CASE reading, structuring and analyzing decisions by judges

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Abstract: It is essential for law students to acquire knowledge about the applicable general rules of law. A major source of applicable rules within the Dutch legal system is, next to statutes, the category of decisions by judges. Law students experience difficulties with finding, reading and comprehending these decisions. CASE (Case Analysis and Structuring Environment) is an instructional environment developed to support students in finding, reading, structuring and analyzing decisions by judges. CASE presents the student an environment in which she can practice with finding, reading, structuring and analyzing a decision in order to determine in what ways this decision adds to the body of applicable legal rules. CASE can be used by law teachers to test selected decisions by judges and to add key words and by law students to search, structure and analyze decisions by judges.

Keywords: Instructional Design, Coaching Systems, Legal Problem Solving

1. INTRODUCTION

The law that applies in a legal system such as the Dutch legal system consists of general rules that are determined or acknowledged by authoritative bodies. The two most important authoritative bodies within the Dutch legal system are the legislature and the judge. While it is obvious the legislature determines the general rules that apply in individual cases, she has to construct a legal solution based on the facts of the case and the applicable legal rules. In the majority of cases that can be solved before the court, a judge formulates a decision that applies only in the case at hand. These decisions do not add to the body of applicable rules in the legal system. However, in cases where a judge has to construct an applicable rule, before being able to decide on the basis of the case at hand, he or she has to follow three steps. The rule constructed by the judge to decide the case, may add to the body of applicable rules in the legal system. Legal practitioners and legal practitioners need to have knowledge of the general rules that apply in the legal system. This involves both knowledge of the legislation and knowledge of the decisions by judges that function as general rules of law. Law students preparing themselves for the legal profession also need to acquire knowledge about the role of decisions by judges in the legal system and they need to understand the two components of decisions by judges. A judge has to have knowledge about how to look for decisions of the second category, understood the mini solution in the decision was a decision relevant to the body of applicable rules in the legal system. Legal education primarily aims at acquiring insight in the legal sources, their history and background. This basic knowledge is of great importance; legal problem solving is hardly possible without such knowledge. To illustrate the use of this knowledge, consider the following case, in which a judge has to determine the legal significance of a decision.

A more effective way to obtain expertise (skill) is by actually performing the task, i.e. students should do the exercises, while the teacher provides feedback on their solutions. However, not only feedback on the solution provided by students is important. For effective learning to take place, it is necessary to monitor the solution process and to provide feedback (Muntjewerff, 2000; Eemeren van et.al., 2006). If feedback is not available for students to be able to ask for help at any time during the process, they should also be able to practice over and over again. An ideal situation would have a teacher available for every student, monitoring the student while practicing and providing support when and wherever necessary. However, this being not practically feasible, the second best option would be to offer the student electronic support. Using a computer program as the instructional medium has a number of advantages. It may offer individualized instruction and practice combined with immediate feedback and support. It can have the capacity to adapt to the individual student’s performance and, last but not least, may support the management of information.

CASE (Case Analysis and Structuring Environment) is an environment when a student can practice with finding, deciding with structuring its text and with analyzing the decision in order to be able to determine in what way it adds to the body of applicable rules in the legal system.

These functionalities are implemented in two integrated modules in CASE.

1. A MODULE TO COMPILE AND STORE DECISIONS

In essence a database containing a collection of decisions used in legal education. The law student can do a search (very slow and in full text) for a specific decision or a set of decisions. Decisions can be added to the database and key words can be indicated for each decision by the teacher. This module can be used separately or in combination with the second module.

2. A MODULE TO STRUCTURE AND ANALYZE DECISIONS

It is essential as instructional environment for learning to structure and analyze a decision to determine how it adds to the body of applicable rules in the legal system. This module builds on the first module. It presents the student the text of a selected decision together with a short introduction to the main elements in a decision text (e.g., the parties involved in the dispute, the law applied, the fact situation). The module contains an interactive text that shows the different components of the decision and the steps taken by the court. It outlines the framework with the relevant parts from the text of the decision. The activities of the student are monitored and compared to a model variable. When a deviation from the model is detected, the student receives feedback on how the model of decision can be adapted to the current case. This module helps the student to structure and analyze the decision. The decision is in fact the task of reconstructing the problem situation (consisting of a reconstruction of both the facts of the case and the conclusion).

2. PRINCIPLED AND STRUCTURED DESIGN APPROACH

The HYPATIA project (Muntjewerff 2010, Muntjewerff 2008) aims at designing and developing new additional electronic materials for law students to learn the law. Law students experience difficulties with acquiring knowledge and in using this knowledge. These problems are acknowledged by law teachers. However, there is no material available to offer individualized support.

