

Pearson CPT

Objective memo to Mary Hamline

1. False imprisonment claim – elements?
2. Likelihood of win
3. Π's injuries compensable?
 - a. Punitive damages likely?
4. Δ store's defenses
 - a. Likelihood of merit?

F1 transcript with Π

F2 shoplifter contractual release form

F3 phone convo with Π's psychiatrist

L1 shoplifting statute

- A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive that person of such goods by: removing any of the goods without paying the purchase price
- B. Any person who knowingly conceals unpurchased merchandise presume to have necessary culpable mental state
- C. SKD
- D. Reasonable cause is a defense

L2 Smitty's (Columbia COA 1998)

- FI elements (R.2d Torts § 35)
 - An actor is subject to liability for FI for wrongful confinement of another if 1) he acts intending to confine the other or a 3P within boundaries fixed by the actor, 2) his act directly/indirectly results in such a confinement of the other, and 3) the other is conscious of the confinement or is harmed by it
- Injuries
 - Π may not recover for NIED unless phys injury
 - FI does not require phys injury
 - Entitle to compensation for loss of time, phys discomfort or inconvenience, and for any resulting physical illness or injury
 - Entitled to damages for mental suffering, humiliation or the like
- Confining an indirect target does not relieve actor of liability
 - Son necessarily confined because defendant intended to confine mom – entitled to compensation
- Shopkeeper defense: A merchant may detain a suspected shoplifter without incurring liability if the storekeeper has reasonable cause to believe that the person shoplifted and if the detention is performed in a reasonable manner for a reasonable length of time (CPC 13-1 C, D)

- Reasonable cause not dependent on actual guilt
- A merchant does not have immunity to detain a companion of a suspected shoplifter unless the store has reasonable cause to believe the companion was involved in the illegal activity

L3 Gaspard (Columbia COA 2001)

- Waivers
 - A release surrenders legal rights or obligations between the parties to an agreement. a release is a complete bar to any later action based on matters covered by the release
 - A signed release contains a strong presumption of enforceability. To presume otherwise would throw into doubt the validity of every settlement and create strong disincentives for parties to settle
 - This presumptive evidence of release shifts the burden to signing party to directly attack the release or establish a fact issue in avoidance of it
 - Ambiguity
 - Here, express inclusion of claims was unambiguous
 - Duress: Was the threat so overbearing that the victim had no reasonable alternative? If assent is induced by such a threat, K is voidable by V. 3 elements:
 - 1) Promise made in response to threat
 - 2) Severity of threat
 - 3) Improper threat
 - Improper threat
 - Crime/tort
 - By crim prosecution
 - By civil process, in bad faith, or
 - Breach of duty of GF and fair dealing
 - Economic duress (Gaspard, Peterson)

L4 Peterson (Columbia COA 1979)

- Punitive damages are recoverable for FI when Π proves, by clear and convincing evidence, that Δ has been guilty of oppression, fraud or malice
 - Malice: Conduct which is intended by Δ to cause injury to Π or despicable conduct carried on by Δ with a willful and conscious disregard of the rights or safety of others
 - Oppression: Despicable conduct that subjects to a person cruel and unjust hardship in conscious disregard of that person's rights
 - Fraud: Intentional misrepresentation, deceit, or concealment of a material fact known to Δ with the intention on Δ depriving a person of property or legal rights or otherwise causing injury
- Even if some force used to detain Π, it doesn't mean there was sufficient evidence of oppression, fraud or malice to warrant punitive damages (Beau)

A signed promise by Π to refrain from suit is entitled to a strong presumption of enforceability (Peterson, Gaspard)

L5 Rafton (Columbia COA 1985)

- Common law FI is defined as an unlawful restraint of an individual's personal liberty or freedom of locomotion. There must be actual or legal intent to restraint
 - Confinement ways
 - 1) Actual or apparent physical barriers
 - 2) Overpowering physical force, or by submission to physical force
 - 3) Threats of physical force
 - 4) Other duress
 - 5) Asserted legal authority
 - Against Π's will – voluntary consent means no FI – moral pressure (Π remains with Δ to clear himself of suspicion of theft) is not enough
 - Words, acts or both. Actual force unnecessary to bring FI
- Here, Π voluntarily accompanied Δ's employees to the room, to protect her reputation. She was never threatened with loss of her job, nor was she in fear of her safety. She was at no time prevented from exiting.

