Lee Burgess: Welcome back to the Law School Toolbox podcast. Today we have another in our "Listen and Learn" series – this one is on false imprisonment and the shopkeeper's privilege. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolbox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Today we will be discussing torts – specifically, the intentional tort of false imprisonment and the associated defense – shopkeeper's privilege.

Lee Burgess: Let's start with a bird's eye view. As you probably already know, there are seven intentional torts – battery, assault, false imprisonment, intentional infliction of emotional distress, conversion, trespass to land, and trespass to chattels. What makes each of these an intentional tort is that they all require the element of intent. If a plaintiff can prove a prima facie case of one of these intentional torts, the defendant can then raise a defense or privilege, like consent, self-defense, or shopkeeper's privilege to try and negate their liability.

Lee Burgess: Today we will focus on false imprisonment and shopkeeper's privilege. We will start the discussion with false imprisonment, because the plaintiff needs to establish a prima facie case of the intentional tort before the defendant can raise any defenses. False imprisonment is defined as an intentional act of restraint that causes a person's confinement within a bounded area. Simply put, when a defendant intentionally confines a plaintiff, you have a potential case of false imprisonment. As with any intentional tort, this can be broken down into elements, and false imprisonment has three: (1) the defendant must have the intent to confine; (2) the defendant must restrain the plaintiff to fixed boundaries; and (3) the plaintiff must either be conscious of the confinement or harmed by it. So let's examine each of these elements one by one.

Lee Burgess: The first element is that the defendant must have the intent to confine. There are a few ways to prove intent to confine. If the defendant acts with purpose to confine the plaintiff, meaning it was the defendant's desired outcome that the plaintiff be confined, they will have the requisite intent. Similarly, if the defendant acts with the knowledge to a substantial certainty that the plaintiff will be confined by the defendant's actions, they will have the requisite intent. The doctrine of transferred intent also applies to false imprisonment. This

doctrine has two applications – it can transfer between persons or between torts. For person-to-person transfer, if the defendant intends to confine person A but actually confines person B, then the defendant's intent transfers to B. For tort-to-tort transfer, if the defendant intends a battery against someone but instead causes a false imprisonment, the requisite intent transfers to satisfy the intent element for false imprisonment.

Lee Burgess: The second element is that the defendant must restrain the plaintiff within fixed boundaries. This element has several important components to understand. First, what counts as restraint? Physical force clearly constitutes valid restraint – for example, if someone physically prevents another person from moving. But restraint can also occur through verbal threats. If someone says, "If you leave this room, I'll hurt your family" – that verbal threat can satisfy the restraint requirement, even without physical contact.

Lee Burgess: Regarding fixed boundaries, this refers to the area of confinement. While the confined area can be substantial in size, it generally cannot be as large as an entire country or state. For example, if plaintiff told they must stay within Canada would likely not succeed with a false imprisonment claim, because the boundary is too large to prove there was no reasonable means of safe escape. If a plaintiff can reasonably escape the area, they were not placed in a fixed boundary. Additionally, merely preventing someone from taking their preferred route or entering a desired location does not constitute a fixed boundary. Additionally, there is no minimum duration requirement for this element. The plaintiff could be restrained for seconds, hours, or days. Any period of confinement can potentially satisfy this element.

Lee Burgess: So, let's go through some examples to help clarify what constitutes being restrained within a fixed boundary. Imagine this: Alexander is driving along his typical path to work when he comes upon a detour sign that forces him to go down a different road, which adds 15 minutes to his commute. Was Alexander restrained within fixed boundaries? The answer is "no". He was prevented from taking his desired route, but that does not constitute confinement within fixed boundaries.

Lee Burgess: Consider another scenario: Erica is obsessed with Mitch, so much so that she locks him in her home and will not let him out. On the first floor of the four-story home, Mitch finds an open window, but does not jump out. Was Mitch restrained within fixed boundaries? Again, the answer is "no". Although the four-story home is a defined space that could satisfy the fixed boundary requirement, the existence of a reasonable means of escape – the first floor window – negates this element. However, if the window had been on the third

floor instead, the outcome would change, because jumping from that height would not constitute a reasonable means of escape.

Lee Burgess: The third element of false imprisonment is that the plaintiff must be conscious of the confinement or harmed by it. Note the "or" in this statement – only one of these conditions needs to be met, though both can occur. Regarding "conscious of the confinement", consider this situation: A is asleep in her room. B locks the bedroom door from the outside. Before A wakes up, B unlocks the door. Later that day, B tells A what happened. Was A conscious of her confinement? No. To satisfy this requirement, the plaintiff must be aware of the confinement while it is occurring, not just learn about it afterward. As for the "harmed by it" requirement, according to bar exam standards, this typically refers to physical harm. Under the traditional approach tested on bar exams, economic property or mental harm alone would generally not satisfy this element.

Lee Burgess: To summarize, a claim of false imprisonment requires proof that, (1) the defendant had the intent to confine; (2) the defendant restrained the plaintiff to fixed boundaries; and (3) the plaintiff was either conscious of the confinement or physically harmed by it. Now let's test your understanding with a couple of hypotheticals. This first hypothetical is adapted from the July 2010 California bar exam:

Lee Burgess: "Burglar used a handgun in an attack on Patron in the parking lot of a movie theater. During the attack, Burglar approached Patron and demanded that she hand over her purse. Patron refused. Burglar drew the handgun, pointed it at Patron and yelled, 'Don't move! You made me mad, so now I'm going to shoot you!' Patron was paralyzed in fear and was unable to move for just long enough for Burglar to grab the purse and run away. Can Patron bring a valid false imprisonment claim against Burglar?"