Basic research is concerned with developing well-founded models of legal knowledge and skills to be learned by law students, examining the difficulties they have with acquiring legal knowledge and legal skills and finding remedies to enhance effective and efficient learning of the required knowledge and skills. The applied research part, basic research findings are used to construct computer model students of legal knowledge and legal reasoning to diagnose and remedy the specific difficulties of law students in learning the law. Instructional design decisions are made on the basis of a global theory on learning and instruction. In this way the design process will result in a coherent and consistent instructional model. Finally indicate that electronic materials are evaluated extensively (developmental testing and field testing). The design approach was validated and used successfully in the construction of an instructional environment for learning to solve legal cases. PRIWA. The approach taken in PRIWA is valuable for a variety of applications for learning the law. The legal case-solving research within HYPATIA has been realized and reported in detail (see, for instance, Muntjewerff 2008; Muntjewerff and Groothuismink 1999, Muntjewerff 2010).

3. ANALYSIS

What is structuring and analyzing a decision? In order to answer this question and to design an environment to support law students in finding, reading, structuring and analyzing decisions to indicate and understand the legal meaning of a decision, it is necessary to analyze the task.

The HYPATIA design approach starts with reconstructing explicit models of legal knowledge and legal reasoning. In the key construction process, two components are distinguished:

(1) A theoretical component of exploration, conceptualization and specification of legal knowledge and legal reasoning, explicit models of legal knowledge and legal reasoning. Two perspectives are taken within this approach: a legal perspective and a knowledge engineering perspective.

(a) From the legal perspective different legal sources, being legal empirical research, legal educational practice, legal dogmatist and legal-theoretical research, are examined to specify the required models.

(b) The knowledge engineering perspective is used to construct models at a high level of abstractions as they have to be extended to the instruction and practice by adapting to the individual student’s performance combined with immediate support and feedback. Electronic learning tools can also support the management of information and present different representations and visualizations of legal knowledge and legal links. The last component involves the use of intelligent tutoring systems to provide feedback and assistance in the learning process.

The legal sources that were examined to model the task of reading and comprehending decisions all describe a series of steps to be taken by the student when reading a decision to determine the legal significance (Boe 1999, Eemeren van et.al. 1996, Franke et.al. 1995, Hinder and Langen van den 1998, Janows 1995, Scheber 1995, Siebel and Schwab 1999). However, merely instructing a method does not work for novices (see for details Muntjewerff 2008). This is partly due to the fact that instructing a method is a problem in itself, as it is not enough to instruct the steps involved in the process. This requires the transition of a solution in words (Muntjewerff, 2008). A method is a task, explaining context is much more substantial and therefore easier. The unwieldy paradigmatic situation is that novices have to learn to determine the legal reasoning by determining the legal reasoning. Law students especially have difficulties in determining what the decision adds to the body of applicable rules in the legal system. Based on findings in research in legal problem solving it is stated that the decision contents are fruitful for the student.

The subject matter appears to be the major source for finding or trying to solve problems (on closer inspection, a decision is a legal solution to a specific problem situation constructed on the basis of abstract legal rules). Structuring and analyzing a decision is in fact the task of reconstructing the problem situation (consisting of a reconstruction of both the facts and the legal question), tracing the abstract legal rules that were applied and specifying the legal solution consisting of the argument structure and the conclusion.

Reading and understanding a decision is not a trivial activity. Observations of first year law students reading decisions showed that they experience difficulties with seeing through the composition of the decision, with reconstructing the argument structure and with determining the legal significance of the decision. These difficulties are of the kind of what happened. Next to the fact that the decision contains many references, both explicit and implicit, to regulations, other decisions and concepts. The fact that a decision has a stratified structure which is not supported by recognizable clues in the text does not help either.
4. SESSION WITH CASE

This indeed is one of the parties in the dispute, but unfortunately it is not the opponent. To get a basic idea of the functionality of the system we now describe a session with CASE.

A small number of simple functions are implemented using client-side JavaScripts. CASE offers extensive support for administrative-, editing-, browsing-, tracking- and educational tasks. Using the same portal, administrators can add, remove and change users and cases; editors can add keywords to cases and prepare the solution framework of a case for use; teachers can use the interface to track the results of students, previewing the solution framework and for browsing and searching the database; and students can browse and search the database, and test their analysis skills.

