

READING AND BRIEFING CASES IN LAW SCHOOL: GUIDELINES AND HELPFUL TIPS

By: Nicole Raymond Chong¹

I. INTRODUCTION TO LAW SCHOOL LEARNING

Law school, particularly the first semester, may be one of the most stressful times you've ever experienced. You are exposed to a new way of learning, thinking, and writing. Further, you are learning a new language: legal terminology. Much of what you read at first may sound foreign to you, so expect to have to read, re-read, and re-read again. Expect to spend significant time, much more so than you might think, on reading just one court opinion. Therefore, this article hopefully will decrease some of that anxiety by helping you to navigate through the start of your law school career by providing pertinent information on how to prepare for your law school classes.

You may find that law school learning differs significantly from your other educational experiences. One of the most notable differences is the format of the text books. Most law school texts are likely to be unfamiliar territory for many law students because they are in the form of "case books." Case books typically are divided into chapters about the various components of the area of the law that you are studying in a particular class. For example, in Torts, you are likely to see a case book that has chapters on intentional torts and on negligence. You will see further breakdowns between chapters or sections in a chapter on the various elements of intentional torts, such as the definition of "intent," and the elements of negligence, including duty, breach, causation, and harm. The case books compile court opinions ("cases") that illustrate the various concepts that you are learning, such as the Torts concepts of intent, duty, causation, and so forth. Thus, case books don't explicitly tell you what the "law" and "rules" are, but rather case books provide cases from which you will need to extract and define the law and rules on your own. The case method helps students to learn the process of legal analysis. Students read the cases to extract legal concepts, and they prepare "case briefs" to assist in learning through the use of the case method.

Professors typically will use the cases from the case books in class as a starting point for discussion, questions, and hypothetical fact patterns. For example, during class, many professors ask questions about the different parts of the cases assigned as reading that are discussed in this document. They will expect students not only to answer questions about the different parts of the case assigned as reading, but also to use or apply the rule set out in the case to a new set of facts, called a hypothetical fact pattern. This method of teaching is called the "Socratic" method. The following describes the Socratic method further:

[T]eachers who use [the Socratic method] will ask questions designed to elicit a discussion of the cases assigned for the day's class. You will have to know information about each case. Specifically, you should be able to discuss which facts are relevant and why, which arguments the judge

¹ © 2009, Nicole Raymond Chong, Director and Professor, Legal Analysis, Research, and Writing at Penn State's Dickinson School of Law. I would like to thank the members of the Legal Analysis, Research, and Writing faculty who contributed to this article.

accepted and why, and in general what the judge’s reasoning was. . . . The professor will probably go on to explore the implications of the decision, often asking you a series of questions involving hypothetical situations based on the case under discussion. . . . [T]he purpose of class is not just to impart information, but to expose the uncertainties in the law, even in what appear to be pretty straightforward rules.²

Although law school classes are similar in some respects, such as the use of the case and Socratic methods of teaching, you likely will find that professors have their own preferences, styles, and methods for using cases, so you will need to learn your professors’ preferences as you proceed through law school. For instance, as explained below, some professors may use different terms to describe different parts of cases. All professors, however, will expect you to be prepared for class, including preparing case briefs. Although your professors will not require you to turn in written case briefs for the assigned reading, you will find that you are not prepared to answer the professor’s questions in class unless you have prepared these briefs for yourself ahead of time. The case briefs also will help you to study for the final exam in each course.

The following information should help as you start your first year of law school. In Section II, suggestions are provided about what to do when you are first assigned a case to read in a law school class. In Section III, “case briefs” are introduced. Section IV provides guidance on what court opinions might look like in the event cases are assigned outside of the case book. Section V provides a practice case to read and brief. Finally, Section VI defines some common legal terminology that will likely be introduced in the first year of law school.

II. WHAT TO DO WHEN YOU ARE FIRST ASSIGNED A CASE TO READ: ACTIVE READING AND NOTE-TAKING

Recall the statement above about having to read cases multiple times to gain a clear understanding of them. This is very true when students are first learning to read cases. In fact, one of the reasons that students have to re-read cases is that they often jump headfirst into reading the text of the case with their highlighters in hand. When students look back through the case, they find that most of the case is highlighted. Ultimately, they can’t figure out which pertinent concepts were supposed to be extracted from the case. Jumping in and highlighting right away is an inefficient way, particularly for novice legal readers, to begin reading case books. Contrary to what you might think then, highlighting right away is not a “time-saver.” Instead, expect to start by just reading a case first, which is actually the more efficient way to read the case book. Efficiency is critical when trying to balance a first-year law student’s workload.³

² HELENE SHAPO & MARSHALL SHAPO, LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS 29-30 (Foundation Press 2d ed., 2002) (1996).

³ A similar way students jump headfirst into reading cases is when they have their laptop computers open and they type as they read through a case. In doing so, many students look back to see that their initial typed “summary” of the case is not a “summary” at all, but rather it is practically a re-typed version of the case. Thus, typing notes immediately also is an inefficient way to begin reading cases. Read a case first without the laptop computer.

So, how might you approach a case in a case book more efficiently? One of the most overlooked and obvious steps you should take is determining where the case fits into the “big-picture” of your class. Be sure to note in which chapter the case falls or in which sub-section or sub-sub-section the case falls. Note the headings or sub-headings throughout chapters; they are clues about the concept the professor expects students to extract from the assigned case. For instance, using the Torts example again, if a case falls in a chapter about “intentional torts” under a heading of “intent,” then you would expect to read that case for the meaning of “intent.” You wouldn’t expect to read that case for a “negligence” concept. While this may sound obvious, many students overlook these easy clues.

Now that you know the concept for which you should be reading the case, what is next? The next step is simply to read the case. Resist the urge to have a pen, pencil, highlighter, or laptop computer in hand. Simply sit and read. Understand what happened to the parties in the case. Who did what to whom? Understand what specific legal issue the court is addressing. Understand what the rule of law is that the court is applying and explaining. Understand what the court decided. Once the case is read once, you will have a better feel for what information will be pertinent.

After you’ve read the case at least once (maybe more than once if the case is particularly complex or lengthy), you now can get out your pens, pencils, and highlighters. You are now in the active reading and note-taking phase of reading a case. Since you’re familiar with the case already from your first read-through, read the case again and start to highlight and to make notes in the margins. You should highlight and make notes in the margins for the following information:

- name and citation of the case
- court and date
- procedural facts/posture
- facts
- issue(s)
- holding(s)
- reasoning/rationale/rules
- judgment/disposition
- dicta
- concurring or dissenting opinions

Before these parts of a court opinion are defined, three things should be noted. First, some court opinions are more reader-friendly than others. However, most court opinions are not so reader-friendly that the judge who has drafted the opinion starts sentences with, “The procedural posture is . . . The facts are . . .” You need to know what information to look for. You will find, though, that there is significant similarity in the order in which most opinions are written that is common and familiar to legal writers. Second, although there often is a common order of opinions, you will find that some opinions are more organized than others. For instance, some opinions are organized with headings. Even if an opinion does not contain headings, some opinions start with the procedural posture, followed by the case facts, followed by the issue, followed by the holding, and so on. However, other opinions intermingle the above parts of an

opinion. Thus, you might find that there are facts toward the beginning of the opinion and more facts within the reasoning/rationale part of the opinion. To be an effective legal reader, you must be a careful and thorough reader. Finally, professors may vary in what they call the parts of an opinion. For example, as seen above, “reasoning” and “rationale” are the same thing; “judgment” and “disposition” are the same thing. As long as the pertinent information is marked, you should be fine. Then, as you learn your professor’s preferences for terminology, adjust your notes and the case brief that was prepared for class accordingly.

A. Example Court Opinion

To assist in defining the above parts of the opinion, the following “Constitutional Law” case will be used, which is in a form similar to that which might be seen in a law school text book:

SCOTT v. HARRIS
Supreme Court of the United States, 2007
550 U.S. 372

. . . Justice SCALIA delivered the opinion of the Court.

We consider whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?

I

In March 2001, a Georgia county deputy clocked respondent's vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. The deputy activated his blue flashing lights indicating that respondent should pull over. Instead, respondent sped away, initiating a chase down what is in most portions a two-lane road, at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to report that he was pursuing a fleeing vehicle, and broadcast its license plate number. Petitioner, Deputy Timothy Scott, heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, respondent pulled into the parking lot of a shopping center and was nearly boxed in by the various police vehicles. Respondent evaded the trap by making a sharp turn, colliding with Scott's police car, exiting the parking lot, and speeding off once again down a two-lane highway.

Following respondent's shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit vehicle. Six minutes and nearly 10 miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a “Precision Intervention Technique (‘PIT’) maneuver, which causes the fleeing vehicle to spin to a stop.” . . . Having radioed his supervisor for permission, Scott was told to “ ‘[g]o ahead and take him out.’ ” . . . Instead, Scott applied his push bumper to the rear of respondent's vehicle. As a result, respondent lost control of his vehicle, which left the roadway, ran down an embankment, overturned, and crashed. Respondent was badly injured and was rendered a quadriplegic. . . .

Respondent filed suit against Deputy Scott and others under . . . 42 U.S.C. § 1983, alleging, *inter alia*, a violation of his federal constitutional rights, viz. use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The District Court denied the motion, finding that “there are material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury.” . . . On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision to allow respondent's Fourth Amendment claim against Scott to proceed to trial. Taking respondent's view of the facts as given, the Court of Appeals concluded that Scott's actions could constitute “deadly force” under *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), and that the use of such force in this context “would violate [respondent's] constitutional right to be free from excessive force during a seizure. Accordingly, a reasonable jury could find that Scott violated [respondent's] Fourth Amendment rights.” . . . The Court of Appeals further concluded that “the law as it existed [at the time of the incident], was sufficiently clear to give reasonable law enforcement officers ‘fair notice’ that ramming a vehicle under these circumstances was unlawful.” . . . The Court of Appeals thus concluded that Scott was not entitled to qualified immunity. We granted certiorari . . . and now reverse. . . .

II[]

A

The first step in assessing the constitutionality of Scott's actions is to determine the relevant facts. As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences “in the light most favorable to the party opposing the [summary judgment] motion.” *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962)(*per curiam*); *Saucier, supra*, at 201, 121 S.Ct. 2151. In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.

There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened. The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals. For example, the Court of Appeals adopted respondent's assertions that, during the chase, “there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle.” . . . Indeed, reading the lower court's opinion, one gets the impression that respondent, rather than fleeing from police, was attempting to pass his driving test: . . .

“[T]aking the facts from the non-movant's viewpoint, [respondent] remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. He did not run any motorists off the road. Nor was he a threat to pedestrians in the shopping center parking lot, which was free from pedestrian and vehicular traffic as the center was closed. Significantly, by the time the parties were back on the highway and Scott rammed [respondent], the motorway had been cleared of motorists and pedestrians allegedly because of

police blockades of the nearby intersections.” *Id.*, at 815-816 (citations omitted).

The videotape tells quite a different story. There we see respondent's vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury. . . .

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a “genuine” dispute as to those facts. Fed. Rule Civ. Proc. 56(c). As we have emphasized, “[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’ ” *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (footnote omitted). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.

B

Judging the matter on that basis, we think it is quite clear that Deputy Scott did not violate the Fourth Amendment. Scott does not contest that his decision to terminate the car chase by ramming his bumper into respondent's vehicle constituted a “seizure.” “[A] Fourth Amendment seizure [occurs] ... when there is a governmental termination of freedom of movement through means intentionally applied.” *Brower v. County of Inyo*, 489 U.S. 593, 596-597, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989) (emphasis deleted). . . . It is also conceded, by both sides, that a claim of “excessive force in the course of making [a] ... 'seizure' of [the] person ... [is] properly analyzed under the Fourth Amendment's ‘objective reasonableness’ standard.” *Graham v. Connor*, 490 U.S. 386, 388, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). The question we need to answer is whether Scott's actions were objectively reasonable. . . .

Respondent urges us to analyze this case as we analyzed *Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1. . . . We must first decide, he says, whether the actions Scott took constituted “deadly force.” (He defines “deadly force” as “any use of force which creates a substantial likelihood of causing death or serious bodily injury,” *id.*, at 19, 105 S.Ct. 1694.) If so, respondent claims that *Garner* prescribes certain preconditions that must be met before Scott's actions can survive Fourth Amendment scrutiny: (1) The suspect must have posed an immediate threat of serious physical harm to the officer or others; (2) deadly force must have been necessary to prevent escape; and (3) where feasible, the officer must have given the suspect some warning. . . . Since these *Garner* preconditions for using deadly force were not met in this case, Scott's actions were *per se* unreasonable. . . .

Respondent's argument falters at its first step; *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute “deadly force.” *Garner* was simply an application of the Fourth Amendment's “reasonableness” test, *Graham, supra*, at 388, 109 S.Ct. 1865, to the use of a particular type of force in a particular situation. *Garner* held that it was unreasonable to kill a “young, slight, and unarmed” burglary suspect, 471 U.S., at 21, 105 S.Ct. 1694, by shooting him “in the back of the head” while he was running away on foot, *id.*, at 4, 105 S.Ct. 1694, and when the officer “could not reasonably have believed that [the suspect] ... posed any threat,” and “never attempted to justify his actions on any basis other than the need to prevent an escape,” *id.*, at 21, 105 S.Ct. 1694. Whatever *Garner* said about the factors that *might have* justified shooting the suspect in that case, such “preconditions” have scant applicability to this case, which has vastly different facts. “*Garner* had nothing to do with one car striking another or even with car chases in general A police car's bumping a fleeing car is, in fact, not much like a policeman's shooting a gun so as to hit a person.” *Adams v. St. Lucie County Sheriff's Dept.*, 962 F.2d 1563, 1577 (C.A.11 1992) (Edmondson, J., dissenting), adopted by 998 F.2d 923 (C.A.11 1993) (en banc) (*per curiam*). Nor is the threat posed by the flight on foot of an unarmed suspect even remotely comparable to the extreme danger to human life posed by respondent in this case. Although respondent's attempt to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slosh our way through the factbound morass of “reasonableness.” Whether or not Scott's actions constituted application of “deadly force,” all that matters is whether Scott's actions were reasonable.

In determining the reasonableness of the manner in which a seizure is effected, “[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *United States v. Place*, 462 U.S. 696, 703, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase. . . . It is equally clear that Scott's actions posed a high likelihood of serious injury or death

to respondent-though not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head, see *Garner, supra*, at 4, 105 S.Ct. 1694, or pulling alongside a fleeing motorist's car and shooting the motorist, cf. *Vaughan v. Cox*, 343 F.3d 1323, 1326-1327 (C.A.11 2003). So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did. . . .

