

Introduction To Law

Course Materials Supplement

Widener University

School of Law

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SECTION I

Much of the assigned reading in your first semester will describe issues arising in the context of civil litigation. In your Civil Procedure course you will discuss in great detail how a civil lawsuit progresses. It is useful, however, to have a basic understanding now of common elements of a civil lawsuit. Below are brief descriptions of those elements and a summary in two charts

Investigation

Courts seek to provide just resolutions of disputes, but courts do not want to waste resources on frivolous litigation. And so, more than a good story is necessary to begin a lawsuit. There must be a factual basis for the story and the facts must be relevant under some law. Lawyers representing potential plaintiffs must investigate the facts and the law before filing suit on behalf of a client. The same practical duties of investigation apply to defendants before responding to a claim.

Choice of Forum (Limits)

Although there are numerous trial courts throughout the United States from which a plaintiff might pick, the authority of a particular court to render a valid judgment depends on whether the court has jurisdiction over the defendant and jurisdiction over the subject matter. Even if those two jurisdiction requirements are satisfied, a particular court may not be considered an appropriate “venue.” As you will learn, the issues of jurisdiction and venue are complicated topics. It suffices for now that you understand there are multiple factors affecting a plaintiff’s choice of a court (forum) capable of rendering a valid judgment.

Pleadings

To begin a civil lawsuit in federal court – and in many state courts -- the plaintiff files a document called a “complaint” with the court and “serves” a copy of the complaint on the defendant. The complaint sets forth the bases for subject matter jurisdiction, describes the plaintiff’s injury, explains how the defendant caused the injury, and asks the court to order

relief. A plaintiff may seek money to compensate for the injury, or may ask the court to order the defendant to stop the conduct that is causing the harm. The court may also order other types of relief, such as a declaration of the legal rights of the plaintiff in a particular situation.

After being served with the complaint, a defendant has an opportunity to respond to the complaint. A defendant can file a motion (a request for court to issue an order) asking the court to dismiss the plaintiff's claims for a variety of reasons, such as lack of jurisdiction over the defendant or the subject matter. A defendant may choose to respond directly to the allegations in the complaint by filing a pleading in which the defendant admits or denies the plaintiff's allegations and asserts other reasons for which the plaintiff would not recover under the applicable law. If a defendant fails to respond to the complaint – or responds in a manner deemed inadequate by the court – a default judgment can be entered in favor of the plaintiff.

Case Management

Judges no longer follow the tradition of acting merely as neutral referees in the pre-trial portion of civil litigation. Rather, judges often foster efficient management of the dispute resolution process by conferring with the parties shortly after the pleading stage to formulate a plan and a timeline for subsequent parts of the pretrial process. A judge also can use case management conferences to foster settlement discussions among the parties to a lawsuit. If a trial will be necessary to resolve a dispute, case management frequently includes a conference of the judge and the parties to set a plan for the trial.

Discovery

The discovery period is an opportunity for parties to a lawsuit to collect from each other and from non-parties information relevant to the claims and defenses raised in the suit. Rules of procedure provide a number of different methods for collecting the information, such as depositions and document requests. Courts have authority to sanction parties and non-parties who fail to comply with proper discovery requests.

Dispositive Motions Later in the Pretrial Process

In some of the court opinions below you will see references to “motions for summary judgment.” Such motions are procedural opportunities frequently used by parties in civil litigation. The party making the motion asserts the court has enough information to conclude there cannot be a rational dispute about the facts giving rise to a claim (or defense) in the lawsuit and the applicable law entitles the moving party to a judgment in its favor given those facts. The moving party seeks to convince the court there is no need to proceed further with a claim.

Trial

Most civil litigation in the United States concludes by the parties agreeing to settle their claims or through dispositive motions. If a trial is necessary, constitutions and statutes may afford the right to a jury trial for some claims. The plaintiff presents evidence supporting its version of the facts, and the defendant presents evidence rebutting the plaintiff’s evidence or supporting its own version of the facts. From the evidence presented, the jury must decide what actually happened (the facts) and render a verdict after applying to the facts the applicable law as described by the judge. The judge will enter a judgment after the jury’s verdict. If there is no right to a jury trial for a particular claim or if a party waives its right to a jury trial, then the judge becomes the fact finder and applies the applicable law to the facts.

During trial and after entry of judgment, a party may make a motion for a judgment as a matter of law. The motion for a judgment as a matter of law and a motion for summary judgment are similar in that the party making the motion asserts a rational decision maker must find in the moving party’s favor based on the information available to the court at the time of the motion. The motion for judgment as a matter of law and the motion for summary judgment differ in two significant ways. First, a motion for judgment as a matter of law can be made only after the non-moving party has had its “opportunity to be heard” at trial. Second, the motion for judgment as a matter of law focuses on what a rational decision maker could conclude from the information admitted as evidence at trial before a party makes the motion.

A party dissatisfied with a trial judgment also can make a motion in the trial court for a new trial. There are a variety of reasons for which a trial court could grant a new trial. You are likely to discuss those reasons in your course on Civil Procedure. What is important to understand at this point is how a motion for a new trial differs from a motion for judgment as a matter of law. The latter motion requests the court to enter judgment in favor of the moving party, i.e., to pick a winner. The motion for a new trial requests only another chance at a trial.

Appellate Courts

See pages 51-54 in [What Every Law Student Really Needs to Know](#) for a brief discussion.

OVERVIEW OF CIVIL LITIGATION: PART I – PRE-TRIAL

EVENT	INVESTIGATION	CHOICE OF FORUM	PLEADINGS & INITIAL MOTIONS	CASE MANAGEMENT	DISCOVERY OF INFORMATION RELEVANT TO CLAIM OR DEFENSE	LATER DISPOSITIVE PRETRIAL MOTIONS	CASE MANAGEMENT
Action by Plaintiff (Π)	1. Find reasonable (objective) bases in fact and law for legal remedy	2. (a) Jurisdiction over subject matter 2. (b) Jurisdiction over defendant (Δ) 2. (c) Venue	3. Complaint (Petition) Π files with court and has complaint served on Δ.	5. (a) Confer with Judge and Δ to plan a just and efficient conduct of pre-trial processes, such as discovery, dispositive motions, and voluntary settlements.	6. (a) Use of Interrogatories, Requests for Documents (Data sets), Requests for Admission, Witness Interviews, and Witness Depositions	7. (a) Motion for Summary Judgment	8. (a) Confer with Judge and Δ to plan a just and efficient conduct of trial.
Action by Defendant (Δ)	[Before step 4. →, Δ must find reasonable (objective) bases in fact and law for defenses, counterclaims and crossclaims.	Despite Π 's initial choice of forum, Δ may be able (after step 3 above) to “remove” the lawsuit from state court to federal court or may request a change of venue within the original court system.	4. (a) Motions (e.g. to dismiss for lack of jurisdiction or failure to state a claim upon which relief can be granted) 4. (b) Answer 4. (c) Default	5. (a) Confer with Judge and Π to plan a just and efficient conduct of pre-trial processes, such as discovery, dispositive motions, and voluntary settlements.	6. (b) Use of Interrogatories, Requests for Documents (Data sets), Requests for Admission, Witness Interviews, and Witness Depositions	7. (b) Motion for Summary Judgment	8. (b) Confer with Judge and Π to plan a just and efficient conduct of trial.

