



Rules and Standards: Examples

William Fisher



Standards

Rules



Standards

Rules

Age
Restrictions



Age Restrictions

- Qualifications for Presidency
 - US Constitution, Article II, Sec. 1: “No person except a natural born Citizen ... shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years.....”
- Pilots over 60 may not land on an aircraft carrier
- Mandatory retirement ages
- Drinking ages



Standards

Rules

Age
Restrictions



Standards

“Reasonable Care”
standard for
negligence

Rules

Age
Restrictions



Standards

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“Reasonable Care”
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Age
Restrictions

Family Law:
--distribution of property
on divorce;
--“best interest of child”
standard for custody



Massachusetts Gen. Laws, ch. 208, sec. 34 (2011)^{May 23, 2011}

Upon divorce or upon a complaint in an action brought at any time after a divorce, ... the court of the commonwealth ... may make a judgment for either of the parties to pay alimony to the other. In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other.... In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be so assigned, the court ... shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit. ...



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Strict Liability
for sampling
sound recordings



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Strict Liability
for sampling
sound recordings
(e.g., Bridgeport Music)



Standards

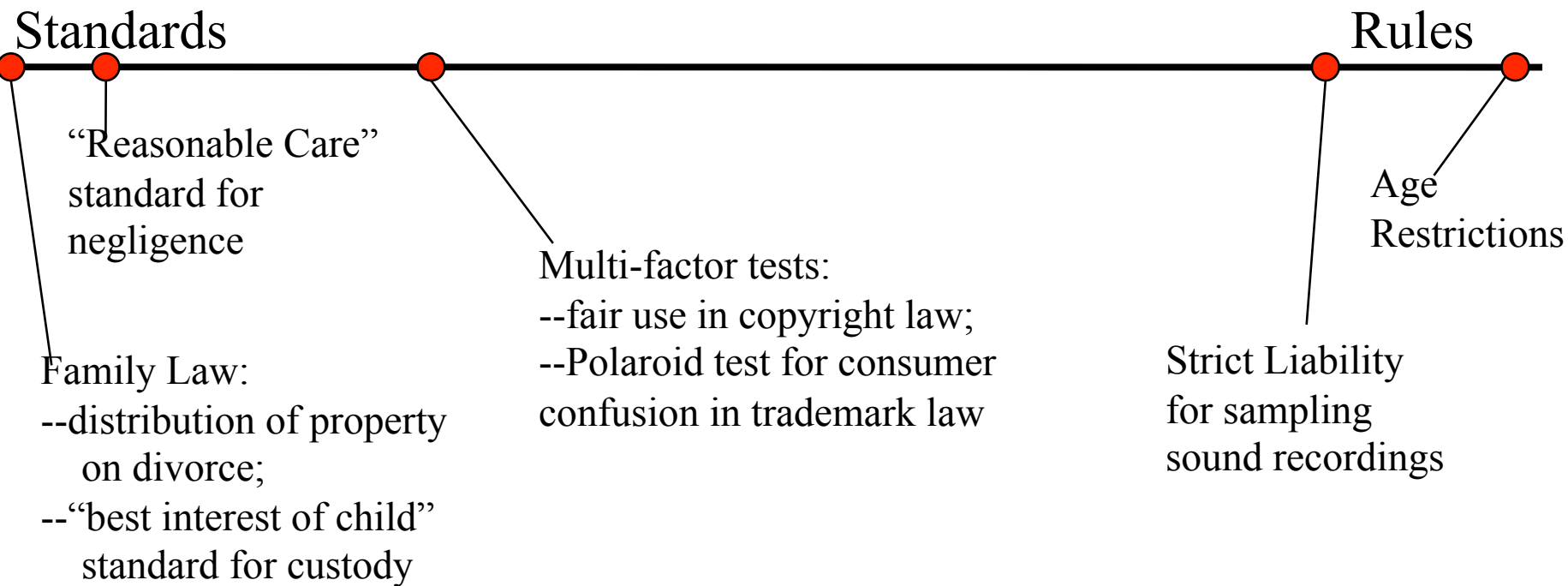
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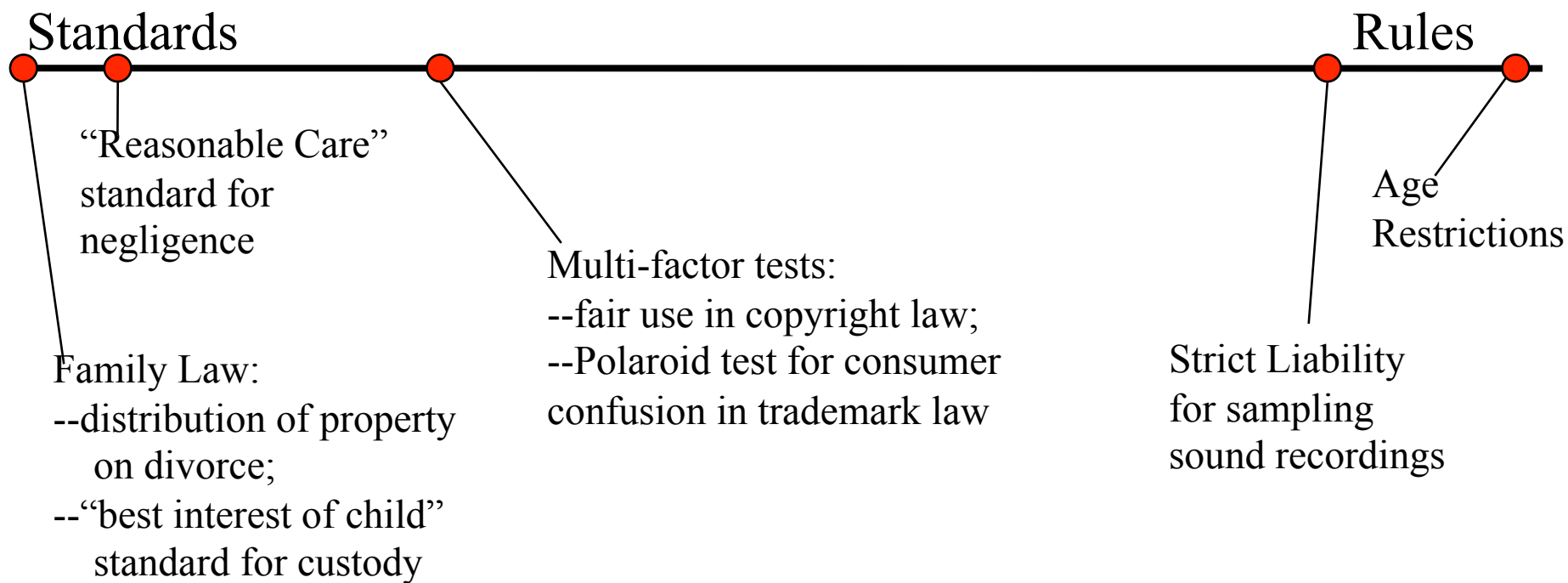
17 U.S.C. sec 107