But wait, says respondent: Couldn't the innocent public equally have been protected, and the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action-ramming respondent off the road-was *certain* to eliminate the risk that respondent posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to respondent that the chase was off, and that he was free to go. Had respondent looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his path. Cf. *Brower*, 489 U.S., at 594, 109 S.Ct. 1378. Given such uncertainty, respondent might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow. . . .

Second, we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. . . .

The car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others; no reasonable jury could conclude otherwise. Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. The Court of Appeals' decision to the contrary is reversed.

It is so ordered. . . .

B. Parties and Citation

Typically, the first two pieces of information for a case in a case book are the parties to the lawsuit and the citation. First, for the parties to the case, note the parties' names and also note their titles in the lawsuit: who is the plaintiff? the defendant? the appellant? the appellee? Second, the citation is the "address" of the case, which is where the case can be found in print or in an electronic source.

In the *Scott* case, the parties are found in the first line of the heading. The citation is in the second line of the heading. The citation tells you that the case can be found in the United States reporter in volume 550, starting at page 372.

C. Court and Year

The next two pieces of information for a case in a case book are usually the court and year. The court simply is the court that decided the case and drafted the opinion. The court that decided the *Scott* case was the United States Supreme Court. The year is the year in which the opinion was filed. The *Scott* opinion was filed in 2007.

D. Procedural Facts or Posture

The procedural facts or posture is the part of the opinion that tells how the case proceeded through the court system and ended up before the court that drafted the opinion. Most of the cases you'll read in case books are appellate-level cases, which means that the case already was decided by a lower court, but at least one of the parties appealed to the next highest court. You would want to know who sued whom, who won at the lower level, who appealed, and what issue or motion is being appealed. You also might make a note about whether the case is a civil or criminal case. In *Scott*, which is a civil case that involves an action against a county deputy for an alleged violation of the plaintiff's constitutional rights against unreasonable searches and seizures, the procedural posture is found in the third paragraph of section I.

E. Facts

The facts of a case are sometimes called the "evidentiary" facts. Simply, the facts are the "story" underlying the legal dispute. Who did what to whom? Why are the parties in court?

The key with identifying the facts of the case is figuring out which are the "legally relevant" facts. In other words, some court opinions have numerous paragraphs of facts. You usually don't need all of those facts. You just need the ones that are relevant to the legal issue for which you are reading the case. A legally relevant fact is a fact that mattered to the court in reaching its decision. If you change a certain fact, and a different outcome might have been reached by the court, then that fact is legally relevant.

The *Scott* facts are found in the first two paragraphs of section I and in the second through the fourth paragraphs of section II.A. Only the legally relevant facts should be marked or highlighted.

F. Issue

The issue is the legal question that the court decided. This issue may take several forms. The court may be deciding a pure legal issue. A purely legal issue is when the court is deciding what the meaning of the law is. For instance, a court may be deciding whether a standard of care for a tort is negligence or something more severe, such as recklessness or willful and wanton conduct. Courts also decide issues that are specific to the case facts. In this scenario, the court may know what the rule of law is, but the court has to decide how that rule of law applies to the case facts before it. For example, assume that the court knows that a plaintiff who is suing a defendant for damages for emotional distress must prove that the defendant acted “recklessly.” The court, however, must look at what the particular defendant did and decide whether that defendant did, in fact, act “recklessly.” After the court applies the “recklessness” rule to the case facts, a new rule of law comes out of that court opinion, which is often called a “rule from the case,” “a processed rule,” or “an emerging rule.” Often, this “rule from the case” is not defined by the court, but rather, you will need to articulate this rule in your own words.

The ease at which the issue can be identified and defined varies based on each court opinion. The issue might be explicitly identified in the court opinion. The court might say something like, “the issue before us is . . .” or “we must decide whether . . .” However, the court may not be so explicit, so you may have to dig for the issue or even define it in your own words. Identify in the opinion where the issue is found, whether explicit or implicit. In *Scott*, the Court stated the issue explicitly in first paragraph of the opinion (prior to section I). The Court also stated part of the issue explicitly in the last sentence of the first paragraph of section II.B.

G. Holding

The holding is the answer to the legal issue. Sometimes the holding will be a simple “yes/no” answer. In other words, the issue may be the following: “In a claim for emotional distress, did a defendant act recklessly when he shouted obscenities at the plaintiff while knowing that the plaintiff suffered from severe depression?” The holding could be as simple as, “yes.” Mark where the holding is found. The holding in *Scott* is found in several paragraphs, including in the first sentence of section II.B. and the last sentence of the first paragraph in section II.B.2.

H. Reasoning/Rationale/Rules

The reasoning or rationale part of the opinion is one of the most important parts for class preparation purposes as well as for your own understanding of the opinion. This is where the court explains *why* it reached the holding that it did. One of the first things you want to look for are the rules of law the court is interpreting or applying to the case facts. Look for a statute, regulation, or common law rule that the court is interpreting or applying to the case facts. For example, in a common law tort claim for the intentional infliction of emotional distress (“IIED”), you may find that a court requires a plaintiff to prove that the defendant engaged in extreme and outrageous conduct; that the defendant did so recklessly, or with the intent to cause the plaintiff severe emotional distress; and that the conduct caused the plaintiff to suffer such distress. This would be the common law rule of law that the court is interpreting or applying to the case facts.

However, the next thing you need to look for is how this court further interprets this rule or applies the rule to the case facts. For example, you may find that the court analyzed and applied the element of the IIED rule regarding whether the defendant engaged in extreme and outrageous conduct and held that the defendant's conduct was extreme and outrageous. Thus, look for the court's explanation of how it applied rules to the case facts in reaching its holding. For example, why did the court find that the defendant's conduct was extreme and outrageous? Further, you also want to look for any policy reasons the court explains in support of its holding. Rules and reasoning can encompass multiple paragraphs of an opinion. The goal is to mark or highlight all of the *relevant* rules and reasoning. In *Scott*, the Court's rationale is found in section II.B.

I. Judgment/Disposition

The judgment or disposition is the procedural relief awarded by the court. Because case book opinions typically are appellate-level opinions, the judgment often is whether the court reversed or affirmed the lower court's decision. Simply put, if a court approves or ratifies the lower court's holding, then the appellate court "affirmed" the lower court. If the court revokes or overthrows the lower court's holding, then the appellate court "reversed" the lower court. If you read that the appellate court "remanded" the case to the lower court, then the case is sent back to the lower court for further action, such as a re-hearing on a limited issue or even for a new trial. The judgment in *Scott* is found in two places: in the last sentence of section I and the last sentence of the last full paragraph of the opinion.

J. Dicta

Some opinions contain "dicta." Dicta is defined as statements that are made by the court that are not actually required to decide the particular case before it. In other words, dicta is extraneous information that the court added to the opinion, likely in its explanation of its reasoning. Dicta is important because it may help you to predict outcomes in other similar situations. *Scott* does not include any dicta.

K. Concurring or Dissenting Opinions

When a judge did not agree or entirely agree with the majority of the judges, a judge may file either a concurring or dissenting opinion. Typically, these will be redacted from case books if they are not important to the concepts that your professor is teaching. However, if the case book does include these opinions, then read them carefully. The opinions may help you to understand the majority opinion or possible flaws with majority opinion. *Scott* does not have any dissenting or concurring opinions.

L. Example of Active-Reading and Note-Taking

The following is a marked-up version of *Scott* so that you can see what *Scott* might look like if you had actively read it and made notes in the margin on the categories defined above:

<p style="text-align: center;">SCOTT v. HARRIS Supreme Court of the United States, 2007 550 U.S. 372</p> <p>... Justice SCALIA delivered the opinion of the Court.</p> <p>We consider whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?</p> <p style="text-align: center;">I</p> <p>In March 2001, a Georgia county deputy clocked respondent's vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. The deputy activated his blue flashing lights indicating that respondent should pull over. Instead, respondent sped away, initiating a chase down what is in most portions a two-lane road, at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to report that he was pursuing a fleeing vehicle, and broadcast its license plate number. Petitioner, Deputy Timothy Scott, heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, respondent pulled into the parking lot of a shopping center and was nearly boxed in by the various police vehicles. Respondent evaded the trap by making a sharp turn, colliding with Scott's police car, exiting the parking lot, and speeding off once again down a two-lane highway.</p> <p>Following respondent's shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit vehicle. Six minutes and nearly 10 miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a "Precision Intervention Technique ('PIT') maneuver, which causes the fleeing vehicle to spin to a stop." . . . Having radioed his supervisor for permission, Scott was told to "[g]o ahead and take him out." . . . Instead, Scott applied his push bumper to the rear of respondent's vehicle. As a result, respondent lost control of his vehicle, which left the roadway, ran down an embankment, overturned, and crashed. Respondent was badly injured and was rendered a quadriplegic. . . .</p> <p>Respondent filed suit against Deputy Scott and others under . . . 42 U.S.C. § 1983, alleging, <i>inter alia</i>, a violation of his federal constitutional rights, viz. use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The District Court denied the motion, finding that "there are material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury." . . . On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision to allow respondent's Fourth Amendment claim against Scott to proceed to trial. Taking respondent's view of the facts as given, the Court of Appeals concluded that Scott's actions could constitute "deadly force" under <i>Tennessee v. Garner</i>, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), and that the use of such force in this context "would violate [respondent's] constitutional right to</p>	<p>Parties Court, Year Citation</p> <p>Justice</p> <p>Issue (stated 2 ways by the Court)</p> <p>Facts</p> <p>Procedural facts</p>
---	--

be free from excessive force during a seizure. Accordingly, a reasonable jury could find that Scott violated [respondent's] Fourth Amendment rights.” . . . The Court of Appeals further concluded that “the law as it existed [at the time of the incident], was sufficiently clear to give reasonable law enforcement officers ‘fair notice’ that ramming a vehicle under these circumstances was unlawful.” . . . The Court of Appeals thus concluded that Scott was not entitled to qualified immunity. We granted certiorari . . . and now reverse. . . .

Judgment

II[]

A

The first step in assessing the constitutionality of Scott's actions is to determine the relevant facts. As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences “in the light most favorable to the party opposing the [summary judgment] motion.” *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962)(*per curiam*); *Saucier, supra*, at 201, 121 S.Ct. 2151. In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.

There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened. The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals. For example, the Court of Appeals adopted respondent's assertions that, during the chase, “there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle.” . . . Indeed, reading the lower court's opinion, one gets the impression that respondent, rather than fleeing from police, was attempting to pass his driving test: . . .

More facts

“[T]aking the facts from the non-movant's viewpoint, [respondent] remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. He did not run any motorists off the road. Nor was he a threat to pedestrians in the shopping center parking lot, which was free from pedestrian and vehicular traffic as the center was closed. Significantly, by the time the parties were back on the highway and Scott rammed [respondent], the motorway had been cleared of motorists and pedestrians allegedly because of police blockades of the nearby intersections.” *Id.*, at 815-816 (citations omitted).

The videotape tells quite a different story. There we see respondent's vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort,

<p>placing police officers and innocent bystanders alike at great risk of serious injury. . .</p>	
<p>At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a “genuine” dispute as to those facts. Fed. Rule Civ. Proc. 56(c). As we have emphasized, “[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’ ” <i>Matsushita Elec. Industrial Co. v. Zenith Radio Corp.</i>, 475 U.S. 574, 586-587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (footnote omitted). “[T]he mere existence of <i>some</i> alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no <i>genuine</i> issue of <i>material</i> fact.” <i>Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.</p>	<p>Standard of review rules (not directly relevant to the substantive issue)</p>
<p>That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.</p>	<p>Court’s statement re: which version of the facts to rely on</p>
<p style="text-align: center;">B</p> <p>Judging the matter on that basis, we think it is quite clear that Deputy Scott did not violate the Fourth Amendment. Scott does not contest that his decision to terminate the car chase by ramming his bumper into respondent's vehicle constituted a “seizure.” “[A] Fourth Amendment seizure [occurs] ... when there is a governmental termination of freedom of movement through means intentionally applied.” <i>Brower v. County of Inyo</i>, 489 U.S. 593, 596-597, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989) (emphasis deleted). . . . It is also conceded, by both sides, that a claim of “excessive force in the course of making [a] ...'seizure' of [the] person ... [is] properly analyzed under the Fourth Amendment's ‘objective reasonableness’ standard.” <i>Graham v. Connor</i>, 490 U.S. 386, 388, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). The question we need to answer is whether Scott's actions were objectively reasonable. . . .</p>	<p>Holding</p> <p>Rule – definition of “seizure”</p> <p>Rule – “excessive force” standard</p> <p>Part of the issue statement</p>
<p style="text-align: center;">1</p> <p>Respondent urges us to analyze this case as we analyzed <i>Garner</i>, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1. . . . We must first decide, he says, whether the actions Scott took constituted “deadly force.” (He defines “deadly force” as “any use of force which creates a substantial likelihood of causing death or serious bodily injury,” <i>id.</i>, at 19, 105 S.Ct. 1694.) If so, respondent claims that <i>Garner</i> prescribes certain preconditions that must be met before Scott's actions can survive Fourth Amendment scrutiny: (1) The suspect must have posed an immediate threat of serious physical harm to the officer or others; (2) deadly force must have been necessary to prevent escape; and (3) where feasible, the officer must have given the suspect some warning. . . . Since these <i>Garner</i> preconditions for using deadly force were not met in this case, Scott's actions were <i>per se</i> unreasonable. . . .</p>	<p>Rule – <i>Garner</i> conditions (note that Court ultimately doesn’t apply these conditions to the case facts)</p>

Respondent's argument falters at its first step; *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute "deadly force." *Garner* was simply an application of the Fourth Amendment's "reasonableness" test, *Graham, supra*, at 388, 109 S.Ct. 1865, to the use of a particular type of force in a particular situation. *Garner* held that it was unreasonable to kill a "young, slight, and unarmed" burglary suspect, 471 U.S., at 21, 105 S.Ct. 1694, by shooting him "in the back of the head" while he was running away on foot, *id.*, at 4, 105 S.Ct. 1694, and when the officer "could not reasonably have believed that [the suspect] ... posed any threat," and "never attempted to justify his actions on any basis other than the need to prevent an escape," *id.*, at 21, 105 S.Ct. 1694. Whatever *Garner* said about the factors that *might have* justified shooting the suspect in that case, such "preconditions" have scant applicability to this case, which has vastly different facts. "*Garner* had nothing to do with one car striking another or even with car chases in general A police car's bumping a fleeing car is, in fact, not much like a policeman's shooting a gun so as to hit a person." *Adams v. St. Lucie County Sheriff's Dept.*, 962 F.2d 1563, 1577 (C.A.11 1992) (Edmondson, J., dissenting), adopted by 998 F.2d 923 (C.A.11 1993) (en banc) (*per curiam*). Nor is the threat posed by the flight on foot of an unarmed suspect even remotely comparable to the extreme danger to human life posed by respondent in this case. Although respondent's attempt to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slough our way through the factbound morass of "reasonableness." Whether or not Scott's actions constituted application of "deadly force," all that matters is whether Scott's actions were reasonable.

