

Law: Error/Misstatement

Did the opinion rely on a material misstatement of or failure to acknowledge settled law, or an inapplicable legal principle? (“Material”: it’s reasonably likely the error(s) affected the result.)

Where a court “applies the wrong legal standard” to the facts, error occurs. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 [re abuse of trial court discretion]; *Cooter & Gell v. Hartmarx Corp.* (1990) 496 U.S. 384, 405 [110 S.Ct. 2447, 110 L.Ed.2d 359] [same, re ruling “based ... on an erroneous view of the law”]); *Schlup v. Delo* (1995) 513 U.S. 298, 333 [115 S.Ct. 851, 130 L.Ed.2d 808] (conc. opn. of O’Connor J.) [“a paradigmatic abuse of discretion”].) It’s no different for appellate courts, as they also must avoid “apply[ing] an incorrect legal standard” to the facts. (*Wade v. Terhune* (9th Cir.2000) 202 F.3d 1190, 1197.) And such an error can be far-reaching; for example, where “the state court’s legal error infects the fact-finding process, the resulting factual determination will be unreasonable” (*Taylor v. Maddox* (9th Cir. 2004) 366 F3 992, 1001.)

Of the types of legal error that may cloud an appellate opinion, relying on an inappropriate standard of review is particularly significant; after all, “[t]he standard of review is the lens through which the court will view the lower court’s rulings, and in many cases, it can control the outcome.” (Roussos, *How to Maximize Your Chances of Showing an Abuse of Discretion on Appeal* (The Daily Recorder, April 20, 2009); see, e.g., *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706 [Court of Appeal relied on incorrect standard of review in reversing trial court ruling; applying proper standard, Supreme Court upheld that ruling]; *Johnson v. California* (2005) 543 U.S. 499, 502, 505 [cert. granted to determine correct standard of review, because lower courts had applied wrong standard, case remanded].)