



THEME. THEORY. PLAN OF ATTACK

lecture 03



WHAT IS THEORY?

theory is the basis of your argumentation

Legal Aspects

- What crime has been charged?
- What parts are there to a charge?

Factual Aspects

- What is the case about?
- What happened in the situation?
- Tell YOUR story!

FOR THEORY... YOU HAVE TO
CONNECT THE TWO!

What would this look like?

CRIMINAL CHARGES - ARMED ROBBERY

The crime of armed robbery requires proof of the following:

1. The defendant took property of another person; *and*
2. The taking was from the other person's person or immediate presence; *and*
3. The taking was against the other person's will; *and*
4. The defendant used or threatened to use force against any person with the intent to force surrender of the property or to prevent resistance to taking or keeping the property; *and*
5. The defendant, in the course of committing the robbery, was armed with a deadly weapon.

What is the burden of proof?

Level of obligation necessary to get the ruling
of a verdict

FLASH VOCAB... what is the BEYOND A REASONABLE DOUBT?

The defendant is presumed to be *innocent*
until proven guilty

The prosecution must prove without
any *reasonable doubt* that the
defendant committed the crime

The defendant has NO burden to
present evidence or prove innocence,
as presumed innocent

reasonable doubt: a doubt of a fair-minded, impartial juror honestly seeking the truth... not a
vague and arbitrary doubt... but one where reason can be given

This means that if/when the
defendant presents evidence... the
prosecution needs to negate or
disprove it without reasonable doubt

Note that this is not necessarily
beyond all doubt... or to
mathematical certainty

FLASH VOCAB... what is the PREPONDERANCE OF EVIDENCE?

The defendant is NOT presumed
to be *innocent until proven guilty*

The plaintiff must
prove that the
defendant is guilty
more likely than not.

50.000001%

WHY DOES THIS MATTER?

It is YOUR goal to understand the burden of proof when you are making your THEORY!

It helps you lay out your argument and gives you a roadmap to make sure you are providing all essential parts

The defense can also use this to find ways to cause suspicion

THEME

Short phrase or quote that is supposed to STICK with jury

This is where you can get theatrical

QUOTE:

“Desperation makes you do things that you never wanted to do”

Want to make it memorable



If the gloves do not fit, you must acquit

POWERFUL STATEMENT:

“... found his opportunity... and he took it”

THEORY AND THEME



ARGUMENTATION AND PERSUASION

It is important to note that both pairs are not synonyms
they just function as a *team*

Argumentation

What is the structural heart of my point?

- **What is my claim?**
- **What are my facts to support it?**
- **How do the facts support each other?**
- **What are the counterarguments to my claim?**
- **Why are they wrong?**
- **How do I tie everything together?**

Persuasion

How do I make the other side not only say my argument was cohesive....

But also... How do I make them AGREE with me?

- **How can I appeal to the audience?**
- **What would catch the audience's eye?**
- **What will make the audience agree with me?**
- **AUDIENCE**
- **AUDIENCE**
- **AUDIENCE**