ANSWER

To: Mary Hamline

From: Applicant

Date: Sun 7/6/2014

Re: Pearson v. Savings Galore

The following contains the analysis requested regarding our client's false imprisonment claim against the defendant.

Issues Presented

- I. What constitutes false imprisonment, and what is our likelihood of prevailing on the merits of the FI claim?
- II. Are Pearson's injuries compensable, and how likely are punitive damages?
- III. Does Δ have any defenses, and how likely is it that it would prevail on each defense?

I. Elements of False Imprisonment

An actor is subject to liability for FI for wrongful confinement of another if 1) he acts intending to confine the other or a 3P within boundaries fixed by the actor, 2) his act directly/indirectly results in such a confinement of the other, and 3) the other is conscious of the confinement or is harmed by it. R.2d Torts § 35, as cited by Smitty's. Common law FI is defined as an unlawful restraint of an individual's personal liberty or freedom of locomotion. There must be actual or legal intent to restraint. Rafton.

1. Intent to confine another

There must be a requisite intent by the defendant to confine our client for false imprisonment to be made out. The detective came out and stopped Pearson and Jeff. After Jeff took off, the

detective herded Pearson back to the store, like a dog herding sheep. It did not seem like an option for Pearson to walk away because he felt she could probably tackle him. She took Pearson to an office in the back and brought two security staff members. Thus, there was an intent to confine Pearson by the store.

2. Boundaries fixed by the actor

The store detective took Pearson to a room without windows. The door was closed. The store might argue that the door was not locked. However, Rafton mentions actual or apparent physical barriers. To Pearson, it sounded like they locked the door, although he did not try to open it. There was also a guard standing right behind the door. Thus, it is likely that there were both actual and apparent physical barriers with no reasonable means of escape.

3. Act resulted in actual confinement

There is no false imprisonment if II has voluntarily consented. Rafton. Moral pressure (II remains with Δ to clear himself of suspicion of theft) is also not enough for confinement. Here, Pearson wanted to clear his name somehow. He produced ID to show his college because Pearson figured it was better if they knew who he was. It could be said that Pearson felt some moral pressure, which would mean there wasn't enough coercion for confinement.

On the other hand, there was no voluntary consent. The detective herded Pearson into the back room and brought two security guards. The act of the detective resulted in Pearson being inside the room, in confinement. Pearson "didn't really see any choice" but to be there and show them his ID. He repeated a mantra where he weakly asserted that they had no right to keep him there. Thus, there was no voluntary consent on Pearson's part that would negate the store's confinement.

Actual force is unnecessary—unlawful restraint may be effected by words alone, acts alone or both. Pearson was told he was "in big trouble" by the detective. She looked like a big, strong football player. She picked up the bags and herded him in, where she told Pearson if he gave Jeff's name up, she'd let him go.

Based on these acts and words, a person in Pearson's position would have felt restrained. Therefore, it is likely that Pearson was in actual confinement.

4. Conscious of confinement + harm

Pearson was aware of the confinement. He heard the door lock and got scared and anxious. He later suffered harm, likely as a result of his experience. The phone conversation with Dr. Romeo shows that Pearson was suffering from low energy, low motivation, sleep disorder, loss of concentration, tearfulness and loss of general interest. Romeo is reasonably confident that Pearson is suffering from posttraumatic stress as a result of a traumatic event at the store. Thus, Pearson was aware of the confinement, and harm came about as a result.

Based on the store employees' intent to confine Pearson in a bounded area, and Pearson's actual confinement and harm, it is likely that Pearson will be able to establish and prevail the claims of false imprisonment.

Process:

Note out requirements and non-requirements from instructions

Note facts from instructions

Start outline with headings

Skim the file for story

Pull out the law

Fill in outline with law

Read the file carefully

Fill in relevant facts in outline

Fill in brief case facts in outline

Factually analogize favorable cases / distinguish unfavorable cases