

LEGAL ANALYSIS EXERCISE

Instructions

Please read the fact pattern and the case summaries below. For the purposes of this exercise you should assume that these cases are the *only* relevant law on the tort of false imprisonment.

As a first step, try to identify the relevant facts in Archie's case. Make a list of what you consider to be the relevant facts.

Then read the case summaries and extracts from secondary sources. As you read the case summaries, make a note of the main principle from each case. I suggest that you chart the facts and ratios of each case for comparison purposes (see sample chart p.7).

After you read the cases, try to fit the principles you have derived from them into one comprehensive and coherent statement of the law of false imprisonment (ie create a synthesis). Creating a synthesis requires you to compare cases, to recognize their similarities and differences, and to weave them together into a single picture of the law.

After you read the case summaries and create your synthesis, return to your list of relevant facts. Does it need to be revised? Did you include facts in your original list that you now consider irrelevant, based on your understanding of the law? Are there facts you should have included but didn't?

As a final step, write a short application of law to facts. Use your synthesis as a guideline or checklist of the points you will need to address. Predict the likely outcome should this case proceed to trial (predict liability, not remedy). For the purposes of this exercise you can assume, without explaining the law on point, that an injured minor may sue another minor.

Facts

Your client, Archie, is a frail, ten-year-old boy who is chronically ill. He has a bowel condition that flares up when he is under stress. Elisapee is a thirteen-year-old girl that Archie and others know to be a bully. She is large for her age and very aggressive, often name-calling and picking fights with younger children, as well as with those her own age. Elisapee hangs out with a group of older teens, some of whom have been charged with minor offences such as mischief and disturbing the peace. Two months ago Elisapee punched a classmate at the end of a basketball game in the school gymnasium, breaking the girl's nose. The victim was on the opposite team. She had prevented Elisapee from scoring what would have been the winning basket. No criminal charges were laid, nor did Elisapee's victim sue her for assault.

Three weeks ago Elisapee confronted Archie in mid-day, on a quiet side street in Victoria. Archie had just stepped off a bus and was walking to a church four blocks away where he was scheduled to play the piano at a gathering of senior citizens (an event organized by Archie's grandmother). Elisapee demanded that Archie put his nose against a nearby telephone pole. Knowing Elisapee's reputation as a bully, Archie immediately complied. Elisapee instructed Archie not to move until she gave him permission to do so. Once Archie's back was turned and he was standing nose to pole, Elisapee quietly walked away. At no point did Elisapee explicitly threaten Archie, touch him, or block his path, to prevent him from continuing down the street.

Archie remained with his nose pressed to pole for almost two hours. Then an adult passerby noticed him and stopped to ask what he was doing. Once Archie looked around and realized that Elisapee was gone, he ran back to the bus stop and caught a bus home.

Now, three weeks later, Archie is embarrassed that he complied so readily with Elisapee's demands. Not only is he disappointed that he missed his piano recital at the church, but he has been ridiculed as a "crybaby" by his classmates and shunned by younger and older children alike. Archie is having difficulty coping with the reaction of his peers. Archie's father tried to console Archie by explaining that the other children are probably taunting Archie out of fear that they too may become victims unless they endorse Elisapee's actions, thereby establishing themselves as part of the "tough" crowd. The emotional stress and the embarrassment of this event caused Archie's bowel condition to flare up. The flare up caused him to be hospitalized for four days. Archie's parents want to know if they can sue Elisapee for damages to compensate Archie for his stress and hospitalization.

General Background and Case Summaries - False Imprisonment

In law, the word "reasonable" usually indicates an objective standard (what would a reasonable person perceive), rather than a subjective standard (what did this person perceive).

Tort Law – General Introduction (from Osborne's *Law of Torts*, Irwin Law: 2000)

A tort is a civil injury or wrong. A civil wrong gives rise to a claim by the plaintiff against the defendant for compensation.

Tort law is about both conduct and consequences. It reflects an intuitive sense of fairness, that the defendant should be held liable only for loss caused by a wrongful act, not for loss caused by an accident or by an error of judgment or by bad luck. Tort law therefore classifies the conduct of the defendants in a way that permits a line to be drawn between wrongful and innocent conduct. In general, there are three concepts that define this line: intention, negligence and accident.

Conduct is intentional when the defendant desires its consequences. For example, the arsonist who sets fire to a building does so intentionally.

