Reasoning in Common Law Systems

**CIVIL LAW**
- Mostly deductive reasoning
- Proceeding from stated general principles or rules of law contained in the legal codes to a solution in a specific case

**COMMON LAW**
- More use of inductive reasoning (reasoning by analogy)
- Deriving general principles or rules of law from a specific decision, or a series of specific decisions, extracting an applicable rule, and then applying it to a particular case.

Precedent: A common law judicial decision has 2 effects:

- An end (perhaps only temporary) is put to the controversy before the court.
  - This is the same as in civil law systems.

- A “precedent” that will control the disposition of later cases in which the same issue or issues arise.
The principle of precedent, or *stare decisis*, combines two propositions:

1. Hierarchy: The lower court *must* accept the position held on any given issue by its hierarchical superior.
   - In theory, this isn't true in civil law countries.

2. Courts are bound by their own *previous decisions*.

- Imagine the following situation:
  - You are the younger of two siblings.
  - One night when your brother was 15 years old, he stayed out with his friends until 12:00 p.m. on a school night.
  - Your parents were very angry, and told him that he could not stay out past 10:00 p.m. on school nights.
  - They told him that they were making this rule because they want him to do well in school, which he can't do if he is tired.
• When you turn 15, they tell you that you have to be home by 9:00.

• What do you say to them?

• Assume that they agree with you and set your curfew to 10:00 p.m. on school nights.

• One day, you decide to sign up for a private English course. However, the only course that you can find which is at your level meets once a week from 8:00-9:30 p.m., which means that you won’t be able to get home until 10:30 p.m.
• Your parents tell you that you can’t go, because you will be getting back too late.

• What could you say to them in order to convince them to change their minds?

• Let’s say that you convince them. They say, “Okay, we will make an exception to the rule that you have to be home by 10:00, because we think this English course is important for your education, and because 10:30 isn’t that much later.”

• After your parents allowed the English course, what would a complete expression of their rule on the subject of your curfew be?
After you have finished with the English course, there are two different activities that you want to participate in:

1. An Italian cooking class. This meets once a week from 7:00 until 9:30. It would take you until 11:00 to get home.
2. A math course designed to help you on your college entrance exam. It meets twice a week and it would take you until 10:30 to get home.

Would these new activities be allowed under your parents curfew rule? Should they be? With a partner, think of arguments you could make on both sides of this question.