2

In determining the reasonableness of the manner in which a seizure is effected, "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *United States v. Place*, 462 U.S. 696, 703, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase. . . . It is equally clear that Scott's actions posed a high likelihood of serious injury or death to respondent—though not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head, see *Garner, supra*, at 4, 105 S.Ct. 1694, or pulling alongside a fleeing motorist's car and shooting the motorist, cf. *Vaughan v. Cox*, 343 F.3d 1323, 1326-1327 (C.A.11 2003). So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted.

Rationale – Court declines to follow a rigid *Garner* test. Instead, Court defines "reasonableness" based on individual case facts.

Rule – "reasonableness" balancing test

Rationale (applying reasonableness rule to case facts)

More Rationale

<p>Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did. . . .</p>	<p>More Rationale</p> <p>Holding</p>
<p>But wait, says respondent: Couldn't the innocent public equally have been protected, and the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action-ramming respondent off the road-was <i>certain</i> to eliminate the risk that respondent posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to respondent that the chase was off, and that he was free to go. Had respondent looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his path. Cf. <i>Brower</i>, 489 U.S., at 594, 109 S.Ct. 1378. Given such uncertainty, respondent might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow. . . .</p>	<p>More rationale – Court identifies some policy concerns</p>
<p>Second, we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. . . .</p>	<p>More policy concerns</p> <p>Rationale – Court rather explicitly defines the rule from the case</p>
<p>The car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others; no reasonable jury could conclude otherwise. Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. The Court of Appeals' decision to the contrary is reversed.</p>	<p>Holding Judgment</p>
<p><i>It is so ordered.</i> . . .</p>	

III. DESCRIPTION OF THE TOOL USED TO SUMMARIZE CASES FOR CLASS: THE CASE BRIEF

Case briefs are the tools that law students use to summarize the material in the numerous cases they have to read for their classes and to prepare for class. If you've taken the time to actively read and take notes, then the case briefing phase of class preparation will be easier.

Before the content of a case brief is explained in more detail, several points should be remembered about case briefing. First, remember that the purpose of case briefs is to prepare you for class because most professors ask about information from specific cases in implementing

the Socratic method of teaching. The case briefs are not handed in to your professors or critiqued in any way. They are your notes. Therefore, don't spend tons of time proofreading them or making them perfect – just get the pertinent information into the case brief, and you will be fine. Second, the case brief should be “brief.” Lengths of case briefs vary, but they should be short enough to be usable (in other words, if they're too long, you might as well be looking at the entire opinion). However, while they should be short (maybe 1 – 1 ½ pages), case briefs also need to be accurate and thorough, so you'll need to find that balance for each case. Third, no “absolutely right” way exists to brief a case. Typically, all case briefs should contain similar information, but you will see different formats for case briefs. Ultimately, you'll find the format that works for you. Finally, some professors require certain formats for case briefs in their classes; therefore, be sure to use that required format for that particular class.

Even though formats differ, all case briefs should contain the following information, all of which should be familiar to you after reading the prior section:

- name and citation of the case
- court and date
- procedural facts/posture
- facts
- issue(s)
- holding(s)
- reasoning/rationale/rules
- judgment/disposition
- dicta
- other relevant information, such as concurring or dissenting opinions or questions or thoughts about the case

The above section defined what these parts of the opinion are. Now, here are a few tips specific to preparing case briefs and an example of what the various sections of the *Scott* case brief might look like.

A. Parties and Citation

In most law school courses, with the exception of seminal cases, you may not need to memorize the party names or the citation. However, you do need to remember the case. In addition to the party names, consider identifying the parties by “role” in the case also. For example, if you identify the parties as landlord/tenant, you are more likely to remember the case as contrasted to Smith/Jones or plaintiff/defendant.

Also, while the citation is important information in the real-world of law practice should you want to pull that opinion from a reporter, Westlaw, or LexisNexis, the citation is not a piece of information you will need to memorize or perhaps even use in most law school classes. However, a similar type of “address” information could be helpful, which is the page number on which the case is found in the case book. Students often find that their early case briefs are inadequate or overly detailed so that they need to go back to the court opinion in the case book

for information as they study for exams later. A quick time-saver is to note the case book page number.

Scott: Scott (defendant in lower court case; county deputy) v. Harris (injured plaintiff in lower court); 550 U.S. 372; Page 3 of text

B. Court and Year

Often in law school classes, the court and year need not be memorized. However, you may need to know when an opinion is from the United States Supreme Court. Further, you might want to note whether the case is a federal or state case. Finally, the year could be important to determine how old or recent an opinion is, if that is relevant information, such as if the policy reasons in an older case may no longer be applicable in today's society.

Scott: United States Supreme Court; 2007

C. Procedural Facts or Posture

The procedural facts or posture are important to be included in the case brief. Professors may ask this question in class, so you need to be prepared. Also, in procedure-based classes, such as Civil Procedure, this section of the case brief is more important. However, when it comes time to use your case briefs as tools to study for exams, you likely will not need this information, unless it is a procedure-based class.

Scott: P ("plaintiff") sued D ("defendant") for an alleged violation of his civil rights (excessive force resulting in unreasonable search and seizure). D filed a motion for summary judgment asserting qualified immunity. District court denied the motion. 11th Cir. affirmed the district court's denial of the motion. S. Ct. granted certiorari.

D. Facts

Summarize only the legally relevant facts briefly in the case brief. Although the length of each "facts" section of a case brief will vary because the necessary detail of facts in cases are different, this section of the case brief should be short and preferably should be summarized in your own words. Also, you often will see abbreviations in law school that are helpful to be more concise. For instance, "plaintiff" is often noted as "P" (pi sign) or "P"; "defendant" is often noted as "D" (delta sign) or "D." Here, and in other sections of the case brief, you'll likely find that you develop your own form of abbreviations or shorthand as you proceed through law school.

Scott: A county deputy attempted to stop P for speeding. Instead of stopping, P led the deputies on a high-speed chase. The lower court found that P's driving was controlled and not a threat to others. However, a videotape contradicted the lower court's factual findings. The S. Ct. found that P's version of the facts that the lower court adopted were not credible in light of the videotape. In the videotape, P was speeding and driving recklessly on narrow, two-lane

roads. Police and innocent bystanders were placed at risk. To stop P, the D-deputy pushed his car's bumper into the rear of P's car. P lost control, crashed, and was severely injured.

E. Issue

If the court explicitly defines the issue, then that is great news. However, it is often helpful for your own understanding of the case if you try to put the issue into your own words. Further, as explained above, you need to put an issue in your own words when the court doesn't spell out the issue for you.

If the court hasn't spelled out the issue clearly, then the first thing you should think about is whether the court has decided a pure legal issue or an issue in which the court applied a rule to the case facts. If you have a purely legal issue, you may find that your issue statement is rather short and won't contain many case facts. Using the example above, the following might be a purely legal issue: "In a claim for emotional distress, must the plaintiff prove that the defendant acted negligently, recklessly, or willfully?" However, when you have an issue that is reliant on the case facts, then you might have a longer issue statement. The key then is to keep the issue brief enough to be useful, but long enough to be accurate. This takes practice. A helpful formula to keep in mind when trying to put an issue that is reliant on case facts into your own words is the following: Identify the rule of law + critical case facts. Using the example above: In a claim for emotional distress, did a defendant act recklessly {rule of law} when he shouted obscenities at the plaintiff while knowing that the plaintiff suffered from severe depression {case facts}?

One other important thing should be noted about issue statements. The issue should be the substantive legal issue the court decided, not the procedural posture question. A common mistake new law students make is to define the issue too procedurally. For example, students often state something like: "Did the trial court err in granting the plaintiff's motion for summary judgment?" This is too procedural and does not give the pertinent, substantive information you need to extract from the case. Unless the issue is procedural (like in your Civil Procedure class), your professors will be more concerned about the substantive issue the court decided. Further, a procedural issue, such as the example above, is too vague. The procedural issue will describe the issue in many of your case book opinions because most of those opinions are appellate opinions in which the court is deciding whether the trial court erred. Thus, you might end up with multiple cases with "issues" that sound almost identical to each other. The result is that you'll have to go back and re-read the case yet again later.

In addition, be sure to note whether the case is addressing one or more issues. If more than one issue is decided, then be sure to have a separate issue statement for each issue.

Scott: Did an officer use excessive force that resulted in an unreasonable seizure in violation of the Fourth Amendment when he attempted to stop a fleeing motorist from continuing a public-endangering flight by ramming the motorist's car from behind?

F. Holding

For case brief purposes, a simple “yes/no” statement of the holding often is sufficient. A suggestion, however, for information-retention purposes is to redraft the holding into a sentence format. Students often find that repetition of information helps them to retain pertinent legal information longer. As an example, let’s use an issue statement from above: “In a claim for emotional distress, did a defendant act recklessly when he shouted obscenities at the plaintiff while knowing that the plaintiff suffered from severe depression?” The holding could be as simple as, “yes.” However, you may find it helpful to write instead: “In a claim for emotional distress, a defendant acted recklessly when he shouted obscenities at the plaintiff while knowing that the plaintiff suffered from severe depression.” Also, if there is more than one issue, then be sure to include a holding for each issue. Finally, be sure to answer the substantive legal issue, and do not simply answer whether the lower court erred.

Scott: No. An officer did not use excessive force that resulted in an unreasonable seizure in violation of the Fourth Amendment when he attempted to stop a fleeing motorist from continuing a public-endangering flight by ramming the motorist’s car from behind. The officer’s conduct was objectively reasonable.

G. Reasoning/Rationale/Rules

In the reasoning, the key is to be thorough, yet concise. Be sure to have listed all of the reasons the court provided in support of its holding. However, delete extraneous, irrelevant information. This will take practice. In addition, ensure that the case brief contains the relevant rationale or reasoning for each issue if the opinion contains multiple issues.

Scott: A Fourth Amendment seizure occurs when “there is a governmental termination of freedom of movement through means intentionally applied.” Excessive force in making a seizure is analyzed under an “objective reasonableness” standard. The Court declined to apply a rigid test for determining when conduct was reasonable; instead, the Court stated that each case will be determined on its facts. In determining reasonableness, the nature and quality of the intrusion must be balanced with the government’s interests that justify the intrusion. Therefore, the risk of bodily harm of the officer’s actions to P must be balanced with the threat to the public that the officer was trying to eliminate. Here, P posed an actual and imminent threat to the public and the officers as evidenced by the videotape. Also, the number of lives at risk and their relative culpability should be considered. Here, the public was innocent, while P intentionally was placing the public in danger. The Court declined to find that the officers should have just stopped the chase for two reasons: (1) the uncertainty of P’s interpretation of why the officers stopped giving chase; and (2) the policy ramifications of allowing fleeing suspects to get away if they drive so recklessly that they put others in danger. The Court stated its rule as: “A police officers’ attempt to terminate a dangerous high-speed chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.”

H. Judgment/Disposition

As with the parties, citation, court, year, or procedural posture, the judgment is important to note in the case brief because professors may ask this question in class. However, when it comes time to use the case briefs as tools to study for exams, you likely will not need this information, unless the class is a procedure-based class.

Scott: D was entitled to summary judgment; Court of Appeals reversed.

I. Dicta

Dicta also should be noted in case briefs. While dicta is not controlling on the issue at hand, the information is helpful for predictive purposes. Because professors use hypothetical fact patterns in class (and on law school exams) that often are variations of the case facts, and because students have to predict the result of those hypothetical fact patterns, dicta is helpful information to include in a case brief.

Scott: No dicta.

J. Other Relevant Information

Use this part of the case brief to include other relevant information, such as summaries of concurring or dissenting opinions. You also might want to include any questions or thoughts you had while reading through the opinion.

K. Sample Case Brief: *Scott*

SCOTT (deputy; D in lower ct.) v. HARRIS (injured P in lower ct.) (S. Ct. 2007) 550 U.S. 372; page 3 of text

PROCEDURAL FACTS: P sued D for an alleged violation of his civil rights (excessive force resulting in unreasonable search and seizure). D filed a motion for summary judgment asserting qualified immunity. District court denied the motion. 11th Cir. affirmed the district court's denial of the motion. S. Ct. granted certiorari.

FACTS: A county deputy attempted to stop P for speeding. Instead of stopping, P led the deputies on a high-speed chase. The lower court found that P's driving was controlled and not a threat to others. However, a videotape contradicted the lower court's factual findings. The S. Ct. found that P's version of the facts that the lower court adopted were not credible in light of the videotape. In the videotape, P was speeding and driving recklessly on narrow, two-lane roads. Police and innocent bystanders were placed at risk. To stop P, the D-deputy pushed his car's bumper into the rear of P's car. P lost control, crashed, and was severely injured.

ISSUE: Did an officer use excessive force that resulted in an unreasonable seizure in violation of the Fourth Amendment when he attempted to stop a fleeing motorist from continuing a public-endangering flight by ramming the motorist's car from behind?

HOLDING: No. An officer did not use excessive force that resulted in an unreasonable seizure in violation of the Fourth Amendment when he attempted to stop a fleeing motorist from continuing a public-endangering flight by ramming the motorist's car from behind. The officer's conduct was objectively reasonable.

