

Reasoning by Analogy

“Your neck is like a tower of ivory. Your eyes are like pools.”

-- *Song of Solomon 7:4*

What is an analogy in literature?

Analyzing an idea by showing **significant similarities** to another idea.

“Shall I compare thee to a summer’s day?
Thou art more lovely and more temperate.”

-- Shakespeare, *Sonnets XVIII*

What is an analogy in legal reasoning?

Analyzing a case's facts by showing **significant similarities** to a precedent's facts.

Only if the facts are *analogous* will the precedent be followed.

Precedent: $A + B = H$

New case 1: $A + B = H$

New case 2: $A + C \neq H$

Not all **similarities** (differences) are **significant.**



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What is an analogy in legal reasoning?

Analyzing a case's facts by showing **significant similarities** to a precedent's facts.

So, how do you know whether factual similarities are **significant**?

By analyzing the underlying **public policy**.

False imprisonment:

1. **Restraint** of a person
2. Within a bounded area
3. Without justification or consent.

New case: Pl comes home. Def, a large man, has broken into the house and is pointing a knife at pl.

Issue: Has def “**restrained**” pl?

Our case isn't s clear. A clear case would be if pl tried to run away and def hit him.

Precedent: PI was confronted by a
“muscular” woman waving a baseball bat.
Held: Yes, restrained.

What’s the **public policy** behind the
restraint requirement?

A person should not have to put his life at
risk by trying to run away to test whether he
is truly “restrained.”

Writing the analogy:

1.Precedent's facts: PI was confronted by a “muscular” woman waving a baseball bat. Held: Yes, restrained.

2.New case facts: PI comes home. Def, a large man, has broken into the house and points a knife at pl.

3.The facts of both cases are **similar** in that both pls were confronted by physically imposing defs holding weapons in threatening ways.

4.As a matter of **policy**, such threats should be enough to count as “restraint.” A pl should not have to put his life at risk by trying to run away to test whether he is truly “restrained.”

Exercise:

Rule: “Vehicles” are not allowed in the park.

What are the possible **policies** behind that rule?

Precedent: A car counts as a “vehicle”

Under those policies, which of the following should be banned as **similar** to a car?

- Bicycle
- Electric golf cart with maximum speed 2 mph
- Toy car

Analogy example (Burnham p.70)

Issue: Does owner recover from third party (3P)?

	Holding	How taken from owner?	Price paid by 3P	3P's knowledge of illegal taking
Case 1	Yes	Boat stolen	Fair market value	None
Case 2	No	Boat taken by fraudulent check	Fair market value	None
Case 3	Yes	Oil painting taken by fraudulent check	Below market value	Heard rumors

Exercise

New Case: Is OVERNIGHT FERRY company liable for loss of passenger's luggage? Ferry has restaurant and bar. The luggage was stolen from an overhead rack in the plaintiff's locked cabin.

Precedent 1--HOTEL owner held liable for a guest's stolen luggage because contract of hospitality impliedly involved reasonably safe storage of the guest's belongings.

Precedent 2: RAILROAD company held not liable for the loss of the luggage of a passenger who traveled on a train in a locked sleeper berth because the contract was *primarily* for travel and not for lodging.

Law school taught me one thing: how to take two situations that are exactly the same and show how they are different.

--Hart Pomerantz