



PRE-ARRIVAL READING FOR INTERNATIONAL LL.M. and EXCHANGE STUDENTS

Dear International LL.M. and Exchange Students:

Welcome to Santa Clara Law! We look forward to meeting all of you!

You will be studying in a new country and a new legal system, resulting, like all legal systems, from the particular history, culture, and values of the country. To help you acquire the information and skills you will need as you begin this new academic experience, we have put together the following background information on the U.S. legal system and U.S. legal education. We ask that you read it before the semester begins.

We look forward to meeting you and to supporting and advising you this year! In particular, please let me know if I can provide any assistance, even before orientation.

Prof. Evangeline Abriel
LL.M. Faculty Advisor

The U.S. Legal System and Lawyers

The structure of government, how laws are made, and the court system 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 these before orientation.

- *U.S. Federal Government*
<https://www.usa.gov/branches-of-government>

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
<https://www.courts.ca.gov/2113.htm>

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

Finally, as you will know from your previous legal education and perhaps practice of law, law is 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-judicial system. We provide additional reading material on this point:

- Santa Clara County Bar Association Code of Professionalism
<https://www.sccba.com/code-of-professional-conduct/#:~:text=As%20lawyers%2C%20we%20owe%20duties,courtesy%2C%20cooperation%2C%20and%20competence>. (Read Sections 1, 2, 6, 14, 16 through 19, and 22.)

Sources of Law in the United States¹

The primary sources of law in the United States are the United States Constitution, state constitutions, federal and state statutes, common law (primarily case law), and administrative law.

Constitutions

Constitutions define how governments are to be organized, and the power and responsibilities of those governments. Constitutions can also serve to protect individual liberties. For example, in the federal Constitution, the first 3 Articles are devoted to laying out the structure and scope of the federal government, while the First 10 Amendments (the "Bill of Rights") are primarily devoted to protecting individual liberties. Because a constitution is the blueprint for the entire government, everything that the government does must be consistent with the Constitution. If any action taken by any part of the government is inconsistent with the Constitution, that action is said to be "unconstitutional" and it must be struck down.

Statutes

¹ This section was adapted from LawShelf: Sources of Law, <https://lawshelf.com/courseware/entry/sources-of-law>.

Statutes are created by the federal, state and local legislatures, which are composed of elected officials who have the power to create laws. Courts must apply statutes, if available, to the facts of a case. If no statute exists, courts defer to *common law* or *case law*. In general, when we use the term "common law" in the United States today, we are referring to case law. "Case law" consists primarily of court decisions, that is, judicial interpretations of the Constitution, a statute or the common law. "Case law" includes Supreme Court and lower court decisions. Because statutes are passed by legislatures who are empowered to make laws, statutes control over common law or case law where the two conflict. An exception to this is that a statute can be thrown out by a court if, under interpretations made by applicable case law, the statute is unconstitutional (inconsistent with the Constitution).

The process through which an idea becomes a law is long and complicated. Although the federal and state procedures can be technically quite different, they are, at their most basic levels, similar.

First, a lawmaker introduces a bill in either the Senate or House of Representatives (or their equivalents at the state level). After the bill is introduced, it is reviewed by the appropriate committee and/or subcommittee. The subcommittee reviews the bill, holds hearings and makes amendments that it deems necessary. Once the subcommittee is satisfied with the bill, it presents the new version to the full committee. If the full committee approves of the bill, the bill goes to the full chamber in which it was originally introduced (Senate or House), for debate and final vote.

If the first chamber passes the bill, the bill is presented to the other chamber, where it is reviewed in similar fashion. Both chambers must approve the bill in identical form. If the bill is not approved by both chambers, it may be sent to a conference committee to resolve issues where the chambers disagree.

Once approved by both chambers, the bill is presented to the President (or Governor) for signature. Once signed, the bill becomes a law and is effective, as the legislature has prescribed. The President or Governor can also refuse to sign the bill, an action known as a "veto." This prevents the bill from becoming law, although vetoes can often be overridden by supermajority votes by the legislatures (under the federal system, a 2/3 majority of both houses of Congress is required to override a presidential veto). The federal government and many state governments have provisions whereby if the President or Governor does not sign the bill

within a certain number of days while the legislature is in session, the bill automatically becomes a law.

...

Judicial Interpretation of Statutes

Because legislatures cannot write laws for every possible factual scenario, laws are written broadly enough to be applicable to a variety of situations. To what situations a law may apply, however, is not always clear. This is when courts must engage in statutory interpretation to determine the legislature's intent. There are many things courts will consider:

Binding precedent: If a court with direct appellate jurisdiction over the court considering the issue (i.e., a court to whom cases can be appealed to from that court) has interpreted the law in a certain manner, that interpretation must be used by the court.

Actual language: Most legislation is the result of careful planning and consideration. Therefore, courts give great deference to the actual words the legislature has chosen to use.

Legislative history: When the language is ambiguous, courts will often review the statute's legislative history, if available. As explained above, statutes are usually debated before passed; these debates are often recorded. Committee and subcommittee reports are included in the legislative history. Recent legislative history is readily available at the federal level; at the state level, however, it can be quite sparse.

