

3.20 FALSE IMPRISONMENT (FALSE ARREST) (Approved 6/89)

B. DEFENSE OR LEGAL AUTHORITY FOR CONFINEMENT

It is a complete defense, however, to a claim of false imprisonment if the defendant restrained or arrested the plaintiff with legal authority or justification. If the defendant was exercising his/her rights according to law then the imprisonment was justifiable. In this regard, defendant says that he/she was acting as he/she had a right to do, because he/she was *[making a citizen's arrest (go on to subsection C)] or [arresting plaintiff as a police officer, even though at that time, there was no warrant for plaintiff's arrest (go to subsection D)] or [arresting plaintiff for a disorderly person's offense/breach of the peace under a municipal ordinance (go on to subsection E)] or [taking plaintiff into custody for shoplifting (go on to subsection F)]*.

NOTE TO JUDGE

1. General Rule

The terms false imprisonment and false arrest are synonymous. They are different names for the same tort. *Price v. Phillips*, 90 N.J. Super. 480 (App. Div. 1966).

The gist of an action for false imprisonment is unlawful detention, without more. *Jorgensen v. Pennsylvania R.R.*, 38 N.J. Super. 317 (App. Div. 1955), *rev'd on other grounds*, 25 N.J. 541 (1958); *Pine v. Olzewski*, 112 N.J.L. 429 (E. & A. 1933); *Earl v. Winne*, 14 N.J. 119 (1953); *Cannon v. Kratowitch*, 54 N.J. Super. 93 (App. Div. 1959).

The malicious filing of a false complaint which causes the issuance of a warrant upon which one is arrested does not give rise to a cause of

action for false imprisonment. The action must be one for malicious prosecution. *Genito v. Rabinowitz*, 92 N.J. Super. 225 (App. Div. 1966).

The tort of false imprisonment has been defined to include the following elements [1 *Harper & James, The Law of Torts*, (3rd ed.) at 226]:

- (1) THERE MUST BE A DETENTION
 - (a) A Detention Is An Unlawful Restraint Of A Person's Liberty Or Freedom Of Movement. *Pine v. Olzewski*, 112 N.J.L. 429 (E.& A. 1933).
 - (b) The Detention Need Not Be Forcible. Threats of force by conduct or words coupled with the apparent ability to carry out such threats are sufficient. *Jorgensen v. Penn. R.R.*, *supra*; *Earl v. Winne*, *supra*.

In ordinary practice, words are sufficient to constitute an imprisonment, if they impose a restraint upon the person and the party is accordingly restrained: for he/she is not obliged to incur the risk of personal violence and insult by resisting until actual violence is used.

Where no force is used, submission must be by reason of an apprehension of force or other unlawful means, mere moral persuasion not being sufficient. 1 *Harper & James, The Law of Torts*, (3rd ed.) at 227; *Prosser on Torts*, (3rd ed.) at 57.

- (c) The Detention Must Be Total, *i.e.*, It Must Be Within Boundaries.

The restraint must be a total one rather than a mere obstruction of the right to go where the plaintiff pleases. Thus, it is not imprisonment to block the plaintiff's passage in one direction only or to shut him/her in a room with a reasonable exit open. *Prosser on Tort*, (3rd ed.) at 54.

Imprisonment is something more than a mere loss of freedom to go where one pleases; it includes the notion of restraint within some limits defined by a will or power exterior to our own. Accordingly, although there are cases to the contrary, the most authoritative modern view is that the plaintiff must be completely confined and any reasonable means of egress known to him/her will prevent an imprisonment. 1 *Harper & James, The Law of Torts*, (3rd ed.) at 227. See also, *Pine v. Olzewski, supra*.

- (d) The Detention Must Be For An Appreciable Time, However Short.

The actual amount of time required to establish that a detention is unlawful has not been decided by our courts. In *Pine v. Olzewski, supra*, our former Court of Errors and Appeals said that a false imprisonment is any restraint of the personal liberty of another; any prevention of his/her movement from place to place. 1 *Harper & James, The Law of Torts*, (3rd ed.) at 226 defines the requirement of time as "any appreciable time, however short."

Prosser on Torts, (3rd ed.) at 55, says that the tort is complete with even a brief restraint of the plaintiff's freedom.

In *Cannon v. Kratowitch, supra*, the Attorney General filed a brief on how long a suspected person may be detained by police authorities in order to investigate

whether he/she actually committed a crime. Although the Court found it unnecessary to make a determination of this issue, the authorities referred to in the brief are stated in the opinion at p. 100.

(2) THE DETENTION MUST BE UNLAWFUL

A detainer pursuant to lawful authority or legal justification cannot support a false imprisonment action. *Genito v. Rabinowitz*, 93 N.J. Super. 225 (App. Div. 1966); *Cannon v. Kratowitch*, *supra*; *Jorgensen v. Penn. R.R.*, *supra*; *Earl v. Winne*, *supra*; *Lakutis v. Greenwood*, 9 N.J. 101 (1952); *Pine v. Olzewski*, *supra*; *Collins v. Cody*, 95 N.J.L. 65 (Sup. Ct. 1920); *Shaefer v. Smith*, 92 N.J.L. 267 (Sup. Ct. 1919).

(3) THE ACT OF THE DEFENDANT IN CONFINING THE PLAINTIFF MUST HAVE BEEN DONE WITH THE INTENTION OF CAUSING A CONFINEMENT

The purely accidental confinement, without the intent to confine is not a false imprisonment; nor is a confinement due to the negligence of the defendant a false imprisonment. *Price v. Phillips*, *supra*.

But a mistake in identity is not a defense. his/her intention to confine another person will make him/her liable to the person actually confined although there is no desire or intent on the part of the defendant to harm the plaintiff. 1 *Harper & James, The Law of Torts*, (3rd ed.) at 228.

Although intent to confine the individual is necessary it need not be with knowledge of who he/she is; and, as in the case of other intentional interferences with person or property, an innocent and quite reasonable mistake as to his/her identity will not avoid liability. There may be liability although the defendant believed in good faith that the arrest was justified or that he/she was acting for

the plaintiff's own good. *Prosser on Torts*, (3rd ed.) at 61.

- (4) THE DETENTION MUST HAVE BEEN AGAINST THE PLAINTIFF'S WILL. *Earl v. Winne, supra; Hebrew v. Pulis*, 73 N.J.L. 621 (E. & A. 1906).

If the plaintiff agreed of his/her own free will to surrender his/her freedom of motion or personal liberty, it is no false imprisonment. *Pine v. Olzewski, supra*.

The plaintiff may submit to the confinement without resistance and if the submission is not voluntary, there is an imprisonment. *Hebrew v. Pulis, supra*.

2. Malice Is Not An Ingredient In The Tort Of False Arrest

Prosser On Torts, (3rd ed.) at 61 says "although intent is necessary, malice in the sense of ill will or a desire to injure is not. There may be liability although the defendant believed in good faith that the arrest was justified or that he/she was acting for the plaintiff's own good. Nor is probable cause a defense except insofar as it may serve to validate the arrest itself or to justify a defense of person or property."

1 *Harper & James, The Law of Torts*, (3rd ed.) at 228 says: "Malice or ill will or bad motive, however is unnecessary."

In actions for false imprisonment malice is not an essential element of the right of action, as in malicious prosecution. *Baldwin v. Point Pleasant Beach and Surf Club*, 3 N.J. Super. 284 (Law Div. 1949); *Altana v. McCabe*, 132 N.J.L. 12 (Sup. Ct. 1944).