OVERVIEW OF CIVIL LITIGATION: PART II – TRIAL and POST-TRIAL

EVENT	TRIAL	DISPOSITIVE TRIAL MOTIONS	VERDICT & ENTRY OF JUDGMENT	POST-TRIAL MOTIONS	APPEAL
Action by Plaintiff (Π)	<p>9. Π’s Case in Chief (Plaintiff’s direct evidence presented through witnesses and exhibits. Defendant cross-examines.)</p>	<p>12. (a) Motion for Judgment as a Matter of Law (Directed Verdict)</p>	<p>13. Verdict rendered by jury if jury trial has been appropriately requested, or Verdict rendered by trial judge if a non-Jury Trial (“Bench Trial.”) and then Entry of Judgment</p>	<p>14. (a) Options Motion for Judgment as a Matter of Law (Judgment Not Withstanding the Verdict) Motion for a New Trial Petition to Open the judgment</p>	<p>15. (a) File Notice of Appeal addressing errors in trial court. Submit briefs arguing merits of appeal. Oral argument before court of appeals might occur.</p>
Action by Defendant (Δ)	<p>10. Motion for Judgment as a Matter of Law (Directed Verdict) 11. Δ’s Case in Chief (Defendant’s direct evidence presented through witnesses and exhibits. Plaintiff cross-examines.)</p>	<p>12. (b) Motion for Judgment as a Matter of Law (Directed Verdict)</p>	(See 13 above)	<p>14. (b) Options Motion for Judgment as a Matter of Law (Judgment Not Withstanding the Verdict) Motion for a New Trial Petition to Open the judgment</p>	<p>15. (b) File Notice of Appeal addressing errors in trial court. Submit briefs arguing merits of appeal. Oral argument before court of appeals might occur.</p>

**United States Court of Appeals
First Circuit**

**Debra McCANN, Personally, and as
Mother and Next Friend of Jillian
McCann and Jonathan McCann,
Plaintiffs, Appellees/Cross-Appellants,**

v.

**WAL-MART STORES, INC., Defendant,
Appellant/Cross-Appellee.**

210 F.3d 51 (2000).

John W. McCarthy with whom Rudman & Winchell, LLC was on consolidated brief for defendant.

Samuel W. Lanham, Jr. with Cuddy & Lanham on consolidated brief for plaintiffs.

Before Boudin, Circuit Judge, Bowens, Senior Circuit Judge, and Lynch, Circuit Judge.

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 and that the court's jury instructions on false imprisonment were in error. * * *

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 (to which we will return) 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 . . . [W]e 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.” *Knowlton*, 95 A. at 283.¹ 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

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.

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.

Court of Appeals of Wisconsin

**Elaine TEICHMILLER, Plaintiff-
Appellant,**

v.

**ROGERS MEMORIAL HOSPITAL
INCORPORATED; Sue Otto, Individually
and as agent for Rogers Memorial
Hospital Incorporated; Debbie
Bergerson-Hawkins, Individually and
as agent for Rogers Memorial Hospital
Incorporated, Defendants-
Respondents.**

**228 Wis.2d 509,
1999 WL 270281 (Wis App.1999)**

APPEAL from a judgment of the circuit court for Waukesha County: MARIANNE E. BECKER, Judge. *Affirmed.*

Before Brown, Anderson and Ziegler, JJ.
PER CURIAM.

Elaine Teichmiller appeals from a summary judgment dismissing her claims for wrongful discharge and false imprisonment. Because we conclude that summary judgment was appropriate, we affirm.

Beginning in September 1994, Teichmiller, a registered nurse, was an at-will employee of Rogers Memorial Hospital at its main facility. In the spring of 1995, Teichmiller began working as a nurse at the hospital's Racine clinic. Her immediate supervisor was Christine Hansburg-Hotson. Hansburg-Hotson reported to Debbie Bergerson-Hawkins, the Director of Clinical Services. Bergerson-Hawkins reported to Sue Otto, Vice President of Patient Care Services.

One of Teichmiller's responsibilities at the clinic was to perform patient intake and multidisciplinary assessments. Another of her responsibilities was to complete medical records or charts. In her amended complaint, Teichmiller alleged that she was directed to falsify medical records and that her refusal to do so resulted in her forced resignation. In effect, Teichmiller claimed that she was wrongfully discharged because she was forced to leave her employment after declining to falsify medical records.

* * *

[A] September 12 meeting [was] held [in the office of Teichmiller's supervisor] to

discuss Teichmiller's impending departure from the clinic, Teichmiller was handed a memorandum whose subject was "Position Exit Requirements." The document stated that Teichmiller had been advised of the "specific documentation requirements" which she had to complete before leaving her employment. These documentation requirements included outstanding nursing assessments, progress notes and discharge notes. Teichmiller contends that the memorandum essentially directed her to falsify charts.

* * *

We turn to Teichmiller's false imprisonment claim. The claim arises from a confrontation between Teichmiller and her superiors at the [meeting on] September 12 to discuss her impending departure. In her deposition, Teichmiller testified that she was asked to meet at the clinic with Hansburg-Hotson, Bergerson-Hawkins and Otto. The purpose of the meeting was to discuss Teichmiller's exit requirements, specifically the need to complete medical records before she departed. Teichmiller sat in the chair nearest the door, which remained open during the meeting. She was handed the

exit requirements and was told that she would be assisted in completing her charts. Teichmiller refused to sign the form and stated that she had consulted an attorney. Bergerson-Hawkins and Otto became very excited and started shouting about Teichmiller's contact with an attorney.

When Teichmiller stated that she wanted to make a copy of the document, Otto and Bergerson-Hawkins left their chairs. Bergerson-Hawkins came to Teichmiller's right side and blocked the doorway. Otto came to Teichmiller's left side. Bergerson-Hawkins and Otto screamed at Teichmiller that she was stealing hospital property because she was going to take the exit requirements form to the copier in the conference room. Otto and Bergerson-Hawkins continued to stand on either side of Teichmiller and attempted to grab the form from Teichmiller's hands. Teichmiller felt caged and could not move left or right because Bergerson-Hawkins and Otto were on either side, her chair was behind her, and the office desk was in front of her. Bergerson-Hawkins and Otto held their hands approximately one-inch

above Teichmiller's arms while they were trying to grab the form. Teichmiller felt that Bergerson-Hawkins and Otto were being aggressive and were dangerous.

Bergerson-Hawkins blocked Teichmiller's movement to the right toward the open door. Teichmiller was afraid that if she moved, they would think she was being aggressive. The standoff took three to four minutes and then on Teichmiller's third attempt to move to the right, Bergerson-Hawkins stepped aside and Teichmiller left for the copier. Bergerson-Hawkins and Otto "chased" Teichmiller to the copy room where they stood on either side of her as she unsuccessfully tried to use the copier, followed her to her office, and "guarded" her from outside of the women's restroom where she fled after her first attempt to use the copier. Teichmiller later permitted Otto to speak privately with her in Teichmiller's office after Teichmiller had photocopied the exit requirements form. Teichmiller testified that she did not feel free to move when Bergerson-Hawkins and Otto were standing next to her in the office and at the copier. Teichmiller concedes that she

was not touched or threatened with physical contact, although she felt threatened physically and verbally because Otto and Bergerson-Hawkins were in proximity to her and were excited.

Although Teichmiller stated that Bergerson-Hawkins and Otto refused to let her leave, she testified that she never actually asked to leave the office. Rather, she repeatedly stated that she needed to make a copy of the document and because the copier was not located in the office, she believes she made it clear that she had to leave the room.

Bergerson-Hawkins and Otto do not dispute most of Teichmiller's description of the confrontation in the office and at the copier. Nevertheless, they argue that Teichmiller's allegations do not rise to the level of false imprisonment.