Context, general and specific: Courts will often consider the context in which the statute was enacted, its purpose, and other existing statutes that may be similar. Why the statute was enacted at the time it was enacted may also be important in determining public policy.

Treatment by other courts: If the statute has not been construed or interpreted by the appellate courts, no precedent binds the trial courts. Other trial courts, however, may have considered the same issue; these decisions may be helpful to the court currently considering the issue, and the court will often review other similar decisions. These decisions may be from the same jurisdiction or a different jurisdiction, although decisions from foreign jurisdictions are less persuasive. Where an appellate court is considering an issue for the first time, it may also review other courts' decisions, even if they are from other jurisdictions.

Legal treatises and other scholarly literature: Because statutes are often analyzed by legal scholars before they are considered by the courts, many courts find such analysis helpful in their own interpretation.

Other jurisdictions' statutes: Many states have similar legislation to each other on numerous topics. A review of similar legislation in other states may shed light on the legislation in question.

Administrative Law

As regulation becomes more pervasive, the body of administrative law has become increasingly important. Administrative law refers to regulations and administrative decisions issued by administrative agencies.

Administrative agencies are created by the legislature by what are called "enabling" statutes. The administrative agencies are part of the executive branch and are charged with the administration of government functions. A person aggrieved by an agency's decision can usually appeal to an appellate tribunal (court) within the agency. One may often appeal the appellate tribunal's decision to a federal or state court.

LEARNING IN U.S. LAW SCHOOLS

Different professors choose different reading materials and cases for their classes, and they all teach a bit differently based on their own background and goals for your learning. Some professors lecture, some engage you in discussion, many ask you to resolve specific hypothetical problems, and others utilize simulations and role-play. This diversity of approaches mirrors the legal profession into which you will graduate.

Probably the most widely known teaching approach in U.S. law schools is the Socratic method, which will be used in some form or another in most of your first-year classes. Traditional Socratic method begins with your professor assigning you a group of cases. Before coming to class, your task is to read and make sense of those cases individually and as a whole by briefing them. You'll bring your briefs and casebook to class and your professor will begin asking questions. She may ask for some basic information, such as a summary of the facts or the procedural history. She will likely ask a student to explain the legal reasoning the court applied (what law the court decided to use and why, and how it was applied to the facts.) And sometimes, she will ask how that law would apply to a

different, hypothetical situation. This approach not only helps you make sense of the law; it is the way that courts, judges, and lawyers do their jobs every day.

Sometimes students are nervous about being called on by their professors and worry about being able to think on their feet. This is a perfectly normal reaction. The best way to manage your nerves and to get the most out of the experience is to be fully prepared for class. We will be talking about preparation for class, homework assignments, and exam study during orientation, and both the LL.M. faculty advisor, Evangeline Abriel, and the Office of Academic and Bar Success (OABS), <https://law.scu.edu/admissions/asp/> are available to consult with you as you continue to develop your study and exam preparation skills.

READING AND BRIEFING CASES

Reading cases is a critical part of U.S. legal education. Creating briefs for those cases is the process by which you make sense of that reading material, prepare for class, and, ultimately, study for your exams. During Orientation, you will begin practicing that skill. This section provides some background information that you should review before your first orientation academic session.

The Basic Structure of a Case

Cases contain two main parts: the heading and the opinion. The heading precedes the opinion, and normally consists of:

- The title of the case;
- The name of the court issuing the opinion;
- The date of the opinion;
- The case citation.

After the heading is the main opinion, the part of the case written by the court. It usually contains the following parts:

- The name of the judge writing the opinion;
- The facts of the case;
- The procedural history of the case;
- The issue(s) presented to the current court;
- The holding(s) that resolve those issues;

- The court's rationale, or reasons, for the holding(s);
- The court's order or judgment.

Sometimes, court opinions or the edited versions of them in your casebooks omit some of these components, or the components must be inferred from other parts of the opinion. Read opinions to glean information pertinent to each component, but do not be discouraged if an opinion is written so cryptically that you can't determine all of these parts. Analyze the opinion as best you can and discuss it with others, as you will find that different readers often have different understandings of what an opinion means. Lawyers confer with each other often about the meanings of cases; as law students, you should start that practice through discussions in class and with fellow students.

First Steps to Reading a Case: Recognizing the Context

In your undergraduate college, you might have just jumped right into your reading. In law school, however, you'll want to understand the context of your assignment so that you can fit it into the larger framework of your course. For example, a Criminal Law course will cover the topic of homicide not all in one day, but instead over the span of many class sessions. Your reading assignment for a particular class session might address one specific aspect of homicide, such as the mental state required for a first-degree murder. Thus, in reading a case, be aware both of how the case helps define the discrete topic covered – mental state for first-degree murder – and also of how it fits into the larger analytical framework for homicide crimes and into the larger topic of criminal law.

