PROJECT ON

ANALOGY IN LEGAL REASONING

SEMESTER: 1st
SECTION : A
FACULTY : ARABINDA SAHOO
GROUP : 6

GROUP MEMBERS: Matisa Majumder, Aparajita Saran, Gautam Mahto, Kamalendra, K. Harshvardhan
## CONTENTS:

<table>
<thead>
<tr>
<th>SL NO.</th>
<th>TOPIC</th>
<th>PAGE NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>WHAT IS MEANT BY AN ANALOGICAL ARGUMENT</td>
<td>3</td>
</tr>
<tr>
<td>2.</td>
<td>IMPORTANCE OF ANALOGICAL ARGUMENT IN LAW</td>
<td>4</td>
</tr>
<tr>
<td>3.</td>
<td>CRITERIA USED TO DISTINGUISH ANALOGICAL ARGUMENTS</td>
<td>5</td>
</tr>
<tr>
<td>4.</td>
<td>GOOD ANALOGY VERSUS BAD ANALOGY</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>➢ CASES WITH REFERENCE TO GOOD ANALOGY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>➢ CASES WITH REFERENCE TO BAD ANALOGY</td>
<td></td>
</tr>
</tbody>
</table>
WHAT IS MEANT BY AN ANALOGICAL ARGUMENT:

A typical dictionary lists synonyms for the word analogy, such as similarity, resemblance, and correspondence. Then it adds more specialized word senses, such as a similarity in some respects of things that are otherwise dissimilar, a comparison that determines the degree of similarity, or an inference based on resemblance or correspondence.

An analogical argument proceeds from the similarity of two or more things in one or more respects to the similarity of those things in some further aspects.

Logical and analogical reasoning are sometimes viewed as mutually exclusive alternatives, but formal logic is actually a highly constrained and stylized method of using analogies. Before any subject can be formalized to the stage where logic can be applied to it, analogies must be used to derive an abstract representation from a mass of irrelevant detail. After the formalization is complete, every logical step — of deduction, induction, or abduction — involves the application of some version of analogy.

The informal arguments illustrated in Figure 1 are supported by an analysis of the algorithms used for logical reasoning. Following is Peirce's classification of the three kinds of logical reasoning and the way that the structure-mapping operations of analogy are used in each of them:

- **Deduction.** A typical rule used in deduction is modus ponens: given an assertion p and an axiom of the form p implies q, deduce the conclusion q. In most applications, the assertion p is not identical to the p in the axiom, and structure mapping is necessary to unify the two ps before the rule can be applied. The most time-consuming task is not the application of a single rule, but the repeated use of analogies for finding patterns that may lead to successful rule applications.

- **Induction.** When every instance of p is followed by an instance of q, induction is performed by assuming that p implies q. Since the ps and qs are rarely identical in every occurrence, a form of analogy called generalization is used to derive the most general implication that subsumes all the instances.

- **Abduction.** The operation of guessing or forming an initial hypothesis is what Peirce called abduction. Given an assertion q and an axiom of the form p implies q, the guess that p is a likely cause or explanation for q is an act of abduction. The operation of guessing p uses the least constrained version of analogy, in which some parts of the matching graphs may be more generalized while other parts are more specialized.
As this discussion indicates, analogy is a prerequisite for logical reasoning, which is a highly disciplined method of using repeated analogies. In both human reasoning and computer implementations, the same underlying operations can be used to support both.

**IMPORTANCE OF ANALOGICAL ARGUMENT IN LAW:**

Analogical argument is one of the most important fundamental tools of appellate courts. In law, analogy is used to resolve issues on which there is no previous authority. A distinction has to be made between analogous reasoning from written law and analogy to precedent case law.

- **ANALOGIES FROM CODES AND STATUTES**

  In civil law systems, where the preeminent source of law is legal codes and statutes, a gap arises when a specific issue is not explicitly dealt with in written law. Judges will try to identify a provision whose purpose applies to the case at hand. That process can reach a high degree of sophistication, as judges sometimes not only look at a specific provision to fill gaps, but at several provisions (from which an underlying purpose can be inferred) or at general principles of the law to identify the legislator's value judgment from which the analogy is drawn. Besides the not very frequent filling of gaps, analogy is very commonly used between different provisions in order to achieve substantial coherence. Analogy from previous judicial decisions is also common, although these decisions are not binding authorities.