RATIONALE: A Fourth Amendment seizure occurs when "there is a governmental termination of freedom of movement through means intentionally applied." Excessive force in making a seizure is analyzed under an "objective reasonableness" standard. The Court declined to apply a rigid test for determining when conduct was reasonable; instead, the Court stated that each case will be determined on its facts. In determining reasonableness, the nature and quality of the intrusion must be balanced with the government's interests that justify the intrusion. Therefore, the risk of bodily harm of the officer's actions to P must be balanced with the threat to the public that the officer was trying to eliminate. Here, P posed an actual and imminent threat to the public and the officers as evidenced by the videotape. Also, the number of lives at risk and their relative culpability should be considered. Here, the public was innocent, while P intentionally was placing the public in danger. The Court declined to find that the officers should have just stopped the chase for two reasons: (1) the uncertainty of P's interpretation of why the officers stopped giving chase; and (2) the policy ramifications of allowing fleeing suspects to get away if they drive so recklessly that they put others in danger. The Court stated its rule as: "A police officers' attempt to terminate a dangerous high-speed chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death."

JUDGMENT: D was entitled to summary judgment; Court of Appeals reversed.

DICTA: None

OTHER: None

IV. FORMAT OF CASES COPIED FROM REPORTERS⁴ OR PRINTED FROM WESTLAW OR LEXISNEXIS

Professors sometimes require the reading of cases other than those found in the case book. These cases may have been copied from a book (called a reporter) or printed from Westlaw or LexisNexis. While the substance of the opinion will be similar to a case book, the format of these cases is going to look different than the cases found in the case book. So that you don't get sidetracked by formatting questions, the following will explain some of the different or additional information that might be seen in a reporter, Westlaw, or LexisNexis format.

Take a moment and review the Westlaw printout of *Scott* in Attachment A and the LexisNexis printout of *Scott* in Attachment B and compare them to the case book version of

⁴ Reporters are the books in which court opinions are published. Many reporters are published by West, and so the format of cases in reporters will correspond more similarly to the Westlaw format below, such as the use of similar or identical "syllabus/synopsis" sections and headnotes. Therefore, see the Westlaw format for the format most similar to an opinion in a reporter.

Scott above. As you read through the opinions in the Attachments, you should see that much of the two electronic formats contain the same information as an opinion in the case book, particularly in regard to the substance of the opinion itself. However, additional information appears in the reporter or electronic formats that may, at first, be disconcerting or distracting. To take the mystery out of a reporter, Westlaw, or LexisNexis printout of a case, the following identifies and explains some of the additional information mostly likely to cause distraction.

First, you might see some additional information for the parties and citation. There may be a few more parties listed as well as their procedural titles (such as appellant/appellee). In addition to just one citation, you also might see a second, or even third, citation. For example, in *Scott*, you'll now note three citations: 550 U.S. 372, 127 S. Ct. 1769, and 167 L.Ed.2d 686. This simply means that the case can be found in three different reporters, the United States reporter, the Supreme Court reporter, and the Lawyers' Edition Second reporter. Another new piece of information near the parties and citation is the docket number. The docket number is the number that the court's clerk assigned to the case as it proceeded through the court system. The *Scott* docket number is No. 05-1631. The docket number is rarely important in law school classes.

Second, after the parties, citation, court, and year, often there is a syllabus and/or synopsis. The syllabus or synopsis is where the publisher of the opinion (such as West or LexisNexis) summarizes the opinion for lawyers. The syllabus or synopsis is not written by the court, and therefore, is not considered to be part of the court opinion. The syllabus or synopsis is helpful, however, when lawyers need a quick summary of the case either for informational or legal research purposes. *Scott* has a synopsis immediately after the caption information, and a syllabus prior to the opinion.

Third, after the syllabus or synopsis, you will see "headnotes." These headnotes also are drafted by the publisher so that you can read more summarily about the information contained in a case or to help you maneuver around a case if that case contains multiple issues. Again, as with the syllabus or synopsis, the headnotes are not drafted by the court, and therefore, they are not considered to be part of the court opinion. They are helpful for a summary of the case or for legal research purposes.⁵

Fourth, in electronic printouts, you'll see asterisks with numbers scattered throughout the opinion. What are these? If you were looking at a book in print, it is easy to see when the page of the opinion changes: you simply turn the page and look at the top or bottom for the page number. But, this is not so easy when reading a case on the computer. Thus, the asterisks with numbers are the Westlaw and LexisNexis way to tell you when the page has changed in the print version of the reporter. Using the Westlaw format of *Scott* in Attachment A as an example, recall the *Scott* reporters: 550 U.S. 372, 127 S. Ct. 1769, and 167 L.Ed.2d 686. The specific

⁵ If your professor gives you a longer case that spans multiple issues, headnotes are useful to maneuver around the case. Using Westlaw for an example, often you'll see more than one headnote, which will be numbered. *Scott*, for example, has 14 headnotes. You'll then find a corresponding number in the body of the opinion indicating where the information identified in the headnote begins in the opinion itself. If, as you were reading the *Scott* headnotes, you primarily were interested in the material in headnote #12, look through the opinion until you see the #12 in brackets. In the printout in Attachment A, [12] starts at section II.B.2. The material after [12] in the opinion matches headnote #12.

pages for the first reporter (the United States reporter) are identified as “* ___.” So, if you see “*374,” then you know that the material following that single asterisk appears on page 374 of the United States reporter. The specific pages for the second reporter (the Supreme Court reporter) are identified as “** ___.” Therefore, if you see “**1773,” then you know that the material following that double asterisk appears on page 1773 of the Supreme Court reporter.

Finally, many court opinions include more than one issue that is resolved by the court. Most law school case books redact information that is not pertinent to the chapter or section in which that case is placed for a very specific concept. This may not be the case if professors provide a case from a reporter or electronic source: professors may redact the case, but they may not. You first will need to identify the purpose for which you need to read that case: what issue is your professor interested in? some? all? If just one or some issues are relevant to the class, then when you’re reading the case the first time, take note of information that may not be relevant at all. Then, in the active reading stage, simply cross out the irrelevant information.

So, why is the above additional information relevant for most law school classes? The short answer is that “it isn’t.” With the exception of the Legal Analysis, Research, and Writing class, you likely don’t need to know the above information, and the Legal Analysis, Research, and Writing professors will guide you through what you need to know for that class. However, because you don’t need any distractions when reading and briefing a case, such as “what are those asterisks for?”, it is better to explain the additional information here.

V. ANOTHER PRACTICE CASE AND SAMPLE CASE BRIEF

The following case will give you some practice in reading and briefing cases. Assume you were assigned this case in your Torts class in the chapter on the affirmative defense of “assumption of the risk.” First, read through the case. Second, actively read and take notes in the margins of the case as explained above. Third, brief the case. Finally, compare your case brief to the sample brief provided in Attachment C.

AMERICAN POWERLIFTING ASSOC. v. COTILLO Court of Appeals of Maryland, 2007 401 Md. 658, 934 A.2d 27

GREENE, Judge.

This matter arises from a civil action filed in the Circuit Court for Calvert County by the respondent, Christopher Cotillo, against the petitioners, collectively, William Duncan, the American Powerlifting Association (“the APA”), and the Board of Education of Calvert County (“the Board”), for injuries Mr. Cotillo sustained while participating in a powerlifting competition. Mr. Cotillo asserted various negligence claims, and both sides filed motions for summary judgment. The Circuit Court granted the petitioners' motions for summary judgment on the grounds that Mr. Cotillo assumed the risk of his injuries. On appeal, the Court of Special Appeals affirmed the judgment of the Circuit Court in part and reversed in part, holding that summary judgment was proper as to all claims except the claim that the spotters were negligently trained.

The petitioners ask this Court to decide whether the Circuit Court erred in finding that Mr. Cotillo's claim, that the spotters were negligently instructed, was barred by assumption of the risk, in light of the trial court's additional determination that Mr. Cotillo assumed the risk of injury during a lift, and that Mr. Cotillo assumed the risk that the spotters would fail to protect him in the event of a failed lift.

We shall hold that there is no genuine issue of material fact that Mr. Cotillo assumed the usual and foreseeable risks of the sport when he voluntarily entered a powerlifting competition, and therefore summary judgment was appropriate. There is no genuine dispute that the immediate cause of the respondent's injury was his attempt to qualify by bench pressing 530 pounds. As a result, whether any of the petitioners were negligent in failing to prevent the respondent's injury is of no consequence. . . .

FACTUAL AND PROCEDURAL BACKGROUND

On November 8, 2003, Mr. Cotillo, a powerlifter with ten years of experience, was injured during the 2003 Southern Maryland Open Bench Press & Deadlift Meet (“the Meet”), when he attempted to lift 530 pounds. The Meet was sanctioned by the APA, and held at Patuxent High School, which operates under the jurisdiction of the Board. It was organized by Mr. Duncan, the faculty sponsor of Patuxent High School's weightlifting club, and Scott Taylor, APA president.

Before the Meet, the lifters were informed that they could use their own spotters. Mr. Cotillo did not exercise this option, electing instead to use the spotters provided by the organizers of the Meet. Mr. Duncan recruited Chris Smith and Chris Blair, Patuxent High School students, to act as spotters during the Meet. At the time of the Meet, Mr. Smith was fifteen years old, approximately five feet and eight to ten inches tall, and 180 pounds. Mr. Blair, at the time of the Meet, was fourteen years old, approximately six feet tall, and weighed 260 pounds. Both spotters had some weightlifting experience. . . .

On the morning of the Meet, Mr. Duncan spoke with the spotters and told them that, while they should keep their hands close to the bar, they could not touch the bar because it would disqualify the lift. Mr. Taylor further instructed the spotters that if the lifter were to hesitate, without making any downward motion with the bar, they should wait for the referee's instruction to grab the bar. If the lifter were to hesitate and the bar were to come down, Mr. Taylor instructed the spotters that they should not wait for the referee's instruction, but instead grab the bar.

During the Meet, Mr. Cotillo wore a “Karin's Xtreme Power” double denim bench shirt, which allowed him to lift approximately 150 pounds more than he could have without the shirt. The spotters were positioned on either side of the bar, and Mr. Duncan was positioned in the middle. Mr. Cotillo's first two lifts in the Meet, using the spotters, were uneventful. On his third lift, Mr. Cotillo was attempting to lift 530 pounds. Mr. Cotillo brought the bar down without any trouble. As he began to lift it, he had some difficulty, at which point Mr. Blair testified that he began to move his own hands closer to the bar. The judge instructed the spotters to grab the bar, but as the spotters closed in, the bar came down, striking Mr. Cotillo in the jaw. The entirety of these events happened within a matter of seconds. As a result of the incident, Mr. Cotillo suffered a

shattered jaw, a laceration, and damage to several teeth, requiring treatment. . . .

On January 15, 2004, the respondent filed a complaint in the Circuit Court for Calvert County. In his amended complaint, Mr. Cotillo asserted various claims of negligence against Mr. Duncan, the APA, and the Board. Each of the parties filed motions for summary judgment and on February 3, 2006, the court denied the respondent's motion and granted the petitioners' motions, on the grounds that Mr. Cotillo assumed the risk of his injuries. . . .

Mr. Cotillo filed an appeal with the Court of Special Appeals, which affirmed in part and reversed in part. The Court of Special Appeals held that summary judgment was properly entered on all claims except the negligence claim grounded in allegations of improper preparatory instruction of the spotters. The intermediate appellate court reasoned that because Mr. Cotillo did not know the spotters were improperly trained, . . . Mr. Cotillo could not have assumed the risk. *Cotillo v. Duncan*, 172 Md.App. 29, 54, 912 A.2d 72, 86-87 (2006). . . .

The APA and the Board filed petitions for writ of certiorari in this Court, which we granted. *American Powerlifting v. Cotillo*, 398 Md. 313, 920 A.2d 1058 (2007). . . .

DISCUSSION

I. Parties' Arguments

The petitioners argue that the Court of Special Appeals erred by holding that Mr. Cotillo could not have assumed the risk that the spotters would be negligently trained. They contend that the doctrine of assumption of the risk operates independently from the law of negligence, and therefore it is irrelevant whether they may have been negligent in training the spotters. The petitioners reason that holding otherwise would create a problem of circular logic, enabling plaintiffs to escape an assumption of the risk defense by claiming that they could not have anticipated the defendants' negligence. . . .

The respondent argues that the petitioners were negligent in training the spotters. . . . The respondent contends that he could not have assumed the particular risk that the spotters would be negligently trained because assumption of the risk requires that Mr. Cotillo have particular knowledge of the risks he assumes, and he had no prior knowledge of the training the spotters received before he encountered the risk. . . .

II. Standard of Review

We are asked in the case *sub judice* to review the Circuit Court's entry of summary judgment and we do so *de novo*. *Educational Testing Serv. v. Hildebrant*, 399 Md. 128, 139, 923 A.2d 34, 40 (2007). In a review of a grant of summary judgment, our two-part analysis determines first whether there is a genuine dispute of material fact, and then whether the moving party is entitled to judgment as a matter of law. *Id.* Where a dispute regarding a fact can have no impact on the outcome of the case, it is not a dispute of material fact such that it can prevent a grant of summary judgment. *Miller v. Bay City Property Owners Ass'n, Inc.*, 393 Md. 620, 631, 903 A.2d 938, 945 (2006). For purposes of reviewing a grant of summary judgment, we construe the facts

before this Court in the light most favorable to the non-moving party. *Todd v. MTA*, 373 Md. 149, 155, 816 A.2d 930, 933 (2003).

III. Assumption of the Risk

Assumption of the risk is a doctrine whereby a plaintiff who intentionally and voluntarily exposes himself to a known risk, effectively, consents to relieve the defendant of liability for those risks to which the plaintiff exposes himself. *ADM Partnership v. Martin*, 348 Md. 84, 91, 702 A.2d 730, 734 (1997) (quoting *Rogers v. Frush*, 257 Md. 233, 243, 262 A.2d 549, 554 (1970)). Assumption of the risk is a defense that completely bars any recovery by the plaintiff. *Crews v. Hollenbach*, 358 Md. 627, 640, 751 A.2d 481, 488 (2000). The doctrine “negates the issue of a defendant's negligence by virtue of a plaintiff's previous abandonment of his or her right to maintain an action if an accident occurs.” *McQuiggan v. Boy Scouts of Am.*, 73 Md.App. 705, 710, 536 A.2d 137, 139 (1988) (citing *Pfaff v. Yacht Basin Co.*, 58 Md.App. 348, 473 A.2d 479 (1984)). In Maryland, there are three requirements that the defendant must prove to establish the defense of assumption of the risk: (1) the plaintiff had knowledge of the risk of danger; (2) the plaintiff appreciated that risk; and (3) the plaintiff voluntarily confronted the risk of danger. *ADM Partnership*, 348 Md. at 90-91, 702 A.2d at 734. In determining whether a plaintiff had the requisite knowledge, an objective standard is applied. *Crews*, 358 Md. at 644, 751 A.2d at 490. Although the determination as to whether a plaintiff has assumed a risk will often be a question for the jury, “where it is clear that any person of normal intelligence in his position must have understood the danger, the issue must be decided by the court.” *Gibson v. Beaver*, 245 Md. 418, 421, 226 A.2d 273, 275 (1967) (quoting W. Prosser, *Handbook of the Laws of Torts* § 55 at 310 (2nd ed.)); *see also Crews*, 358 Md. at 644, 751 A.2d at 490.