To figure out that context, you'll want to review the topics assigned on your course syllabus and the table of contents in your textbook. Consider your professor's focus for that class session, so that you can understand why this case is being assigned. This is important because most cases will address multiple issues and legal rules. Typically, your professor assigns a case because it addresses one specific legal topic very well. Because you've identified the focus area for that date's class, you'll be able to zero in on that topic in the case and pay special attention to it. That topic should make up the bulk of your case brief so that you're ready for the discussion in class and, ultimately, can use that case material in preparing for exams.

The Case Heading

The heading helps you understand some very basic aspects of the case. It contains the following:

The title typically contains the names of at least two parties to the lawsuit. There may be other parties, but for brevity's sake, the title generally includes only one party on each side of the lawsuit. In a trial court, the parties are referred to as plaintiff and defendant. In appellate courts, the parties are typically renamed as the appellant or petitioner (the losing party at trial, now asking the appellate court to review the decision), and the appellee or respondent (the party who was successful at the trial level).

The name of the Court issuing the opinion, such as the U.S. Supreme Court, a Missouri appellate court, or the U.S. District Court for the Northern District of California. Knowing which court issued the opinion helps you assess the opinion's relative weight.

The year of the opinion is also critical because it tells you when the opinion was decided relative to other cases that involve the same issues. Many older cases are still relevant, but a current court may decide that an earlier decision was wrong or that circumstances have changed so dramatically since the issuance of an older opinion that a new rule or rationale should be used instead.

The case citation. Lawyers and judges must be able to access decisions quickly and accurately. For this reason, each case has a citation, including the name, volume, and page number of the books, called "reporters," where the decision is published. We will cover the rules for formulating citations in legal documents in your LARAW course.

Depending on the course and your professor's preference, it is useful when creating your case brief to note some of the information from the heading. For some classes, it is enough to note simply the case's title and year and which party is which. Other professors and classes focus more on the procedural and precedential aspects of the cases, so having more detail about the court and timeline of the case is important.

Some Tips for Reading a Court Opinion

The opinion is the main text of the case, explaining the fact situation, the relevant law, and how the court applied that law to the facts. If you are a "big picture" person, it may be helpful to skim the case for a basic understanding of what occurs before beginning your in-depth reading. Others may wish to highlight text and make margin notes on an early read-through so you can go back and retrieve parts for your brief. This can be

especially helpful for kinesthetically-oriented people, who tend to learn best when moving or “doing.”

As you read cases, try to identify each of the components of the opinion listed below. This will help you understand what the court is doing at each stage of the opinion. The court may not address the components in the listed order, and the casebook editor may have omitted some components, but you should be able to identify one or more of the components in each of the paragraphs of the decision. When you brief the case, you will be using these same components as the headings for the sections in your brief.

Especially for new lawyers, the terminology in court opinions may be unfamiliar. When you read cases, have a legal dictionary at hand so that you can look up any term that you don't know. Don't just assume you understand the gist of a word or that its conversational English definition applies. The preferred resource, used by most law students, is *Black's Law Dictionary*.

Components of a Court Opinion

The name of the judge writing the opinion is found at the beginning of the body of the opinion. Trial courts typically have only one judge presiding. Appellate courts consist of multiple judges, and the judge whose name appears at the beginning of the opinion is generally writing on behalf of the entire court or a majority of the court. If the court's decision is not unanimous, then other judges on the panel may publish concurring or dissenting opinions, which are printed at the end of the majority opinion.

The procedural history of the case, sometimes called procedural facts, is usually found towards the beginning of the court's decision. It explains how the case worked its way to this court from the time it was filed with the initial court. Procedural history is particularly important in your Civil Procedure class, but may also be of interest to your other professors. When briefing a case, it can be helpful to write a timeline of the procedural history.

The facts about the parties' conduct or events that gave rise to the case are typically stated at the beginning of the opinion in narrative form. By the facts, we refer to the events that led to the judicial proceeding. In effect, the facts are the story of the people or institutions that become the parties to the judicial proceeding.

Issues are the legal questions posed by the specific case. Issues generally fall into one of three categories. These are (1) *issues of law*, in which the court

must interpret the meaning of a particular statutory term or otherwise determine what legal rule should apply; (2) *issues of fact*, in which a court must determine what the true facts of the case are (especially where the evidence is conflicting); and (3) *mixed questions of law and fact*, where the court determines the outcome of a dispute by applying the relevant legal rules to the specific facts before it.

Sometimes, though not always, the court makes it simple to identify the issues by stating them as questions. At other times, the issues just appear as headings or introductory sentences. There may be more than one issue in a case, and there may be more than one type of issue in a case

In *the rationale or analysis section*, usually the lengthiest part of the decision, the court explains the reasoning that led to its holding(s).

The court will use different types of reasoning depending on whether it is deciding a question of law or a mixed question of law and fact. For both types of issues, the court will begin by summarizing the applicable pre-existing *rules of law*. Rules of law originate in primary sources of law, including federal and state constitutions, statutes, regulations, and, under the doctrine of *stare decisis*, the holdings of courts superior to the deciding court and of earlier decisions by the deciding court.

When the case addresses a new issue of law, the court's reasoning will include statutory interpretation, existing rules in related areas of law, and public policy, among other bases. The court's holding, or answer, to a question of law will be a new rule.

