



ORIENTATION HOMEWORK ASSIGNMENT

Welcome to Santa Clara Law! This packet of materials introduces you to some of the basic ideas behind legal education and includes your assignments for the sessions that will meet during Orientation. Our goal for Orientation is to help you get your bearings so that the first few weeks of the semester are a bit less overwhelming. Law school is an incredibly challenging undertaking that will require you to work harder and think more deeply than you probably ever have before. We hope to ease your transition into this new academic environment, and look forward to supporting and advising you along the way.

Lawyers and the Legal System

If you went to high school and/or college in the United States¹, you probably have some background knowledge on the structure of our government, how our laws are made, and what the court system does. These are foundational concepts to the study of law, so we provide here links to some general articles that introduce (or reintroduce) this material. Please review each prior to Orientation.

- *U.S. Federal Government*
<https://www.usa.gov/branches-of-government>
- *Introduction to the American Legal System*
<http://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>
A LexisNexis account is not required to access this page.

As Santa Clara is located in California and most of our graduates go on to practice in this state, some portion of our curriculum focuses on the specifics of California law and legal practice.

- Fact Sheet: California Judicial Branch
http://www.courts.ca.gov/documents/Calif_Judicial_Branch.pdf

¹ If you weren't educated in the United States, it may be helpful to do some additional reading in this area. A book we recommend is *Constitutional Law: Principles and Practice* by Joanne Banker Hames and Yvonne Ekern. Professors Hames and Ekern are on the Santa Clara Law faculty.

- State Bar of California: Admissions Requirements
<http://www.calbar.ca.gov/Admissions/Requirements>

Finally, you are entering into one of the world's most respected professions. Lawyers serve a unique role in our society, and have important professional obligations that come along with that position. Lawyers are "officers of the court," serving not only the interests of our clients, but also those of the entire legal system. As law students, beginning to understand and develop that professional identity is essential.

- Santa Clara County Bar Association Code of Professionalism
<http://www.sccba.com/associations/12315/files/SCCBACode%2007.final.pdf>
Read Sections 1, 2, 6, 14, 16 through 19, and 22.
- Ignore Law School Etiquette at Your Career Peril
<http://abaforlawstudents.com/2013/11/01/ignore-law-school-etiquette-career-peril/>

TOOLS FOR ACADEMIC SUCCESS **PROFESSOR DEVIN KINYON²**

One very important idea for new law students to embrace is that you need to develop a new approach to learning in law school if you hope to be successful. Simply put, law school isn't like anything else you've experienced, so the strategies you've used in the past for college will have to change for you to succeed.

Professor Kinyon will begin your exposure to the various tools, techniques, and strategies that successful law students employ at your first academic session. Our goal is to show you a variety of ideas, and empower you to do those things that align with your learning preferences, background, and needs.

At this session we will discuss a concept called Self-Regulated Learning, an idea employed by the very best students in all disciplines to get the most out of their learning experience. Please watch the following video presentation in preparation for our discussion:

² Professor Kinyon teaches *Advanced Legal Writing: the Bar Exam, Community Property, Legal Analysis, and Property*; oversees academic support; and as a part of the faculty in the Office of Academic & Bar Success, helps prepare students for the California Bar Exam.

- Expert Learning for Law Students: Part III
http://lawschoolasp.org/eLearning/expert_learning_part3/viewer.swf
There are two additional presentation (parts I and II), that are not required for our discussion, but may be useful to view. They are available at:
http://lawschoolasp.org/students/learning_opps.php
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PREPARING FOR CLASS **PROFESSORS LIZA-JANE CAPATOS³ AND DEVIN KINYON**

Understanding and studying cases is essential to success in law school and can be very challenging. The work you do before class to make sense of and prepare to discuss the assigned cases will make-up the bulk of your class preparation as a law student.

In this session, Professors Capatos and Kinyon will lead you through the typical ways that students prepare for class, including briefing cases. In preparation, please prepare a case brief for *McCann v. Wal-Mart Stores, Inc.*

In advance of the session, we're not going to provide extensive guidance on how to prepare a case brief. One reason for that is that every student briefs cases in a slightly different way. More importantly, we want to be able to lead you through a more directed conversation about briefing during this session. For now, there are few key items you should be identifying in every case brief. They may sound familiar if you've done any reading (or Google-ing) about law school.

