

For each intentional tort, be sure to discuss in your analysis the following:

1. D's ACT

2. D's INTENT

3. D's CAUSATION of P's harm

4. P's DAMAGES

5. D's DEFENSES

1. Paul v. Clerk - Tort Claims

(Torts tend to have multiple defendants. Thus, be sure to specify who is the plaintiff and who is the defendant for each call of the question.)

A. False imprisonment

In order for Paul to maintain a false imprisonment claim, he must show that 1) ~~an~~ D's act that 2) confines or restrains P 2) in a bounded area occurred. The D must have 3) intent to confine the P and P must show 4) causation. 5) Additionally, the P must know that he was confined at the time or was harmed by the confinement.

### 1. DEFENDANT'S ACT TO RESTRAIN P

D's act of restraint can be done through a physical act or under an imminent threat. In this case, Clerk, the defendant, yelled at P to "come back here, thief!", and told P to follow him in to the back room to wait for Mark. The back room did not have windows and had only one door, that Clerk closed but did not lock. C will argue that because he did not lock the door, P had reasonable means of escape, as all he had to do was walk out the door. ~~On the other hand,~~ Clerk can further argue that he only asked P to come with him, and did not physically restrain him or obligate him to come. Paul can counter by stating that telling someone that they have his license number and will call the cops is sufficient to make a person stay in an area. Overall, Clerk's act of telling Paul to come with him and placing him in the room was a an act to confine P. Therefore, the element of act is satisfied.

(Follow the facts in order. Intentional torts and crimes are sequential. Use the facts: "P stopped" in response to C's statement of calling the police and equate police with imminent threat. Additionally, by C closing the only door to the back room, C has completed the act to confine P. Note that words tend to illustrate one's intent rather than one's act. Pay attention to the words found in "quotations" and infer the intent from that. Thus, the actual act to restrain P is when C closed the door, not when he yelled.)

### 2. BOUNDED AREA

~~Second,~~ the windowless backroom only had a-one door, which Clerk closed but did not lock. Paul thought that he could not leave because he did not want trouble with the police.

Additionally, Paul did not leave the room when he heard a running engine and felt ill, probably because he believed that he was not allowed to leave. It is unclear whether Paul knew that the room was unlocked, but Paul will argue that he did not check to see if it was unlocked because he was under the impression that he was forbidden to leave. (To strengthen this analysis, discuss the inference of what would happened if P did try to leave e.g. he could possibly run into clerk or the store manager or worse, the cops.) Clerk can argue that Paul was not in a bounded area because the door was unlocked. However, the fact that Clerk threatened to call the cops and closed the door is sufficient to satisfy the bounded area element.

(Be specific in your facts especially with numbers. Say “one door” instead of “a” door. Paint the picture for the reader.)

### **3. Defendant’s INTENT to confine P**

With respect to intention, Paul can argue that Here, Clerk intended to imprison-confine Paul because when he yelled, “come back here, thief!”, indicating C’s intent to not let P leave the store premises. Further, C told Paul to wait in the room while he called, Mark, the manager, and closed the door. Closing the only door on P shows C’s intent to leave Paul there while they waited for the Manager. -He additionally threatened Paul with calling the cops if he did not stay. Thus, Paul will argue that he was left with no option but to follow Clerk’s instructions as he wanted to avoid any trouble with the police. -Therefore, there was intent to confine P.

### **4. CAUSATION**

Causation can be divided in actual and proximate cause. Actual cause is the cause in fact and proximate cause is the “but for” factor.

Here, the actual cause of Paul being confined is when Clerk told Paul to wait in the room and left him there there for 25 minutes. Second, but for Clerk bringing P to the room and leaving him there for 25 minutes, Paul would not have -suffered carbon dioxide poisoning been imprisoned in the room and suffered further injury from another tort (discussed below). (Be specific. Use the facts)

### **5. P’s Damages**

Finally with respect to knowing of the imprisonment, Paul can argue that to his knowledge, he was not able to leave the room. C will counter that he did not lock the door. Yet, In addition, he P will argue that he did not trouble with the cops which further led him to stay in the room. Further, P suffered carbon monoxide poisoning due to the C’s confinement. This element is met.

