

## False Imprisonment

**Step 1 – Definition:** A **total restraint** of the Plaintiff that is **directly** and **intentionally or negligently** brought about by the **positive and voluntary** act of the defendant.

### Step 2 – Positive and voluntary act

Must have been PVA not omission – consider *Scott v Sheppard* for PVA and *Innes v Wiley* for omission.

### Step 3 – Directness.

This is where it ‘follows so immediately upon the act of the defendant that it may be termed part of the act’ (*Hutchins v Maughan*). There mustn’t have been an intervening cause as this would mean it was ‘merely consequential’ - show this

- Actively promoting detention- liable for FI (*Coles Myer v Webster*- manager fabricated story that led police to arrest)
- *Myer Stores Ltd v Soo*: ‘The act of imprisoning a person either personally or by an agent or being active in promoting and causing the imprisonment thereby is the proximate cause of the imprisonment’
- Was D’s actions alone sufficient to cause FI to P?
- Actions must be so closely connected/flow immediately after D’s PVA (*Southport v Esso*)

Any intervening acts? (must occur independently of PVA)

### Step 4 – Fault

- Fault requirement in Australia
  - Intention or negligence
  - The defendant must have intended, or have been careless with regard to, the outcome of their actions not just the actions themselves.
- Intention:
  - Actual intention
    - If no intention, no tort
  - Deemed/implied: so substantially certain to occur
- Burden of proof
  - In Australia, it is generally the case that the defendant must show that the trespassory act was neither intentional nor negligent (*McHale v Watson*).
  - However, with regard to highway accidents, the burden with regard to fault is on the plaintiff (*Venning v Chin*)

**Step 5 – Total restraint:** [plaintiff] must have been totally restrained by [defendant], more than just a partial obstruction, with a defined boundary (*Bird v Jackson*) – however short a time (*Bird v Jackson*)

- a) Nature of restraint
  - Physical (*McFadzean*) or psychological (*Symes v Mahon*)
  - If physical move onto ‘reasonableness of egress’
  - If psychological – move onto ‘peculiarities’
- b) Reasonableness of egress (*McFadzean v CFMEU*)
  1. Threat or danger to self

2. Threat or danger to property
  3. Illegality
  4. Distance and time
- If there is a reasonable means of egress, it does not matter if the victim doesn't use it, or hesitates about accessing it. The period of hesitation cannot be claimed as a period of FI

**Knowledge of restraint:** do not need to know of restraint (*Lampard-Trevorrow*- boy didn't know he was 'imprisoned')

- Lord Atkin: 'So a man might in fact... be imprisoned by having the key of a door turned against him... although he does not know that the key has been turned'
- Duration of restraint is irrelevant

**Peculiarities:**

- Contractual obligation- can surrender liberty under contractual agreement (*Balmain Ferry*- agreed he couldn't leave until he paid penny)
- Terms of work- if you agree to be detained for a certain time, it is not false imprisonment (*Herd v Weardale Steel Coke*- descended into mine)
- Psychological- can be psychological restraint if there is evidence of 'complete submission' to the control of the other party (*Symes v Mahon*- plaintiff believed he *had* to go with police officer)

**Step 6 – defences**

- **Consent:** Consent must be obtained from the party with legal authority to consent, and must extend to the specific act in question (**Marion's**)
- Self defence, defence of others,
- **Self defence:**
  - D believe it was necessary to do what he/she did in the circumstances (**Zecevic v DPP**)
  - D must have taken reasonable steps other than force initially. Eg: move away (**Fontin v katapodis**)
- **defence of property?**
  - Court less willing to find force is justified than in cases of protection of people
- Necessity
  - D needs to harm plaintiff to protect themselves, despite P being completely innocent
  - The Trespass was reasonably necessary to protect a person, goods or land from imminent danger (**Southwark London Borough Council v Williams**)
- Lawful arrest?
- Children cannot consent/age of consent is variable (Marion's case)
- Quote to use: 'This is because the focus on this civil wrong is on the vindication of liberty and reparation to the victim, rather than upon the presence or absence of moral wrongdoing on the part of the defendant' (Kirby J in *Ruddock v Taylor*)