When the court addresses a mixed question of law and fact, the court's reasoning will include its *application of the rules of law to the facts of the case* before it. By application, we mean the court's examination of whether the facts in the case meet the requirements of the applicable rules of law, and why or why not.

The analysis of each issue usually ends with a *conclusion or holding*. The content of the holding depends on the type of issue the court is deciding. If the court is deciding a question of law, its holding will be a new rule of law. If the court is deciding a mixed question of law and fact, the court's holding will be the conclusion it reaches after applying existing and any new rules of law to the facts of the case before it. There will generally be one holding for each issue in the case. For example, the court may first decide a question of law and then apply its holding on that question (which will be a new rule of law) to the facts of the case before it.

Typically, the holding(s) will be followed by *the court's order*. The order describes the procedural steps needed to effect the court's decision, such as affirming or reversing the lower court's decision or remanding (sending back) the case to a lower court for further action.

Concurring and *dissenting opinions* may be included with a case, as judges on an appellate panel may not agree with each other as to the outcome of the case or may agree as to the outcome but not as to the reasoning the majority opinion used to get there. A *concurring opinion* agrees with the judgment rendered by the majority, but either disagrees with the issue to be decided or the method of deciding it or sets out additional reasoning. A *dissenting opinion* disagrees with the majority's holding. These opinions are often retained in the casebook to demonstrate the varying viewpoints within the court and to aid you in understanding the scope and reasoning of the case.

Writing a Case Brief

A case brief is a written summary of a court's opinion. It serves several critical purposes. Its preparation forces deeper reading so that the student or lawyer understands how the opinion advances and applies the law. It also boils down the content of an opinion and organizes it in a useful format for later reference in class discussions and preparing for exams.

Because the process of creating briefs advances the law student's legal analysis and writing skills, the use of commercially-published briefs is counterproductive, as it preempts the activity of studying opinions and distilling their content. This is a skill mastered only through practice.

A brief should be just that - brief, hopefully no more than a page or two. Early in the semester, you will probably write longer briefs. Edit them for focus after class discussion to make them more useful and to improve your briefing skills for the next case. Do not be discouraged that brief-writing is difficult at first; it is a sophisticated activity that takes time. You will improve with practice.

One final but critical note: it is often difficult to identify the elements of an opinion by simply reading it from beginning to end. It may take several readings of the opinion to understand its parts. You will need to dissect the rationale to find the rules and facts the court relied upon. Those key facts and formulation of the rule are then necessary to construct the issue statement and the corresponding holding.

Components of a Brief

1. *Heading:* Start your brief by listing:
 - a. Title of the case;
 - b. Name of the court writing the opinion;
 - c. Year of the opinion;
 - d. Casebook page number;
 - e. Topic area from your syllabus or table of contents.

2. *Facts:*

Summarize the relevant facts of the dispute before the court. Remember the context in which your professor assigned the case and focus on the facts that address that specific issue area. The court may provide the facts in a separate facts section, and will also refer to them when applying the rules to the facts. In referring to the parties, use a description (for example, owner, seller, parent) rather than the parties' positions in the lawsuit, which can be confusing to follow in a brief.

3. *Procedural History:*

A summary of the relevant procedural details. Include who originally sued whom and the cause of action (the claim for relief). In addition, include the trial court's judgment, who appealed the judgment, and how any appellate court(s) have ruled so far.

4. *Issue(s):*

A statement of the pertinent legal question(s) before the court. Sometimes courts explicitly state the issues presented in the case with language such as "the issue presented is whether...," or "the question in this case is whether..." If the issues are not expressly stated, you must identify them from the court's summary of earlier proceedings or the arguments advanced by counsel.

You will formulate your issue statements a little differently, depending on whether the issue is one of law or one of mixed law and fact. (You will rarely see the third type of issue - questions of fact - in the appellate decisions you read for class).

An issue of law arises when there is an unanswered question as to what the law should be on a given point. The resulting rule does not depend on the

facts in the case before the court, so a question of law does not need to include the facts of the specific case, although it may include generic facts.

On the other hand, a mixed question of law and fact is resolved by applying the existing applicable law to the facts of the specific case, so it must contain both a reference to the applicable law and the facts from the case that are most determinative in satisfying (or not satisfying) the requirements of the applicable law.

Here is an example of an issue statement for a pure question of law:

Whether a presumption of competence exists in delinquency proceedings, thus placing the burden on the minor to establish incompetence?

You can see that the question does not include the facts of a specific case, because the answer to the question will be a rule that applies in any delinquency case, regardless of the facts in that specific case.

In contrast, a good issue statement for a mixed question of law and fact incorporates both a brief statement of the applicable rule and a brief statement of the facts that determine whether or not that rule is met in the specific case (sometimes called “the determinative facts”). Here’s an example, taken from the same case as the question of law set out above:

If so, whether substantial evidence supported the trial court’s determination that the minor failed to prove incompetence, where psychologist testified that minor was not competent, despite minor’s refusal to submit to psychological testing, where minor’s comments indicated to judge that minor understood nature of proceedings, and where minor’s three year old school records showed no cognitive or adaptive delays?