Conduct is negligent when the defendant creates a reasonably foreseeable and substantial risk of consequences. For example, the store owner who fails to mop up water that has spilled on the floor, causing a customer to slip, fall, and injure herself.

Conduct is accidental when the defendant neither desires its consequences nor creates a foreseeable and substantial risk of consequences. For example, the hunter who discharges a firearm in an unpopulated area and wounds a person whom he has no reason to believe was in the vicinity.

The nature of the defendant's conduct is a vital element of Canadian tort law. As a general rule, proof of intentional or negligent conduct is an essential component of tort liability. Generally there is no liability without fault.

Tort law cannot compensate everyone for all the losses generated by the intentional or negligent conduct of others. Tort law must therefore draw a line between compensable and non-compensable claims.

Bird v. Jones (1845), 115 E.R. 668 (Q.B.)

The defendants obstructed part of a public footway and carriage-way on a bridge over a river. They were using part of the footway as a viewing area for a rowing regatta. They erected a temporary fence to separate a portion of the footway, within which they provided seating for the event. The plaintiff was crossing the bridge. He insisted on walking along the particular part of the bridge fenced by the defendants. He climbed over the fence despite the defendants' attempts to prevent him from doing so. The defendants then stationed two policemen inside the fenced area, to prevent the plaintiff from proceeding along the footway in the direction he wished to go. The policemen told the plaintiff that if he wished to cross the bridge he would have to go back into the carriage-way and then walk along the footpath on the other side of the bridge (which was not obstructed). In other words, he was free to cross the bridge but he was not permitted to cross it within the fenced area. The plaintiff refused. He remained where he was (inside the fenced area) for about 30 minutes and then left. Subsequently he brought this action in which he claimed false imprisonment. In concluding there was no false imprisonment here, Coleridge J. emphasized that confinement may occur in various ways with the crucial point being restraint on the plaintiff's movement. He noted:

A prison may have its boundary large or narrow, visible and tangible, or, though real, still in the conception only; it may itself be movable or fixed; but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place within the ambit of which the party imprisoning would confine him...imprisonment is something more than the mere loss of [freedom]...it includes the notion of restraint within some limits defined by a will or power exterior to our own...

Justice Coleridge concluded that although the plaintiff was partially obstructed, he was at liberty to go in the other direction but chose not to do so. There can be no false imprisonment without complete restriction on the plaintiff's physical liberty.

Similarly, Justice Patteson wrote (at pp. 671-72):

I have no doubt that, in general, if one man compels another to stay in any given place against his will, he imprisons that other just as much as if he locked him up in a room: and I agree that it is not necessary, in order to constitute an imprisonment, that a man's person should be touched. I agree, also, that compelling a man to go in a given direction against his will may amount to imprisonment... But imprisonment is, as I apprehend, a total restraint of the liberty of the person, for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him.

In the same case, Williams J. wrote (at p. 670):

So, if a person should direct a constable to take another in custody, and that person should be told by the constable to go with him, and the orders are obeyed, and they walk together in the direction pointed out by the constable, that is, constructively, an imprisonment, though no actual violence be used. In such cases, however, though little may be said, much is meant and perfectly understood. The party addressed in the manner above supposed feels that he has no option, no more power of going in any but the one direction prescribed to him than if the constable or bailiff had actually hold of him; no return or deviation from the course prescribed is open to him. And it is that entire restraint upon his will which, I apprehend, constitutes the imprisonment.

Black's Law Dictionary, 6th ed., defines "imprisonment" as:

The detention of a person contrary to his will. ... The restraint of a person's personal liberty; coercion exercised upon a person to prevent the free exercise of his powers of locomotion. ...it may take place without the actual application of any physical agencies of restraint (such as locks or bars), as by verbal compulsion and the display of available force. Every confinement of the person is an 'imprisonment', whether it be in a prison, or in a private house, or even by forcibly detaining one in the public streets. Any unlawful exercise or show of force by which [sic] person is compelled to remain where he does not wish to be.

The Dictionary of Canadian Law defines "false imprisonment" as:

Intentional restraint of a person's liberty without lawful authority by preventing the person from leaving a place or actively confining them.

Chaytor v. Long, New York and Paris Association of Fashion Ltd. (1961), 30 D.L.R. (2d) 527 (Nfld. S.C.)