In ruling on the summary judgment motion, the trial court concluded that the following facts were undisputed regarding the September 12 meeting. Teichmiller gave notice of her intention to leave the clinic. She was invited to a

meeting with her supervisors to which she arrived last. The exit requirements document was presented to her in anticipation of her final day at the clinic. Teichmiller took the document, refused to return it and a three-minute standoff ensued during which no one blocked the door, which had been open the entire time, and no one obstructed Teichmiller. Teichmiller never stated that she wanted to leave her supervisor's office and her liberty was not restrained. Teichmiller was paid for the entire time she was at the clinic on September 12.

Regardless of possible factual disputes, the summary judgment record does not support Teichmiller's claim that she was intentionally and unlawfully restrained. *See* WIS J I-CIVIL 2100. Teichmiller did not ask to leave her supervisor's office; at best, she obliquely requested to leave when she demanded access to the copier. Teichmiller also states that after three to four minutes, Bergerson-Hawkins moved out of her way and she left the office. In light of the cases discussed below, Teichmiller's false imprisonment claim cannot stand.

In *Herbst v. Wuennenberg*, 83 Wis.2d 768, 266 N.W.2d 391 (1978), political canvassers checking addresses against voting registration lists were approached in an apartment building vestibule by Wuennenberg, the area's alderperson. *See id.* at 770, 266 N.W.2d at 393.

Wuennenberg demanded that they identify themselves, and when they refused, she directed her husband to call the police. *See id.* at 771, 266 N.W.2d at 393. Wuennenberg stood in front of the building's outer door and “[stood] there with her arms on the pillars to the door” which, the canvassers believed, blocked their exit. *See id.* The canvassers sued for false imprisonment but conceded that Wuennenberg had not threatened or intimidated them and that they did not ask her permission to leave or make any attempt to get Wuennenberg to move away from the door. *See id.* at 771-72, 266 N.W.2d at 393. Each of the canvassers assumed that he or she would have to push Wuennenberg out of the way in order to leave the vestibule. *See id.* at 772, 266 N.W.2d at 393.

The central issue was whether the canvassers were confined by threat of

physical force, i.e., an apparent intention and ability to apply force as expressed in words or acts. *See id.* at 775-76, 266 N.W.2d at 395-96. The court noted that Wuennenberg did not verbally threaten the canvassers and none of them asked her to step aside. Therefore, it was speculation to conclude that Wuennenberg would have refused a request to step aside and would have physically resisted the canvassers' attempt to leave. *See id.* at 778, 266 N.W.2d at 396. The court concluded that the evidence at best supported an inference that the canvassers remained in the vestibule because they assumed they would have to push Wuennenberg out of the way in order to leave. The court found this assumption insufficient to support the false imprisonment claim. *See id.*

The *Herbst* court distinguished *Dupler v. Seubert*, 69 Wis.2d 373, 230 N.W.2d 626 (1975), in which an employee claimed to have been falsely imprisoned by her employer when she was called to the office to be informed of her termination. The manager yelled at the employee, blocked the office door and told her in a loud voice to "sit down." The manager

declined the employee's repeated requests to leave. *See Dupler*, 69 Wis.2d at 376, 230 N.W.2d at 628. The jury found false imprisonment. *See id.* at 377, 230 N.W.2d at 629. On review, the court held that the employee was intentionally confined by an implied threat of actual physical restraint. *See id.* at 383, 230 N.W.2d at 632.

In distinguishing *Dupler*, the *Herbst* court noted that the canvassers could not bring themselves within the purview of *Dupler* because they were not berated or screamed at by Wuennenberg, they outnumbered Wuennenberg three to one, and there was no evidence that they were frightened of Wuennenberg or that they feared harm. *See Herbst*, 83 Wis.2d at 779, 266 N.W.2d at 397. The canvassers "did not submit to an apprehension of force" and therefore were not imprisoned. *Id.* at 780, 266 N.W.2d 391, 266 N.W.2d at 397.

Teichmiller's deposition testimony indicates that she was yelled at, outnumbered and feared she would be harmed. However, she never actually asked to leave the clinic manager's office and was able to leave the office on her

third attempt to move past Bergerson-Hawkins, who apparently was standing between her and the door. While Teichmiller claims she was afraid force would be used, it appears that this was speculation.

There is also a question as to whether Teichmiller, an employee, could be “imprisoned” during paid work hours. In *Dupler*, the court noted with approval the holding of *Weiler v. Herzfeld-Phillipson Co.*, 189 Wis. 554, 208 N.W. 599 (1926), that an employee detained during work hours in the employer's office prior to her discharge was not imprisoned because she was compensated for her time. *See Dupler*, 69 Wis.2d at 383, 230 N.W.2d at 632. In *Dupler*, the employee was

compensated until 5:00 p.m., but remained in the manager's office until 6:00 p.m. *See id.* at 377, 383, 230 N.W.2d at 628, 632. The court concluded that the employee's imprisonment commenced at 5:00 p.m. In contrast, Teichmiller was paid for all of her time at the clinic on the day she contends she was imprisoned.

We conclude that there are no facts showing that Teichmiller was intentionally and unlawfully restrained in an office whose door was open and from which she never asked to leave.

* * *

By the Court. - Judgment affirmed.

Notes & Questions

1. Should the owner of a store, such as the defendant in *McCann*, have a right to detain someone the owner suspects of shoplifting without being liable for false imprisonment?

2. The court in *Teichmiller* relied on the decision in *Herbst v. Wuennenberg*, 83 Wis.2d 768, 266 N.W.2d 391 (1978). In the latter case, the court described the claim of false imprisonment as follows:

The action for the tort of false imprisonment protects the personal interest in freedom from restraint of movement. The essence of false imprisonment is the intentional, unlawful, and unconsented restraint by one person of the physical liberty of another. . . . There is no cause of action unless the confinement is contrary to the will of the "prisoner." It is a contradiction to say that the captor imprisoned the "prisoner" with the "prisoner's" consent.

In *Maniaci v. Marquette University*, 50 Wis.2d 287, 295, 184 N.W.2d 168 (1971) and in *Dupler v. Seubert* . . . we adopted the definition of false imprisonment given by the Restatement of Torts, Second, sec. 35: "(1) An actor is subject to liability to another for false imprisonment if (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and "(b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it.

After review of the record we conclude that the evidence is not sufficient to support the conclusion that Wuennenberg's acts "directly or indirectly result(ed) in . . . a confinement of the (plaintiffs)," a required element of the cause of action.

3. The disposition in *McCann* favored the plaintiffs, while the disposition in *Teichmiller* favored the defendants. Given that both courts were applying section 35 of the *Restatement* and the courts issued their opinions only a year apart, can you reconcile the opinions? Did *Teichmiller* expand the understanding of false imprisonment you had after reading *McCann*?

SECTION II

Court of Appeals of New York

Donald C. PARVI, Appellant,

v.

**CITY OF KINGSTON, Respondent, et al.,
Defendants.**

**41 N.Y.2d 553, 362 N.E.2d 960 ,
394 N.Y.S.2d 161 (1977)**

FUCHSBERG, Justice.

This appeal brings up for review the dismissal, at the end of the plaintiff's case, of two causes of action, both of which arise out of the same somewhat unusual train of events. One is for false imprisonment and the other for negligence. The judgment of dismissal was affirmed by the Appellate Division by a vote of three to two. The issue before us, as to each count, is whether a *prima facie* case was made out. We believe it was.