In this example, the issue statement refers to the applicable legal rule (the requirement that the minor prove incompetence). Then it summarizes the relevant facts.

5. *Holding/Conclusion:*

Just as a court’s opinion sometimes contains an explicit statement of the issue, it may also include an explicit statement of the holding. You should look for phrases like “the holding is...” or “we hold...” or sometimes “we conclude...” or “we find... .”

Your holding should be a mirror-image response to the issue statement. Its format will vary depending on whether it answers a question of law or a mixed question of law and fact. Here are examples of a holding on a question of law and a holding on a mixed question of law and fact, responding to the issue statements set out above:

1. *Yes. There is a presumption of competence in delinquency proceedings, and the minor bears the burden of establishing competence.*
2. *No. Substantial evidence supported the judge's finding that minor had not established incompetence, where, despite psychologist's opinion that minor was incompetent, minor's statements in court indicated to judge that he understood nature of proceedings, and his school records showed no cognitive or adaptive delays.*

One thing to note: articulating the holding of a case is not always simple. In many cases, the readers of an opinion (lawyers, judges, law professors, and law students) disagree about the precise holding of a case. Some may reasonably argue that a holding is very narrow, applicable to only a very small range of future situations. Others may reasonably argue that a holding is very broad, applicable to a wide variety of future cases. There is not always one correct way to articulate the holding of a case; only time and later cases will tell.

6. *The Court's rationale.*

Here, you should identify the court's reasons for its holding or conclusion. It is helpful to summarize the rationale by the issue. In other words, if the court has decided two issues, you will divide your summary of the rationale in your case brief according to the issues.

The court's reasons for its holdings on both questions of law and mixed questions of law and fact will start with the relevant pre-existing rules. The court's further reasoning, however, will differ depending on whether it is deciding a question of law or a mixed question of law and fact. For a question of law, the court will use statutory interpretation, references to related rules, and public policy, among other bases, in making its decision. For a mixed question of law and fact, the court will apply the pre-existing rules and any new rule resulting from its holding on a question of law to the facts before it to reach a conclusion on the issue. The court's rationale on a mixed question of law and fact may also include public policy reasons.

Rules: Phrasing of the rule statement is important, as using a precise rule on an exam is a hallmark of solid legal analysis. When you begin briefing, extracting the rule statement verbatim from the casebook tends to be the best approach. Over time you will see how your professor rephrases or polishes rule statements, and you'll want to mirror that approach in your briefs and ultimately on your exam.

Application: By "application," we mean the court's examination of whether the facts in a specific case establish or do not establish the requirements ("elements") of the relevant rules. Recognizing how a court has applied the rule to the facts and developing the ability to apply rules to facts yourself are critical skills that you will need in reading and briefing cases, in answering questions in class, on exams, and in the practice of law.

One thing to note: sometimes the casebook editors will have edited the case to take out some of the court's rationale. For example, if the point of including the case was to demonstrate how a court arrived at a particular new rule of law, the casebook might not include the court's application of the rule to the facts.

7. *Concurring and Dissenting Opinions:*

Your brief may include a short summary of a concurring and/or dissenting judge's opinion. You will find that persuasive dissenting opinions sometimes become the majority opinions of tomorrow.

Finally, leave space to amend your brief based on class discussion. What did the professor emphasize? Ignore? You will find it far easier to make these notes during or immediately after class rather than many days and thousands of pages later. What are the two or three takeaways that this case adds to your understanding of this area of law? Is it the major statement of the rule moving forward? A source of a new exception or element of the rule? A particularly good example of the application of a familiar rule to interesting facts? Was it used with a hypothetical in class? As you approach the end of each topic area of your course, be sure to consider how each case relates to others in that section.

IRAC

You will most likely have heard the term "IRAC" and, if you have not, you will hear it frequently in law school! IRAC (issue, rule, application, conclusion) is simply a short term for the tasks of identifying an issue, identifying the applicable rules, applying those rules to the facts of a new

case, and reaching a conclusion on the outcome of a mixed question of law and fact. These tasks are the essential skills that you'll apply (with some variation) in all of your coursework, on law school exams, on the bar exam, and in legal practice. For those of you with a philosophy or logic background, IRAC is a form of syllogistic, or deductive, reasoning. You'll begin seeing more and more IRACs as you read cases and other legal writing.

Practicing Reading and Briefing

Before we meet during orientation, please read the *People v. Majors* decision (starting on the next page). As you read, identify the different components of the case. Then please try your hand at briefing the *Majors* decision. We have attached a sample annotated brief (of the decision in *People v. R.V.*), which should be a helpful guide in briefing the *Majors* decision. We'll talk about both the *Majors* decision and your brief during orientation. But remember that a brief is a tool for your use, so briefs will differ depending on the writer.

I look forward to meeting you! Please let me know if I can be of any assistance, even before orientation.

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33 Cal.4th 321
Supreme Court of California
The PEOPLE, Plaintiff and Respondent,
v.
Gaylon Michael MAJORS, Defendant and Appellant.
No. S113086.