1. Your brief should identify the key **issue or issues** presented by the case. Issues are the legal questions the Court is addressing in the case opinion you're reading. When you take a law school exam, your first task is to identify the issues presented.
2. For each of the issues identified in your brief, you should find the applicable **rule**. Rules are the statement of law that the court cites to answer the question raised by the issue. The rule should be a statement – one or more sentences. Those sentences are very important because they are likely to be ones you'll include in your course outline, and memorize to use on a law school exam (and on the Bar Exam).

³ Professor Capatos teaches *Advanced Legal Writing: the Bar Exam* and *Legal Analysis*; supervises the Academic Success Program and advises Directed Study students; and as a part of the faculty in the Office of Academic & Bar Success, helps prepare students for the California Bar Exam.

3. Under each issue and rule, you'll have a brief summary of the **application** of that law to the facts of the case. This requires you to identify the facts the court thought were important, and make sense of how those facts interact with the rule to reach a conclusion.
4. And finally, you should identify that **conclusion**. State what result the court reached, and most importantly, why it reached that conclusion. Usually your conclusion, which some professors and judges call a *holding*, is the answer to the question presented in your issue statement. Like the rule statement, it should be a full sentence, and should include a "because."

It's ok if this doesn't make a lot of sense to you right now. Try it out and bring your work to this session. Professors Capatos and Kinyon will lead you through how to brief a case and talk more broadly about how to prepare for your classes next week.

Debra McCANN
v.
WAL-MART STORES, INC.

United States Court of Appeals,
First Circuit.

210 F.3d 51 (2000)

BOUDIN, Circuit Judge.

This case involves a claim for false imprisonment. On December 11, 1996, Debra McCann and two of her children—Jillian, then 16, and Jonathan, then 12—were shopping at the Wal-Mart store in Bangor, Maine. After they returned a Christmas tree and exchanged a CD player, Jonathan went to the toy section and Jillian and Debra McCann went to shop in other areas of the store. After approximately an hour and a half, the McCanns went to a register and paid for their purchases. One of their receipts was time stamped at 10:10 p.m.

As the McCanns were leaving the store, two Wal-Mart employees, Jean Taylor and Karla Hughes, stepped out in front of the McCanns' shopping cart, blocking their path to the exit. Taylor may have actually put her hand on the cart. The employees told Debra McCann that the children were not allowed in the store because they had been caught stealing on a prior occasion. In fact, the employees were mistaken; the son of a *different* family had been caught shoplifting in the store about two weeks before, and Taylor and Hughes confused the two families.

Despite Debra McCann's protestations, Taylor said that they had the records, that the police were being called, and that the McCanns "had to go with her." Debra McCann testified that she did not resist Taylor's direction because she believed that

she had to go with Taylor and that the police were coming. Taylor and Hughes then brought the McCanns past the registers in the store to an area near the store exit. Taylor stood near the McCanns while Hughes purportedly went to call the police. During this time, Debra McCann tried to show Taylor her identification, but Taylor refused to look at it.

After a few minutes, Hughes returned and switched places with Taylor. Debra McCann told Hughes that she had proof of her identity and that there must be some proof about the identity of the children who had been caught stealing. Hughes then went up to Jonathan, pointed her finger at him, and said that he had been caught stealing two weeks earlier. Jonathan began to cry and denied the accusation. At some point around this time Jonathan said that he needed to use the bathroom and Hughes told him he could not go. At no time during this initial hour or so did the Wal-Mart employees tell the McCanns that they could leave.

Although Wal-Mart's employees had said they were calling the police, they actually called a store security officer who would be able to identify the earlier shoplifter. Eventually, the security officer, Rhonda Bickmore, arrived at the store and informed Hughes that the McCanns were not the family whose son had been caught shoplifting. Hughes then acknowledged her mistake to the McCanns, and the McCanns left the store at approximately 11:15 p.m. In due course, the McCanns brought suit against Wal-Mart for false imprisonment....

The jury awarded the McCanns \$20,000 in compensatory damages on their claim that they were falsely imprisoned in the Wal-Mart store by Wal-Mart employees. Wal-Mart has now appealed the district court's denial of its post-judgment motions for judgment as a matter of law and for a new trial pursuant to Fed.R.Civ.P. 50(b) and 59, respectively, arguing that the McCanns did not prove false imprisonment under Maine law....

Both of Wal-Mart's claims of error depend on the proper elements of the tort of false imprisonment. Although nuances vary from state to state, the gist of the common law tort is conduct by the actor which is intended to, and does in fact, "confine" another "within boundaries fixed by the actor" where, in addition, the victim is either "conscious of the confinement or is harmed by it." *Restatement (Second), Torts* § 35 (1965). The few Maine cases on point contain no comprehensive definition, see *Knowlton v. Ross*, 114 Me. 18, 95 A. 281 (1915); *Whittaker v. Sandford*, 110 Me. 77, 85 A. 399 (1912), and the district court's instructions... seem to have been drawn from the *Restatement*.