Lee Burgess: Let's analyze each element and discuss. For the first element, Burglar did have an intent to confine Patron by pointing a gun at her and commanding, "Don't move!" Burglar purposefully intended to restrict Patron's movement. Moving to the second element, Burglar did restrain Patron to fixed boundaries. The restraint occurred through the verbal threat backed by the deadly weapon, not through physical contact. Although Patron was in an open parking lot, rather than an enclosed space, she was effectively confined to her spot because there was no reasonable means of escape. Attempting to flee could result in being shot. Even though the restraint lasted only briefly, there is no minimum duration requirement for false imprisonment.

Lee Burgess: Regarding the third element, Patron was certainly conscious of her confinement. She was aware that she could not move because of the gun pointed at her. While she was not physically harmed by the confinement itself, consciousness of the confinement is sufficient to satisfy this element. Since all three elements are met, Patron would be able to bring a false imprisonment claim against Burglar.

Lee Burgess: Let's examine one more hypothetical, adapted from the July 2006 California bar exam:

Lee Burgess: "After paying for his gasoline at Delta Gas, Paul decided to buy two 75-cent candy bars. The Delta Gas store clerk, Gary, was talking on the telephone, so Paul tossed $1.50 on the counter, pocketed the candy, and headed out. Gary saw Paul pocket the candy and had not seen Paul toss down the money. Gary yelled, 'Come back here, thief!' Paul said, 'I paid, look on the counter.' Gary replied, 'I've got your license number and I'm going to call the cops.' Paul stopped. He did not want trouble with the police. Gary told Paul to follow him to the back room and to wait for Mark, the store manager, and Paul complied. Gary closed and locked the only door to the windowless back room. Paul was in the room for 25 minutes before Mark came in. Can Paul raise a valid prima facie case against Gary for false imprisonment?"

Lee Burgess: Now, I'm going to pause here for a moment and let you think about this question on your own. You can also pause this episode and do a little work on this question, and then come back and we can talk about the elements.

Lee Burgess: Okay, are you back? Now let's analyze the elements. Did Gary have the intent to confine Paul? Yes. Gary purposefully placed Paul in a locked windowless room, clearly intending to confine him while waiting for the manager. Did Gary restrain Paul within fixed boundaries? Yes. Paul was physically restrained because he was in a windowless room with the only door locked, leaving him with no means of escape. The room certainly constitutes a fixed boundary. Was Paul conscious of his confinement or harmed by it? Yes. There are no facts indicating physical harm, but Paul was certainly aware of his confinement in the locked room. With all three elements satisfied, Paul could raise a valid prima facie case against Gary for false imprisonment.

Lee Burgess: Now that we understand false imprisonment, let's discuss the shopkeeper's privilege defense. This defense can potentially negate liability for false imprisonment when a shopkeeper detains someone suspected of shoplifting. To successfully assert this defense, a defendant must prove three elements: (1) the

defendant had reasonable grounds to believe shoplifting occurred; (2) the defendant detained the plaintiff only for a reasonable period and for investigative purposes; (3) the detention itself was reasonable, generally meaning without excessive force or physical restraint.

Lee Burgess: So, let's apply these elements to our second hypothetical with Paul and Gary. First, did Gary have reasonable grounds to believe shoplifting occurred? While Gary did see Paul pocket the candy bars without immediately observing payment, his belief became unreasonable once Paul told him to check the counter for money. A reasonable investigation would've involved simply looking at the counter, which Gary apparently did not do.

Lee Burgess: Second, was Paul detained for a reasonable period and for investigative purposes? The 25-minute detention was likely excessive, given that verifying payment would've taken less than a minute. The detention seems to have extended well beyond what was necessary for a reasonable investigation under these circumstances.

Lee Burgess: Third, was the detention itself reasonable? In terms of methods used, no physical force was employed against Paul, suggesting this aspect of the detention was reasonable. Since Gary satisfies only the third element of shopkeeper's privilege – reasonable means of detention, but fails to satisfy the first two elements, he cannot successfully assert this defense to negate his liability for false imprisonment.

Lee Burgess: To recap what we've learned, false imprisonment has three elements: intent to confine, restraint within fixed boundaries, and the plaintiff's consciousness of or harm from the confinement. If these elements are established, the defendant may be liable unless they can raise a valid defense.

Lee Burgess: Shopkeeper's privilege is a defense specific to false imprisonment in retail context. It also has three elements: reasonable grounds to suspect shoplifting, detention for a reasonable period for investigative purposes, and reasonable methods of detention. All three elements must be satisfied for the defense to succeed.

Lee Burgess: Alright, we're out of time for today. Thank you for joining me as we discussed false imprisonment and the shopkeeper's privilege. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments,

please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

"Listen and Learn" series
California Bar Examination – Essay Questions and Selected Answers, July 2010
California Bar Examination – Essay Questions and Selected Answers, July 2006