(Note: C will counter argue that M is an intervening force in causing P’s injuries.)

Since all of the elements of false imprisonment are met here Overall, Paul will be able to maintain a tort claim against clerk for false imprisonment.

### **DEFENSES – CONSENT – Discuss?**

(Analyze the facts: “P complied”)

### **DEFENSES - SUPERSEDING FORCE – DISCUSS?**

#### **DEFENSES - Shopkeeper’s Privilege Defense: Good**

The shopkeeper’s privilege ~~defense~~ allows a shopkeeper to briefly detain a person under (1) reasonable suspicion of theft to investigate a possible theft. The detention suspieion must also be conducted in a (2) reasonable manner and (3) within a reasonable time.

#### **(1) Reasonable suspicion of theft**

In this case, - Clerk believed that Paul had stolen the candy bars because “he saw P pocket the candy bars.” he did not see Paul will counter that the belief of theft is unreasonable as P throw

~~down~~ossed the \$1.50 for the candy bars on the counter. Further, C was not paying attention as he was on the telephone, and all he had to do was look down at the counter to see that P had paid. In fact, P indicated to C that he paid and to “look at the counter” where he tossed the \$1.50. In addition, P can argue that Clerk’s reaction to the candy bars was unreasonable because shouting that he was a thief and threatening to call the police **over \$1.50 (of which he paid)** is not reasonable.

*(Use the exact facts and then make inferences from those facts)*

## (2) Reasonable Manner? Discuss.

### (3) Reasonable Time

~~However,~~ Paul can argue that he was left in the windowless back room for 25 minutes, which is not reasonable to investigate whether the 2 candy bars worth a total of \$1.50 were stolen or not. Clerk can argue that he paged Mark as soon as possible, and that Mark’s coming 25 minutes later was not his fault. Overall, 25 minutes in a windowless back room with the door closed for candy bars ~~would is not be~~ brief. ~~In addition, P can argue that Clerk’s reaction to the 1.50 candy bars was unreasonable because shouting that he was a thief and threatening to call the police is not reasonable.~~ (sentence is confusing with the unreasonable and reasonable) This defense will more than likely fail.

## 1B. Paul v. Mark

### Negligence

In order for Paul to maintain a negligence claim against Mark, he must prove that 1) Mark had a duty to him, 2) that the duty was breached, 3) causation and 4) damages from that breach. Good

### DUTY

Duty is the duty of care owed to foreseeable plaintiffs in the zone of danger. The amount of care owed is the care that a reasonably prudent person *(here a reasonably prudent store manager of a gas station)* would take under similar circumstances. Under one theory *(need to be specific in theory Cardozo or Andrews?)*, duty is owed only to reasonably foreseeable plaintiffs. The other theory *(Same comment as before)* states that duty is owed only to known plaintiffs. Here, Mark left his ear-truck running in the garage, and closed the garage door which caused carbon monoxide to build up. Mark, as the store manager of a gas station, owed a duty to people/customers around the garage and store and gas station to protect them from the carbon monoxide seeping from the garage, and subsequently into the storage room. However, Mark can argue that ~~there was no possible way that he would have~~ did not know that Paul was in the storage room as it was seldom used, and he should not owe a duty to Paul. In conclusion, ~~Mark owed a duty to Mark under one theory but not another. ???~~

*(This conclusion is confusing. Also Mark works at a place of business that invites customers into the premises. As such, the invitee standard of care applies and Delta Gas and its store manager, Mark, has to protect against all known or should have known about dangers. In fact, Mark cannot be causing dangers on the premises.)*

### BREACH

(FOLLOWING PAGES INTENTIONALLY DELETED)