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Easy Cases and Hard Cases – A General Overview of an Eternal Question of Legal Theory[1]

I. INTRODUCTION

Judges and judicial decisions have always been in the focus of academic attention. There is an understanding that judges have three important obligations: decide on every single case they have; decisions should be based on written rules, and (last but not least) decisions should be reasonable and just.[2] According to these principles, judges have a permanent obligation to decide and there is no doubt that sometimes it is a really hard task as they often face complicated and complex cases.

This paper focuses on a special point of view while examining the main characteristics of judicial decisions. The first question is: what does legal dogmatics say about judicial decision-making? Dogmatics maintains that there are two types of legal cases that affect judicial decisions (in addition to any other viewpoint, for example, distinguishing between criminal and civil proceedings): easy cases and hard cases. The main difference between these two categories is whether there is a written rule which constitutes the basis for the decision-making, or there is no such "rule". As for hard cases, written rules do not have a traditional role in adjudication here. There is a lay opinion according to which judges always decide based on rules. Professionals know very well that there is a great number of non-formal elements in each legal system. Hence, the question changes: are these elements allowed or not allowed in the application of law? The old *sententia* of Roman law, *summum ius summa iniuria*[3] supports the idea that the role of non-formal elements has always been very important. Thus, this paper examines a problem which leads us to two classic and eternal issues: the nature of law and the concept of law. It is also important to emphasise that the applied mental process clearly remains in a legal philosophical perspective, not in a technical one.

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[2] Coing, 1996, 258.
[3] This phrase appeared in ancient Rome, in the era of the republic, and it has remained an existing thought interpreted by Cicero (Nótári, 2004).

II. ESTABLISHMENT OF SOME IMPORTANT FACTORS

1. Well-known Judge Role Models and the Traditional Methods of Application of Law

First and foremost, it should be stated that legal culture has created a number of famous role models of reasoning methods used by judges. In these famous descriptions, judges represent the main features of an ideal decision-maker. We should imagine a scale with two very different endpoints: the approach of Weber's judge and that of the Swiss Civil Code in the application of law. Weber maintained that the ideal judge works like a paragraph-machine: clients need to supply the facts of the case, while the judge supplies the rules and the legal expenses into this „machine", which then delivers the judgement.[4] The solution offered by the Swiss Civil Code is interesting, too: if there is no rule or custom, which could decide the case, judges should act as legislators.[5] Thus, between these two endpoints, there are many types of judges. There are two more examples, which cannot be ignored: one of them is Dworkin's Hercules-judge who has superhuman skills and, according to the scholar, Hercules can solve the so-called hard cases as well. Dworkin created him to set up Hercules as a model for real judges. The other one, Paul Magnaud[6] is referred to as „the good judge"; he was open to making his judgements *contra legem* because he tried to be fairer than the written rules suggested.[7]

Why is it relevant to create judicial role models? A role model can be used to illustrate what is the expected behaviour and role of a judge. Recently, this issue was analysed by Zenon Bankowski, who pointed out: a large number of various judicial models have existed in each era and in each legal system. According to Bankowski, one of them is the most famous judge ever, of course a symbolic character, and the story can be found in the Gospel of Luke.[8] It is the parable of the Unjust Judge or Parable of the Persistent Widow; it demonstrates that there are two ways in which a judge can decide wrongfully: he fears no God and has no regard for man. Fortunately, the widow is quite persistent, and, at the end of the story, the judge grants her justice, but „for thought we might fear God and know our doctrine, we might still not know enough to fit the widow uniquely into the law."[9] Bankowski writes that the main point is how to cope with the particularity of judicial cases? Of course, there are skills and capacities which may help

[4] At first sight, this description seems to be astonishing, but it was only Weber's opinion about his epoch's bureaucratic judges (Weber, 1981, 174-175.).

[5] Maczonkai, 2011, 517-525.

[6] Magnaud is not a fictional person (as Dworkin's Hercules or Weber's paragraph-machine judge): he was a real judge in the XIXth century France and an important agent of the school called sociology of law.

[7] We have already mentioned a *sententia* from the Roman law which is quite similar to Magnaud's method *(summum ius summa iniuria).*

[8] See Luke 18, 2-8.