The question of whether the plaintiff had the requisite knowledge and appreciation of the risk in order to assume the risk is determined by an objective standard. *Gibson*, 245 Md. at 421, 226 A.2d at 275. By this standard, “a plaintiff will not be heard to say that he did not comprehend a risk which must have been obvious to him.” *Id.* In this case, Mr. Cotillo knew and appreciated the risk of danger, and voluntarily confronted that risk. At the time of his injury, Mr. Cotillo had been powerlifting for approximately 10 years. Prior to the Meet, he had successfully competed in several competitions at the local, national and international level, while setting several records in the process. Mr. Cotillo had also signed documents at past competitions containing waivers, which indicated the risks of participating in powerlifting, including the risk of equipment malfunction. These facts show that Mr. Cotillo was aware of the risk of injury by participating in a powerlifting competition. . . .

Not only did Mr. Cotillo have direct knowledge of the inherent risks of powerlifting, but it is clear to any person of normal intelligence that one of the risks inherent in powerlifting is that the bar may fall and injure the participant. That this is clear to any person of normal intelligence is evidenced by the fact that the nature of the sport is to attempt to lift great amounts of weight above the lifter's body. If the participant were to fail to lift the weight, the obvious conclusion is that gravity would cause the bar to come down on the person beneath it. The apparent necessity of spotters in the sport only reinforces the inescapable conclusion that there is a risk that the bar might fall and injure the participant.

We find persuasive the reasoning of the court in *Lee v. Maloney*, 180 Misc.2d 992, 692 N.Y.S.2d 590, 591-92 (Sup.Ct.1999), *aff'd*, 270 A.D.2d 689, 704 N.Y.S.2d 729 (2000), concluding that the risk of a lift bar falling and striking a participant in a weightlifting competition is “ ‘perfectly obvious,’ from the nature of the activity itself.” *Id.* In *Lee*, a weightlifter was injured in competition during an attempt to bench press 565 pounds. *Id.* at 591. Mr. Lee claimed that the spotter was negligent for failing to catch the bar in a timely manner that would have prevented injury entirely. *Id.* As an experienced weightlifter, with 14 years of experience, Mr. Lee was familiar with the rules of the sport and the safety precautions that were commonly taken. *Id.* The court determined, as a matter of law, that Mr. Lee voluntarily assumed the risk of injury by participating in the weightlifting competition, including the risk that the spotter may fail to catch the bar quickly enough to prevent injury. *Id.*

In sports, there are some risks, “as for example the risk of injury if one is hit by a baseball driven on a line, which are so far a matter of common knowledge in the community, that in the absence of some satisfactory explanation a denial of such knowledge simply is not to be believed.” Dan B. Dobbs, Robert E. Keeton, & David G. Owen, *PROSSER & KEETON ON TORTS* § 68, at 488 (5th ed.1984). Furthermore, “voluntary participants in sports activities may be held to have consented, by their participation, to those injury-causing events which are known, apparent, or reasonably foreseeable consequences of their participation.” *Conway v. Deer Park Union Free School Dist. No. 7*, 234 A.D.2d 332, 651 N.Y.S.2d 96, 97 (1996) (finding that summary judgment in favor of the defendants was appropriate because the plaintiff, an experienced softball player who had previously observed a sewer lid in the vicinity, assumed the risk of injury of slipping on that sewer lid while running for a fly ball). Although a sporting event participant does not consent to all possible injuries, he consents to the “foreseeable dangers” that are “an integral part of the sport as it is typically played.” *Kelly v. McCarrick*, 155 Md.App. 82, 97, 841 A.2d 869, 877 (2004) (holding that a softball player assumed the risk of injury from colliding with another player). Such risks, that are inherent to a particular sport, are all foreseeable consequences of participating in that sport, and as they are obvious to a person of normal intelligence, voluntary participants in those sports assume those inherent risks.

Due to the nature of sports injuries, a participant also assumes the risk that other participants may be negligent. *See McQuiggan*, 73 Md.App. at 712, 536 A.2d at 140; *see also Pfister v. Shusta*, 167 Ill.2d 417, 420, 212 Ill.Dec. 668, 657 N.E.2d 1013, 1015 (1995) (“voluntary participants in contact sports are not liable for injuries caused by simple negligent conduct”); *Mark v. Moser*, 746 N.E.2d 410, 420 (Ind.Ct.App.2001) (“[V]oluntary participants in sports activities assume the inherent and foreseeable dangers of the activity and cannot recover for injury unless it can be established that the other participant either intentionally caused injury or engaged in conduct so reckless as to be totally outside the range of ordinary activity involved in the sport.”). In the case *sub judice*, Mr. Cotillo assumed the risk that the spotters may have negligently failed to catch the bar because he knew that type of injury was foreseeable, he appreciated that risk, and he voluntarily accepted that risk by participating in the powerlifting competition. Therefore, we agree that the Court of Special Appeals was correct when it concluded that Mr. Cotillo did assume the risk of injury when he participated in a powerlifting competition.

IV. Assumption of the Risk and Causation

The respondent argues that even if he did assume the risks inherent to the sport, he did not assume the enhanced risk that arose as a result of the alleged negligent training of the spotters. This analysis is misguided because it focuses on the wrong risk. In order to properly determine which risk is relevant or material to the assumption of the risk analysis, we must look to the immediate cause of the injury. *See Imbraguglio v. Great Atlantic & Pacific Tea Co.*, 358 Md. 194, 214, 747 A.2d 662, 673 (2000) (finding that the relevant issue is whether the petitioner assumed the risk that was the immediate cause of his death). *See also Wertheim v. U.S. Tennis Ass'n*, 150 A.D.2d 157, 540 N.Y.S.2d 443 (1989) (holding that a linesman's injuries from being hit by a tennis ball were not the proximate result of the Tennis Association's failure to protect him, and since the risk of being hit by a tennis ball was obvious, the linesman assumed the risk of injury).

Viewing the evidence in the light most favorable to the non-moving party, in this case the respondent, we can assume, *arguendo*, that the spotters were negligently trained. Even granted that assumption, there is no genuine dispute that the immediate cause of Mr. Cotillo's injuries was his own failure to lift the weight successfully. The relevant question, therefore, is whether Mr. Cotillo assumed the risk of injury when he tried to lift a 530 pound weight. We hold, as a matter of law, that he did.

As we recently noted, the defense of assumption of the risk operates independently of the conduct of another person. *Morgan State University v. Walker*, 397 Md. 509, 521, 919 A.2d 21, 28 (2007). The very nature of an assumption of the risk defense is that “by virtue of the plaintiff's voluntary actions, any duty the defendant owed the plaintiff to act reasonably for the plaintiff's safety is superseded by the plaintiff's willingness to take a chance.” *Schroyer v. McNeal*, 323 Md. 275, 282, 592 A.2d 1119, 1123(1991). As in *Morgan State University*, we can assume for the sake of argument that the APA was negligent in failing to prevent Mr. Cotillo's injury. *Morgan State University*, 397 Md. at 521, 919 A.2d 21. Nevertheless, just as a similar assumption did not change the analysis in *Morgan State University*, it does not change our analysis in the case *sub judice*. *Id.* That the petitioners may have been negligent in failing to prevent an injury is irrelevant where the respondent suffered the very type of injury that any person of normal intelligence would expect might result from the plaintiff's actions. The relevant inquiry, therefore, is not whether Mr. Cotillo could have anticipated that the spotters would be negligently trained, but whether he could anticipate the risk that the lift bar would fall and injure him. We hold as a matter of law that he did. . . .

CONCLUSION

By voluntarily participating in a powerlifting competition, Mr. Cotillo assumed the risks that are the usual and foreseeable consequences of participation in weightlifting. The petitioners' alleged negligence in failing to prevent the injury is not material because Mr. Cotillo assumed the foreseeable risk of injury from a failed lift. . . .Therefore, we hold that the Court of Special Appeals was correct in its holding that Mr. Cotillo assumed the risk of his injuries when he voluntarily participated in a powerlifting competition. The Court of Special Appeals erred, however, in holding that Mr. Cotillo did not assume the risk that the spotters would be

negligently trained or instructed.

JUDGMENT OF THE COURT OF SPECIAL APPEALS . . . REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY. RESPONDENT TO PAY THE COST IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS.

VI. HELPFUL LEGAL TERMINOLOGY

Legal terminology is a new language that you must learn in law school. This can be overwhelming when first starting law school. You will encounter words in court opinions that you do not recognize or understand. One of the most important things to do when this occurs is to *stop* and look up that term in a legal dictionary. If you don't, then you may completely misunderstand or miss the point of a case, which then will leave you misinformed and ill-prepared for class. Use a legal dictionary regularly in the first year of law school. To assist with the goal of understanding legal terminology, the following "Terms to Know"⁶ may be helpful to at least start to identify words that will commonly be found in court opinions:

Terms to Know to Understand Judicial Opinions

Answer	the defendant's first pleading that addresses the merits of the case, usually by denying the plaintiff's allegations; an answer usually sets forth the defendant's defenses and counterclaims
Appellant	the party who has filed an appeal requesting that a higher court review the actions of the lower court—note that the appellant can be either the plaintiff or the defendant
Appellee	the party against whom an appeal is taken (usually the prevailing party in the lower court)—note that the appellee can be either the plaintiff or the defendant
Complaint	the initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief; this is sometimes called a petition; in criminal law, this is a formal charge accusing a person of an offense
Concurring opinion	a separate opinion explaining a judge's decision to vote in favor of the judgment reached, but on grounds differing from those expressed in the majority opinion

⁶ Most of the definitions are summaries or quotes from Black's Law Dictionary and compiled by Professors Camille Marion and Nicole Raymond Chong. This list is only a mere sampling of legal terminology that will be found in opinions. If a term does not appear on this list and you don't know what a term means, look it up in a law dictionary.

Counterclaim	a claim for relief asserted against an opposing party after an original claim has been made; it is usually a defendant's claim in opposition to or as a setoff against the plaintiff's claim
Defendant	the party against whom a complaint is filed in a civil action or against whom an indictment or information is brought in a criminal action
Dicta or Obiter Dictum	language that is not critical to a court's decision in that it goes beyond the actual facts presented
Discovery	compulsory disclosure, at a party's request, of information that relates to the litigation; the pretrial phase of a lawsuit during which depositions, interrogatories, and other forms of discovery are conducted
Dissenting opinion	an opinion by one or more judges who disagree with the decision reached by the majority
Holding	the conclusion of law (the rule) reached by the court pivotal to its decision based on the actual facts presented
Judgment	a court's final determination of the rights and obligations of the parties in a case; this can include an equitable decree and any order from which an appeal lies
Majority opinion	an opinion joined in by more than half of the judges deciding a particular case
Motion to dismiss	a request that the court dismiss the case because of settlement, voluntary withdrawal, or a procedural defect
Overrule	the court disavows its interpretation of the law in a later, different case
Per curiam	an opinion written "by the court" rather than by one particular judge or justice; it is usually a short opinion on a well-established rule of law
Plaintiff	the party who initiates a civil action against another party (the defendant)
Petitioner	the one who starts an equity proceeding or the one who takes an appeal from a judgment
Plurality opinion	an opinion without enough votes to constitute a majority, but receiving more votes than any other opinion
Respondent	the party who is defending the petition in an equity proceeding—similar to a defendant in a civil action

Reverse	a higher court decides that the lower court made the wrong decision in the same case
Stare decisis	the doctrine providing that courts will decide cases based on prior binding authority or precedent
Summary Judgment	a judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law; the court considers the contents of the pleadings, the motions, and additional evidence adduced by the parties to determine whether there is a genuine issue of material fact rather than one of law; this procedural device allows the speedy disposition of a controversy without the need for trial

VII. CONCLUSION

You should find this article helpful as you prepare to enter law school.⁷ But, as with most legal skills, you'll only get better with practice. Therefore, don't get discouraged if reading and briefing cases seems to be difficult at first. And, don't be discouraged if your first case briefs contain too much information or contain information that needs to be revised after class. With practice, you'll improve. The first semester of law school will pass quickly, so you might not readily see how far you've improved and how much you've learned in just one semester. Take the time over the winter break to review your first and last case briefs of the fall semester, and chances are that a marked improvement will be seen. Now, take a deep breath and take one case at a time! Good luck with your first year of law school.

⁷ More resources can be found on Penn State's Dickinson School of Law's orientation website.

ATTACHMENT A



127 S.Ct. 1769
550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686. . .
(Cite as: 550 U.S. 372, 127 S.Ct. 1769)

FOR EDUCATIONAL USE ONLY

Page 33

Supreme Court of the United States
Timothy SCOTT, Petitioner,
v.
Victor HARRIS.
No. 05-1631.
Argued Feb. 26, 2007.
Decided April 30, 2007.

Background: Motorist brought § 1983 action against county deputy and others, alleging, inter alia, use of excessive force in violation of his Fourth Amendment rights during high-speed chase. The United States District Court for the Northern District of Georgia, No. 01-00148-CV-WBH-3, [Willis B. Hunt, Jr., J., 2003 WL 25419527](#), denied deputy's motion for summary judgment based upon qualified immunity. Deputy appealed. The United States Court of Appeals for the Eleventh Circuit, [433 F.3d 807](#), affirmed decision to allow Fourth Amendment claim against deputy to proceed to trial. Deputy petitioned for writ of certiorari, which was granted, [549 U.S. 991, 127 S.Ct. 468, 166 L.Ed.2d 333](#).

Holdings: The Supreme Court, Justice [Scalia](#), held that:

(1) in considering deputy's motion for summary judgment, courts had to view the facts in the light depicted by videotape which captured events underlying excessive force claim, and
(2) deputy acted reasonably when he terminated car chase, and thus did not violate motorist's Fourth Amendment right against unreasonable seizure.

Reversed.

Justices [Ginsburg](#) and [Breyer](#) each concurred in separate opinions.

Justice [Stevens](#) dissented in a separate opinion.

