



HOW TO CRAFT AN EFFECTIVE CASE COMPARISON

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The case comparison is one of the most useful, if technical, tools in a legal writer's toolbox. In the United States, like in any common law system, legal reasoning relies on the basic assumption that similar cases should be decided similarly. Consequently, how prior courts have decided cases, and the facts underpinning their reasoning, represents important legal authority, and a legal writer must be prepared to analogize to or distinguish from legal precedent. Although there are several ways to accomplish this goal, the case comparison is one such method. A legal writer using a case comparison demonstrates that the facts and reasoning of a precedential case should (or should not) produce a specific outcome in the present case. The following handout discusses when to use a case comparison, the components of an effective case comparison, and what to do with unfavorable facts in precedential cases.

I. When to Use a Case Comparison: Rule-based Reasoning v. Analogical Reasoning

When formulating an argument, the legal writer has a choice of several reasoning processes.² Indeed, skillful legal writing entails the words on a page as well as the decisions behind the text that inform which arguments to make and how to make them. Two common forms of legal reasoning are rule-based reasoning and analogical reasoning. A legal writer uses analogical reasoning when crafting a case comparison.

Rule-based reasoning applies a rule directly to a set of facts. It adopts the form of a syllogism one encounters in deductive logic—if *a*, then *b*; *x* is *a*; then *x* is *b*. For example, if a California statute prohibits persons under eighteen from using an electronic device when operating a motor vehicle³; and if Janice is under eighteen, then Janice is prohibited from using an electronic device when operating a motor vehicle in California. A legal writer might use this type of reasoning when the legal rule defines a category (e.g., a person under eighteen) that a fact unambiguously fits into.

However, statutes and case law will not always provide a fixed category; instead, legal rules often articulate ambiguous tests that depend on the facts of a particular case. For example, a court applying a legal rule requiring that a person act “reasonably” will look to the facts of the case to make its reasonableness determination. Thus, if a legal writer is arguing that an

¹ This handout was created in 2017 by Michel Djandji.

² For a discussion of the various methods of legal analysis, refer to the handout titled [“What Do You Mean ‘There’s More than One Way to Do It’?”](https://www.law.georgetown.edu/wp-content/uploads/2018/02/legalanalysismethods.pdf) <https://www.law.georgetown.edu/wp-content/uploads/2018/02/legalanalysismethods.pdf>.

³ Cal. Veh. Code § 23124(a)–(b) (West, Westlaw through Ch. 224 of 2015 Reg. Ses.).

individual in the current case acted reasonably based on a court's reasoning in a precedential case, the legal writer will probably employ analogical reasoning.

Analogical reasoning compares the facts of a past case to those of the present case and extrapolates the outcome based on this factual comparison and the court's reasoning in applying the law to the facts in the past case. Similar facts between the past case and the present case lead to a similar outcome (analogizing); dissimilar facts between the past case and the present case lead to a different outcome (distinguishing).

Although both forms of reasoning apply a statement of the law to the facts of the current case, they differ in how the rule is applied to the facts. In rule-based reasoning, the legal writer moves from the general (e.g., "if *a*, then *b*") to a particular ("*x* is *b*," where *x* is a fact in the present case). In analogical reasoning, the legal writer moves from the particular (e.g., the facts in a precedential case) to a particular (the facts in the present case).

II. Dissecting a Case Comparison

Although there is no uniform formula for a case comparison, effective case comparisons share a basic structure: (1) identify and explain the legal rule; (2) present the facts, holding, and reasoning of a precedential case; (3) explicitly compare the facts of the precedential case with the facts of the current case; and (4) apply the reasoning of the precedential case to the current case to reach a proposed outcome.