[9] Bankowski, 2018, 26.

making decisions, but one thing has never been forgotten: judges should let the case speak for itself.[10]

Beside these role models, it is also important to explain the stages of judicial adjudication as it is a major issue as well. No doubt, we face again a „model" which is well elaborated in the literature on legal theory. Generally, the procedure consists of four stages in a judge's thinking:[11] 1) fact-finding, 2) identifying a suitable legal norm/rule (1 and 2 are interchangeable stages as they are interrelated), 3) interpretation and 4) formulating the decision.[12] This process clearly demonstrates that most of the stages are distanced from the public because adjudication is based on a mental process – a special path which is conceived and born in the judge's mind.

From the point of view of the application of law, there are three general theories about how implement this process.[13] In the continental legal system, judges solve cases in a similar way to solving mathematical formulas. This is the method of deduction: as the concepts borrowed from the orders of logic indicate, *premissa maior* is the rule and *premissa minor* matches the facts. With a logical conclusion (called subsummation), the judge easily creates the judgement. Many scholars assert that this method is fairly objective: *premissa maior* does not depend on judges as it is made by the legislative branch, moreover, *premissa minor* is influenced and created by the litigants – judges only have to find the facts which can clearly describe the contested human conduct or event. Moreover, judgment is the outcome of a logical conclusion, so this type of process is anything but subjective.[14]

We should pay attention to the anglo-saxon solution as the easy case/hard case differentiation is a popular and well-elaborated one in this culture. Common law, statute law and equity are the three layers of the concept of law. Roscoe Pound maintained that precedents, the jury system and the doctrine of the supremacy of law are the three components which represent the foundations in this legal culture.[15] It is clear that precedents mean judge-made law, therefore, judicial decisions are based on precedent-law. There is a long-standing solution in which judges rely on decisions made in previous cases. These cases can be instrumental in delivering new verdicts, notedly, the brief and the "rule" established in a specific decision are closely interconnected. This "rule" can only been applied again if there is a similar case. Thus, the essential elements of adjudication are precedents, and there are some fundamental terms which help to understand the

[10] Bankowski, 2018, 35-41.
[11] This process was much critised by American legal realism. The main focus of the criticism is that the description below is not a real one as, in fact, judges decide by first making a conclusion, and then producing a subsequent justification of the decision.
[12] Szigeti, 2006, 309.
[13] It should also be noted that there are three different models of application of law, but this kind of phrasing is not quite correct and the expression "model" needs to be used with caution. In this sense, "modelling" means good help in demonstrating the relevant features of application of law, but it does not mean an empirical analysis at all.
[14] Szabó, 1998, 53-55.
[15] Horváth, 1930, 94.

application of law.[16] *Stare decisis* provides the most relevant instruction: former judicial decisions should be followed. Of course, this regulation has further content which we cannot examine in detail in this paper, therefore, we focus only on one: courts work in a strict order of hierarchy, consequently, only judgments delivered by higher courts are binding. *Ratio decidendi* is the other most important concept, it is „the point in a case that determines the judgement."[17] In fact, identifying this point is a complex task; in some cases it can be expressed with a simple sentence/phrase, but in other cases it is the main meaning of the decision.

Finally, there is an additional procedure which can work in the continental and common law legal systems as well: the argumentative method. It was born when sholars came to the conclusion that, because of the nature of law, it cannot be applied only through deduction. Thus, instead of this method, another one should be elaborated. According to the argumentative method, arguments should be rational, and thanks to this requirement, a larger number of arguments and, as a result, conclusions can improve adjudication.[18]

We have to admit that, in real life, applying these methods is more difficult than the short descriptions mentioned above. This paper will not elaborate them, however, this brief mention is relevant in terms of the forthcoming analysis.

2. Origin of the Easy Case/Hard Case Distinction

When was the distinction between easy cases and hard cases invented? Who operated with this idea for the first time? It makes things more difficult when we realize that there are a lot of different answers to this question. Instead of disappearing in the „ocean" of unnecessary details, it can be sufficient to discuss two possible viewpoints. The first seems quite clear: the distinction was invented by the Roman jurists, namely, the glossators.[19] They bring the Roman law to life again; cases which could be solved by applying the rules written in Corpus Iuris Civilis were called "*casus normalis*"; all other cases were the so-called hard cases when glossators had to come up with a deeper interpretation of the law's text to deliver and understand the solution.[20] The other main reading of the distinction specifically comes from the great legal school of legal positivism. Representatives of legal positivism think that the easy case/hard case distinction is apparent and derives from the Hart-Dworkin debate. Thus, the differentiation is illusory as in reality there are no easy cases, as noted by Dworkin, Fish, Fuller or, for example, Aarnio.[21]