* * *

Sometime after 9:00 p.m. on the evening of May 28, 1972, a date which occurred during the Memorial Day weekend, two police officers employed by the defendant

City of Kingston responded in a radio patrol car to the rear of a commercial building in that city where they had been informed some individuals were acting in a boisterous manner. Upon their arrival, they found three men, one Raymond Dugan, his brother Dixie Dugan and the plaintiff, Donald C. Parvi. According to the police, it was the Dugan brothers who alone were then engaged in a noisy quarrel. When the two uniformed officers informed the three they would have to move on or be locked up, Raymond Dugan ran away; Dixie Dugan chased after him unsuccessfully and then returned to the scene in a minute or two; Parvi, who the police testimony shows had been trying to calm the Dugans, remained where he was.

In the course of their examinations before trial, read into evidence by Parvi's counsel, the officers described all three as exhibiting, in an unspecified manner, evidence that they "had been drinking" and showed "the effects of alcohol". They went on to relate how, when Parvi and Dixie Dugan said they had no place to go, the officers ordered them into the police car and, pursuing a then prevailing police

“standard operating procedure”, transported the two men outside the city limits to an abandoned golf course located in an unlit and isolated area known as Coleman Hill. Thereupon the officers drove off, leaving Parvi and Dugan to “dry out”. This was the first time Parvi had ever been there. En route they had asked to be left off at another place, but the police refused to do so.

No more than 350 feet from the spot where they were dropped off, one of the boundaries of the property adjoins the New York State Thruway. There were no intervening fences or barriers other than the low Thruway guardrail intended to keep vehicular traffic on the road. Before they left, it is undisputed that the police made no effort to learn whether Parvi was oriented to his whereabouts, to instruct him as to the route back to Kingston, where Parvi had then lived for 12 years, or to ascertain where he would go from there. From where the men were dropped, the “humming and buzzing” of fast-traveling, holiday-bound automobile traffic was clearly audible from the Thruway; in their befuddled state, which later left Parvi with very little memory of

the events, the men lost little time in responding to its siren song. For, in an apparent effort to get back, by 10:00 p.m. Parvi and Dugan had wandered onto the Thruway, where they were struck by an automobile operated by one David R. Darling. Parvi was severely injured; Dugan was killed.

* * *

*The Cause of Action for
False Imprisonment*

With these facts before us, we initially direct our attention to Parvi's cause of action for false imprisonment. Only recently, we had occasion to set out the four elements of that tort in *Broughton v. State of New York*, 37 N.Y.2d 451, 456, 373 N.Y.S.2d 87, 93, 335 N.E.2d 310, 314, (1975) where we said that “the plaintiff must show that: (1) the defendant intended to confine him, (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged”.

Elements (1) and (3) present no problem here. When the plaintiff stated he had no place to go, he was faced with but one alternative, arrest. This was hardly the

stuff of which consent is formed, especially in light of the fact that Parvi was, in a degree to be measured by the jury, then under the influence of alcohol. It is also of no small moment in this regard that the men's request to be released at a place they designated was refused. Moreover, one of the policemen testified that his fellow officer alone selected the location to which Parvi was taken; indeed, this was a place to which the police had had prior occasion to bring others who were being "run out of town" because they evidenced signs of intoxication. Further, putting aside for the time being the question of whether such an arrest would have been privileged, it can hardly be contended that, in view of the direct and willful nature of their actions, there was no proof that the police officers intended to confine Parvi.

Element (2), consciousness of confinement, is a more subtle and more interesting subissue in this case. On that subject, we note that, while respected authorities have divided on whether awareness of confinement by one who has been falsely imprisoned should be a *sine qua non* for making out a case (*Barker v. Washburn*, 200 N.Y. 280, 93

N.E. 958; . . .). *Broughton, supra*, 37 N.Y.2d p. 456, 373 N.Y.S.2d p. 92, 335 N.E.2d p. 313 has laid that question to rest in this State. Its holding gives recognition to the fact that false imprisonment, as a dignitary tort, is not suffered unless its victim knows of the dignitary invasion. Interestingly, the Restatement of Torts 2d (s 42) too has taken the position that there is no liability for intentionally confining another unless the person physically restrained knows of the confinement or is harmed by it.

However, though correctly proceeding on that premise, the Appellate Division, in affirming the dismissal of the cause of action for false imprisonment, erroneously relied on the fact that Parvi, after having provided additional testimony in his own behalf on direct examination, had agreed on cross that he no longer had any recollection of his confinement. In so doing, that court failed to distinguish between a later recollection of consciousness and the existence of that consciousness at the time when the imprisonment itself took place. The latter, of course, is capable of being proved though one who suffers the consciousness

can no longer personally describe it, whether by reason of lapse of memory, incompetency, death or other cause. Specifically, in this case, while it may well be that the alcohol Parvi had imbibed or the injuries he sustained, or both, had had the effect of wiping out his recollection of being in the police car against his will, that is a far cry from saying that he was not conscious of his confinement at the time when it was actually taking place. And, even if plaintiff's sentient state at the time of his imprisonment was something less than total sobriety, that does not mean that he had no conscious sense of what was then happening to him. To the contrary, there is much in the record to support a finding that the plaintiff indeed was aware of his arrest at the time it took place. By way of illustration, the officers described Parvi's responsiveness to their command that he get into the car, his colloquy while being driven to Coleman Hill and his request to be let off elsewhere. At the very least, then, it was for the jury, in the first instance, to weigh credibility, evaluate inconsistencies and determine whether the burden of proof had been met.

Passing on now to the fourth and final

element, that of privilege or justification, preliminarily, and dispositively for the purpose of this appeal, it is to be noted that, since the alleged imprisonment here was without a warrant and therefore an extrajudicial act, the burden not only of proving, but of pleading legal justification was on the city, whose failure to have done so precluded it from introducing such evidence under its general denial.

* * *

[Despite the city's failure to plead and prove privilege or legal justification as a defense, the Court noted precedent describing a privilege or a legal justification when restraint or detention, is "reasonable under the circumstances and in time and manner, imposed for the purpose of preventing another from inflicting personal injuries or interfering with or damaging real or personal property in one's lawful possession or custody. "

The Court distinguished two circumstances by explaining:

It may be that taking a person who is in a state of intoxication to a position of greater safety would constitute justification. But it is clearly not privileged to arrest such a person for the sole purpose of running him out of town.

Finally, the court opined: “A person who has had too much to drink is not a chattel to be transported from one locus to another at the whim or convenience of police officers.”]

* * *

Accordingly, the order of the Appellate Division should be reversed, [the] causes of action reinstated and a new trial ordered, with leave to the defendant, if so advised, to move at Trial Term for leave to amend its answer to affirmatively plead a defense of justification to the cause of action for false imprisonment.

BREITEL, Chief Judge (dissenting).

I dissent. On no view of the facts should plaintiff, brought to causing his own serious injury by his voluntary intoxication, be allowed to recover from the City of Kingston for damages suffered when he wandered onto the New York State Thruway and was struck by an automobile. His attack is the familiar one on the good Samaritan, in the persons of two police officers, for not having, in retrospect, done enough.

The order of the Appellate Division

should be affirmed, and the action stand dismissed.

[P]laintiff has failed even to make out a *prima facie* case that he was conscious of his purported confinement, and that he failed to consent to it. His memory of the entire incident had disappeared; at trial, Parvi admitted that he no longer had any independent recollection of what happened on the day of his accident, and that as to the circumstances surrounding his entrance into the police car, he only knew what had been suggested to him by subsequent conversations. In light of this testimony, Parvi's conclusory statement that he was ordered into the car against his will is insufficient, as a matter of law, to establish a *prima facie* case.