July 1, 2004.

Opinion

***872 BROWN, J.

A victim enters the defendant's vehicle under an implicit threat of arrest. Does this evidence satisfy the force or fear element of simple *324 kidnapping? (Pen. Code, § 207, subd. (a) (hereafter section 207(a)).)1 We conclude it does, and therefore reverse the judgment of the Court of Appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 15, 2000, 18-year-old Alesandria M. was riding home on her bicycle. She **362 was an employee at the Zany Brainy store at Mira Mesa Market Center. Earlier that day, Alesandria had purchased a gift at Zany Brainy for her brother's birthday. Just prior to starting home, Alesandria returned to Zany Brainy and made a second purchase.

After Alesandria had been riding for approximately 10 to 15 minutes, defendant Gaylon Michael Majors, wearing sunglasses and standing in the street next to a white van, flashed a badge and asked her to stop. He told her he was a security guard at the Mira Mesa mall and had received a call saying someone on a bicycle was suspected of a theft at the Zany Brainy store. Alesandria got off her bike and showed defendant the items in her backpack, her payment receipts, and her identification. Defendant told Alesandria she would have to return with him to the store and speak to the security guard to resolve the issue. He tried to put her bike in the van, but it did not fit, so he "said to go ahead and lock my bike up at the school right across the street." While Alesandria did so, defendant took her backpack and put it in the van.

When she returned to the van, Alesandria asked to see defendant's badge again. While defendant was not in uniform, Alesandria testified that "I felt scared that maybe if he was undercover or something like that that I would

get in more trouble. So I took his badge again. I was not really sure what to look for." The badge said "security guard" on it. On the other side of the badge was an orange laminated card. Alesandria did not ride off because she "was really scared that if ... he was who he said he was, that I would be in jail, that I would have to explain to my parents why I was there, even though I knew inside that I was innocent of stealing."

Alesandria testified she was afraid she would be arrested if she did not get into the van. She believed defendant had the authority to arrest her because he displayed a badge and identified himself as a security officer. Alesandria had never dealt with the police before, and was afraid not to get in the van. She testified, "I believed what he said about being a security guard and that we would have to go back to the ... mall, to clear things up. And I actually worked at Zaney Brainey [sic], so I was confident about getting the manager to clear everything up for me." "He told me I would have to go with him." "I requested to see his badge because I didn't believe him. But at the same time *325 I didn't want to not believe him if he was telling the truth. I didn't want to make a situation worse than it had already been." Defendant did not do anything to cause her to be afraid for her safety before she got into the van. He did not display any weapons, threaten, or touch Alesandria until they parked at the mall.

Once Alesandria and defendant were in the van, defendant appeared to make a call on his cell phone. "He made it sound like maybe he was talking to a partner or somebody, saying that the suspect was apprehended." Alesandria asked if she ***873 could call her parents. Defendant told her "that we could once we got there." Once they arrived at the mall, defendant said "they were going to have to check with the manager to see if they could look at their cameras." This caused Alesandria apprehension apparently because she knew from her employment there were no cameras at Zany Brainy.

Defendant ultimately drove to an isolated area of the mall. Alesandria started to get out of the van, but defendant grabbed her by the hair and slammed her head into the passenger side window. Alesandria was screaming and crying, and kicking defendant. Alesandria continued to kick defendant, and he eventually released her, saying, "Get out bitch." Alesandria reported the matter to a security guard and the police.

**363 Defendant's fingerprint was found on one of Alesandria's Zany Brainy purchase receipts. Defendant was also positively identified at trial by a woman who lived at the location where defendant initially stopped

Alesandria. On the day of his arrest, defendant was seen driving a white van... .

The jury was instructed that ... simple kidnapping required proof beyond a reasonable doubt that Alesandria “was unlawfully moved by the use of physical force or by any other means of instilling fear,” and that her movement was “without her consent.” “Consent” was defined as “act [ing] freely and voluntarily and not under the influence of threat, force, or duress.... Consent requires a free will and positive *326 cooperation in act or attitude.” With respect to the crimes against Alesandria,² defendant was convicted of ... simple kidnapping (§ 207(a))... .

A divided Court of Appeal reversed defendant’s convictions for kidnapping ...for insufficiency of the evidence regarding the element of force or fear. The majority stated, “This case appears to be a classic case of asportation² by fraud, not by force or fear.” In all other respects as to the crimes against Alesandria, the judgment was affirmed.

We granted the Attorney General’s petition for review to consider whether evidence that a victim entered a defendant’s ***874 vehicle under threat of arrest is sufficient to satisfy the force or fear element of section 207(a) kidnapping.

II. DISCUSSION

Section 207(a) provides, “Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another ... county, or into another part of the same county, is guilty of kidnapping.”

... .