The search engine allows for both Boolean keyword- and free text search in combination with metadata fields such as: date, name, court etc. The principal concept in CASE is that a precedent can be seen as an ordered set of text fragments, each of which can be located according to their position within the solution framework. Text fragments can be as short as a single sentence, but more often, they are as long as a paragraph. The text fragments are stored in a database along with metadata such as the reference to their position in the solution framework. Although a text fragment as described is the basic building block, these fragments can have one or more sub-fragments (such as single words) which can also be selected by the student. For instance, the text fragment ‘Op dit beroep van Ronald G, geboren te Amsterdam op 6 aug. 1954, woonde te Amsterdam, rog. van cassatie tegen een bij verstek gewezen arrest van het Hof te Amsterdam van 12 dec. 1977, waarbij in hoge beroep oor vonnis van de RB., contains the sub-fragment ‘Ronald G’, the accused. In some cases the student needs to select the whole sentence, and in others only the sub-fragment. The solution framework consists of a number of tables, such as parties, facts, claim and the argument structure before the Supreme-Court. Each table is two dimensional and contains a small number of cells, e.g. facts as presented by the initiator, and facts presented by the opponent.

The metadata editor interface is used to add or change metadata of a decision and, more importantly, to add new keywords, or remove existing ones. After completing this procedure, the decision can be searched for using the search interface.

6. A SESSION WITH CASE

As mentioned above, CASE distinguishes four types of users: administrators, editors, teachers and students. Users rights are distributed in an incremental fashion in CASE: this means that a teacher has access to both student- and teaching facilities; an editor has access to editing, teaching- and student facilities; and the administrator user has rights to do everything the other users can, plus adding, removing and changing users, and removing cases from the database. This section describes a typical process from preparation to analysis of a case. After login, the editor recently came upon a decision relevant for law students, she decides to add it to the CASE database. The editor’s menu gives access to the add decision screen. Here she fills in a few facts about the decision (name, publication date, court etc.) and with copy-paste actions she adds the text of the decision to the database.

Next, she visits the metadata editor (see figure 1).
Where the regular interface checks whether the correct text is in the correct position by consulting the database, the prepare tool writes the action of the editor to the database. Note that the editor does not have to add feedback to the database. Feedback is provided to the student in a case-independent way. When the teacher only writes part of the text fragment to be part of the solution, the editor can simply mark these smaller parts. This results in a text fragment with marked coded text fragments that can be placed in the solution table (e.g. Mr. Funke in figure 3). After the editor has finished the above steps, the decision is ready for use by both teachers and students. The teacher is not allowed to change the information or the solution framework of a decision. However, he can add students to the CASE user database, and preview the correct answers (the prepared solution framework) for each decision.

More importantly, the teacher has access to a student tracking facility to analyze student behavior. This way the teacher can determine whether a student came to his or her end result by simply trying every option, or by purposefully placing fragments in the solution framework.

Students can search the decision database using the search interface (see figure 3). This interface offers a metadata search - i.e. on publication date, publication place, court type, court location - but also supports Boolean keyword search and Boolean full text search. The student can also browse through all decisions in the database. The search result page offers support for associative search because key words and other attributes of the cases found are shown. The student can click on any of these to start a search on this attribute. Thus, for example, searching on all decisions with the same keyword of one of the decisions that were found by the original search is done by simply clicking on that keyword in the results page. From the same page, the student can print a decision or open it for structuring and analysis.

The structuring and analysis interface, shown in figure 4, is divided into three frames. The left frame shows all text fragments of the decision at hand. The top right frame contains the tables of the solution framework. The bottom right frame provides feedback to the student’s actions. A text fragment is placed in a cell of the solution table by first selecting the cell, and then selecting the fragment to fill this cell. Once placed, the application will check the combination of cell and fragment and provide a feedback message from the database in the feedback frame. Text fragments can be removed from a cell by clicking the ‘x’-button in the table. Once the student has placed all correct fragments in a specific table, she is notified of this through the feedback frame.

7. SUMMARY AND FUTURE WORK

Learning the law involves reading, structuring and analyzing decisions to be able to indicate the legal significance of the decision. Law students experience difficulties especially with determining what the decision adds to the body of applicable rules in the legal system. Within the current curriculum there is not enough time to read and analyze decisions in the presence of a teacher who may provide immediate feedback. Law students are also not presented with models that may guide them in the process of reading and analyzing decisions. In learning the law it is essential to know how to structure and analyze a decision.

CASE was designed to present the law student with an instructional environment in which she is able to analyze a decision in such a way that the structure is made explicit and the legal meaning can be extracted. CASE is implemented as a web-based server-side application model using open source software. CASE is easy to maintain and re-use and can be made available in different languages. At the moment we are working with a CASE 2.0 version in which some administrative functionalities have been improved. The claim that law students are supported by CASE in structuring and analyzing a decision in such a way that they are able to grasp the legal significance of the decision should be tested in depth. A first small test with first year law students shows that it may be necessary to extend CASE with a knowledge model (Muntjewerff, 2012b).

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BIBLIOGRAPHY