While "confinement" can be imposed by physical barriers or physical force, much less will do-although how much less becomes cloudy at the margins. It is generally settled that mere threats of physical force can suffice, *Restatement, supra*, § 40; and it is also settled-although there is no Maine case on point-that the threats may be implicit as well as explicit, see *id.* cmt. a; 32 Am.Jur.2d *False Imprisonment* § 18 (1995) (collecting

cases), and that confinement can also be based on a false assertion of legal authority to confine. *Restatement, supra*, § 41. Indeed, the *Restatement* provides that confinement may occur by other unspecified means of “duress.” *Id.* § 40A.

Against this background, we examine Wal-Mart’s claim that the evidence was insufficient, taking the facts in the light most favorable to the McCanns, drawing reasonable inferences in their favor, and assuming that the jury resolved credibility issues consistent with the verdict. See *Gibson v. City of Cranston*, 37 F.3d 731, 735 (1st Cir.1994); *Sanchez v. Puerto Rico Oil Co.*, 37 F.3d 712, 716 (1st Cir.1994). Using this standard, we think that a reasonable jury could conclude that Wal-Mart’s employees intended to “confine” the McCanns “within boundaries fixed by” Wal-Mart, that the employees’ acts did result in such a confinement, and that the McCanns were conscious of the confinement.

The evidence, taken favorably to the McCanns, showed that Wal-Mart employees stopped the McCanns as they were seeking to exit the store, said that the children were not allowed in the store, told the McCanns that they had to come with the Wal-Mart employees and that Wal-Mart was calling the police, and then stood guard over the McCanns while waiting for a security guard to arrive. The direction to the McCanns, the reference to the police, and the continued presence of the Wal-Mart employees (who at one point told Jonathan McCann that he could not leave to go to the bathroom) were enough to induce reasonable people to believe either that they would be restrained physically if they sought to leave, or that the store was claiming lawful authority to confine them until the police arrived, or both.

Wal-Mart asserts that under Maine law, the jury had to find “actual, physical restraint,” a phrase it takes from *Knowlton*, 95 A. at 283; see also *Whittaker*, 85 A. at 402. While there is no complete definition of false imprisonment by Maine’s highest court, this is a good example of taking language out of context. In *Knowlton*, the wife of a man who owed a hotel for past bills entered the hotel office and was allegedly told that she would go to jail if she did not pay the bill; after discussion, she gave the hotel a diamond ring as security for the bill. She later won a verdict for false imprisonment against the hotel, which the Maine Supreme Judicial Court then overturned on the ground that the evidence was insufficient.

While a police officer was in the room and Mrs. Knowlton said she thought that the door was locked, the SJC found that the plaintiff had not been confined by the defendants. The court noted that the defendants did not ask Mrs. Knowlton into the room (another guest had sent for her), did not touch her, and did not tell her she could not leave. The court also said that any threat of jail to Mrs. Knowlton was only “evidence of an intention to imprison at some future time.”^[1] *Knowlton*, 95 A. at 283. In context, the reference to the necessity of “actual, physical restraint” is best understood as a reminder that a plaintiff must be actually confined—which Mrs. Knowlton was not.

Taking too literally the phrase “actual, physical restraint” would put Maine law broadly at odds with not only the *Restatement* but with a practically uniform body of common law in other states that accepts the mere threat of physical force, or a claim of lawful authority to restrain, as enough to satisfy the confinement requirement for false imprisonment (assuming always that the victim submits). It is true that in a diversity case, we are bound by Maine law, as Wal-Mart reminds us; but we are not required to treat a descriptive phrase as a general rule or attribute to elderly Maine cases an entirely improbable breadth.

Affirmed.

^[1] Although the distinction may seem a fine one, it is well settled that a threat to confine at a future time, even if done to extract payment, is not itself false imprisonment. See *Restatement, supra*, § 41 cmt. e.

HOMEWORK FOR NEXT WEEK

In law school, students typically have a reading assignment due on the first day of class. Our professors will begin posting those first assignments during the Orientation week. To find those assignments:

- Log onto Camino, Santa Clara’s course management system: <https://www.scu.edu/login/>
- Look at the bulletin board in the Bannan Student Lounge.
- Check your @scu.edu email for a message from your professor or his/her faculty assistant.

Professors post assignments up to the day of your first class, so check back frequently.