West Headnotes

[11](#) Civil Rights 78 1376(1)

[78](#) Civil Rights

[78III](#) Federal Remedies in General

[78k1372](#) Privilege or Immunity; Good Faith and Probable Cause

[78k1376](#) Government Agencies and Officers

[78k1376\(1\)](#) k. In General. [Most Cited Cases](#)

Federal Courts 170B 574

[170B](#) Federal Courts

[170BVIII](#) Courts of Appeals

[170BVIII\(C\)](#) Decisions Reviewable

[170BVIII\(C\)2](#) Finality of Determination

[170Bk572](#) Interlocutory Orders Appealable

[170Bk574](#) k. Other Particular Orders. [Most Cited Cases](#)

Qualified immunity is an immunity from suit, rather than a mere defense to liability, and, like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial; thus, order denying qualified immunity is immediately appealable, even though it is interlocutory.

[2] Civil Rights 78  1376(1)

78 Civil Rights

78III Federal Remedies in General

[78k1372](#) Privilege or Immunity; Good Faith and Probable Cause

[78k1376](#) Government Agencies and Officers

[78k1376\(1\)](#) k. In General. [Most Cited Cases](#)

Civil Rights 78  1376(2)

78 Civil Rights

78III Federal Remedies in General

[78k1372](#) Privilege or Immunity; Good Faith and Probable Cause

[78k1376](#) Government Agencies and Officers

[78k1376\(2\)](#) k. Good Faith and Reasonableness; Knowledge and Clarity of Law; Motive and Intent, in General. [Most Cited Cases](#)

In resolving questions of qualified immunity, courts are required to resolve threshold question of whether, taken in light most favorable to party asserting injury, facts alleged show that officer's conduct violated a constitutional right, and only if court finds a violation of a constitutional right does it take the next, sequential step to ask whether the right was clearly established in light of the specific context of the case.

[3] Federal Civil Procedure 170A  2543

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)3 Proceedings

170Ak2542 Evidence

170Ak2543 k. Presumptions. [Most Cited Cases](#)

Courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing a summary judgment motion.

[4] Federal Civil Procedure 170A  2546

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)3 Proceedings

170Ak2542 Evidence

170Ak2546 k. Weight and Sufficiency. [Most Cited Cases](#)

In considering motion for summary judgment that raised factual issue of whether motorist fleeing law enforcement officials was driving in such fashion as to endanger human life at the time county deputy rammed motorist's car from behind to put end to chase, courts could not rely upon motorist's version of events, which was so utterly discredited by the record that no reasonable jury could have believed him, and instead had to view facts in the light depicted by videotape that captured events underlying motorist's excessive force claim. [U.S.C.A. Const.Amend. 4; Fed.Rules Civ.Proc.Rule 56\(c\), 28 U.S.C.A.](#)

[5] Federal Civil Procedure 170A  2543

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)3 Proceedings

170Ak2542 Evidence

170Ak2543 k. Presumptions. [Most Cited Cases](#)

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a genuine dispute as to those facts. [Fed.Rules Civ.Proc.Rule 56\(c\), 28 U.S.C.A.](#)

[6] Federal Civil Procedure 170A  2470.1

170A Federal Civil Procedure

[170AXVII](#) Judgment
[170AXVII\(C\)](#) Summary Judgment
[170AXVII\(C\)1](#) In General
[170Ak2465](#) Matters Affecting Right to Judgment
[170Ak2470.1](#) k. Materiality and Genuineness of Fact Issue. [Most Cited Cases](#)

Federal Civil Procedure 170A  **2544**

[170A](#) Federal Civil Procedure
[170AXVII](#) Judgment
[170AXVII\(C\)](#) Summary Judgment
[170AXVII\(C\)3](#) Proceedings
[170Ak2542](#) Evidence
[170Ak2544](#) k. Burden of Proof. [Most Cited Cases](#)

When the moving party has carried its burden under summary judgment rule, its opponent must do more than simply show that there is some metaphysical doubt as to the material facts, and where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. [Fed.Rules Civ.Proc.Rule 56\(c\), 28 U.S.C.A.](#)

[7] Federal Civil Procedure 170A  **2470.1**

[170A](#) Federal Civil Procedure
[170AXVII](#) Judgment
[170AXVII\(C\)](#) Summary Judgment
[170AXVII\(C\)1](#) In General
[170Ak2465](#) Matters Affecting Right to Judgment
[170Ak2470.1](#) k. Materiality and Genuineness of Fact Issue. [Most Cited Cases](#)

The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment, in that the requirement is that there be no genuine issue of material fact. [Fed.Rules Civ.Proc.Rule 56\(c\), 28 U.S.C.A.](#)

[8] Federal Civil Procedure 170A  **2543**

[170A](#) Federal Civil Procedure
[170AXVII](#) Judgment
[170AXVII\(C\)](#) Summary Judgment
[170AXVII\(C\)3](#) Proceedings
[170Ak2542](#) Evidence
[170Ak2543](#) k. Presumptions. [Most Cited Cases](#)

When opposing parties tell two different stories, and one is blatantly contradicted by the record, so that no reasonable jury could believe it, court should not adopt that version of the facts for purposes of ruling on motion for summary judgment. [Fed.Rules Civ.Proc.Rule 56\(c\), 28 U.S.C.A.](#)

[9] Arrest 35  **68(4)**

[35](#) Arrest
[35II](#) On Criminal Charges
[35k68](#) Mode of Making Arrest
[35k68\(4\)](#) k. What Constitutes Seizure. [Most Cited Cases](#)

Fourth Amendment “seizure” occurs when there is a governmental termination of freedom of movement through means intentionally applied. [U.S.C.A. Const.Amend. 4.](#)

[10] Arrest 35  **68(2)**

[35](#) Arrest
[35II](#) On Criminal Charges
[35k68](#) Mode of Making Arrest
[35k68\(2\)](#) k. Use of Force. [Most Cited Cases](#)

Claim of excessive force in the course of making a seizure of the person is properly analyzed under the Fourth Amendment's objective reasonableness standard. [U.S.C.A. Const.Amend. 4.](#)

[11] Federal Civil Procedure 170A  **2491.5**

[170A](#) Federal Civil Procedure

[170AXVII](#) Judgment

[170AXVII\(C\)](#) Summary Judgment

[170AXVII\(C\)2](#) Particular Cases

[170Ak2491.5](#) k. Civil Rights Cases in General. [Most Cited Cases](#)

At the summary judgment stage of action in which motorist alleged that deputy used excessive force in effecting seizure, once court determined the relevant set of facts and drew all inferences in favor of motorist, as the nonmoving party, to the extent supportable by the record, the reasonableness of deputy's actions was pure question of law. [U.S.C.A. Const.Amend. 4](#); [Fed.Rules Civ.Proc.Rule 56\(c\)](#), [28 U.S.C.A.](#)

[12] Arrest 35  **68(1)**

[35](#) Arrest

[35II](#) On Criminal Charges

[35k68](#) Mode of Making Arrest

[35k68\(1\)](#) k. In General. [Most Cited Cases](#)

In determining the reasonableness of the manner in which a seizure is effected, court must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. [U.S.C.A. Const.Amend. 4](#).

[13] Arrest 35  **68(2)**

[35](#) Arrest

[35II](#) On Criminal Charges

[35k68](#) Mode of Making Arrest

[35k68\(2\)](#) k. Use of Force. [Most Cited Cases](#)

County deputy acted reasonably when he terminated car chase by ramming his vehicle's bumper into vehicle of fleeing motorist, even though that action posed high likelihood of serious injury or death for motorist, given actual and imminent threat to lives of any pedestrians present, to other motorists, and to officers involved in chase resulting from motorist's conduct, and given motorist's culpability and innocence of those who might have been harmed had deputy not acted, and therefore deputy did not violate motorist's Fourth Amendment right against unreasonable seizure, notwithstanding motorist's contention that threat to public safety could likewise have been avoided had police ceased their pursuit. [U.S.C.A. Const.Amend. 4](#).

[14] Arrest 35  **68(2)**

[35](#) Arrest

[35II](#) On Criminal Charges

[35k68](#) Mode of Making Arrest

[35k68\(2\)](#) k. Use of Force. [Most Cited Cases](#)

A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. [U.S.C.A. Const.Amend. 4](#).

****1771 *372 Syllabus**

...

Deputy Timothy Scott, petitioner here, terminated a high-speed pursuit of respondent's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. Respondent was rendered quadriplegic. He filed suit under [42 U.S.C. § 1983](#) alleging, *inter alia*, the use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. The District Court denied Scott's summary judgment motion, which was based on qualified immunity. The Eleventh Circuit affirmed on interlocutory appeal, concluding, *inter alia*, that Scott's actions could constitute "deadly force" under [Tennessee v. Garner](#), [471 U.S. 1](#), [105 S.Ct. 1694](#), [85 L.Ed.2d 1](#); that the use of such force in this context would violate respondent's constitutional right to be free from excessive force

during a seizure; and that a reasonable jury could so find.

Held: Because the car chase respondent initiated posed a substantial and immediate risk of serious physical injury to others, Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. Pp. 1773 - 1779. . . .

(b) The record in this case includes a videotape capturing the events in question. Where, as here, the record blatantly contradicts the plaintiff's version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion. Pp. 1774 - 1777.

(c) Viewing the facts in the light depicted by the videotape, it is clear that Deputy Scott did not violate the Fourth Amendment. Pp. 1776 - 1779.

(i) *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute "deadly force." The Court there simply applied the Fourth Amendment's "reasonableness" test to the use of a particular type of force in a particular situation. That case has scant applicability to this one, which has vastly different facts. Whether or not Scott's actions constituted "deadly force," what matters is whether ****1772** those actions were reasonable. Pp. 1776 - 1778.

***373** (ii) In determining a seizure's reasonableness, the Court balances the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests allegedly justifying the intrusion. *United States v. Place*, 462 U.S. 696, 703, 103 S.Ct. 2637, 77 L.Ed.2d 110. In weighing the high likelihood of serious injury or death to respondent that Scott's actions posed against the actual and imminent threat that respondent posed to the lives of others, the Court takes account of the number of lives at risk and the relative culpability of the parties involved. Respondent intentionally placed himself and the public in danger by unlawfully engaging in reckless, high-speed flight; those who might have been harmed had Scott not forced respondent off the road were entirely innocent. The Court concludes that it was reasonable for Scott to take the action he did. It rejects respondent's argument that safety could have been assured if the police simply ceased their pursuit. The Court rules that a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. Pp. 1777 - 1779.

[433 F.3d 807](#), reversed.

[SCALIA](#), J., delivered the opinion of the Court, in which [ROBERTS](#), C.J., and [KENNEDY](#), [SOUTER](#), [THOMAS](#), [GINSBURG](#), [BREYER](#), and [ALITO](#), JJ., joined. [GINSBURG](#), J., and [BREYER](#), J., filed concurring opinions. [STEVENS](#), J., filed a dissenting opinion. [Philip W. Savrin](#), Atlanta, GA, for petitioner.

[Gregory G. Garre](#), for the United States as amicus curiae, by special leave of the Court, supporting the petitioner.

[Craig T. Jones](#), Atlanta, GA, for respondent.

Orin S. Kerr, Washington, D.C., [Philip W. Savrin](#), Counsel of Record, [Sun S. Choy](#), Freeman Mathis & Gary, LLP, Atlanta, GA, Counsel for Petitioner.

[Craig T. Jones](#), Counsel of Record, Edmond & Jones, LLP, Atlanta, Georgia, [Andrew C. Clarke](#), Borod & Kramer, Memphis, Tennessee, Counsel for Respondent.

For U.S. Supreme Court briefs, see:2006 WL 3693418 (Pet.Brief)2007 WL 118977 (Resp.Brief)2007 WL 760511 (Reply.Brief)

Justice [SCALIA](#) delivered the opinion of the Court.

***374** We consider whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?

I

In March 2001, a Georgia county deputy clocked respondent's vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. The deputy activated his blue flashing lights indicating that respondent should pull over. Instead, respondent sped away, initiating a chase down what ***375** is in most portions a two-lane road, at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to ****1773** report that he was pursuing a fleeing vehicle, and broadcast its license plate number. Petitioner, Deputy Timothy Scott, heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, respondent pulled into the parking lot of a shopping center and was nearly boxed in by the various police vehicles. Respondent evaded the trap by making a sharp turn, colliding with Scott's police car, exiting the parking lot, and speeding off once again down a two-lane highway.

Following respondent's shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit vehicle. Six minutes and nearly 10 miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a "Precision Intervention Technique ('PIT') maneuver, which causes the fleeing vehicle to spin to a stop." . . . Having radioed his supervisor for permission, Scott was told to "[g]o ahead and take him out." . . . Instead, Scott applied his push bumper to the rear of respondent's vehicle. As a result, respondent lost control of his vehicle, which left the roadway, ran down an embankment, overturned, and crashed. Respondent was badly injured and was rendered a quadriplegic. . . .

[1] Respondent filed suit against Deputy Scott and others under . . . [42 U.S.C. § 1983](#), alleging, *inter alia*, a violation of his federal constitutional rights, viz. use ***376** of excessive force resulting in an unreasonable seizure under the Fourth Amendment. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The District Court denied the motion, finding that "there are material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury." . . . On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision to allow respondent's Fourth Amendment claim against Scott to proceed to trial. Taking respondent's view of the facts as given, the Court of Appeals concluded that Scott's actions could constitute "deadly force" under [Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 \(1985\)](#), and that the use of such force in this context "would violate [respondent's] constitutional right to be free from excessive force during a seizure. ****1774** Accordingly, a reasonable jury could find that Scott violated [respondent's] Fourth Amendment rights." . . . The Court of Appeals further concluded that "the law as it existed [at the time of the incident], was sufficiently clear to give reasonable law enforcement officers 'fair notice' that ramming a vehicle under these circumstances was unlawful." . . . The Court of Appeals thus concluded that Scott was not entitled to qualified immunity. We granted certiorari. . . , and now reverse.

***377** II[]

A

[3][4] The first step in assessing the constitutionality of Scott's actions is to determine the relevant facts. As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the [summary judgment] motion." ****1775**[United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 \(1962\)](#)(*per curiam*); [Saucier, supra](#), at 201, 121 S.Ct. 2151. In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.