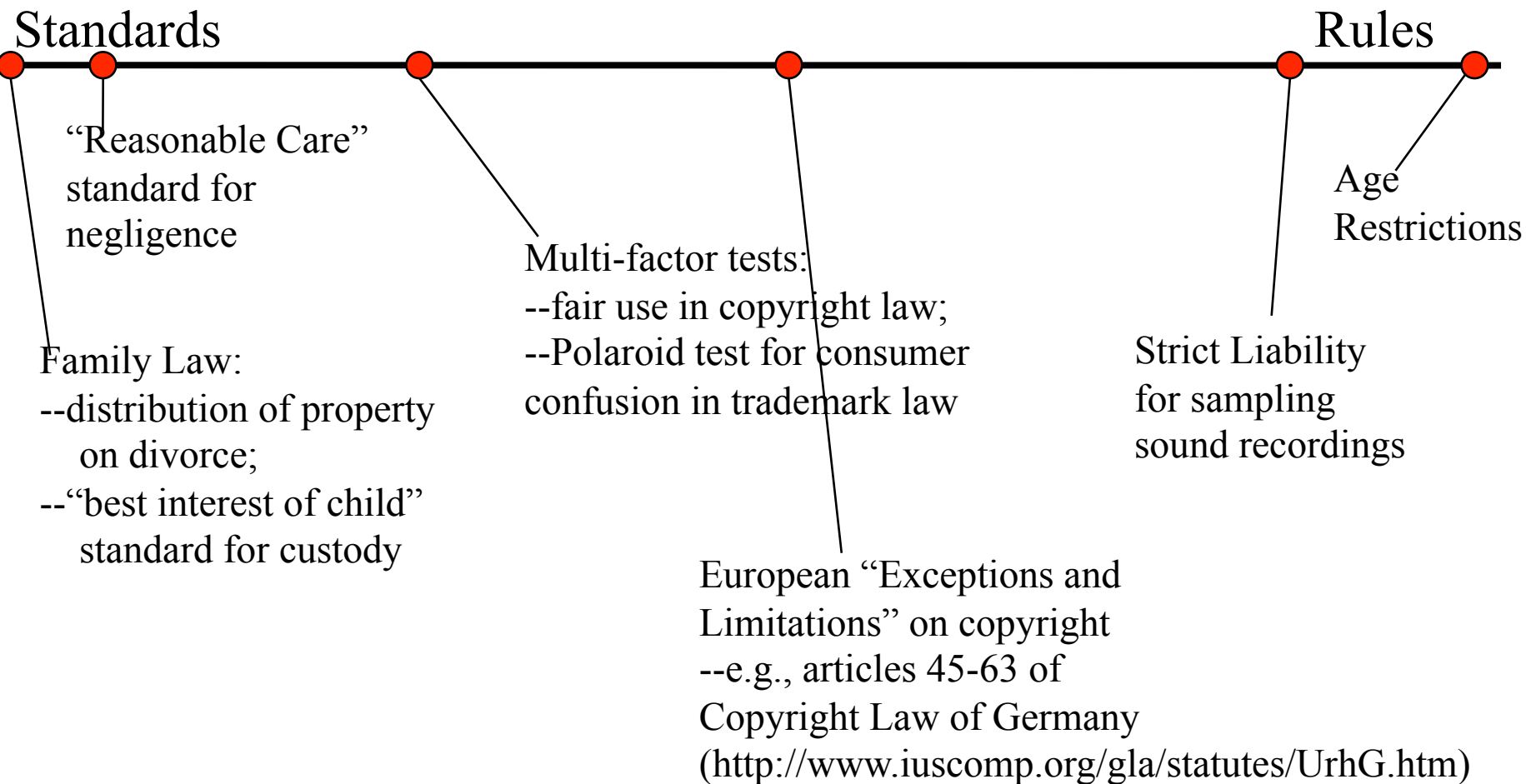
May 23, 2011

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- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.