The plaintiffs, employees of a department store, entered the premises of the defendant, a competitor, for the purpose of "comparison shopping". This is a normal commercial practice that involves keeping a close watch on a competitor's goods and prices. The manager of the defendant store stopped the plaintiffs, calling them "spies". He summoned his store detectives to watch them while he called the police. He asked the police to arrest the plaintiffs as "suspicious characters". When the police officers arrived at the store they asked the plaintiffs to accompany them to the police station. The plaintiffs complied, both to avoid embarrassment and because they felt compelled to do so. They were detained in the police station for approximately 15 minutes before being allowed to leave, without any criminal charges being laid. The plaintiffs sued the store manager and his employer for false imprisonment.

In his judgment Dunfield J. referred to several cases in which there was no actual physical force exerted by store detectives against the customers they detained, but where courts nevertheless found false imprisonment on the basis of the customers' fear that physical force would be used if they did not accompany the store detectives voluntarily. Dunfield J. concluded that the psychological imprisonment in this case was sufficient to establish the tort of false imprisonment. Counsel for the defendant store owner argued that there was no false imprisonment because there was an exit stairway. The court dismissed this argument on the ground that it was not the usual exit known to everybody.

Lebrun v. High-Low Foods Ltd. (1968), 69 D.L.R. (2d) 433 (B.C.S.C.)

The plaintiff, a regular customer at High-Low Foods, began his shopping by placing a carton of cigarettes in his shopping basket. In the midst of shopping the plaintiff left the store and went to his car. He then came back into the store, and went through the check-out with his groceries. The cigarettes were not paid for nor were they anywhere to be found. The store manager reported the incident to a police officer, who stopped the plaintiff as he was about to drive out of the parking lot. The uniformed officer told the plaintiff to move his car to a given spot, inferred the plaintiff was a thief, and then searched the vehicle. The plaintiff consented to having his car searched in the belief that to refuse would lead to his arrest. The cigarettes were not found. The plaintiff claimed he put the cigarettes back on the shelf. The plaintiff was allowed to leave the scene and no criminal charges were laid. The plaintiff sued the store and the police officer for false imprisonment.

Citing the 1928 decision of Mr. Justice Martin in *Higgins v. Macdonald*, [1928] 4 D.L.R. 241 (B.C.C.A.), which in turn referred to the passages from *Bird v. Jones* (1845), 115 E.R. 668 (Q.B.) (as set out above), Mr. Justice Macfarlane (at p. 437 of *Lebrun*) concluded that it is not necessary for there to be actual physical force in making the arrest or in obliging the detained person to remain in one place. False imprisonment requires only a reasonable belief that attempting to leave could result in force being used against the detainee. Macfarlane J. concluded that the plaintiff had been falsely imprisoned; he then went on to consider whether the officer and the defendant store had a viable defence for their actions. Mr. Justice Macfarlane found that the police officer was acting on reasonable and probable grounds and was justified in stopping the plaintiff and searching his car. In contrast, the defendant store manager had a suspicion, but it was not based upon any facts that would create a reasonable suspicion in the mind of a reasonable person. The plaintiff was awarded \$250 damages against the defendant store.

Hanson v. Wayne's Café Ltd. (1990), 84 Sask. R. 220 (Q.B.)

The plaintiff, a waitress employed at the defendant's restaurant, placed a sample of her urine in a styrofoam cup that she obtained from the restaurant, put a lid on it, and placed it in a paper bag. She intended to use it for a pregnancy test. As she was leaving the restaurant, holding her coat over the bag, her employer stopped her and demanded to see what was being hidden. The plaintiff refused to show him. The defendant employer refused to let the plaintiff leave the restaurant by the front door and demanded that she sit down while he called the police. She refused. Suddenly, the plaintiff turned and ran through the restaurant and out the back door with the defendant in pursuit. She fell in the alley behind the restaurant, injuring her knee. The court dismissed her claim of false imprisonment, concluding that the tort only occurs where a person is totally restrained in movement by being prevented from leaving the place where that person is. The restraint must be total; if an alternate route is available, the action will fail.

Jeeves (Guardian ad litem) v. Swanson, [1995] B.C.J. No. 1211 (S.C.)