There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape was doctored or altered in any way, nor any

contention that what it depicts differs from what actually happened. The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals. For example, the Court of Appeals adopted respondent's assertions that, during the chase, "there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle." . . . Indeed, reading the lower court's opinion, one gets the impression that respondent, *379 rather than fleeing from police, was attempting to pass his driving test:

"[T]aking the facts from the non-movant's viewpoint, [respondent] remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. He did not run any motorists off the road. Nor was he a threat to pedestrians in the shopping center parking lot, which was free from pedestrian and vehicular traffic as the center was closed. Significantly, by the time the parties were back on the highway and Scott rammed [respondent], the motorway had been cleared of motorists and pedestrians allegedly because of police blockades of the nearby intersections." *Id.*, at 815-816 (citations omitted).

The videotape tells quite a different story. There we see respondent's vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous *380 maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening **1776 sort, placing police officers and innocent bystanders alike at great risk of serious injury. . . .

[\[5\]\[6\]\[7\]\[8\]](#) At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. [Fed. Rule Civ. Proc. 56\(c\)](#). As we have emphasized, "[w]hen the moving party has carried its burden under [Rule 56\(c\)](#), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " [Matsushita Elec. Industrial Co. v. Zenith Radio Corp.](#), 475 U.S. 574, 586-587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (footnote omitted). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied *381 on such visible fiction; it should have viewed the facts in the light depicted by the videotape.

B

[\[9\]\[10\]\[11\]](#) Judging the matter on that basis, we think it is quite clear that Deputy Scott did not violate the Fourth Amendment. Scott does not contest that his decision to terminate the car chase by ramming his bumper into respondent's vehicle constituted a "seizure." "[A] Fourth Amendment seizure [occurs] ... when there is a governmental termination of freedom of movement through means intentionally applied." [Brower v. County of Inyo](#), 489 U.S. 593, 596-597, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989) (emphasis deleted). . . . It is also conceded, by both sides, that a claim of "excessive force in the course of making [a] ...'seizure' of [the] person ... [is] properly analyzed under the Fourth Amendment's 'objective reasonableness' standard." [Graham v. Connor](#), 490 U.S. 386, 388, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). The question we need to answer is whether Scott's actions were objectively reasonable. . . .

**1777 1

Respondent urges us to analyze this case as we analyzed [Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1](#). . . . We must first decide, he says, whether the actions Scott took *382 constituted “deadly force.” (He defines “deadly force” as “any use of force which creates a substantial likelihood of causing death or serious bodily injury,” [id., at 19, 105 S.Ct. 1694](#).) If so, respondent claims that [Garner](#) prescribes certain preconditions that must be met before Scott's actions can survive Fourth Amendment scrutiny: (1) The suspect must have posed an immediate threat of serious physical harm to the officer or others; (2) deadly force must have been necessary to prevent escape; and (3) where feasible, the officer must have given the suspect some warning. . . . Since these [Garner](#) preconditions for using deadly force were not met in this case, Scott's actions were *per se* unreasonable. . . .

Respondent's argument falters at its first step; [Garner](#) did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute “deadly force.” [Garner](#) was simply an application of the Fourth Amendment's “reasonableness” test, [Graham, supra, at 388, 109 S.Ct. 1865](#), to the use of a particular type of force in a particular situation. [Garner](#) held that it was unreasonable to kill a “young, slight, and unarmed” burglary suspect, [471 U.S., at 21, 105 S.Ct. 1694](#), by shooting him “in the back of the head” while he was running away on foot, [id., at 4, 105 S.Ct. 1694](#), and when the officer “could not reasonably*383 have believed that [the suspect] ... posed any threat,” and “never attempted to justify his actions on any basis other than the need to prevent an escape,” [id., at 21, 105 S.Ct. 1694](#). Whatever [Garner](#) said about the factors that *might have* justified shooting the suspect in that case, such “preconditions” have scant applicability to this case, which has vastly different facts. “[Garner](#) had nothing to do with one car striking another or even with car chases in general A police car's bumping a fleeing car is, in fact, not much like a policeman's shooting a gun so as to hit a person.” [Adams v. St. Lucie County Sheriff's Dept., 962 F.2d 1563, 1577 \(C.A.11 1992\)](#) (Edmondson, J., dissenting), adopted by [998 F.2d 923 \(C.A.11 1993\)](#) (en banc) (*per curiam*). Nor is the threat posed by the flight on foot of an unarmed suspect even remotely comparable to the extreme danger to human life posed by respondent in this case. Although respondent's attempt **1778 to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slush our way through the factbound morass of “reasonableness.” Whether or not Scott's actions constituted application of “deadly force,” all that matters is whether Scott's actions were reasonable.

2

[12][13] In determining the reasonableness of the manner in which a seizure is effected, “[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” [United States v. Place, 462 U.S. 696, 703, 103 S.Ct. 2637, 77 L.Ed.2d 110 \(1983\)](#). Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify *384 the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase. . . . It is equally clear that Scott's actions posed a high likelihood of serious injury or death to respondent-though not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head, see [Garner, supra, at 4, 105 S.Ct. 1694](#), or pulling alongside a fleeing motorist's car and shooting the motorist, cf. [Vaughan v. Cox, 343 F.3d 1323, 1326-1327 \(C.A.11 2003\)](#). So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did. . . .

*385 But wait, says respondent: Couldn't the innocent public equally have been protected, and the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action-ramming respondent off the road-was *certain* to **1779 eliminate the

risk that respondent posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to respondent that the chase was off, and that he was free to go. Had respondent looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his path. Cf. [Brower, 489 U.S., at 594, 109 S.Ct. 1378](#). Given such uncertainty, respondent might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow. . . .

[14] Second, we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this *386 invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. . . .

The car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others; no reasonable jury could conclude otherwise. Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. The Court of Appeals' decision to the contrary is reversed.

It is so ordered. . . .

U.S.,2007.
Scott v. Harris
550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686. . .
END OF DOCUMENT

ATTACHMENT B



LEXSEE 167 L.ED.2D 686

TIMOTHY SCOTT, Petitioner v. VICTOR HARRIS
[No. 05-1631]
SUPREME COURT OF THE UNITED STATES

550 U.S. 372; 127 S. Ct. 1769; 167 L. Ed. 2d 686. . .

February 26, 2007, Argued

April 30, 2007, Decided

SUBSEQUENT HISTORY:

On remand at, Remanded by *Harris v. Coweta County*, 489 F.3d 1207, 2007 U.S. App. LEXIS 15099 (11th Cir. Ga., June 25, 2007)

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

Harris v. Coweta County, 433 F.3d 807, 2005 U.S. App. LEXIS 28484 (11th Cir. Ga., 2005)

DISPOSITION: Reversed.

CASE SUMMARY:

PROCEDURAL POSTURE: Respondent driver filed suit under 42 U.S.C.S. § 1983 alleging, inter alia, the use of excessive force resulting in an unreasonable seizure under the *Fourth Amendment*. A district court denied petitioner deputy's summary judgment motion, which was based on qualified immunity. The United States Court of Appeals for the Eleventh Circuit affirmed on interlocutory appeal. The deputy's petition for writ of certiorari was granted.

OVERVIEW: The deputy terminated a high-speed pursuit of the driver's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. The driver was rendered quadriplegic. The court of appeals took the driver's view of the facts as given. The Supreme Court found that a videotape capturing the events in question quite clearly contradicted the version of the story told by the driver and adopted by the court of appeals. The court of appeals should have viewed the facts in the light depicted by the videotape. The deputy did not contest that his decision to terminate the car chase by ramming his bumper into the driver's vehicle constituted a "seizure." A police officer's attempt to terminate a

dangerous high-speed car chase that threatened the lives of innocent bystanders did not violate the *Fourth Amendment*, even when it placed the fleeing motorist at risk of serious injury or death. The car chase that the driver initiated posed a substantial and immediate risk of serious physical injury to others. The deputy's attempt to terminate the chase by forcing the driver off the road was reasonable, and the deputy was entitled to summary judgment.

OUTCOME: The court of appeals' decision was reversed.

LexisNexis(R) Headnotes

Civil Rights Law > Immunity From Liability > Local Officials > Individual Capacity

[HN1] In resolving questions of qualified immunity, courts are required to resolve a threshold question: taken in the light most favorable to the party asserting the injury, do the facts alleged show an officer's conduct violated a constitutional right? This must be the initial inquiry. If, and only if, the court finds a violation of a constitutional right, the next, sequential step is to ask whether the right was clearly established in light of the specific context of the case. Although this ordering contradicts the United States Supreme Court's policy of avoiding unnecessary adjudication of constitutional issues, such a departure from practice is necessary to set forth principles which will become the basis for a future holding that a right is clearly established.

Civil Procedure > Summary Judgment > Standards > Appropriateness

[HN2] Courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing a summary judgment motion.

***Civil Procedure > Summary Judgment > Burdens of Production & Proof > Movants
Civil Procedure > Summary Judgment > Burdens of Production & Proof > Nonmovants
Civil Procedure > Summary Judgment > Standards > General Overview***

[HN3] At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. *Fed. R. Civ. P. 56(c)*. When the moving party has carried its burden under *Rule 56(c)*, its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > General Overview
Criminal Law & Procedure > Search & Seizure > Seizures of Persons***

[HN4] A *Fourth Amendment* seizure occurs when there is a governmental termination of freedom of movement through means intentionally applied.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection
Criminal Law & Procedure > Search & Seizure > Seizures of Persons***

[HN5] A claim of excessive force in the course of making a "seizure" of a person is properly analyzed under the *Fourth Amendment's* "objective reasonableness" standard.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection
Criminal Law & Procedure > Search & Seizure > Seizures of Persons***

[HN6] In determining the reasonableness of the manner in which a seizure is effected, a court must balance the nature and quality of the intrusion on the individual's *Fourth Amendment* interests against the importance of the governmental interests alleged to justify the intrusion.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection
Criminal Law & Procedure > Search & Seizure > Seizures of Persons***

[HN7] Culpability is relevant, to the reasonableness of a seizure--to whether preventing possible harm to the innocent justifies exposing to possible harm the person threatening them.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection
Criminal Law & Procedure > Search & Seizure > Seizures of Persons***

[HN8] A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the *Fourth Amendment*, even when it places the fleeing motorist at risk of serious injury or death.

DECISION:

[***686] Law enforcement officer, whose automobile chase of speeding driver caused crash that resulted in driver's quadriplegia, held not to have used excessive force resulting in unreasonable seizure under *Federal Constitution's Fourth Amendment*.

SUMMARY:

Procedural posture: Respondent driver filed suit under 42 U.S.C.S. § 1983 alleging, inter alia, the use of excessive force resulting in an unreasonable seizure under the *Fourth Amendment*. A district court denied petitioner deputy's summary judgment motion, which was based on qualified immunity. The United States Court of Appeals for the Eleventh Circuit affirmed on interlocutory appeal. The deputy's petition for writ of certiorari was granted.

Overview: The deputy terminated a high-speed pursuit of the driver's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. The driver was rendered quadriplegic. The court of appeals took the driver's view of the facts as given. The Supreme Court found that a videotape capturing the events in question quite clearly contradicted the version of the story told by the driver and adopted by the court of appeals. The court of

appeals should have viewed the facts in the light depicted by the videotape. The deputy did not contest that his decision to terminate the car chase by ramming his bumper into the driver's vehicle constituted a "seizure." A police officer's attempt to terminate a dangerous high-speed car chase that threatened the lives of innocent bystanders did not violate the *Fourth Amendment*, even when it placed the fleeing motorist at risk of serious injury or death. The car chase that the driver initiated posed a substantial and immediate risk of serious physical injury to others. The deputy's attempt to terminate the chase by forcing the driver off the road was reasonable, and the deputy was entitled to summary judgment.

[**687] **Outcome:** The court of appeals' decision was reversed.

LAWYERS' EDITION HEADNOTES:

[**LEdHN1]

OFFICERS § 61

IMMUNITY FROM SUIT -- OFFICER

Headnote:[1]

In resolving questions of qualified immunity, courts are required to resolve a threshold question: taken in the light most favorable to the party asserting the injury, do the facts alleged show an officer's conduct violated a constitutional right? This must be the initial inquiry. If, and only if, the court finds a violation of a constitutional right, the next, sequential step is to ask whether the right was clearly established in light of the specific context of the case. Although this ordering contradicts the United States Supreme Court's policy of avoiding unnecessary adjudication of constitutional issues, such a departure from practice is necessary to set forth principles which will become the basis for a future holding that a right is clearly established. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[**LEdHN2]

SUMMARY JUDGMENT AND JUDGMENT ON PLEADINGS § 5.7

SUMMARY JUDGMENT -- REVIEW OF MOTION

Headnote:[2]

Courts are required to view the facts and draw reasonable inferences in the light most favorable to the party opposing a summary judgment motion. (Scalia,

J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[**LEdHN3]

SUMMARY JUDGMENT AND JUDGMENT ON PLEADINGS § 5.7

SUMMARY JUDGMENT -- GENUINENESS OF ALLEGED DISPUTE

Headnote:[3]

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. *Fed. R. Civ. P. 56(c)*. When the moving party has carried its burden under *Rule 56(c)*, its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[**LEdHN4]

SEARCH AND SEIZURE § 2

SEIZURE -- DEFINITION

Headnote:[4]

A *Fourth Amendment* seizure occurs when there is a governmental termination of freedom of movement through means intentionally applied. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[**LEdHN5]

SEARCH AND SEIZURE § 5.7

SEIZURE -- EXCESSIVE FORCE

Headnote:[5]

A claim of excessive force in the course of making a "seizure" of a person is properly analyzed under the *Fourth Amendment's* "objective reasonableness" [**688] standard. (Scalia, J., joined by Roberts, Ch.

J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[***LEdHN6]

SEARCH AND SEIZURE § 6
SEIZURE -- REASONABLENESS

Headnote:[6]

In determining the reasonableness of the manner in which a seizure is effected, a court must balance the nature and quality of the intrusion on the individual's *Fourth Amendment* interests against the importance of the governmental interests alleged to justify the intrusion. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[***LEdHN7]

SEARCH AND SEIZURE § 6
SEIZURE -- REASONABLENESS

Headnote:[7]

Culpability is relevant, to the reasonableness of a seizure--to whether preventing possible harm to the innocent justifies exposing to possible harm the person threatening them. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

[***LEdHN8]

SEARCH AND SEIZURE § 10.2
CAR CHASE BY POLICE OFFICER -- RISK TO FLEEING MOTORIST

Headnote:[8]

A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the *Fourth Amendment*, even when it places the fleeing motorist at risk of serious injury or death. (Scalia, J., joined by Roberts, Ch. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ.)