* * *

There is hubris in the bringing of an action of this kind. Parvi is one of a pair of drinkers, derelicts perhaps, engaged in making a public nuisance of themselves in the center of a small Hudson River Valley city on a holiday weekend. The police of that city, a tiny force, are not sisters of charity or baby-sitters.

Basically, the legal issues in this case are

not difficult. And the justice issues are even less so. A drunken man, a pitiable character, is found with his companions in the middle of town. Sympathetic police officers offer to take the men any where they choose, but the poor fellows have no place to go. So, rather than locking them up for a holiday weekend, the officers deposit the men in a suburban setting, where some shelter is available. The officers are thanked for their kindness.

But, in the end, the efforts of the officers are to no avail, as the drunken men wander away from safety and into danger. A tragedy, certainly. A miscalculation, perhaps. But even with the aid of hindsight, the facts in this case are not the stuff on which tort liability may be premised.

Accordingly, I dissent, and vote to affirm the order of the Appellate Division.

Supreme Judicial Court of Maine

WHITTAKER

v.

SANDFORD.

110 Me. 77, 85 A. 399 (1912)

SAVAGE, J.

Action for false imprisonment. The plaintiff recovered a verdict for \$1,100. The case comes up on defendant's exceptions and motion for a new trial.

The case shows that for several years prior to 1910, at a locality called "Shiloh," in Durham, in this state, there had been gathered together a religious sect, of which the defendant was at least the religious leader. They dwelt in a so-called colony. There was a similar colony under the same religious leadership at Jaffa, in Syria. The plaintiff was a member of this sect, and her husband was one of its ministers. For the promotion of the work of the "movement," as it is called, a Yacht Club was incorporated, of which the defendant was president. The Yacht Club owned two sailing yachts, the "Kingdom"

and the "Coronet." So far as this case is concerned, these yachts were employed in transporting members of the movement, back and forth, between the coast of Maine and Jaffa.

The plaintiff, with her four children, sailed on the Coronet to Jaffa in 1905. Her husband was in Jerusalem, but came to Jaffa, and there remained until he sailed, a year later, apparently to America. The plaintiff lived in Jerusalem and Jaffa, as a member of the colony, until March, 1909. At that time she decided to abandon the movement, and from that time on ceased to take part in its exercise or to be recognized as a member. She made her preparations to return to America by steamer, but did not obtain the necessary funds therefor until December 24, 1909. At that time the Kingdom was in the harbor at Jaffa, and the defendant was on board. On Christmas day he sent a messenger to ask the plaintiff to come on board. She went, first being assured by the messenger that she should be returned to shore. The defendant expressed a strong desire that she should come back to America on the Kingdom, rather than in a steamer, saying, as she

says, that he could not bear the sting of having her come home by steamer; he having taken her out. The plaintiff fearing, as she says, that if she came on board the defendant's yacht she would not be let off until she was "won to the movement" again, discussed that subject with the defendant, and he assured her repeatedly that under no circumstances would she be detained on board the vessel after they got into port, and that she should be free to do what she wanted to the moment they reached shore. Relying upon this promise, she boarded the Kingdom on December 28th and sailed for America. She was treated as a guest, and with all respect. She had her four children with her. The defendant was also on board.

The Kingdom arrived in Portland Harbor on the afternoon of Sunday, May 8, 1910. The plaintiff's husband, who was at Shiloh, was telephoned to by some one, and went at once to Portland Harbor, reaching the yacht about midnight of the same day. The Coronet was also in Portland Harbor at that time. Later both yachts sailed to South Freeport, reaching there Tuesday morning, May 10th. From this time until June 6th following the

plaintiff claims that she was prevented from leaving the Kingdom, by the defendant, in such manner as to constitute false imprisonment.

* * *

The plaintiff claimed and testified that on two or three occasions the defendant personally refused to furnish her with a boat so that she could leave the Kingdom; that when she wanted to go ashore "they," evidently referring to the defendant and her husband, "had talked against it"; that the defendant "had spoken plainly that it was out of the question"; that when she spoke to him about it he said he would leave it to her husband to do what he wanted to, that he would not take the responsibility of separating families, but that, when she asked her husband to take her ashore, he replied, "We will see Mr. Sandford about it and see what he says." The plaintiff contended that in this way the defendant and her husband in effect played into each other's hands, and shifted the responsibility from one to the other, while she was the victim of this play of battledore and shuttlecock. It was contended that by virtue of the peculiar religious character attributed to the defendant by those who were in the

movement, of whom the plaintiff's husband was one, being a minister of that faith, he possessed and exercised supreme control over the members, both on sea and on land, and that his wish was law both to their wills and consciences, and that the plaintiff's husband, whatever part he took in the matter, was either merely the defendant's instrument, or else was collocated with him.

It therefore became pertinent for the plaintiff to show the nature and extent of the defendant's authority and power. This, of course, was only one step; but it was a step. Another would be to show that the defendant exercised that authority and that it was effective in restraining the plaintiff of her liberty.

* * *

* * * The court instructed the jury that the plaintiff to recover must show that the restraint was physical, and not merely a moral influence; that it must have been actual physical restraint, in the sense that one intentionally locked into a room would be physically restrained but not necessarily involving physical force upon the person; that it was not necessary that

the defendant, or any person by his direction, should lay his hand upon the plaintiff; that if the plaintiff was restrained so that she could not leave the yacht Kingdom by the intentional refusal to furnish transportation as agreed, she not having it in her power to escape otherwise, it would be a physical restraint and unlawful imprisonment. We think the instructions were apt and sufficient. If one should, without right, turn the key in a door, and thereby prevent a person in the room from leaving, it would be the simplest form of unlawful imprisonment. The restraint is physical. The four walls and the locked door are physical impediments to escape. Now is it different when one who is in control of a vessel at anchor, within practical rowing distance from the shore, who has agreed that a guest on board shall be free to leave, there being no means to leave except by rowboats, wrongfully refuses the guest the use of a boat? The boat is the key. By refusing the boat he turns the key. The guest is as effectually locked up as if there were walls along the sides of the vessel. The restraint is physical. The impassable sea is the physical barrier.

There are other exceptions, but the points involved are all covered by the foregoing discussion. The exceptions must all be overruled.

The Motion.

A careful study of the evidence leads us to conclude that the jury were warranted in finding that the defendant was guilty of unlawful imprisonment. This, to be sure, is not an action based upon the defendant's failure to keep his agreement to permit the plaintiff to leave the yacht as soon as it should reach shore. But his duty under the circumstances is an important consideration. It cannot be believed that either party to the agreement understood that it was his duty merely to bring her to an American harbor. The agreement implied that she was to go ashore. There was no practical way for her to go ashore except in the yacht's boats. The agreement must be understood to mean that he would bring her to land, or to allow her to get to land, by the only available means. The evidence is that he refused her a boat. His refusal was wrongful. The case leaves not the slightest doubt that he had the power to control the boats, if he chose to exercise

it. It was not enough for him to leave it to the husband to say whether she might go ashore or not. She had a personal right to go on shore. If the defendant personally denied her the privilege, as the jury might find he did, it was a wrongful denial.

It is shown that on several occasions the defendant told the plaintiff she could have a boat when she wished; but it is also shown by testimony which the jury might believe that, each time she made a request for a boat to be used at the time, she was refused. The plaintiff did not ask the captain or other officers of the yacht for a boat. These officers testified that they had authority to let any one have the use of a boat, and that, without consulting the defendant. We do not think the defendant can justly claim that she should have asked the officers under him, if he had himself denied her a boat. And in the one specific case shown in the evidence, when she did ask the captain for a boat to go on shore, he referred the discussion of the matter to the defendant. This was at Malta. She apparently believed that an appeal to the officers would be useless. It was not an unreasonable belief.

