

# False Imprisonment: The Misunderstood Tort

By Matthew P. Macleod, JD

The term *false imprisonment* means different things to different people. The phrase has permeated through both pop culture and the legal community for the past half century. In cinema, we all remember Captain Virgil Hilt's escape from a German POW camp in *The Great Escape* and Andy Dufresne's escape from prison in *The Shawshank Redemption*. In the criminal defense world, the notion of the "falsely imprisoned" is at the center of criminal appellate work and organizations such as the Justice Project have had rousing success in freeing many on the grounds of DNA testing.

However, in the tort world, the term false imprisonment means something much more than the context in which it is so often associated. It is not merely the situation in which the accused is wrongfully convicted and subsequently imprisoned. The tort of false imprisonment occurs every day throughout all aspects of life. It is often misunderstood and accordingly ignored. As a result, this tort, unfortunately, is not given nearly the notoriety it deserves.

## The Meaning of False Imprisonment

False imprisonment is an intentional tort against a person. As with any inten-

tional tort, the plaintiff must establish 1) the action/event, 2) intention, 3) causation, and 4) damages. The most common defense to an intentional tort against a person is consent. In the realm of intentional torts, false imprisonment is often overshadowed by the classic, well-known intentional torts of assault and battery. As a consequence, perpetrators of a false imprisonment tort are often exempt from civil liability and the victims are robbed of the justice that they deserve. This article discusses the elements of a false imprisonment tort and provides a snapshot of its place in today's tort world.

The *Restatement Second of Torts* outlines the elements of a false imprisonment tort:

An actor is subject to liability to another for false imprisonment if (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it.<sup>1</sup>

Confinement permeates the definition of false imprisonment and generates the most debate and uncertainty in its meaning. Therefore, in order to determine if

false imprisonment has occurred, you must have a good understanding of the term *confinement*.

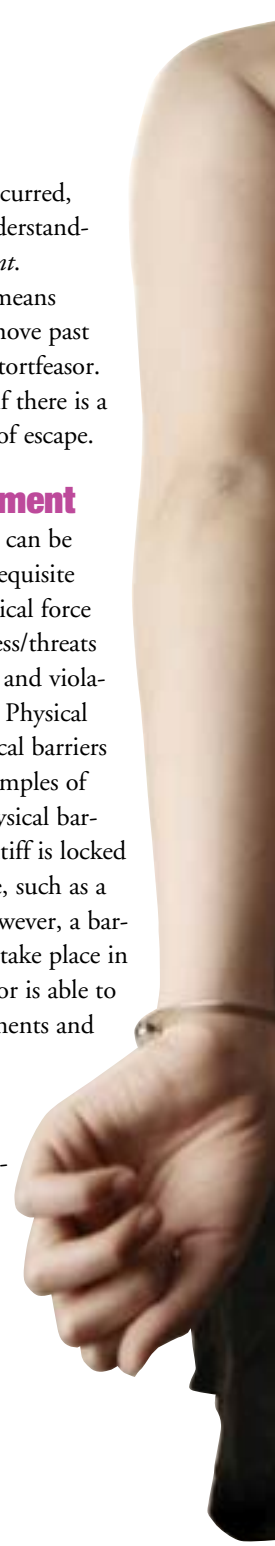
Simply, confinement means that the plaintiff cannot move past the boundaries set by the tortfeasor. There is no confinement if there is a known reasonable means of escape.

## Forms of Confinement

Forms of confinement can be diverse. Examples of the requisite confinement include physical force and physical barriers, duress/threats of force, failure to release, and violative use of legal authority. Physical force and the use of physical barriers are the most common examples of confinement. Use of a physical barrier occurs when the plaintiff is locked in a room or a small space, such as a bedroom or an office. However, a barrier confinement can also take place in open spaces if the tortfeasor is able to limit the plaintiff's movements and method of escape.

## Physical Force

Confinement by physical force is exerted when the tortfeasor physically





grabs or holds the plaintiff and prevents a means of escape. In fact, the physical prowess of the tortfeasor and the plaintiff may be considered when determining whether the necessary physical force was exerted. Physical force may also include

taking the plaintiff's property, which prevents him from leaving a specific area—such as hiding a person's car keys.

Duress and threats of physical force can also fulfill the confinement requisite. Mere threats of physical force are sufficient and the actual act of force is not mandatory. These types of cases involve factual scenarios in which the plaintiff is explicitly told that an attempt to leave a specified area will be met with physical force or restraint, or the tortfeasor makes an inference that an attempt to leave will be met with force. When a threat is used as the support for confinement, the plaintiff must show that there is reason to believe the threat can be delivered or initiated. As with the criminal defense of duress, there must also be a level of immediacy.

### Failure to Release

The act of failing to release a plaintiff also rises to the necessary level of confinement, and is similar to scenarios previously discussed. Failure to release occurs when the tortfeasor breaches a duty and fails to release the plaintiff from some type of confinement. The most common example of this tort is imprisonment. As an example: A woman pled guilty and was sentenced to prison for 2.5 years on a narcotic drug violation. The State crime lab realized a month after her sentencing that the drugs in question were synthetic—thus not illegal. The State sought to dismiss the case and release the woman from prison; however, that message was never relayed to the proper authorities in the prison, and the woman fulfilled the entirety of her term. While this case demonstrates the most blatant form of failure to release from confinement, it contains many factors that must be considered when examining this form of confinement—specifically the relationship between the parties.

Finally, confinement can occur when the tortfeasor illegally asserts a valid authority. This type of confinement can occur when the tortfeasor misrepresents his ability to effectuate

an arrest by portraying himself as a police officer. Even if no physical force or restraint is exerted, confinement occurs if the plaintiff submits to the alleged authority. This is a rare situation, but would fulfill the elements of confinement.

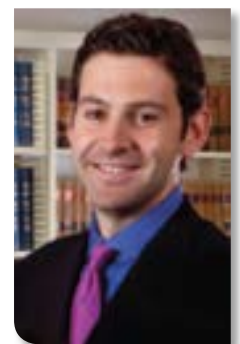
### Conclusion

The tort of false imprisonment occurs in a variety of forms and is often unrecognized. Use of this tort is expanding and plaintiffs are more frequently asserting it in claims relating to a variety of factual scenarios. The tort is also more frequently raised in situations where the tortfeasor eliminates the plaintiff's ability to make independent decisions, like a brainwashing claim. As with any legal theory, the tort of false imprisonment carries with it a plethora of gray areas.

Creative plaintiffs' attorneys are more frequently making claims for their clients under this tort, and likewise, creative defense attorneys are asserting numerous exceptions to this tort claim. One thing is certain, when a valid false imprisonment situation occurs the plaintiff sustains a variety of damages and should be adequately compensated. The measure of these damages and thus how much the claims are worth and whether insurance policies cover an intentional tort are, unfortunately, the subject of another discussion.

<sup>1</sup> *Restatement Second of Torts* § 35 (1965)

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