A legal writer can present these components in various ways. Some writers separate the rule explanation from its application to the current case. To do so, the legal writer might identify and explain the legal rule (component 1) and present the facts, holding, and reasoning of the precedential case to illustrate that legal rule (component 2). In a separate paragraph, the writer would discuss the similarities (or differences) between the precedential case and the facts of the current case (component 3). Based on the factual similarities (or differences), the writer would argue that the outcome of the precedential case should (or should not) apply to the current case (component 4). Although organizing a case comparison in this way is acceptable, it separates the rule explanation from its application to the facts, which requires the legal reader to recall the earlier paragraph on rule explanation when reading the later paragraph on rule application. Where there might be abundant case law, presenting the law in a separate paragraph might be an effective way to present the law (and set up the case comparison) for the reader.

An alternative combines the rule explanation and its application in the same paragraph. Accordingly, the legal writer explains the legal rule (component 1), presents the precedential case (component 2), compares the facts of the precedential case and the current case (component 3), and applies the reasoning to the facts of the current case (component 4) in one place, thereby avoiding a situation where the reader must refer to several paragraphs to understand the legal rule and how it is being applied to the facts of the current case.

The case comparison does not need to follow a precise order, nor does each component require a separate sentence. Nonetheless, when crafting a case comparison, the legal writer should include the following necessary components:

- **Articulate the legal proposition guiding the case comparison:** The case comparison is a tool for applying a rule, so a legal writer must state the rule before applying it. The comparison will make more sense to a reader if the reader learns the legal context of the comparison (i.e., the rule statement and the facts and ruling of the precedential case) *before* delving into the facts of the current case. When a writer inverts this order, by discussing the facts of the current case before the precedential case, or when the writer omits a rule statement, the reader does not know the legal proposition guiding the comparison. Consequently, even relevant facts of the current case will seem meaningless or arbitrarily selected. To solve this problem, introduce the rule statement and the precedential case before discussing the current case.

Example:

¹ Rule statement	A second entry to a residence pursuant to a valid search warrant will usually be regarded as a continuation of the first search and will therefore not violate the Fourth Amendment. ¹ See <i>United States v. Carter</i> , 854 F.2d 1102 (8th Cir. 1988). ² In <i>Carter</i> , the police returned several hours after the initial search to retrieve an item that had been listed in the search warrant, but had been inadvertently left behind by the officers. ³ The Court held that the return search was proper under the Fourth Amendment ⁴ because the authority of the warrant had not expired. ⁵ <i>Id.</i> at 1105. Just as in <i>Carter</i> , ⁶ in the present case, during a properly warranted search of the premises, the officer had seized and tagged and then mistakenly left behind incriminating evidence. Similar to the police in <i>Carter</i> , who went back to the scene several hours later to retrieve evidence, the police here, forty-five minutes after that search, re-entered the house to retrieve the items. ⁷ Accordingly, a court will probably uphold this second search.
² Citation (with introductory signal)	
³ Facts of precedent	
⁴ Holding of precedent	
⁵ Reasoning of precedent	
⁶ Transition phrase	
⁷ Facts of current case compared to facts of the precedential case	
⁸ Conclusion or prediction for current case	

- **Identify the important facts of the precedential case:** Being able to analogize and distinguish cases requires an understanding of what kinds of similarities and differences are legally significant. There is, of course, considerable flexibility in deciding what is “similar or different” and “significant.” This flexibility gives the legal writer the opportunity to be creative when using a case comparison. If you have a sense of how you might use a similarity or difference, you will have a better idea of what you are looking for. A similarity or difference is legally significant if it relates to a term in the governing rule of law or a principle implicated by the rule or its application in this case. If a factual similarity or difference would help a court decide how the rule might apply to that party’s situation, the comparison will be important.

Example:

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² Citation (with introductory signal)	
³ Facts of precedent	
⁴ Holding of precedent	
⁵ Reasoning of precedent	
⁶ Transition phrase	
⁷ Facts of current case compared to facts of the precedential case	
⁸ Conclusion or prediction for current case	

- **State the facts, holding, and reasoning in the precedential case:** There is no fixed order in which to present the facts, holding, and reasoning of the precedential case. And the legal writer need not reserve a separate sentence for each. In the example below, a writer could have stated the holding of the case and provide the reasoning in a single sentence: “The court held that the defendant was not liable to the victim [holding] because the wife lacked knowledge of her husband’s plan and ‘there was nothing the defendant could have done to have stopped the attack’ [reasoning].” Nonetheless, an effective case comparison should, in whatever order, include the facts, holding, and reasoning of the precedential case.