As can be seen by this language, in order to constitute section 207(a) kidnapping, the victim’s movement must be accomplished by force or any other means of instilling fear. We have observed that ... “that a taking is forcible if accomplished through fear.” (*People v. Hill* (2000) 23 Cal.4th 853, 856, 98 Cal.Rptr.2d 254, 3 P.3d 898 & fn. 2 (Hill).) As these earlier cases explain, the force used against the victim “need *327 not be physical. The movement is forcible where it is accomplished through the giving of orders which the victim feels compelled to obey because he or she fears harm or injury from the accused and such apprehension is not unreasonable under

² Note from Prof. Abriel: “asportation” is defined as “the act of carrying away or removing a thing or person from one place to another.”

the circumstances.” (*People v. Stephenson* (1974) 10 Cal.3d 652, 660, 111 Cal.Rptr. 556, 517 P.2d 820; *People v. Camden* (1976) 16 Cal.3d 808, 814, 129 Cal.Rptr. 438, 548 P.2d 1110 We have also observed that the concepts of consent and force or fear “are clearly intertwined.” (*In re Michele D.* (2002) 29 Cal.4th 600, 609, 128 Cal.Rptr.2d 92, 59 P.3d 164 [addressing force]; *Hill*, at p. 855, 98 Cal.Rptr.2d 254, 3 P.3d 898 [kidnapping generally must be “against the will of the victim, i.e., without the victim’s consent”].)

These alternative bases for committing kidnapping, i.e., “forcibly, or by any other means of instilling fear,” while stated in the disjunctive, are not mutually exclusive. As noted, prior to the 1990 addition of the language “any other means of instilling fear,” we had held that threats of force satisfy the force element of section 207(a). Given the similarity between a “threat of force” and “any other means of instilling fear,” there are inevitably now circumstances that constitute both force and fear within the meaning of this statute. As the Attorney General notes, “the mechanism by which a threat of force produces ***875 the movement of the victim necessary for a kidnapping is fear, specifically, the fear that the threat of force will be carried out.”

In contrast to the use of force or fear to compel asportation, “asportation by fraud alone does not constitute general kidnapping in California.” (*People v. Davis* (1995) 10 Cal.4th 463, 517, fn. 13, 41 Cal.Rptr.2d 826, 896 P.2d 119; *People v. Green* (1980) 27 Cal.3d 1, 64, 63, 164 Cal.Rptr. 1, 609 P.2d 468,.... overruled on other grounds in *People v. Martinez* (1999) 20 Cal.4th 225, 239, 83 Cal.Rptr.2d 533, 973 P.2d 512 and *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3, 226 Cal.Rptr. 112, 718 P.2d 99.) This long-standing rule is premised on the language of section 207, which for general kidnapping, at issue here, requires asportation by force or fear, but for other forms of kidnapping proscribes movement procured only by “fraud,” “entice[ment],” or “false promises.” (§ 207, subds.(a)-(d); see *People v. Stanworth* (1974) 11 Cal.3d 588, 602–603, 114 Cal.Rptr. 250, 522 P.2d 1058, overruled on other grounds in *Martinez*, at p. 237, 83 Cal.Rptr.2d 533, 973 P.2d 512; *People v. Rhoden* (1972) 6 Cal.3d 519, 526–527, 99 Cal.Rptr. 751, 492 P.2d 1143.)

*328 Thus, in *Stephenson, supra*, 10 Cal.3d 652, 111 Cal.Rptr. 556, 517 P.2d 820, we reversed two kidnapping convictions. (*Id.* at pp. 659–660, 662, 111 Cal.Rptr. 556, 517 P.2d 820.) In one, the victim entered the vehicle voluntarily because he thought it was a taxi. (*Id.* at p. 656, 111 Cal.Rptr. 556, 517 P.2d 820.) In the other, the victim accepted a ride from a stranger. (*Id.* at p. 657, 111 Cal.Rptr. 556, 517 P.2d 820.) We concluded the victims “were enticed to get voluntarily into defendant’s car by deceit or fraud.” (*Id.* at p. 659, 111 Cal.Rptr. 556, 517 P.2d 820.)

By contrast, in *People v. La Salle* (1980) 103 Cal.App.3d 139, 143, 146, 162 Cal.Rptr. 816 (*disapproved on other grounds in People v. Kimble* (1988) 44 Cal.3d 480, 496, fn. 12, 498, 244 Cal.Rptr. 148, 749 P.2d 803), the victim entered the car not voluntarily, but because the defendant had her two-and-a-half-year-old daughter in the car, and could have driven away with her. While “she was afraid to get into the car, she was more afraid not to get in, because of what could happen to her daughter.... [S]he felt she had no choice but to cooperate. The jury was entitled to conclude that this was not a case of inducement by fraud or deceit, but one wherein the victim was forced to consent to defendant’s demands.” (*La Salle*, at p. 146, 162 Cal.Rptr. 816, original italics; *Dagampat, supra*, 167 Cal.App.2d at p. 495, 334 P.2d 581 [“court could reasonably have found that [victim] did not willingly enter the car, but did so because of a fear of bodily harm induced by [one defendant’s] order to get into the convertible, defendants’ ‘dirty looks,’ the sudden approach of [another member of defendants’ group] from the drugstore, and **365 his recollection of the fight in which” the other defendant stabbed a different victim].)