[16] Badó, 2004, 50-51.
[17] Black's Law Dictionary, 1979, 1135.
[18] Szabó, 2010, 81-87.
[19] Morever, in the era of the Roman Empire, Roman jurists thought of every case as a hard case; while they were trying to identify the solution, they were searching for a conclusion which could be good enough for equity, the universal purpose of law (Deli, 2014, 163-174.).
[20] Szabó, 1999, 52.
[21] Marmor, 2005, 95.

In addition to these main viewpoints, there is another approach which reveals a lot about the nature of the distinction; this latter one is from philosopher Leibniz. According to Paksy, Leibniz's legacy has a significant role in the hard case analysis, because the philosopher established this term using logic. From Leibniz's work it is clear that there are no unsolvable cases at all. He studied ancient brainteasers that he called *„casus perplexus"*. These types of cases are solvable cases; if he had denied solvability, he would have broken an emphasised doctrine which is based on the idea that God is a fair legislator, he can foresee everything, therefore, he creates rules which solve legal disputes.[22] Furthermore, in Paksy's view, the easy case/hard case dilemma has two main explanatory schemes: one is from Leibniz, and the other one was invented by Dworkin. Thus, the theory of Leibniz is in connection with formal language, notedly, the philosophy-language-law triple relation. He starts his explanation using cases from Roman law, and from these he tries to make conclusions, and as we have already mentioned, he copes with logical brainteasers – the *gordian knot* should be cut![23]

III. EASY CASES AND HARD CASES – CREATING DEFINITIONS

1. A Brief Outline of the Problem

To start with, our preliminary knowledge about the easy case/hard case distinction can come from great legal dictionnaries. For example, Brian H. Bix explains the difference between these cathegories in this way: "Hard cases are those in which competently trained and thoughtful lawyers or judges might come to different conclusions about the result. In a sense, the difficulty or easiness of a case could be seen along a few variables: the extent to which all (competently trained) people would agree about the outcome, and, for any given evaluator, the quickness with which the conclusion is reached and the confidence or certainty with which the conlcusions maintained."[24] Therefore, thanks to Bix, the definition of "hard case" is outlined, thus, everything which does not fall under this concept belongs to the term "easy case".

First of all, it may be important to bring clarity to the relationship between easy cases and hard cases, which is quite relative - what is easy, is not hard at the same time, and *vica versa*, what is hard, is not easy. The main question remains simple, but only at first sight: what makes a case "easy case" and how comes hardness of a case? While the literature on legal theory is rich enough to answer the question, a single right solution to this dilemma has not been revealed. We can also say that this question has always been the eternal and recurring question of legal theory and legal philosophy, as it is suggested in the title of the paper.

[22] Paksy, 2017, 31-32.
[23] Paksy, 2019.
[24] Bix, 2004, 81.

The differentiation is closely related to legal dogmatics. Legal dogmatics „(...) cannot be univocally defined. The reason for that is because it stands the closest to legal practice (...) and is most directly linked to reality. (...) Dogmatics has traditionally two levels: first the general level, where dogmatics is understood as scientific processing of all legal material. In a more specific sense dogmatics is understood as sentences that form a certain system, which enable to conceptually and systematically value the appplication of law."[25] Practice and jurisprudence meet in the field of dogmatics; hypothetically, it is conceivable that practice works without jurisprudence, but its bad effects have been well known by the ancient Roman jurists.[26] Moreover, if we concentrate on practice, one more thing should be emphasised: legal thinking consists of two floors, an interior and an exterior one. The former is responsible for legal argumentation, and the latter helps jurists to form conclusions. The two are linked by the so-called objective teleological argument.[27]

In order to analyse the easy case/hard case typology, the first task is to accept the distinction. Sometimes it is problematic because critics assert that the easy case/hard case typology is not relevant in real life and that application of this aspect in practice is an impossible expectation towards judges. Judges do not think about legal dogmatics at all. Moreover, naming of these cases is not appropriate: each judge's reasoning is different from that of his/her collegues', thus, a case that is easy for one judge may be hard for others.[28] Therefore, this line of reasoning is not acceptable for us as the distinction does exist. We are trying to prove that the easy case/hard case typology is applicable in judicial practice as well, not only in a theoretical way. Our task is to explain why there are easy and hard cases, what is the nature of an easy and of a hard case, how we can identify them. Regarding hard cases, pointing out the source of difficulty is a relevant aspect, too.