Example:

¹ Rule statement	A person who transports another to and from the scene of a battery is not liable as a participant unless the person acted in such a way to encourage the tortious incident. ¹ <i>Duke v. Feldman</i> , 226 A.2d 345, 347 (Md. 1967). ² In <i>Duke</i> , the plaintiff sued the wife of his assailant and claimed that the wife should be liable for a battery because she assisted the assailant by driving him to and from the location of the attack. The wife had not encouraged, or even known in advance of, her husband’s plan to strike the plaintiff. ³ <i>Id.</i> at 348. The court explained that because the wife lacked knowledge of her husband’s plan, “there was nothing the defendant could have done to have stopped the attack.” ⁴ <i>Id.</i> ² Accordingly, the court held that the defendant was not liable to the victim. ⁵ <i>Id.</i> Given its similarity to our case, the <i>Duke</i> decision should control here. ⁶ Like the wife in <i>Duke</i> , our client, Smith, did bring the attacker, Wells, to the scene of the assault. Both he and Wells have denied that they had discussed attacking Minter. ⁷ Therefore, according to <i>Duke</i> , unless the plaintiff can establish that Smith knew in advance about, or otherwise encouraged, the battery, a court will likely conclude that Smith is not liable for the plaintiff’s injuries. ⁸
² Citation	
³ Facts of precedent	
⁴ Reasoning of precedent	
⁵ Holding of precedent	
⁶ Appeal to <i>stare decisis</i>	
⁷ Facts of current case	
⁸ Conclusion or prediction for current case	

- **Compare the facts of the precedential case with the facts of the current case, and apply the reasoning of the precedential case to the current case:** The legal writer must indicate how the current case is similar to (or different from) the precedential case. To do so, the writer will compare key facts from the precedential case with the key facts of the current case, noting the legally significant similarities and differences. If the facts are similar, the writer will argue that the reasoning of the precedential case should apply to the current case

to produce a specific outcome; however, if the facts are different, the writer will argue that the reasoning of the precedential case should not apply to the current case, thereby producing a different outcome.⁴ The writer should make sure that the facts and the reasoning discussed and applied relate to the rule statement guiding the comparison.

Additionally, parallel structure enhances a case comparison's effectiveness. For example, if the legal writer presents the facts of the precedential case in a specific order, then the writer should mirror that order when presenting the facts of the current case.

Example:

¹ Rule statement	A person who transports another to and from the scene of a battery is not liable as a participant unless the person acted in such a way to encourage the tortious incident. ¹
² Citation	<i>Duke v. Feldman</i> , 226 A.2d 345, 347 (Md. 1967). ² In <i>Duke</i> , the plaintiff sued the wife of his assailant and claimed that the wife should be liable for a battery because she
³ Facts of precedent	assisted the assailant by driving him to and from the location of the attack. The wife had not encouraged, or even known in advance of, her husband's plan to strike the plaintiff. ³
⁴ Reasoning of precedent	<i>Id.</i> at 348. The court explained that because the wife lacked knowledge of her husband's plan, "there was nothing the defendant could have done to have stopped the attack." ⁴
⁵ Holding of precedent	<i>Id.</i> ² Accordingly, the court held that the defendant was not liable to the victim. ⁵ <i>Id.</i>
⁶ Appeal to <i>stare decisis</i>	Given its similarity to our case, the <i>Duke</i> decision should control here. ⁶ Like the wife in <i>Duke</i> , our client, Smith, did bring the attacker, Wells, to the scene of the assault.
⁷ Facts of current case	Both he and Wells have denied that they had discussed attacking Minter. ⁷
⁸ Conclusion or prediction for current case	Therefore, according to <i>Duke</i> , unless the plaintiff can establish that Smith knew in advance about, or otherwise encouraged, the battery, a court will likely conclude that Smith is not liable for the plaintiff's injuries. ⁸