The defendant did not become a witness, but it is claimed for him that after Tuesday, May 10th, he assumed no responsibility whatever for the plaintiff, and left her in the care of her husband, specifically saying that he would leave it to her husband to say whether she could leave the yacht. From that date, he stayed on the Coronet, only coming aboard the Kingdom once, though on that occasion she says he refused her the use of a boat. From that date she was in the company of her husband, though they were not living in marital relations. She went ashore with him. She visited neighboring islands with him. She was trying to persuade him to leave the movement and make a home for her and their children. He was trying to persuade her to become again a member of the movement. When on shore with him she made no effort to escape. She says she believed it would be useless, and thus went back to the yacht with him. She says that when she did ask her husband to put her ashore to leave, he replied, "We will see Mr. Sandford about it and see what he says." She further says that the defendant had told her that "he" (her husband) "couldn't do it" (put her on shore).

Besides the evidence of express personal refusal on the part of the defendant, we think that a jury might well find upon the evidence that the defendant was strongly desirous that the plaintiff should not leave the yacht, probably for the reason that he hoped her husband's influence might lead her back into the movement, that the husband was strongly desirous of the same end, that if she left the yacht she would be beyond the influence of her husband, that the subject was a matter of conversation between the defendant and the husband, that in view of the relation which the defendant bore to the movement and to the husband, in view of the mystical character attributed to him, in view of the manifest power possessed by him over the minds of the members, growing out of a belief which we have already stated, and which the husband shared in, the husband, if not acting by express mutual understanding with the defendant, was the minister of his known will, with the result that the plaintiff was prevented from leaving the yacht, that the defendant was the superior, the controlling factor, by an influence intentionally used, in keeping her there, that he possessed the key that would

unlock the situation, and that in violation of his duty he refused to use it, and thus restrained her of her liberty. If all this was true, the defendant is liable to the plaintiff. The verdict should not be set

aside on that ground.

The certificate will be: *Exceptions overruled.*

**Court of Civil Appeals of Texas,
Waco.
BIG TOWN NURSING HOME, INC.,
Appellant,
v.
Howard Terry NEWMAN, Appellee.**

461 S.W.2d 195 (1970)

OPINION

McDONALD, Chief Justice.

This is an appeal by defendant nursing home from a judgment for plaintiff Newman for actual and exemplary damages in a false imprisonment case.

Plaintiff Newman sued defendant nursing home for actual and exemplary damages for falsely and wrongfully imprisoning him against his will from September 22, 1968 to November 11, 1968. Trial was to a jury which found:

Plaintiff was falsely imprisoned by defendant on or about September 22, 1968.

* * *

The trial court entered judgment on the verdict for plaintiff for \$25,000.

* * *

Plaintiff is a retired printer 67 years of age, and lives on his social security and a retirement pension from his brother's printing company. He has not worked since 1959, is single, has Parkinson's disease, arthritis, heart trouble, a voice impediment, and a hiatal hernia. He has served in the army attaining the rank of Sergeant. He has never been in a mental hospital or treated by a psychiatrist. Plaintiff was taken to defendant nursing home on September 19, 1968 by his nephew who signed the admission papers and paid one month's care in advance. Plaintiff had been arrested for drunkenness and drunk driving in times past (the last time in 1966) and had been treated twice for alcoholism. Plaintiff testified he was not intoxicated and had nothing to drink during the week prior to admission to the nursing home. The admission papers provided that patient 'will not be forced to remain in the nursing home against his will for any length of time.' Plaintiff was not advised he would be kept at the nursing home against his will. On September 22, 1968 plaintiff decided he wanted to leave and tried to telephone for a taxi. Defendant's employees advised plaintiff he could not

use the phone, or have any visitors unless the manager knew them, and locked plaintiff's grip and clothes up. Plaintiff walked out of the home, but was caught by employees of defendant and brought back forceably, and thereafter placed in Wing 3 and locked up. Defendant's Administrator testified Wing 3 contained senile patients, drug addicts, alcoholics, mentally disturbed, incorrigibles and uncontrollables, and that 'they were all in the same kettle of fish.' Plaintiff tried to escape from the nursing home five or six times but was caught and brought back each time against his will. He was carried back to Wing 3 and locked and taped in a 'restraint chair', for more than five hours. He was put back in the chair on subsequent occasions. He was not seen by the home doctor for some 10 days after he was admitted, and for 7 days after being placed in Wing 3. The doctor wrote the social security office to change payment of plaintiff's social security checks without plaintiff's authorization. Plaintiff made every effort to leave and

repeatedly asked the manager and assistant manager to be permitted to leave. The home doctor is actually a resident studying pathology and has no patients other than those in two nursing homes. Finally on November 11, 1968 plaintiff escaped and caught a ride into Dallas, where he called a taxi and was taken to the home of a friend. During plaintiff's ordeal he lost 30 pounds. There was never any court proceeding to confine plaintiff. Defendant's assistant manager testified that plaintiff attempted to leave the home five or six times, and on each occasion was brought back against his will.

False imprisonment is the direct restraint of one person of the physical liberty of another without adequate legal justification. There is ample evidence to sustain [the] jury findings.

* * *

[The Court affirmed a "reformed" judgment for plaintiff, reducing damages from \$25,000 to \$13,000.

Notes & Questions

1. The United States Court of Appeals for the First Circuit issued the opinion in *McCann* while the New York Court of Appeals issued the opinion in *Parvi*. Do the two opinions have the same value as precedent?

2. Is there any relationship between the law applied in *Parvi* and the law applied in the other cases you have read? The court in *Parvi* cites frequently to the court's decision in *Broughton v. State of New York*, 37 N.Y.2d 451, 373 N.Y.S.2d 87, 335 N.E.2d 310 (1975). In the latter case, the court stated the following:

The action for false imprisonment is derived from the ancient common-law action of trespass and protects the personal interest of freedom from restraint of movement. Whenever a person unlawfully obstructs or deprives another of his freedom to choose his own location, that person will be liable for that interference (Restatement, 2d, Torts, § 35, comment h). To establish this cause of action the plaintiff must show that: (1) the defendant intended to confine him, (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged (Restatement, 2d, Torts, § 35)

The quotation above from *Broughton* contains a citation only to §35 of the *Restatement*. The court, however, appears to include sections of the *Restatement* in addition to §35 when setting forth the 4 elements of the cause of action. There are sections of the *Restatement* addressing consent and privilege.

3. Do all of the facts recited by the New York Court of Appeals in *Parvi* affect the Court's ruling on the claim of false imprisonment? Why does it matter that Raymond Dugan "ran away" when confronted by the police? What connection is there between false imprisonment and Dixie Dugan's death on the New York Thruway? Would it have made a difference if the golf course at which the police left Parvi had been lighted or not abandoned?

4. The New York Court of Appeals in *Parvi* concluded the element of "defendant intend[ing]"

to confine [Parvi] . . . present[s] no problem here.” Do you agree? When did the confinement begin? To what space was Parvi confined and for what period of time? Can a person be confined to “out of town,” i.e., outside the city of Kingston?

5. Note that the Court of Appeals in *Parvi* refers to the burden of proof [or burden of proving] elements (2) and (4) of a claim of false imprisonment. What is a *prima facie* case and how are those terms related to burden of proof? Which party had the burden of proof on elements (2) and (4)? How did the burden of proof affect the disposition of the case? Did the Court of Appeals do more than affirm or reverse the decision of the Appellate Division?

