Pitfalls in legal argumentation
Where interpretation overrides the legal text

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Outline

1 Start

2 Easy

3 Medium

4 Hard
Outline

1. Start
2. Easy
3. Medium
4. Hard
Processing legal provisions

- Retrieving information such as
  - Preconditions (when it applies, where...)
  - Deontic modality (obligation, permission...)
  - Subjects (obligation bearer...)
  - Content (what must be done...)

- Text similarity and other techniques

- Parsing the legal text and related provisions
The role of interpretation

- No law without interpretation (Ehrlich)
- Interpretation goes beyond the literal meaning
  - Sometimes drastically
- Several ways to interpret a provision
  - Hierarchy of norms
  - Extensive / restrictive interpretation
  - *Analogia legis / analogia iuris*
  - Fundamental principles
- These must suffice
Mining the law

- Law = interpretation
- Mining the law ≠ mining the legal text
- But interpretation may be quite confusing
- Some example from the Italian civil code (and beyond)
Mining the law

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“I would like, if I may, to take you on a strange journey.”
Let’s talk about death
Successive usufruct prohibition

Art. 698 c.c. (unofficial translation)

The provision of a will, bequeathing several persons in subsequent order the usufruct [...], is valid only for those that, at the time of death of the testator, are the first to benefit from it.
Successive usufruct prohibition

Art. 698 c.c. *(unofficial translation)*

The provision of a will, bequeathing several persons in subsequent order the usufruct [...], is valid only for those that, at the time of death of the testator, are the first to benefit from it.

- Bequeathing the usufruct in successive order is prohibited
- Within the section on *fideicommissum* (artt. 692–699)
  - Vespasian’s will
- Within the chapter on *substitutions* (artt. 688–699)
Art. 795 c.c. *(unofficial translation)*

Substitutions are not allowed in donations, except in the cases and within the limits established for wills. [...]
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Reserve of usufruct

Art. 796 c.c. (*unofficial translation*)

The donor *may reserve* the usufruct over the donated goods for himself and for another person, or several persons, after himself, but *not further*.
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Literally, the provision contains two deontic modalities:

- a permission
- a prohibition
Art. 795 references all the chapter on substitutions
  - Including art. 698 on successive usufruct
Pursuant to art. 795, successive usufruct is not allowed in donations
Art. 796 allows only one successive usufruct after the reserve
Art. 796 is an exception to art. 795
Without art. 796, successive usufruct would not be allowed
  - The prohibition part is irrelevant
  - Art. 796 contains a permission
A successive usufruct is **not** a *fideicommissum*
- There is no transmission of the right
- Art. 795 does not reference a chapter, but substitutions
  - It does **not** reference art. 698
- Art. 795 does not prohibit successive usufruct in donations
- Art. 796 allows **only one** successive usufruct after the reserve
- Art. 796 is not related to art. 795
- Without art. 796, successive usufruct would be allowed without limits
  - The permission part is irrelevant
  - Art. 796 contains a **prohibition**
Successive usufruct interpretations

Deontic modality changes
- Standalone: permission + prohibition
- Formal reference: permission
- Substantive reference: prohibition
Let’s talk about death
Death of an owner

Art. 2284 c.c. (unofficial translation)

Unless the business contract prescribes otherwise, upon the death of one of the owners, the others must liquidate the share to the heirs, unless they prefer to dissolve the partnership or continue it with them if they agree.
Death of an owner

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- Applies to a partnership (with unlimited liability of the owners)
- Complex provision, with many different possibilities
- But at least the default rule is clear
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- Complex provision, with many different possibilities
- But at least the default rule is clear
- Or is it?
Houston, we have a problem

“The others”?
Houston, we have a problem

“The others”? Why not “the partnership”?
Example

- Equity = patrimony = 120K
- 3 partners with equal shares
- Each has 40K (1/3) equity
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- Equity = patrimony = 120K
- 3 partners with equal shares
- Each has 40K (1/3) equity

If the partnership pays

- Equity = 80K
- 2 partners with equal shares
- Each has 40K (1/2) equity

If the others pay

- Equity = 120K
- 2 partners with equal shares
- Each has 60K (1/2) equity
60 years later...

- United Sections of the Court of Cassation
- Decision 291/2000
  - The case started in 1984
60 years later...

- United Sections of the Court of Cassation
- Decision 291/2000
  - The case started in 1984
- Art. 2284 is wrong
- The correct formulation is “the partnership”
- The obligation bearer is changed
Death of a partnership owner interpretations

Obligation bearer changes

- Literal: the other owners
- Systematic: the partnership
Let’s talk about parking
“Bridge” parking slots

Art. 41-sexies l. 1150/1942

Specific parking areas must be reserved in new buildings [...], measuring no less than one square meter per ten cubic meters of building.

Introduced in 1967, amended in 1989 and 2005

Purpose: avoid cramming the streets with cars

Provision directed at public administration (in releasing building licences)

Fairly clear provision, isn’t it?

THEN HELL BROKE LOOSE
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What did the Cassation do?

- At least five decisions in the ’80s
  - Four in United Sections
- The purpose of this law is to guarantee that every building has suitable parking
- Building and parking cannot be separated
- This law concerns estate sale deeds
- Deeds cannot transfer a property without its parking spot
  - (Or the other way around)
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Bottom line

One can buy a parking lot, but not use it.
Everything changes: deontic modality, bearer, content...

- **Doctrinal:**
  - Obligation
  - PA (or builder)
  - Authorization to build

- **Court:**
  - Constitutive statement
  - Seller / buyer
  - Real right of use