For easy cases ancient Romans had a term, "*casus normalis*", which meant that a case could be solved by applying a written rule. Nowadays, we can say that an easy case is such where the facts and the written rule interweave; it can be stated that there is no real decision-making situation. Easy cases are easy beacuse the decision-maker has one certain handhold, the written rule – and that is all. According to Miklós Szabó, an easy case can be easily recognised: 1) there is no dilemma in relation to the facts of the case or the interpretation of the written rule; 2) no questionable statements were made; 3) or if such were made, the court rejected them. The task is more complex if we examine hard cases. Certainly, written rules do not have a traditional role in adjudication here. In fact, it happens that hard cases have several opposing solutions. Their complexity is in connection with a simple realization: there are several sources of difficulty (for example, moral, interpretational, etc.). These short preliminary definitions should be suffi-

[25] Narits, 2007, 19.
[26] Szabó, 2007, 160.
[27] Jakab, 2010, 85-86.
[28] By the way this reflection was conceived by Jerome Frank. See more: Bódig, 2002, 254.

cient at this starting point. The next chapter will present their exact content. Accepting the distinction between easy and hard cases is the most important requirement. We also have to admit that creating correct typology does not mean that it will work in the future very well. In fact, there are various types of judges or legal scholars, and cases will be easy for ones, and hard for others at the same time.

2. The Concept of Easy Cases and Hard Cases in Literature on Legal Theory

We have already stated that when judges face easy cases, there will certainly be a written rule which can solve the problem. This thesis requires an explanation of what "a rule" means exactly. This word has different meanings in the continental and in the common law legal system. The importance of the answer is in that it shows what kind of components count as elements of law. The most important element of the law is the written rule: it expresses an acceptable instruction regarding the behaviour, but it is quite a general term. What do these elements of the law have in common? As their meaning is clear regarding the factual situation, the given case is like a routine case. In this interpretation easy cases act like rule-based cases. Decision-making has no barriers as the rule is applicable to the facts. Andrei Marmor says: an easy case is when we understand what the rules order and we know how to apply them.[29]

In his famous book entitled *The concept of law*, Herbert Hart started and established an endless debate about easy and hard cases. According to the scholar, rules are formulated using general/common expressions. In the majority of cases, the situation is clear and judges understand the meaning of these general expressions well. The key element in this method is that these clear cases (he uses the term "clear" and "paradigmatic", not "easy") are based on the *core of meaning*. But, there is always a point when the application of a rule is problematic. His famous example is the following: imagine a rule according to which "entering a park by vehicle is forbidden". If you want to enter the park by car, the car belongs to the *core of meaning* as the car is evidently a vehicle. But the situation is questionable if somebody wants to use a scooter: is it a vehicle, or not? Consequently, a scooter is something which we classify under the *core of penumbra*.[30] Therefore, in these cases syllogism will not help the decision-maker, solving the problem will need to be at his/her discretion – this is a situation that is called a hard case. Hart's theory has a special name - "the open texture of law" which expresses really well that if there are any difficulties in adjudication, this can arise from the nature of language.[31] Hart knew that a lot of scholars are quite critical in connection with the distinction, namely, when do we face a clear case and when should we explain the meaning of a general instruction of the legislator? In fact, two societal needs

[29] Marmor, 2005, 96.
[30] Hart, 1995, 149-152., 159.
[31] Leiter, 2010, 28.

must be reconciled: 1) there are rules which can be applied safely as they are clear enough, and 2) there should be "open questions" which are completely natural elements of an average legal system.[32]

