

****False Imprisonment:**

False imprisonment: A **total restraint** on the plaintiff's freedom that is **directly**, and **intentionally or negligently**, brought about by the **positive and voluntary act** of the defendant without lawful justification.

Elements of False Imprisonment:

- Defendant's **positive and voluntary act** (must have exercised free will, cannot be an omission or a reflexive action)
- That brings about **directly** (*see directness on earlier page*) and
- Either **intentionally or negligently** (caused the false imprisonment)
- The **total restraint of the plaintiff** (either physical or psychological)
- Without lawful excuse

**Trespass is actionable per se (the plaintiff doesn't have to show they suffered harm/injury from the trespass - the fact that they were totally restrained is all that is needed)

Total Restraint of the Plaintiff:

Bird v Jones:

For imprisonment to be established, there must be a "**total restraint of the liberty of the person in question**". There will be *no* imprisonment if a person "merely obstructs the passage of another in a particular direction", leaving the obstructed person "at liberty to stay where he is or to go in any other direction if he pleases". A prison, even a notional one must have a "boundary" beyond which the person imprisoned is "prevented from passing".

Physical restraint: Where there is no reasonable means of egress.

An alternate route or means of escape must be *reasonable*.

Burton v Davies: If a condition of escape is unreasonable, false imprisonment will be found.

- One factor is whether resorting to the alternate route will be dangerous (e.g. *Burton v Davies*).
- Another factor is how apparent or obvious the alternate route is.

McFadzean v CFMEU:

- If there is a reasonable means of egress, it is not pertinent whether the plaintiff makes use of it or not
- When there is a reasonable means of egress, hesitation to use it does *not* constitute false imprisonment
- Where there is no reasonable means of egress, hesitation to use it forms part of the false imprisonment
- The capacity to use outside means of assistance to get out (e.g. calling the police) is not a reasonable means of egress

Factors to be considered when determining whether a means of egress is reasonable (as per *McFadzean v CFMEU*):

- Threat or danger to oneself (or others)
- Threat or danger to one's own (or another's) property

- Legality (if your exit requires you to do something illegal such as commit a criminal trespass or break someone's property, this may render the exit unreasonable)
- Distance and time
- The physical health and fitness of the plaintiff
- The clothing and footwear of the plaintiff
- The terrain to be traversed
- The plaintiff's experience

Other factors to be considered:

- **Size of Area in which restraint occurs:** The size of area in which the restraint occurs does not seem to be pertinent (as per *SA v Lampard-Trevorrow*)
- **The Duration of the restraint:** There may be false imprisonment as long as there is total restraint, for "however short a time" (as per *Bird v Jones*).

Contractual cases: If a person enters into an area subject to contractual conditions, and is detained until those conditions are satisfied, is there false imprisonment?

➤ No - *Balmain New Ferry Co Ltd v Robertson*:

Robertson went out to the ferry. There was a notice saying anyone leaving or entering the wharf had to pay one penny, regardless of whether one travels by ferry or not. He missed the ferry and decided to try and leave. Was told by officers that he was not allowed to leave until he paid another penny. He claimed to be falsely imprisoned in the time that the officers restrained him. It was seen he was not totally restrained, as he had other options (to catch the ferry 20 minutes later, to pay the penny or to escape via the water). **There will not be a total deprivation of liberty in cases where fulfillment of a person's reasonable contractual obligations is a reasonable means of escape** (in this case paying the fare).

- No - *Herd v Weardale Steel Coke and Coal*: Herd was a coal miner, from 9.30am-4pm. There was a sign and legislation stating that miners were not entitled to be lifted to the surface until the end of their shift. At 11am, they decided it was unsafe and asked to leave, and they were not allowed. The supervisor said they were not entitled to be lifted to the surface. This was decided not to be false imprisonment, as the miners had entered into the contract where they essentially lose their liberty for a period of time. **A person who binds himself (by contract) to be held cannot bring an action of false imprisonment against the holder.**

**Criticism of these judgments: Individuals are not entitled to imprison others to force them to comply with the terms of their contract (or to punish the party in breach of the contract)

Psychological restraint: submission to the defendant's control. It does not require physical boundaries.

➤ **Must be a 'complete submission of will':**

Symes v Mahon: for psychological restraint to be established, there must be a **complete submission of will**. Because Mahon felt as though he had no choice

but to go to the police station (he did not go on his own volition), he was falsely imprisoned.

➤ **'Fear & Authority' constitute total restraint:**

Myer Stores v Soo: Total restraint does not need to be physical - fear and authority are sufficient to constitute total restraint. Mr. Soo was escorted to the back room for questioning by a security guard and 2 policemen. They interviewed him for an hour without a warrant before allowing him to leave (mistaken identity). Held to be false imprisonment.

When distinguishing consent and submission, the court might consider:

- The official capacity of the defendant (e.g. if the defendant was a police officer)
- The language used by the parties (e.g. asking for permission to go somewhere shows that you didn't think that you had free will to act)
- The behaviour of the parties (e.g. if the defendant sits there in fear and does not move)

Knowledge of Restraint: it does not matter whether the plaintiff was aware of any total restraint on his freedom of movement (as per *SA v Lampard-Trevorrow*).

SA v Lampard-Trevorrow:

- The plaintiff, who was a baby at the time he was taken from his parents, did not need to know that he was being restrained.
- Placing a child into foster care, who has the freedom of movement and the care and nurture of any other child, does not amount to false imprisonment.
- A person can be imprisoned while they are asleep, unconscious or in a state of drunkenness.

Directness of Restraint:

Coles Myer Ltd v Webster:

- The fact that the tort is committed by a principal's agent does not disrupt the element of directness in respect of the principal
- However, the principal must have caused and procured the unlawful detention (the agent must not have been acting on their own terms)

It was alleged that stolen credit cards were being used to purchase gift cards. The manager called police officers about 2 people using the scam. Police (the agent) didn't arrest them but kept them in a loading dock for an hour. It was later found that the store manager was simply getting back at the pair for previous mischievous actions (and had actively promoted the imprisonment). The court found directness to exist and Coles Myer (the employer) & the police officers were joint tortfeasors.

Answering False Imprisonment Questions:

- Who are the plaintiff & defendant?
- Where/ when does the possible false imprisonment(s) occur?
- Definition of false imprisonment
- Address every element -
 - Was there a positive and voluntary act? Who must do that act? What was the act and why does it meet those descriptions?
 - Was there the required interference with the P? – is a lack of physical boundary around P a problem? What case(s) should you

refer to?

- Was there 'Directness' between the D's act and the relevant interference with P's person? What does directness mean? What case(s) should you refer to?
- Is the necessary 'fault' present? What type of fault is there? Is that sufficient? What case says that is sufficient?
- Which party has the burden of proof for each of the above elements and why?
- Are there any defences?
- What remedies might be appropriate?