- Conclude how the court will rule on the issue in the current case:** The final section in a case comparison should provide the reader with a conclusion or prediction for how the court in the current case will rule on the legal principle discussed in the case comparison. The example below deals with whether a second entry into a residence pursuant to a valid search warrant would be considered a continuation of the first entry and, therefore, a lawful search under the Fourth Amendment. The first question—whether the second entry is a continuation of the first—is related to the second question—whether law enforcement violated the defendant's Fourth Amendment rights. Although the writer could have ended the case comparison by concluding that "a court will probably uphold this second search," adding the second conclusion relates the case comparison to the broader issue of the section in which the comparison is located in a legal document. The first and last sentences in every paragraph are positions of emphasis that the writer should use to advance her argument.

⁴ The writer should beware of logical fallacies. If the logic is flawed, the analogy on which it is based will not be effective. For example, a writer cannot argue that because the precedential case has fact *x* and the current case does not have fact *x*, the outcome of the current case is not the outcome of the precedential case; this is mistaken negation.

Example:

¹ Rule statement	A second entry to a residence pursuant to a valid search warrant will usually be regarded as a continuation of the first search and will therefore not violate the Fourth Amendment. ¹ See <i>United States v. Carter</i> , 854 F.2d 1102 (8th Cir. 1988). ² In <i>Carter</i> , the police returned several hours after the initial search to retrieve an item that had been listed in the search warrant, but had been inadvertently left behind by the officers. ³ The Court held that the return search was proper under the Fourth Amendment ⁴ because the authority of the warrant had not expired. ⁵ <i>Id.</i> at 1105. Just as in <i>Carter</i> , ⁶ in the present case, during a properly warranted search of the premises, the officer had seized and tagged and then mistakenly left behind incriminating evidence. Similar to the police in <i>Carter</i> , who went back to the scene several hours later to retrieve evidence, the police here, forty-five minutes after that search, re-entered the house to retrieve the items. ⁷ Accordingly, a court will probably uphold this second search. Therefore, law enforcement officials did not violate the defendant's Fourth Amendment rights when they entered the residence a second time. ⁸
² Citation (with introductory signal)	
³ Facts of precedent	
⁴ Holding of precedent	
⁵ Reasoning of precedent	
⁶ Transition phrase	
⁷ Facts of current case compared to facts of the precedential case	
⁸ Conclusion or prediction for current case	

Although the structure of a case comparison might seem formalistic at first glance, you will soon become more skilled in its usage and will be able to use it in conjunction with other, analytical and rhetorical devices when making a legal argument. With practice, you can use shortcuts (such as skilled and appropriate use of parentheticals) to be more concise. In the appropriate context, the writer may pare down the extent of the comparison and collapse some steps into one another. Such paring down may be appropriate if the comparison addresses a relatively minor point, illustrates a general principle, or provides supplemental support. Such paring down should not regularly be used as a substitute for a fuller case comparison. Novice writers should be particularly careful about using parentheticals as a substitute for textual discussion of cases.

Example:

