientist.

HOW ELITE LAWYERS ARGUE: ARGUING IN A LEGAL SYSTEM

This is the main and crucial part of the book How Lawyers Argue in this section Joel Trachtman presents fifteen tools that lawyers use while arguing their case, and procedures and explains why to use help in winning the case:

(i) In the case of Aviat Chemicals v. Magna Laboratory, the plaintiff lost the pecuniary Jurisdiction and a permanent injunction was enforced against the defendant[9]. the plaintiff needs to decide which court he is filing the case even these criteria decide whether he wins or loses because different jurisdictions have different laws.

(ii)lawyers need to focus on every small source of advantage.

(iii) There are limitations to the jurisdiction of all courts, meaning that they cannot hear or consider matters when it is not the tribunal's business. In this case, never lose this opportunity and argue it is none of the tribunal's business.

(iv)make strong arguments of bias, conflict of interest, recusal, and voir dire, contend that there is a problem with this tribunal.

(v) Makes Your Side More Appealing, The complainant gets the chance to present the situation in a way that is most advantageous to him. Although this does give the plaintiff a lot of power, the defence can still reframe the case.

[6]'Law and Other Disciplines' (*Georgetown Law Curriculum Essay*)<https://curriculum.law.georgetown.edu/jd/law-other-disciplines/> accessed on 24 January 2024
[7] Ibid
[8] 'The Tools of Argument: How the Best Lawyers Think, Argue, and Win'(*BooksFree)*< *https://www.booksfree.org/wp-content/uploads/2022/04/The-Tools-of-Argument-by-Joel-P-Trachtman.pdf*> accessed on 24 January 2024
[9] Siddharth Tripathi, 'Effects of opting the wrong jurisdiction on a matter: a study based on problems and solutions via judicial pronouncements'(2021)iPleaders< https://blog.ipleaders.in/effects-opting-wrong-jurisdiction-matter-study-based-problems-solutions-via-judicial-pronouncements/> accessed on 25 January 2024

(vi) distinct regulations designed to implement distinct policies, as well as regulations from federal, local, and other governments so need to be careful in arguing for the application of specific rules.

(vii) While it is true that two wrongs do not make a right. so argue when they are wrong too.

(viii) In a scenario where a legal obligation exists but cannot be asserted by anybody or the parties with the authority to do so are uninterested, a third party filed a case then the lawyer may argue that the matter is not the complainant's business

(Ix) Make the Argument That the Complainant Is Corrupted: In Tu Quoque, Clean Hands, Pari Delictus, and Contributory Negligence.

(x) One way of keeping a complainant from using the forum it would prefer is to argue that the dispute is not yet ready for that forum

(xi) The complainant has a window of opportunity to file a claim or complaint between lack of ripeness and the statute of limitations expiring. Expectations have been met after a significant enough amount of time, and it would be too disruptive to bring up the past so a lawyer has to argue it's too late.

(xii) As a heuristic, the burden of proof states that unless the party assigned the burden can demonstrate his entitlement to a different conclusion, the matter will remain unchanged. The presumption's opponent must offer proof that the presumption is false, while the proponent of the assumed fact need only offer circumstantial evidence. He clearly stated when to Argue That Your Opponent Must Prove His Case Before You Must Prove Yours

(xiii) Even after losing or winning a case, the lawyer still needs to fight for what complaint gets by way of remedies or enforcement.

(xiv) In Union Of India & Anr vs Purushottam suffers from the vice of double jeopardy and, therefore, has been correctly quashed by the Division Bench. so in the case of Res Judicata, Collateral Estoppel, Repose, and Double Jeopardy Argue That It's Already Been Decided.

(xv) In addition to having a thorough understanding of the law and being adept at the techniques of analysis and reasoning covered in this book, lawyers also provide a level of procedural sensitivity that others might not have.

TRICKS AND WINNING ARGUMENTS

Joel Trachtman elaborated on rhetorical tricks like the use of Non-Sequitur, Ad Hominem Arguments and rhetorical devices like Occam's Razor. despite the logical error of a non sequitur, you can use it to persuade an audience. The logical fallacy may even be concealed by the non sequitur.

It is more comfortable for us to assume causality when the connection is stronger and the alternatives are less likely.it is very important to establish a proper cause-and-effect argument. The employment of rhetorical devices in statistical arguments should be avoided at all costs, as the discovery of an argument supported by false figures will undermine the entire hearing. Occam's Razor is an analytical and persuasive tool that is undoubtedly useful in legal settings. Whatever our organizational structure, what can we do to innovate? Assist us in coming up with fresh concepts for executive coordination on our strategy to deal with the current shift. These are examples of assuming questions used by the lawyer to strengthen their argument.

The whole tenth chapter of this deals with Winning Arguments With Reasoned Persuasion. Persuasion is the art of persuading someone to adopt a particular viewpoint or perspective. A well-reasoned opinion backed up and clarified by facts is called an argument. Writing an argument is a constructive means of advancing ideas and understanding.[10]

CONCLUSION

I've noticed that pre-law students often have misconceptions about what it means to be a lawyer and that these misconceptions are often based on popular media that glamorizes the practice of law. When pre-law students attend law school, they learn a lot of theory and textbook material, case studies, and other things, but they don't learn the skills they need to practice law. If you're a lawyer, whether you work as a solo practitioner or not, you have to negotiate whether you are in business or you're running a business to make your arguments effective. I would highly recommend this book to anyone preparing for law school or law students. The author is a practising attorney who has probably negotiated hundreds of deals involving major businesses on an international scale. The book is fairly concise but detailed, providing you with plenty of examples and information needed to learn how to negotiate effectively and how to think like a

[10] 'Persuasion | Arguing Through Writing'(Lumen Learning)< https://courses.lumenlearning.com/suny-jefferson-collegecomposition/chapter/persuasion/> accessed on 24 January 2024

lawyer. The knowledge gained by readers of this book fairly helps them in practical experiences.