Dworkin thinks that law is a closed totality which consists of rules, principles and policies. In his entire life and work Dworkin concentrated on hard cases. He claimed that easy cases do not exist, that, in fact, every single case is a hard case. The main problem is that easy cases can be solved by rules, unlike hard cases where judges have to search for applicable principles and policies. In Dworkin's terminology, principles have a large number of characteristics that make them different from rules. For example, principles provide a direction to reasoning; principles do not have exceptions; moreover, principles represent the solidary anchor/bond of the legal system as they try to compensate the accidental inequity of rules. Furthermore, an important feature of principles is not validity, but importance. So, in a special aspect, principles stand above rules in the legal system. Judges are not allowed to exercise their discretion while solving so-called hard cases; instead, they should turn to principles and policies.[33] Dworking believes that each judge can be a real Hercules on his/her own; as we know, Hercules was an ancient hero with superhuman abilities and who had never faced invincible tasks, so decision-makers should strive to become the heros of verdict-making.[34] It is also important to emphasise that Dworkin believed in liberal pluralism, he stated that judicial decisions (of course hard cases as well) should match the political morality of a society.[35]

Mátyás Bencze speaks of three types of cases: in addition to easy and hard cases, he differentiates difficult cases. Easy cases do not mean a real decision-making situation, as facts and the written rule perfectly interact, and the judge does not have to resort to legal dogmatics. Difficult cases are like mathematical examples; they are real logical brainteasers requiring a mental effort. Bencze explains hardness as having several opposite solutions, hence the decision-maker is required to make a real choice. He states that hardness can come from two sources, one from the nature of language, and the other one is in connection with the relation between the judge and the rule to be applied. The linguistic aspect is quite similar to Hart's theory. The second source of hardness brings out new information about the phenomena. Firstly, it sometimes happens that while the facts and the rule can be matched with each other, the judge nevertheless decides that this match is not sufficient; this consideration can come from realising that any other judge may decide like this. Secondly, judges have their own sense of subjectiveness which may motivate them to decide *contra legem* (like Magnaud).[36]

Miklós Szabó's main view on the dilemma has already been cited, but there are additional details which should be discussed. In easy cases, there is no source of

[32] Hart, 1995, 151., 159.
[33] Dworkin, 1996, 17-46.
[34] Dworkin, 2013, 132.
[35] See Dworkin, 1995, 132-156.
[36] Bencze, 2007, 127.

difficulty as in adjudication, in the mental process the judge can take note of *premissa maior* (rule) and *premissa minor* (facts) and understand well their consistency. An easy case is a simple routine case, many cases of this type exist in the judicial practice, and they can be decided by a simple written rule. Szabó also focuses on the question of hardness, which can manifest in the following forms: 1) impossibility of fact-finding; 2) too abstract formulation of the rule; 3) difficulty of communication during the trial; 4) moral difficulty; 5) non-formal elements of law are used in the judgment; 6) difficulty in the syllogism process.[37] Szabó's view is similar to that of Dworkin's who maintains that difficulty has three main sources: 1) moral difficulty; 2) verifiability of facts or rules; 3) litigants establish the facts differently.

And finally, according to Aulis Aarnio, there are some reasons why we can call certain cases easy or routine cases. The first most important factor is recurrence as they occur a great number of times in practice, they are part of everyday life. These kind of cases can be called "isomorphic cases" or "mechanical decisions". In such cases discretion is not allowed – and this is the key to understanding the difference! In hard cases, discretion is allowed, in fact, "(...) in order to distinguish hard cases from routine decisions, this type of decision can be termed a decision of discretion. A typical feature is that either more than one legal norm can be applied to the same set of facts, or the same legal norm permits more than one interpretation."[38]

3. Examples of Easy and Hard Cases

At the end of the analysis, there is one more question. As mentioned above, judicial work has a natural aspect: judges must solve the cases, there are no exceptions. This leads to a reasonable question: which one is the paradigmatic case in legal dogmatics, the easy or the hard case? Reasons next to easy case are the following: easy cases are basic cases, all other cases, that is, hard cases, have extra complications. On the other hand, if hard cases are to serve as model cases, it is clear that they can trigger jurist's self-awareness. If we accept the decisions made in easy cases, it seems that jurists (especially judges) are not needed. Moreover, there is an expectation in society that most cases should be easy. According to this perception, judicial work shall be no more than mechanical work; on the other hand, this kind of opinion is quite extreme, therefore, we disregard it. If we focus on hard cases, the situation is reversed: the possibility of difficulty is everywhere, and it is a matter of luck or coincidence where we have no impression of mental and logical barriers. Therefore, this type of reasoning is not mechanical at all because each case needs special thinking and reasoning: it is a case-based, customised method with a practical purpose of making general norms universal.[39]

[37] Szabó, 1998, 13-14.
[38] Aarnio, 1987, 2.
[39] Szabó, 2005, 160-161.