SYLLABUS

[***689] Deputy Timothy Scott, petitioner here, terminated a high-speed pursuit of respondent's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. Respondent was rendered quadriplegic. He filed suit under 42 U.S.C. § 1983 alleging, *inter alia*, the use of excessive force resulting in an unreasonable seizure under the *Fourth Amendment*. The District Court denied Scott's

summary judgment motion, which was based on qualified immunity. The Eleventh Circuit affirmed on interlocutory appeal, concluding, *inter alia*, that Scott's actions could constitute "deadly force" under *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1; that the use of such force in this context would violate respondent's constitutional right to be free from excessive force during a seizure; and that a reasonable jury could so find.

Held:

Because the car chase respondent initiated posed a substantial and immediate risk of serious physical injury to others, Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. Pp. 3-13.

(a) Qualified immunity requires resolution of a "threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272. Pp. 3-4.

(b) The record in this case includes a videotape capturing the events in question. Where, as here, the record blatantly contradicts the plaintiff's version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion. Pp. 5-8.

(c) Viewing the facts in the light depicted by the videotape, it is clear that Deputy Scott did not violate the *Fourth Amendment*. Pp. 8-13.

(i) *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute "deadly force." The Court there simply applied the *Fourth Amendment's* "reasonableness" test to the use of a particular type of force in a particular situation. That case has scant applicability to this one, which has vastly different facts. Whether or not Scott's actions constituted "deadly force," what matters [***690] is whether those actions were reasonable. Pp. 8-10.

(ii) In determining a seizure's reasonableness, the Court balances the nature and quality of the intrusion on the individual's *Fourth Amendment* interests against the importance of the governmental interests allegedly justifying the intrusion. *United States v. Place*, 462 U.S. 696, 703, 103 S. Ct. 2637, 77 L. Ed. 2d 110. In weighing the high likelihood of serious injury or death to respondent that Scott's actions posed against the actual and imminent threat that respondent posed to the lives of others, the Court takes account of the number of lives at risk and the relative culpability of the parties

involved. Respondent intentionally placed himself and the public in danger by unlawfully engaging in reckless, high-speed flight; those who might have been harmed had Scott not forced respondent off the road were entirely innocent. The Court concludes that it was reasonable for Scott to take the action he did. It rejects respondent's argument that safety could have been ensured if the police simply ceased their pursuit. The Court rules that a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the *Fourth Amendment*, even when it places the fleeing motorist at risk of serious injury or death. Pp. 10-13.

433 F.3d 807, reversed.

COUNSEL: Philip W. Savrin argued the cause for petitioner.

Gregory G. Garre argued the cause for the United States, as amicus curiae, by special leave for of court.

Craig T. Jones argued the cause for respondent.

JUDGES: Scalia, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Souter, Thomas, Ginsburg, Breyer, and Alito, JJ., joined. Ginsburg, J., *post*, p. ____, and Breyer, J., *post*, p. ____, filed concurring opinions. Stevens, J., filed a dissenting opinion, *post*, p. ____.

OPINION BY: Scalia

OPINION

[*374] [**1772] Justice **Scalia** delivered the opinion of the Court.

We consider whether a law enforcement official can, consistent with the *Fourth Amendment*, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?

I

In March 2001, a Georgia county deputy clocked respondent's vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. The deputy activated his blue flashing lights indicating that respondent should pull over. Instead, respondent sped away, initiating a chase down what [*375] is in most portions a two-lane road, at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to [**1773]

report that he was pursuing a fleeing vehicle, and broadcast its license plate number. Petitioner, Deputy Timothy Scott, heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, respondent pulled into the parking lot of a shopping center and was nearly boxed in by the various police vehicles. Respondent evaded the trap by making a sharp turn, colliding with Scott's police car, exiting the parking lot, and speeding off once again down a two-lane highway.

Following respondent's shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit [***691] vehicle. Six minutes and nearly 10 miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a "Precision Intervention Technique ('PIT') maneuver, which causes the fleeing vehicle to spin to a stop." . . . Having radioed his supervisor for permission, Scott was told to "[g]o ahead and take him out." . . . Instead, Scott applied his push bumper to the rear of respondent's vehicle. As a result, respondent lost control of his vehicle, which left the roadway, ran down an embankment, overturned, and crashed. Respondent was badly injured and was rendered a quadriplegic. . . .

Respondent filed suit against Deputy Scott and others under . . . 42 U.S.C. § 1983, alleging, *inter alia*, a violation of his federal constitutional rights, viz. use [*376] of excessive force resulting in an unreasonable seizure under the *Fourth Amendment*. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The District Court denied the motion, finding that "there are material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury." . . . On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision to allow respondent's *Fourth Amendment* claim against Scott to proceed to trial. Taking respondent's view of the facts as given, the Court of Appeals concluded that Scott's actions could constitute "deadly force" under *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985), and that the use of such force in this context "would violate [respondent's] constitutional right to be free from excessive force during a seizure. [**1774] Accordingly, a reasonable jury could find that Scott violated [respondent's] *Fourth Amendment* rights." . . . The Court of Appeals further concluded that "the law as it existed [at the time of the incident], was sufficiently clear to give reasonable law enforcement officers 'fair notice' that ramming a vehicle under these circumstances was unlawful." . . . The Court of Appeals thus concluded that Scott was

not entitled to qualified immunity. We granted certiorari, 549 U.S. 991, 549 U.S. 991, 127 S. Ct. 468, 166 L. Ed. 2d 333 (2006), and now reverse. . . .

[***692] [*377] II []

A

The first step in assessing the constitutionality of Scott's actions is to determine the relevant facts. As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, [***LEdHR2] [2][HN2] courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the [summary judgment] motion." *United States v. Diebold, Inc.*, [**1775] 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962) (*per curiam*); *Saucier, supra*, at 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272. In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.

There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape [***693] was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened. The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals. For example, the Court of Appeals adopted respondent's assertions that, during the chase, "there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle." . . . Indeed, reading the lower court's opinion, one gets the impression that respondent, [*379] rather than fleeing from police, was attempting to pass his driving test:

"[T]aking the facts from the non-movant's viewpoint, [respondent] remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. He did not run any motorists off the road. Nor was he a threat to pedestrians in the shopping center parking lot, which was free from pedestrian and vehicular traffic as the center was closed. Significantly, by the time the parties were back on the highway and Scott rammed [respondent], the motorway had been cleared of motorists and pedestrians allegedly because of

police blockades of the nearby intersections." *Id.*, at 815-816 (citations omitted). . . .

The videotape tells quite a different story. There we see respondent's vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous [*380] maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening [**1776] sort, placing police officers and innocent bystanders alike at great risk of serious injury. . . .

[***694] [HN3] [***LEdHR3] [3] At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. *Fed. Rule Civ. Proc. 56(c)*. As we have emphasized, "[w]hen the moving party has carried its burden under *Rule 56(c)*, its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (footnote omitted). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied [*381] on such visible

fiction; it should have viewed the facts in the light depicted by the videotape.

B

Judging the matter on that basis, we think it is quite clear that Deputy Scott did not violate the *Fourth Amendment*. Scott does not contest that his decision to terminate the car chase by ramming his bumper into respondent's vehicle constituted a "seizure." [HN4] [***LEdHR4] [4] "[A] *Fourth Amendment* seizure [occurs] . . . when there is a governmental termination of freedom of movement through means intentionally applied." *Brower v. County of Inyo*, 489 U.S. 593, 596-597, 109 S. Ct. 1378, 103 L. Ed. 2d 628 (1989) (emphasis deleted). . . . It is also conceded, by both sides, that [HN5] [***LEdHR5] [5] a claim of "excessive force in the course of making [a] . . . 'seizure' of [the] person . . . [is] properly analyzed under the *Fourth Amendment's* 'objective reasonableness' standard." *Graham v. Connor*, 490 U.S. 386, 388, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). The question we need to answer is whether Scott's actions were objectively reasonable. . . .

[**1777] [***695] 1

Respondent urges us to analyze this case as we analyzed *Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1. . . . We must first decide, he says, whether the actions Scott took [*382] constituted "deadly force." (He defines "deadly force" as "any use of force which creates a substantial likelihood of causing death or serious bodily injury," *id.*, at 19.) If so, respondent claims that *Garner* prescribes certain preconditions that must be met before Scott's actions can survive *Fourth Amendment* scrutiny: (1) The suspect must have posed an immediate threat of serious physical harm to the officer or others; (2) deadly force must have been necessary to prevent escape; and (3) where feasible, the officer must have given the suspect some warning. . . . Since these *Garner* preconditions for using deadly force were not met in this case, Scott's actions were *per se* unreasonable.

Respondent's argument falters at its first step; *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute "deadly force." *Garner* was simply an application of the *Fourth Amendment's* "reasonableness" test, *Graham, supra*, at 388, 109 S. Ct. 1865, 104 L. Ed. 2d 443, to the use of a particular type of force in a particular situation. *Garner* held that it was unreasonable to kill a "young, slight, and unarmed" burglary suspect, 471 U.S., at 21, 105 S. Ct. 1694, 85 L. Ed. 2d 1, by shooting him "in the back of

the head" while he was running away on foot, *id.*, at 4, 105 S. Ct. 1694, 85 L. Ed. 2d 1, and when the officer "could not reasonably [*383] have believed that [the suspect] . . . posed any threat," and "never attempted to justify his actions on any basis other than the need to prevent an escape," *id.*, at 21, 105 S. Ct. 1694, 85 L. Ed. 2d 1. Whatever *Garner* said about the factors that *might have* justified shooting the suspect in that case, such "preconditions" have scant applicability to this case, which has vastly different facts. "*Garner* had nothing to do with one car striking another or even with car chases in general. . . . A police car's bumping a fleeing car is, in fact, not much like a policeman's shooting a gun so as to hit a person." *Adams v. St. Lucie County Sheriff's Dep't*, 962 F.2d 1563, 1577 (CA11 1992) (Edmondson, J., dissenting), adopted by 998 F.2d 923 (CA11 1993) (en banc) (*per curiam*). Nor is the threat posed by the flight on foot of an unarmed suspect even remotely comparable to the extreme [***696] danger to human life posed by respondent in this case. Although respondent's attempt [**1778] to craft an easy-to-apply legal test in the *Fourth Amendment* context is admirable, in the end we must still slosh our way through the factbound morass of "reasonableness." Whether or not Scott's actions constituted application of "deadly force," all that matters is whether Scott's actions were reasonable.

2

[HN6] [***LEdHR6] [6] In determining the reasonableness of the manner in which a seizure is effected, "[w]e must balance the nature and quality of the intrusion on the individual's *Fourth Amendment* interests against the importance of the governmental interests alleged to justify the intrusion." *United States v. Place*, 462 U.S. 696, 703, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983). Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify [*384] the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase. . . . It is equally clear that Scott's actions posed a high likelihood of serious injury or death to respondent--though not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head, see *Garner, supra*, at 4, 105 S. Ct. 1694, 85 L. Ed. 2d 1, or pulling alongside a fleeing motorist's car and shooting the motorist, cf. *Vaughan v. Cox*, 343

F.3d 1323, 1326-1327 (CA11 2003). So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did. . . .

[*385] But wait, says respondent: Couldn't the innocent public equally have been [***697] protected, and the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action--ramming respondent off the road--was *certain* to [**1779] eliminate the risk that respondent posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to respondent that the chase was off, and that he was free to go. Had respondent looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his

path. Cf. *Brower*, 489 U.S., at 594, 109 S. Ct. 1378, 103 L. Ed. 2d 628. Given such uncertainty, respondent might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow. . . .

Second, we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this [*386] invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: [HN8] [***LEdHR8] [8] A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the *Fourth Amendment*, even when it places the fleeing motorist at risk of serious injury or death. . . .

The car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others; no reasonable jury could conclude otherwise. Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. The Court of Appeals' judgment to the contrary is reversed.

It is so ordered. . . .

ATTACHMENT C

**AMERICAN POWERLIFTING ASSOC. (D in lower ct.) v. COTILLO (injured P/sports
contestant in lower ct.) (Ct. of Appeals of Md., 2007)
401 Md. 658, 934 A.2d 27; page 24 of text**

PROCEDURAL FACTS: P sued D for negligence, including a claim that D negligently trained its employees. D filed a motion for summary judgment, asserting assumption of risk. The lower court granted the motion for summary judgment. P appealed. The court of special appeals reversed the motion regarding the claim that the spotters were negligently trained. D appealed, asserting that P assumed the risk that the spotters would fail to protect him.

FACTS: P was an experienced, competitive powerlifter. At a competition at D, P used D's spotters. As D was executing a lift, he had trouble. Before the spotters could grab the bar, the bar came down and injured P.

ISSUE: Is P's claim that the spotters were negligently trained barred by P's assumption of risk when P was injured by a risk that was inherent in the sport in which he participated?

HOLDING: Yes. When P is injured by a risk that is inherent in the sport in which he participated, then P's claim regarding the negligent training of the sports organizer's employees is barred by P's assumption of the risk.

RATIONALE: Assumption of the risk completely bars recovery by a P because a P "who intentionally and voluntarily exposes himself to a known risk, effectively, consents to relieve the defendant of liability for those risks to which the plaintiff exposes himself." To prove assumption of the risk, D must prove: "(1) the plaintiff had knowledge of the risk of danger; (2) the plaintiff appreciated that risk; and (3) the plaintiff voluntarily confronted the risk of danger." First, an objective standard is applied to determine whether P had knowledge of or appreciated a risk; so, look at the nature of the activity and the obviousness of the risk. "Risks, that are inherent to a particular sport, are all foreseeable consequences of participating in that sport, and as they are obvious to a person of normal intelligence, voluntary participants in those sports assume those inherent risks." Here, P was an experienced, voluntary participant and the risks of a bar falling on a participant in a powerlifting competition are inherent and obvious. Second, participants assume the risk that other participants may be negligent, such as here, where the spotters may have been negligent (P assumed the risk that the spotters may have negligently failed to catch the bar). Finally, in evaluating assumption of the risk, look to the immediate cause of the injury to determine whether the risk is foreseeable. Here, the immediate cause of the injury was the bar falling on P. Thus, negligent training is irrelevant since P experienced the very type of injury that any person of normal intelligence would expect from P's actions (P could anticipate the bar falling and injuring him).

JUDGMENT: D was entitled to summary judgment; Court of Appeals reversed; remanded to lower court to affirm its judgment.

DICTA: None

OTHER: None