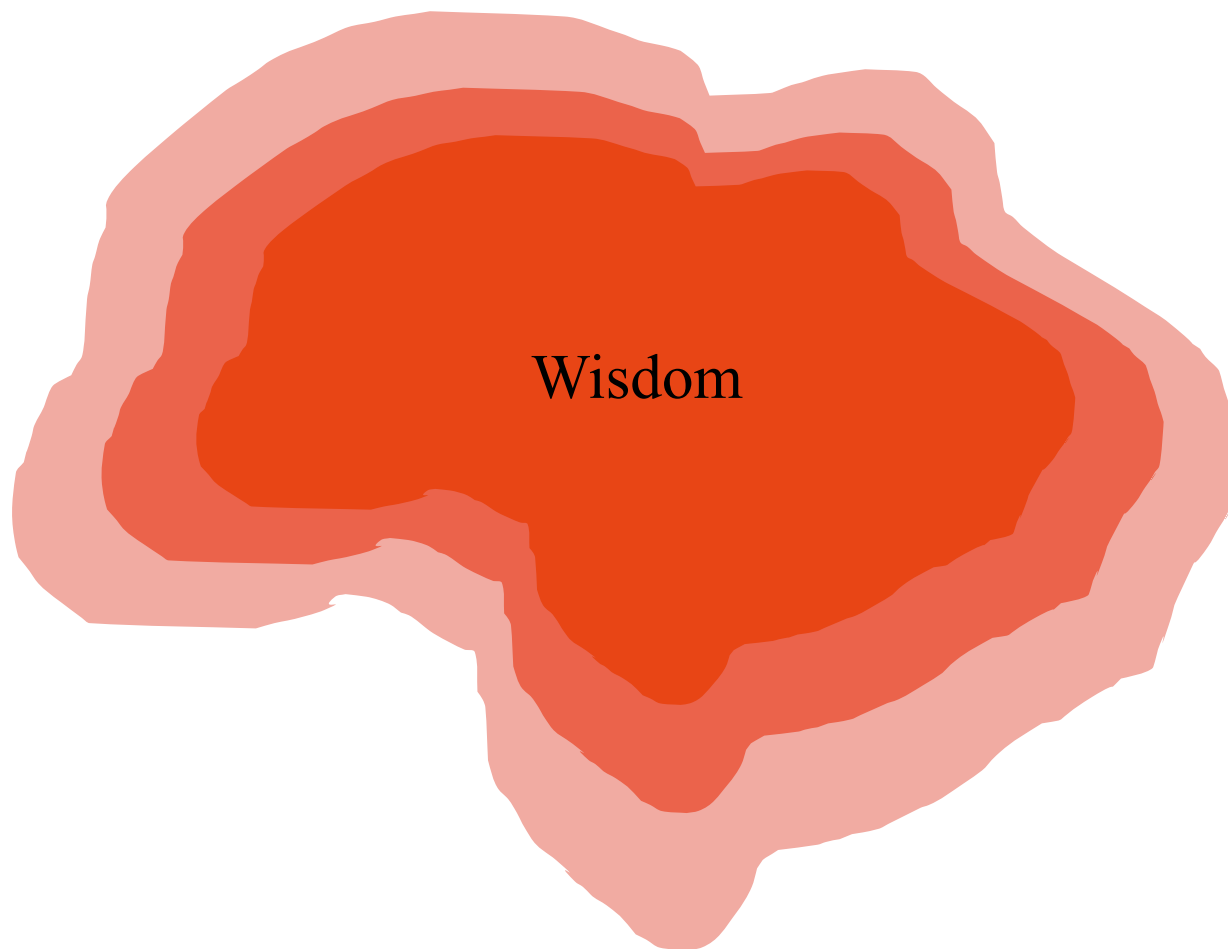


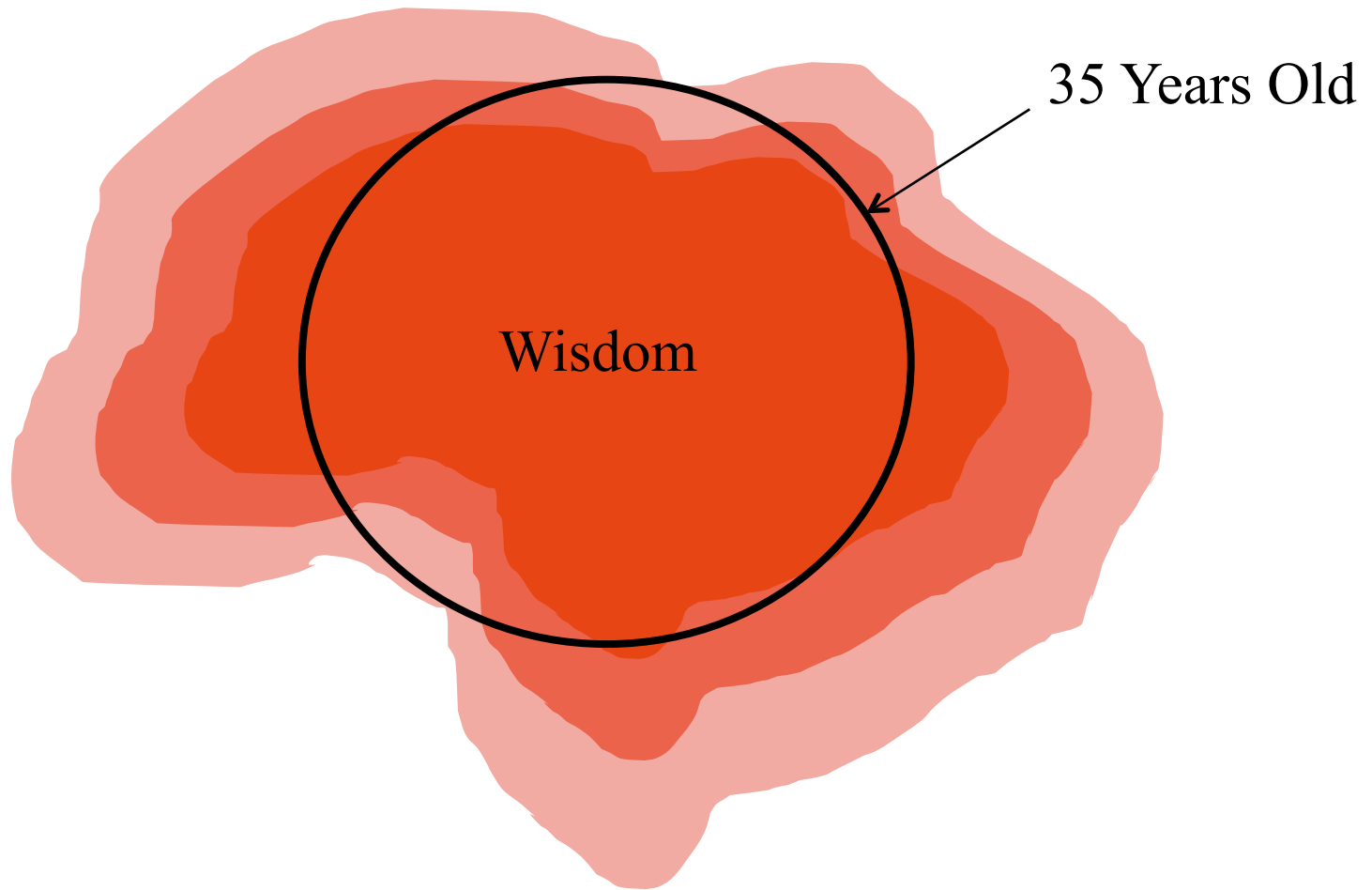


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Rules

Unpredictable _____ Predictable
 Precise _____ Over- or Under-Inclusive
 Costly to Interpret & Enforce _____ Costly to Promulgate
 Requires Expensive Legal Advice _____ Less Need for Legal Advice
 Strong Chilling Effects _____ Weak Chilling Effects
 Conducive to Incoherence _____ Conducive to Coherence
 Easy to change _____ Hard to Change







Or college degree

35 Years Old