There is a famous case which is usually referred to as the paradigmatic case of hard cases: *Regina vs. Dudley & Stephens* (or just "*La Mignonette*"). Dudley and Stephens were shipwrecked along with two other men. When one of them, the cabin boy Richard Parker, fell into a coma, Dudley and Stephens decided to kill him for food. In a highly publicized trial they were convicted of murder and sentenced to death with a recommendation for clemency; the sentence was commuted to six months in prison.[40] With this perfect example, we can demonstrate that the factual situation and the norms are quite clear (premeditated murder); but despite such straightforward circumstances, decision-making is very problematic as it involves a serious moral dilemma. There is another case in which the facts are very similar to those of the *Regina vs. Dudley & Stephens* case; it is the *Case of the Speluncean Explorers* which is a fictitious legal case created in 1949 by Lon Fuller to illustrate divergent theories of law and morality. With this similar case, Fuller wanted to emphasise why judges disagree about how to apply law to particular cases, and, additionally, what if the opinions held by judges rationalize judicial policies and approaches.[41]

Interpretation is more interesting if there are some hard factors in the process. This type of difficulty can be one of the most challenging judicial tasks. The following case from the practice of the Court of Appeals of Budapest is a good example. There was a woman who lived in a workers' hostel. She did not know that she was pregnant. One day she had a really strong abdominal pain; she went to the bathroom. Other workers called the ambulance. Next day, the houseman found a body of a dead baby in the WC. Investigation demonstrated the relation between the woman and the dead baby. The judge had to decide if the woman was guilty of murdering her baby or not? At first sight, one would probably say that she was, and so did the court. The Court of Appeals was reasoning in a very enlightening way and it showed a new way to the higher courts: if there is a human who is dead, he or she cannot be the object of a murder. A dead body is not suitable at all as an object of this crime (murder) as the woman's baby was dead when he/she was borne, it was subsequently proved by a group of physicians during the process.[42]

Instead of analysing more and other types of hard cases, we will mention only a few famous and important ones. At the beginning of this paper, the story of the Persistent Widow from Luke's gospel was mentioned. This parable offers a symbolic "judge character" and an interesting decision-making situation as well. In the *Riggs vs. Palmer* case referred to by Dworkin the decision-maker could not decide by written rules as there weren't any, so he solved this hard case by applying a principle of civil law. Additionally, Magnaud's judgments also offer good examples of hard cases when a judge is forced to decide *contra legem*. And, of course, we shall not forget about the paradigmatic cases demonstrated above (*Regina vs. Dudley and Stephens, the Case of the Speluncean Explorers*).

[40] Márkus, 1904, 433.
[41] Suber, 1998, 2.
[42] Court of Appeals of Budapest, 2Bf.292/2010.

And what about easy cases? Are there any good examples to illustrate this category? In legal tradition there are no paradigmatic cases among easy cases as they are not so interesting or relevant, but in practice there is a wide range of these so-called easy cases; just think of routine decisions such as witholding taxes from a pay check, determining the size of a pension, issuing a passport, and so on.[43]

IV. CONCLUSION

This paper focused on an eternal problem of legal theory. It is clear that the easy case/hard case typology requires a complex analysis as the issue relates to the concept of law – and what else can be the fundamental question of any other scholarly work? This analysis is not complete, as, for instance, the area of norms/rules has not been explored, which can be another challenge, because the theory of norms is inseparable from the easy case/hard case distinction. Thus, using the interpretation offered in this paper, mental effort is not necessary to solve an easy case because it is a simple routine case and the applicable written rule provides an exact content. Regarding hard cases, the particularity and exceptionality of the case is emphasised. Trying to discuss the easy case/hard case distinction with real judges may be an impossible conversation as they find it somewhat degrading. They might say that the easiness or hardness of a case cannot be a basis of typology. The aspect of legal dogmatics does not depreciate judicial decision-making at all when it creates the easy case method. In reality, judges do not really have a "heureka" feeling; as we have already mentioned, they must decide and this obligation affects their viewpoint in connection with such legal philosophical studies. We can say that the hardness of a case for them is hidden, but in each situation they can be real Hercules judges, as Dworkin hoped.

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