

LEH355/PHI370 – LEGAL REASONING – ASSIGNMENT #2 – DUE OCT 1

Your assignment should be written clearly, concisely and precisely.

Hand in a paper copy in class and submit an electronic copy on the course website.

Argument reconstruction Watch the You Tube video featuring US Supreme Court Justices Scalia and Breyer, as well as the video featuring Justice Sotomayor during the Senate hearing. Answer at least five of the following questions in 2-3 pages and make sure you reconstruct the Justices' arguments as precisely as possible:

- (a) Do Breyer and Scalia think that the task of the judge is to do justice or to apply the law? Carefully summarize the arguments and examples that each Justice gives.
- (b) Why does Breyer think that “purpose” and “consequence” are important tools for interpreting legislative texts? What are Breyer’s arguments? Does Scalia agree? What are Scalia’s arguments?
- (c) What is the idea of a living constitution? Why does Breyer think it’s a good idea? Why does Scalia disagree? Reconstruct their arguments carefully.
- (d) What is Sotomayor’s position about the idea of a living constitution? Does she agree with Scalia, Breyer or neither? Explain.
- (e) Is Somotayor a realist, originalist, strict constructionist or neither of these? Carefully explain Sotomayor’s position and also define what these concepts mean.
- (f) What would Breyer, Scalia and Sotomayor say about the Palmer case? Would they agree with the majority opinion or not? Explain and carefully motivate your answer.

Please clearly itemize your answers. *Do not write in essay form.*