Your reading on Legal Formalism, pp. 119-120, refers to the formal (X/Y) issue frame and to the legal syllogism.

**Formal (X/Y) issue frame.** See, e.g., p. 13 (contrasting the formal issue frame in *Smith* and a possible normative issue frame).

- Recall that in the formal (X/Y) issue frame, legal reasoning begins with an element or category within a legal rule, and asks whether some set of facts, on a particular description of those facts, counts as an instance of that element or category. For ease of reference, we are designating the element or category within the legal rule as Y, and we are designating the set of facts, under its chosen description, as X.
- Framed formally, the “life necessities” issue in the *Shoes* case might be stated: Are items of clothing worn for purposes of religious observance [X] “life necessities” [Y] within the meaning of §101?
- Framed normatively, the issue might be stated: “Is spending income on nice church shoes for her daughters sufficiently important to a life of dignity and participation in the community so that welfare recipient Mrs. Beatty should not have to repay that amount to the government?”
- **Our formalist conscience** urges us to frame the issue formally whenever possible, and to reject normative issue frames.
- But **our realist doubts** tell us that even in framing issues formally, normative-evaluative choices cannot be finessed or eliminated. This is due partly to the level of generality problem associated with all possible descriptions of X.

**Legal syllogism.** See handout, *The Legal Syllogism*, for class #3.

Grady’s legal reasoning on Count II in *Ulane* as an example of a legal syllogism.

- Rule (major premise): It is an unlawful employment practice to discharge or discriminate against an individual because of such individual’s sex. Title VII.
- Decision rule (minor premise): Discharging an individual because she is a transsexual [X] is “discharging or discriminating against an individual because of such individual’s sex” [Y] within the meaning of Title VII.
- Holding (conclusion): It is an unlawful employment practice to discharge or discriminate against an individual because she is a transsexual.

**Our formalist conscience** urges us to structure our legal reasoning on Count II in this way. But **our realist doubts**, illustrated by the quote from Joseph Singer on p. 124, might incline us to believe that it is not so easy to separate the legal question about what Title VII means from the moral-normative question about why sex discrimination in the workplace is so bad that (unlike some other forms of workplace discrimination) it is prohibited. (Should we also consider the sum of economic costs and benefits of prohibiting discrimination on the basis of transgender in the workplace?) And **our natural law imagination**, illustrated by the quotes from Ronald Dworkin and Frederick Douglass, pp. 127-131, perceives the issue as inviting and requiring us to interpret our national commitment to end sex discrimination in the workplace. While it is true that in so doing we are interpreting a legal rule (Title VII), we are also interpreting wider principles of equality and anti-discrimination or anti-subordination that weave their way through the fabric of our constitution and laws (cf. Dworkin on Riggs v. Palmer and Posner’s Marshall dissent). On this view, legal formalism gets us off to a bad start when it initiates legal reasoning with an isolated rule.