Of course, it goes without saying that asportation may be accomplished by means that are both fraudulent and involve force or fear. For example, a defendant who claims to have a gun but who in fact does not could not successfully argue he induced the movement of the victims who credited his statement solely by fraud.

[5] The question in this case is whether movement accomplished by the implicit but false threat of arrest satisfies the elements of force or fear in section 207(a), or whether such movement is simply asportation by fraud.

....

***878 As observed above, the concepts of consent and force or fear with regard to kidnapping are inextricably intertwined. (*See Michele D., supra*, 29 Cal.4th at p. 609, 128 Cal.Rptr.2d 92, 59 P.3d 164.) Thus, in those cases in which the movement was found to be by fraud alone, and not force or fear, the circumstances suggest the victim exercised free will in accompanying the perpetrator. By contrast, the threat of arrest carries with it the threat that one’s compliance, if not otherwise forthcoming, will be physically forced. Thus, the use of force is implicit when arrest is threatened. Contrary to defendant’s assertion, “being arrested” is not an “esoteric” fear that stretches the meaning **367 of the statute. This is true regardless of whether the defendant used deception regarding the fact of the threatened arrest. The compulsion, which is the gravamen of the kidnapping crime, remains present.

[6] We therefore conclude an implicit threat of arrest satisfies the force or fear element of section 207(a) kidnapping if the defendant's conduct or statements cause the victim to believe that unless the victim accompanies the defendant the victim will be forced to do so, and the victim's belief is objectively reasonable. We further conclude there was substantial evidence here of force or fear, i.e., that Alesandria entered defendant's van under such implicit threat of arrest. In making this determination, we do not resolve evidentiary conflicts, but " 'view the evidence in a light most favorable to' " the People, " 'and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " (*People v. Johnson* (1980) 26 Cal.3d 557, 576, 162 Cal.Rptr. 431, 606 P.2d 738; *People v. Felix* (2001) 92 Cal.App.4th 905, 910, 112 Cal.Rptr.2d 311.)

First, there was substantial evidence Alesandria subjectively feared arrest. Alesandria testified she was afraid she would be arrested if she did not get into the van. She believed defendant had the authority to arrest her because he displayed a badge and identified himself as a security officer. Alesandria *332 had never dealt with the police before, and was afraid to not get into the van. "I requested to see his badge because I didn't believe him. But at the same time I didn't want to not believe him if he was telling the truth. I didn't want to make a situation worse than it had already been."

Moreover, Alesandria's belief that she would be arrested if she did not accompany defendant back to the mall was objectively reasonable. Defendant approached the victim, who had been riding her bike, and stopped her by holding up a badge. He identified himself as a security guard, and indicated he stopped her for a law enforcement purpose. Specifically, he told the victim he had received a call about a suspected theft from a store Alesandria had just visited twice, and that the suspected thief was someone on a bicycle. Defendant told Alesandria she "would have to go with him." He then exerted control over the victim's belongings, at first trying to put her bike into his van. When he saw that the bike would not fit, he told her to lock it up, thus depriving her of transportation. He then took her backpack and put it in the van. Once the victim was in the van, defendant continued the ruse in a manner that reinforced the notion that he had law enforcement authority and that the victim might be in criminal trouble: He made a phone call to tell his partner or some other interested person that "the suspect was apprehended" and refused the victim's request to call her parents, telling her she had to wait until they returned to the mall to do so.

As the Attorney General notes, when defendant “implicitly threatened Alesandria ***879 with arrest if she did not get in the van and return with him to the mall to face the theft allegations, he necessarily threatened her with the possibility of force if she did not comply.” This kind of compulsion is qualitatively different than if defendant had offered to give Alesandria a ride, or sought her assistance in locating a lost puppy, or any other circumstance suggesting voluntariness on the part of the victim. While defendant contends this is no more than a classic case of asportation by fraud, we disagree. As the Attorney General observes, defendant’s “misidentification of himself and his implicit threats of false arrest were simply the vehicle for his conveyance of threats of force and fear that compelled Alesandria to get in his van.” Thus, the evidence was sufficient to demonstrate a threat of force, and alternatively, that such a threat instilled fear in Alesandria that such force would actually be applied. Under either the force or the fear prong of the kidnapping statute, therefore, we conclude the evidence was sufficient.

Defendant asserts that Alesandria was not “afraid of some implicit threat of forcible arrest,” but rather “got into the van to prove her innocence,” and was “simply afraid of the possibility of going to jail.” It is not obvious how these concepts of fear of “implicit threat of forcible arrest” and fear of “the possibility of going to jail” substantially differ. In any event, contrary to *333 defendant’s assertions, we **368 read the record as containing sufficient evidence from which a jury could reasonably conclude that Alesandria’s movement was compelled by an implicit threat of arrest.

....

****369 DISPOSITION**

The judgment of the Court of Appeal is reversed, and the case remanded to that court for proceedings consistent with this opinion.

WE CONCUR: GEORGE, C.J., KENNARD, BAXTER, WERDEGAR, CHIN and MORENO, JJ.