The adult plaintiff took a child's silver bracelet to the defendants' jewelry store for engraving. She left a second bracelet with the store as an example of what she wanted the engraving to look like. When the plaintiff returned to the store with her infant child to pick up the bracelet, the plaintiff was dissatisfied with the quality of the engraving. She insisted that the damage done to the bracelet be made right. The male defendant (store owner) admitted that the engraving was of poor quality. He asked the plaintiff to take the damaged bracelet and leave. As the plaintiff attempted to leave, the second defendant (female store owner) refused to allow her to do so unless she first paid for the engraving. That second defendant locked the door of the shop. The door was secured by a deadbolt knob that could be opened from the inside without a key. Neither defendant was standing guard so as to physically prevent the adult plaintiff and her child from leaving. The plaintiff thought that the second defendant had locked the door with a key; she didn't check it. She was not aware of any other exit from the store. The plaintiff remained in the store until the police arrived some 30 minutes later. No criminal charges were laid. In this action for false imprisonment the court accepted that the plaintiff reasonably felt restrained a result of the defendants' intentional conduct. She was therefore confined against her will. Damages of \$4,500 were awarded.

In his judgment, Mr. Justice Low *adopted the following passage from Linden's textbook, Canadian Tort Law, 5th ed. (1993) regarding the law of false imprisonment.*

Anyone who intentionally confines another person within fixed boundaries is liable for the tort of false imprisonment.

There can be no false imprisonment without a total confinement. The restraint must be complete within definite boundaries. It is insufficient to block another person's way if another route can be taken.

One can be imprisoned in a room, in an automobile, or in a boat set adrift on the water.

...

Restraint may be accomplished by direct force or by the threat of force to which the plaintiff submits. A plaintiff, who reasonably perceives that force may be employed is imprisoned if deciding to submit and not to risk violence. It will also be imprisonment if the plaintiff goes along with another, in a suspected shoplifting case for example, in order to avoid a "scene which would be embarrassing". This has been described as a type of psychological imprisonment, but it is as real as if one were physically overpowered. It is also possible to confine someone by retaining control of that person's valuable property, or perhaps even by holding hostage someone's child or a beloved pet. If, as a result of the defendant's intentional conduct, a person reasonably feels totally restrained, however that result is obtained, it amounts to an imprisonment and is actionable unless it is justified.

Then, at paragraph 18 of the judgment, Mr. Justice Low wrote:

I think that in describing this tort the word "imprisonment" simply means "confinement". It need not be the equivalent of placement in a gaol cell. The word "false" does not mean there must be some deception or misrepresentation of the facts. It simply means that the confinement must be unauthorized or legally wrong.

Kovacs v. Ontario Jockey Club (1995), 126 D.L.R. (4th) 576 (Ont. Gen. Div.)

The plaintiff was wrongly suspected of attempting to defraud a racetrack. While at the track he was asked to accompany two security officers to an interview room. One of the officers touched his arm while making that request. The plaintiff accompanied the officers and supplied identification when requested to do so. The officers then discovered they had made an error and the plaintiff was told that he was free to leave. The incident lasted between 20-30 minutes.

At p. 586 of the judgment Mr. Justice Cumming cited *Kendall v. Gambles Ltd.*, [1981] 4 W.W.R. 718 at 728 (Sask. Q.B.) as follows:

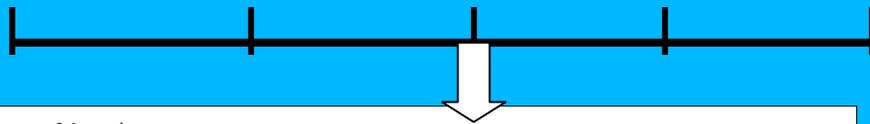
The plaintiff must prove three elements to establish the tort of false imprisonment. He or she must have been totally deprived of liberty; this deprivation must have been against his or her will; and it must be caused by the defendant. The onus then shifts to the defendant to justify the detention, based on legal authority under common law or statute.

Citing *Lebrun*, Cumming J. went on to conclude that actual physical force is not necessary to establish the tort. All that is required is a reasonable belief that an attempt to leave could result in force being used against the detainee.

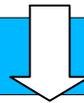
Cumming J. found that a person in the position of the plaintiff would reasonably conclude that he had no choice except to go with the security officers. Although there was no physical force, there was coercion in the sense of the impression that was given to the plaintiff that the officers had the authority to require him to accompany them. The presence of both officers in the security office during the interview, especially with one stationed behind the plaintiff, was a deterrent to any attempt to leave. There was no justification for the detainment. Damages of \$1,500 awarded to the plaintiff.

1. Synthesizing Cases

Case	#1	#2	#3	#4	#5
Important Facts					
Rule(s) of Law					



Synthesis: (Extrapolation of Law)



Application to Facts: