

## Trespass to the person: False imprisonment

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

- A plaintiff that proves that their imprisonment was caused by the d therefore has a prima facie case. At cl, **defendant must then show lawful justification for their actions**
- **D has to disprove the fault element, prove that the trespassory act was neither intentional nor negligent** (*McHale v Watson*)
  - Exception to the general rule - highway cases (anything involving a motor vehicle accident) - the burden with regard to fault is on the **plaintiff** (*Venning v Chin*) - rationale is that going on highway accept that you are exposing self to risk of harm, accidents often happen without intention or negligence
  - Highway accident occurs when
    - There is a collision between vehicles on the highway;
    - There is a collision between a vehicle and a pedestrian on the highway;
    - A vehicle runs off a highway and damages property adjoining the highway; or
    - There is contact between goods being carried out of a property adjacent to a highway, and people using the highway.
- Must have **temporal connection between physical and fault elements** (**same time**) – e.g. once you do have the fault element (knows he's up o the roof) and don't help get off, its become an omission – no temporal connection

Elements:

- **Actionable per se – no harm required, only relevant for assessment of damages**
- **Voluntary act of D – willed and conscious control over own bodily actions (planned act)**
- **Positive act of D** (*Innes v Wylie*) – measures are taken, can't be an omission
  - If didn't do the thing that directly caused the restraint but don't let them out - omission
- **Fault** - The d must have intended, or have been careless with regard to, the outcome of his actions not just the actions themselves (*League Against Cruel Sports v Scott*)
  - Intentional - refers to the consequence/outcome - desire to bring about a result
    - The doctrine of substantial certainty: if a defendant acts in a certain way, and a reasonable person in the defendant's position would believe that a particular result was substantially certain to follow, he will be deemed to have intended that result.
    - *Aim, purpose, he knew, he intended, he meant to, he wanted to*
  - Negligent = careless, didn't think about the consequence that a reasonable person in their position would have thought about it, undertaking the relevant actions with less care than a reasonable person would have taken in the circumstances (*Williams v Miolotin*)
  - Recklessness - *foresee the probability of that result but you do it anyway, know that the outcome might ensue from the actions, but he goes on and undertakes those actions anyway - Foresaw the probability, disregarded/ oblivious to/ wilfully blind/ had no regard to*
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  - **An injury is direct when it follows so *immediately* upon the act of the defendant that it may be termed part of the act and there is no intervening cause - Herring CJ from *Salmond on Torts (Myer Stores Ltd v Soo)* - locking door directly brings about restraint**
  - **Part of d's act and not the consequence**
  - **Whether D's act, on its own, was sufficient to bring about the interference with P?**
  - There must not have been an intervening act, necessary for the occurrence of the tort
    - Intervening act
      - Human actions, including actions of the plaintiff himself (*Myers Stores Ltd v Soo*) (*Coles Meyer v Webster*)
      - Natural forces (*Southport Corporation v Esso Petroleum*)
      - Actions taken reflexively and in self-defence - Unlikely to be found to be intervening actions (*Scott v Shepherd*)
  - Directness and **agency**
    - *The fact that the tort is committed by a principal's agent does not disrupt the element of directness in respect of the principal (Dickinson v Waters)*
  - Directness and assault
    - An assault will be direct in the relevant sense if what is threatened is a direct act.
- **Total restraint (*Bird v Jones*)**
  - 'total restraint of the liberty of the person in question' (*Bird v Jones*)
  - A person must be prevented from leaving a place (*Bird v Jones*)
  - **Duration:** 'there may be false imprisonment as long as there is total restraint, for **'however short a time'**. (*Bird v Jones per Patterson J*)
  - **More than partial obstruction (*Patterson J, Bird v Jones*)**
  - Must have a **boundary (*Bird v Jones*)**
  - **Psychological (*Symes v Mahon*)** in cases where there has been no application of physical force, must have been "**complete submission**" by the p to the control of the d - higher standard than physical
  - **Physical (*McFadzean v CFMEU*)**- must be a **reasonable means of egress** for there not to be false imprisonment (*McFadzean v CFMEU*). 4 things to consider, **say ones P would argue and which ones D would.**
    - *Threat or danger to the self* - Varies with circumstances according to courts, depends on the facts. The threat need not be life threatening to be unreasonable.
    - *Threat or danger to property*
    - *Illegality* – (reasonable if requires you to climb over fence to someone's property)
    - *Distance and time* - Not much authority – depends on facts, unreasonableness means **more than mere inconvenience**, take into account the physical condition
  - **Restraint is attributable to maturity (*SA v Lampard-Trevorrow*)**
  - **Knowledge of restraint**
    - **Physical** - **don't need to be aware, can be imprisoned if asleep, drunk, unconscious (*Meering v Grahame-White Aviation*)**
    - **Psychological** - P **must be aware**, at least aware of surrounding circumstances such as they **would be willing to submit to d (*SA v Lampard-Trevorrow*)**
  - **Contractual cases (*Balmain New Ferry Co Ltd v Robertson & Herd v Weardale Steel Coke and Coal Co*)** - person who is **not permitted to leave an area until the conditions of his entry are satisfied will not** have a claim in false imprisonment. i.e. you can consent to be falsely imprisoned if you enter contract.