6. An arrest based upon warrant or probable cause is not a tort. When a police officer improperly arrests a person, the tort is often called false arrest. Confinement also is an element of a claim for false arrest.

7. Why is it useful to read the dissenting opinion of Chief Judge Breitel in *Parvi*?

8. *Whittaker* is a much older opinion than the other opinions you have been asked to read. How a court articulated its opinions in 1915 might strike the modern ear as foreign. Nevertheless, understanding the context in which certain words and phrases are used in older opinions can help you understand the opinion. For example, the court in *Whittaker* refers to “exceptions” raised by Sandford, the losing defendant at trial. How would you explain “exceptions” in your own words?

9. As exemplified by the court’s opinion in *Whittaker*, a court does not always state explicitly the “rule” used by the court. How would you articulate the rule(s) used by the court in *Whittaker*? Would a court today reach the same result under §35 of the *Restatement (Second), of Torts*? Does the cultural context of the United States in 1915 make a difference?

10. The court in *Whittaker* states as part of its reasoning, “The boat is the key.” How would you describe this type of reasoning? Look again at pages 80-89 in What Every Law Student Really Needs to Know: An Introduction to the Study of Law.

11. Suppose Mrs. Whittaker had not wanted to leave the religious sect led by Mr. Sandford, but some of her relatives abducted her and subjected her to deprogramming. Would the relatives be liable for false imprisonment?

12. What does the opinion in *Big Town Nursing Home* add to your understanding of false imprisonment?

SECTION III

Your First Outlining Assignment

Using the principles discussed here and in the pre-class video, create an outline of false imprisonment and bring a hard copy with you to Class 6 (on Thursday, August 15). Your outline will probably be 1 – 2 pages in length. You will not need to hand in this outline, but you are welcome to submit your outline to your instructor in class 6 for feedback.

Outlining Basics

The *process* of outlining the rules (law) covered in your courses helps you to understand and retain the material that you need to know and use on your law school exams.

A useful outline should:

- A. be well organized -- it should use rules and concepts as the organizational framework rather than cases, and it should accurately depict the relationships between all the rules.
- B. present the rules accurately and thoroughly.
- C. be visually accessible so that units of information are easily discernible.

The pre-class video on outlining and your class on outlining during Introduction to Law will help you understand the process more, and as your first year progresses you will become more adept at this important skill. To get you started, the following is a simple step-by-step approach to use while outlining your courses:

Step 1: Gather Materials.

Begin by gathering your class notes, case briefs, and any supplemental materials you may have (such as hornbooks, dictionaries, etc.). For your other courses this semester you will also want to have your text book and course syllabus with you.

Step 2: Create the Framework.

The next step will be to create the overall organizational framework for your outline. To complete this step, for most courses you will consult your course syllabus and your text book's table of contents.

The overall organizational framework for a course outline should be based on rules and concepts, and categories of rules and concepts. For example, a Criminal Law outline might be organized around main categories such as "Theories of Punishment," "Theft Offenses," "Homicide Offenses," and the like. Then sub-headings based on material covered in class would be included under the main categories. Thus under the topic of "Theft Offenses," there would be subtopics for the individual crimes, such as "Theft," "Burglary," and "Extortion."

- I. Theft Offenses
 - A. Theft
 - B. Burglary
 - C. Extortion

For your first outlining exercise for Introduction to Law, you won't yet have an overall structure because we are focusing on only one discrete tort. With that said, false imprisonment would likely be found under the main heading of "Intentional Torts."

An important thing to note is that except in rare instances – such as when you are studying important Supreme Court cases – you will not use case names as headings or sub-headings. Therefore, for example, you should not use "McCann v. Walmart" as a subtopic heading in the outline you prepare for this class. The reason for this is that you generally don't need to know individual cases for your exams – you only need to know the rules and examples from those cases.

Step 3: Flesh it Out.

Using your notes and other materials, fill in more details about each of your topics and subtopics. As you flesh out an outline, keep in mind the following:

- **Divide main rules into their component parts.** Oftentimes the component parts of a rule are referred to as "elements," though not every rule has elements. (False imprisonment is an example of a rule that does have elements.) Within your outline,

each part of the rule, or element, would be its own subtopic heading. For example, under the sub-heading of Burglary, you would include each separate element as described by your professor or course materials, like this:

- A. **Burglary:** breaking and entering the dwelling of another at nighttime with the intent to commit a crime therein:
1. Breaking
 2. and entering
 3. the dwelling
 4. of another
 5. at nighttime,
 6. with the intent to commit a crime therein

Complete this step carefully, so that you don't break the rule up too much; be sure that you know what each component or element is. If you're not sure, seek assistance from professors, reliable supplemental materials, and your peers.

- **Indent similar sub-concepts consistently**, using a simple hierarchical structure to accurately represent the relationship of the concepts. Note in the example above that the six elements of "Burglary" are indented together – they are equivalent in importance, so their positioning in the outline structure reflects that. This helps you see at a glance that Burglary has 6 elements that you need to memorize.
- Then under each component part or element of the rule, further indent and include what is referred to as "**Rule Explanation**," or helpful information about the element. This may include definitions of the element (what is a "dwelling?"), exceptions, etc. Another important item to include will be examples of the element being met or not being met (e.g., can a car sometimes be a "dwelling?") The examples come from the cases and notes in your text books, as well as sample fact patterns or "hypotheticals" that your professor may discuss in class. The examples add dimension to your understanding of a rule and how it needs to be applied to a fact pattern, so they are very helpful to include in your outlines.
- **Other items** you'll want to put in your outlines include exceptions to rules, policy considerations, minority and majority rules, and the like. Be sure to place these pieces of information at the appropriate locations within your outline's framework.
- Strive for **accuracy and thoroughness** in your presentation of the rules in your outlines. Never leave out elements or critical language. Keep in mind that on your

exams, part of what you'll need to be able to do will be to state relevant rules, and points will be awarded for how well you do that. You have to be able to state the rule accurately, and you can't leave out key language or terms of art. So you wouldn't want to say that burglary is committed when a person "breaks into someone's house at night with the intent to steal." Can you spot the errors? That rule statement is in the ballpark, but it won't get you full credit.

Step 4: Edit for Visual Accessibility.

- The most effective outlines present information in smaller chunks that are easier to remember; for example, listing out the elements of a rule separately often will be easier to remember than stating the elements in a sentence or paragraph form.
- It is often helpful to leave plenty of white space on the page, with breaks between concepts and good-sized margins.
- And finally, using highlighting techniques like **bolding** for key terms can also be helpful for memorization. Don't overuse highlighting techniques, though – they lose their effectiveness if overused, or if too many different techniques are used.

Notes on Writing Essay Answers

Final examinations in law school and state bar examinations include questions in multiple-choice and essay formats. You will have your first chance to craft a response to an essay question during Introduction to Law. While you can find many books and articles about how to take law school exams, the following pages describe some strategies commonly identified for success on all exams and for essay questions in particular.²

I. For All Examinations

a. Exam Structure

Law school exams often consist of multiple parts, e.g., sections with essay questions and sections with multiple-choice questions. It may be helpful to review the entire exam briefly when you first have the opportunity to do so. Unless your professor requires you to address the sections of the exam in a particular order, knowing the overall structure of an exam gives you the opportunity to build some confidence by addressing a format or issues with which you feel most comfortable.

b. Directions

Carefully read the professor's directions for the exam. There may be directions applicable to multiple sections of the exam and there may be directions applicable only to a particular part of the exam. As an example of the first type of direction, you may be instructed to write answers to essay questions throughout the exam in double-space format if typing or on every other line if handwriting. As an example of the second type of direction, an essay question may have directions requiring you to address specific issues for that question and informing you not to address other issues. You do not want to lose points or adversely affect your professor's perception of your abilities by failing to follow directions.