¹ Rule statement	An additional factor in determining the reliability of a witness's identification of a suspect is the witness's opportunity to view the suspect at the time of the crime. ¹ <i>Biggers</i> , 409 U.S. at 199. ² In most Minnesota cases where the identification is found to be reliable, the witness had a much better opportunity to view the defendant than did the victim in our case. ³ See, e.g., <i>State v. Lindahl</i> , 309 N.W.2d 763 (Minn. 1981) (witness spent 45 minutes with attacker); <i>State v. Kowski</i> , 423 N.W.2d 706 (Minn. Ct. App. 1988) (witness spoke with suspect for five minutes in broad daylight). ⁴ By contrast, the victim spoke to the pedestrian she saw for less than a minute on a poorly lit street at night. ⁵ The victim's opportunity to view this suspect was much more fleeting than the witnesses' opportunities in <i>Lindahl</i> or <i>Kowski</i> . ⁶ The court should therefore conclude that the victim's limited opportunity to view the pedestrian is evidence of her identification's unreliability. ⁷
² Citation (short cite)	
³ Reasoning and holding of precedent are "collapsed" because this discussion is part of a full analysis in which the context is clear.	
⁴ Facts of precedent given as part of citation in a parenthetical	
⁵ Facts of current case	
⁶ Transition phrase (here, distinguishing our case)	
⁷ Conclusion or prediction for current case	

III. What To Do with Unfavorable Facts

The legal writer will encounter precedential cases in which the facts closely resemble the facts of the current case, but in which the result obtained in the precedential case is inconsistent

with, or even opposite to, the desired result in the current case. These instances are called counterexamples, and a legal writer must be prepared to anticipate and rebut them.

Rebutting a counterexample increases the writer’s credibility with the reader because it demonstrates that the writer has considered her argument in light of contradictory evidence and believes that her argument is the stronger one. Additionally, like a vaccine introduces a sample virus to immunize the host from infection in the future, rebutting a counterexample exposes the reader (i.e., the host) to harmful precedent (i.e., the virus). Because the reader is made aware of this harmful precedent, the reader is less persuaded by the counterexamples when they are subsequently presented.

A legal writer can rebut a counterexample in a case comparison. Consider the following example examining whether the FBI’s drone surveillance constituted an unlawful search under the Fourth Amendment. In this example, the drone was equipped with a camera fitted with a zoom lens, and the FBI agents used the zoom feature on the camera to peer through plants to take pictures of boxes on the defendant’s fifth-floor balcony.

Example:

- ¹Rule statement synthesized from two cases
- ²Citation (short cite with explanatory parenthetical)
- ³Facts of precedent
- ⁴Holding of precedent
- ⁵Reasoning of precedent
- ⁶Facts of current case
- ⁷Counterargument
- ⁸Rebuttal
- ⁹Conclusion or prediction for current case

Although naked-eye observations are less likely to invade an individual’s reasonable expectation of privacy in his property, *see, e.g., Ciruolo*, 476 U.S. at 215, the use of technological enhancements does not necessarily make the observations unlawful under the Fourth Amendment,¹ *see Dow Chem. Co.*, 476 U.S. at 228 (“The mere fact that human vision is enhanced somewhat . . . does not give rise to constitutional problems.”).² In *Dow Chemical*, the Environmental Protection Agency (EPA) used a standard precision aerial mapping camera to inspect a chemical-manufacturing plant.³ 476 U.S. at 229. Although the camera gave the EPA more detailed information than would naked-eye observations, the Court concluded that taking aerial photographs from navigable airspace was not a Fourth Amendment search.⁴ *Id.* at 238–39. The Court reached its conclusion in part because the photographs were “limited to an outline of the facility’s buildings and equipment” and did not “penetrate walls or windows” to reveal confidential discussions or trade secrets.⁵ *Id.* Like in *Dow Chemical*, the FBI agents used a technological device to make an observation.⁶ **Although the drone provided more than an outline of the boxes by allowing the FBI agents to read the boxes’ labels and markings,⁷ the drone’s camera did not penetrate the walls of the box to reveal their contents.⁸** Thus, the FBI’s use of the drone and the camera’s zoom feature was limited to information that was readily observable.

In the example above, the writer anticipated an unfavorable fact (i.e., the device used in the precedential case provided a limited outline of the premises, whereas the camera on the drone took more detailed pictures). Nonetheless, the writer rebutted the counterexample with a pertinent fact that re-established the precedential case’s relevance to the current case (i.e., that even though the pictures in the current case were more detailed than the pictures in the precedential case, neither device penetrated the walls to see the inside of the facility or the boxes).