- **ANALOGIES FROM PRECEDENT CASE LAW**

  By contrast, in common law systems, where precedent cases are the primary source of law, analogies to codes and statutes are rare (since those are not seen as a coherent system, but as incursions into the common law). Analogies are thus usually drawn from precedent cases: The judge finds that the facts of another case are similar to the one at hand to an extent that the analogous application of the rule established in the previous case is justified.
CRITERIA USED TO DISTINGUISH ANALOGICAL ARGUMENTS:

In order to appraise the strength of analogical arguments, it is distinguished in six criteria. These are:

i. **Number of entities:**
   Number of entities is the first criterion in evaluating of analogical argument. It is said generally that larger the number of entities stronger is the argument. However, if a conclusion is drawn from analogical argument has six instances in its premises; it will not be exactly three times as portable as a similar argument that has two premises. Even though it is important to increase the number of entities but other factors are also important. For example: if we notice the behavior of five bulldogs. They are friendly and intelligent. We conclude that the next bulldog will also be friendly and intelligent.

ii. **Variety of instances in the premises:**
   We understand mainly in this criterion that more dissimilar the instances mentioned only in premises of analogical argument, stronger is the argument. For example: If somebody purchases dresses from departmental store and branded showroom in the city. Then he may be confident about the dresses themselves not their sellers that accounts on his satisfaction.

iii. **Number of similar aspects:**
   In this criterion it is said that greater the number of respects in which the entity in the conclusion is similar to the entities in the premises, the more portable is that conclusion. For example: If the dresses purchased are of same style and same price then it will give more satisfaction.

iv. **Relevance:**
   Relevance adds more force to the argument and a single highly relevant factor contributes more to the argument than a cluster of irrelevant similarities. For example: If a new dress is bought from the same manufacturer from which the previous one was bought it will likely to be more satisfactory.

v. **Disanalogies:**
   Disanalogies weaken the analogical arguments. As disanalogies are primary are the primary weapon against an analogical argument whatever can ward off any potential disanalogies will
strengthen the argument. A disanalogy is the point of difference, a respect the case which we are reasoning about in our conclusion is distinguishable from the cases on which arguments is based. For example: a student named John joins a university in first year many students from his school have successfully studied in the same university. We analogically argue that he is likely to succeed in his studies as well. If those students are similar to one another in one respect but differ in the same respect with John then that disanalogy will determine the argument for John’s success.

vi. **Claim that conclusion makes:** In general it is said that the more modest the claim, the less burden is placed on the premises and stronger the argument. The bolder the claim, the greater the burden is on the premises and weaker is the argument. For example: If a person acquires 30 miles to gallon from his new car, one may infer that in order to purchase a car of same model he must get at least 20 miles to the gallon.

**GOOD ANALOGY VERSUS BAD ANALOGY:**

This is an important aspect of analogical reasoning is to differentiate between good analogy and bad analogy. This is done on the basis of an example. Mentioned below is a case which helps us to understand this differentiation.

According to doctrine of adverse possession, a person occupying a piece of land in a way that is open, notorious, and hostile to the owner’s rights can claim ownership of the land after certain number of years of continuous occupancy. In this connection, Dr. Wacko a mad scientist hauled telescopes and radio antennas to the top of Mica peak every night for twenty years to detect extra terrestrial life. At the end of the period he petitioned the court for a decree stating that he owned Mica peak under the theory of adverse possession. Tom Bell the owner of Mica peak attempts to defeat Dr. Wacko’s petition.

The two arguments for this case are:

1. Crick occupied a house in Centerville that was owned by Hoskins she lived in the house continuously, mowed the lawn weekly and parked her car in front. After 20 years she petitioned
the court for a decree stating that she owned the property under the theory of adverse possession and the court granted the decree against the objection of Hoskins.

2. Raymond set up a large tent on a piece of rural property owned by Mr. Bride and lived in it for nine months each year. During the rest 3 months heavy snow made the property inaccessible. After 20 years Raymond petitioned the court for a decree stating that he owned the property under the theory of adverse possession and the court denied Raymond’s petition.

So according to the given arguments the first argument is in favour of the case and it strengthens it so it is a good analogy. Whereas the second argument is against it, it weakens the case so it is a bad analogy.