² Strategies for multiple-choice questions will be addressed during the semester.

c. Time Management

A very common refrain of 1L's after an exam is that they needed more time for the exam. And so, if you believe you have completed the exam with time remaining in the exam period, then you may be a 1L genius but it is more likely you could have done more with the exam.

With respect to time dedicated to different sections of an exam, a professor may designate on the exam a recommended amount of time for a section, e.g., "Section A – Recommended Time: 40 Minutes." Follow your professor's recommendation until you become more familiar with law school exams. Even if your professor does not specifically recommend an amount of time for an exam section, there may be other guides for time management. For example, if your professor tells you that the entire exam is worth 100 points and Section A of the exam is worth 40 out of the 100 points, it is reasonable to spend 40% of the exam period on section A. Ask your professor during the semester whether she or he will be recommending an amount of time or designating a relative weight for the sections of the exam.

II. Essay Questions - IRAC

What are commonly called "essay questions" require students to provide a written analysis of a fact pattern (story) through the lens of the law covered in the course. A successful analysis of the fact pattern demonstrates more than a student's ability to recite accurately the rules of law learned during a semester. Instead, a successful analysis demonstrates that a student *understands* the law so well that the student can explain how the law learned during the semester might reasonably be applied to a fact pattern different – at least in part -- than the fact patterns of the cases the student prepared for or discussed in class during the semester.

A traditional format for responding to essay questions is known by the abbreviation "IRAC." As explained below, each letter of the abbreviation stands for a part of the response

to an essay question. Professors typically award points for each element of the IRAC framework.

a. "I" (Issue)

Begin by identifying the issue(s) to be addressed (sometimes referred to as issue spotting). Issue identification often takes the form of a question as a matter of custom. Issue identification involves consideration of the professor's directions for the question as well as facts in the fact pattern relevant to those directions.

For example, assume you had not read *Parvi v. City of Kingston* in either Introduction to Law or in your Torts class during the semester. Also assume your Torts professor uses the facts of *Parvi* in the final exam for Torts. You may recall Mr. Parvi raised a claim of "negligence" in addition to a claim of false imprisonment. If your professor's directions on the exam asked you to discuss all reasonable claims and defenses presented by the fact pattern, then you would create two "issue statements," one for the claim of negligence and one for the claim of false imprisonment. If, however, your professor's directions asked you only to discuss the City of Kingston's liability for false imprisonment, you would create only one issue statement.

Let's assume your professor directed you to discuss only a claim of false imprisonment. Your issue statement should do more than merely repeat your professor's directions. That is to say, you must do more than state: "The issue is whether the City of Kingston is liable to Mr. Parvi for false imprisonment." Instead, your issue statement should reflect that you have spotted key facts and their significance. Accordingly, a better issue statement would read: "Is the City of Kingston civilly liable to Mr. Parvi for false imprisonment when [fill in the material facts for *Parvi* discussed in class.]

b. "R" (Rule)

Accurately recite the rules of law you learned during the semester that correspond to your issue statement. For example, in the exam scenario described above, your rule statement would describe the legal standards and policies you synthesized from class during

orientation week regarding the liability for false imprisonment. Some professors may award points for citing to the source of the rule, e.g., citation of court case or *Restatement* section. Other professors may award points only for an accurate statement of the applicable rule, and so citing to the source would be a waste of time. Also please note that memorization of accurate rule statements before an exam is often necessary preparation for making accurate rule statements during an exam.³ A vague paraphrase of the law is not a sufficient substitute for an accurate rule statement.

You should provide a rule statement for each issue presented by a fact pattern in light of your professor's directions regarding the fact pattern.

c. "A" (Analysis/Application/Argument)⁴

After accurately stating a rule, explain how the rule might reasonably be applied to the facts in the fact pattern. For example, using the scenario described above, identify and explain how certain facts could reasonably support each element of a cause of action by Mr. Parvi against the City of Kingston under the law imposing liability for false imprisonment. And, to maximize the award of points, identify and explain how other facts in the fact pattern could reasonably be used to defeat such a claim (counter-analysis or counter-argument). An argument need not be a certain winner to be reasonable. Also note that most of us tend to favor one side of an argument or party the first time we read through a fact pattern, and so you must plan to look for reasonable counter-arguments.⁵

Another way of thinking about the "A" in IRAC is to consider it a necessary step in explaining to the reader of your answer the logic of how you went from the Rule stated

³ Memorization of key words and phrases is helpful even for "open book" exams. Please do not assume you will have much time to review during an "open book" exam the materials you are permitted to bring with you and use during the exam.

⁴ Some descriptions of "IRAC" describe the "A" as standing for "analysis" while others describe it as standing for "application" or "argument."

⁵ During your first semester you may hear about "short answer" and "long answer" essay questions. The former may be contrasted with the latter in that "short answer" fact patterns may focus on a single issue, simple rules, and/or may not contain facts sufficient to support analysis *and* counter-analysis of the facts.

before the “A” to the conclusion (“C”) stated after the “A.” Some have likened the “A” section to showing all of the steps in solving a math problem, such as a proof in geometry.

What will not suffice for analysis is to state the applicable rule and then simply list a bunch of facts from the fact-pattern that are relevant to the rule. You must link specific facts with particular parts of a rule (sub-issues). For example, from which facts could a reasonable person conclude the City of Kingston’s police officers intended to confine Mr. Parvi (or the contrary)? From which facts could a reasonable person conclude Mr. Parvi was conscious of the confinement (or the contrary)?

Many students in their first semester fail to appreciate the importance of the “A” in IRAC. That is a costly mistake. The “A” is what differentiates in large part the mere *memorization* of the law from a demonstrated *understanding* of the law. Accordingly, some professors award more points for the “A” than for other components of the IRAC framework.

You should provide analysis for each part of each rule statement contained in your essay answer.

d. “C” (Conclusion)

Many professors will award points for stating a conclusion as to which of the reasonable arguments presented in the “A” section is most likely to prevail. For example, you might conclude Mr. Parvi is likely to prevail because the fact pattern contains facts sufficient to prove a claim of false imprisonment and fewer facts to prove a defense of privilege.

III. Essay Questions – Additional Practical Strategies

Read the fact pattern and directions more than once. Use the first reading to get a basic understanding of the story and the objectives of your professor. On the second – or third – reading, underline or mark in the margin of the exam where facts are described that you can use in the IRAC structure.

Plan your response to an essay question before you write it. It would be reasonable to spend 20% to 30% of the time allotted to a question to plan your response. You can create

an IRAC chart to create an outline for your answer and to use as a checklist as you complete your answer.

Cross off the facts in the fact pattern as you use them in issue spotting and analysis. If you find there is a fact that you have not used, consider again whether that fact gives rise to another issue or affects an issue you have already identified. While a professor may include some facts solely to make the story in the fact pattern flow better, it is safer to assume that the vast majority of the facts are relevant to some issue the professor wants you to address.

Do not introduce new facts into the fact pattern. Address the fact pattern your professor has created and not one you would rather address. If, however, you conclude a critical fact is missing from the fact pattern your professor wrote for the exam, then identify the missing fact and explain why it is critical.