

EXAMINERS' ANALYSIS OF QUESTION NO. 6

1) The most relevant cause of action is false imprisonment, as Smith is suing over his "wrongful detention", not a wrongful or false arrest. However, it should be recognized that false imprisonment and false arrest are closely aligned, and "there has been confusion in Michigan law regarding whether false arrest and false imprisonment are separate causes of action." *Moore v City of Detroit*, 252 Mich App 384, 386 (2002). A false arrest is an illegal or unjustified arrest, and is guided by the same probable cause analysis as is false imprisonment. *Burns v Olde Discount Corp*, 212 Mich App 576, 581 (1995); *Tope v Howe*, 179 Mich App 91, 105 (1989). An applicant's label of the tort is not as important as recognizing the elements related to Smith's confinement.

2) False imprisonment requires "an unlawful restraint on a person's liberty or freedom of movement." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 17 (2003). "The elements of false imprisonment are [1] an act committed with the intention of confining another, [2] the act directly or indirectly results in such confinement, and [3] the person confined is conscious of his confinement." *Moore*, 252 Mich App at 387 (quotation marks and citations omitted). "[B]rief confinements or restraints are insufficient for false imprisonment." *Id.* at 388. An essential component of a false imprisonment claim is that the imprisonment was false, i.e., that the defendant lacked any right or authority to confine the plaintiff. *Id.* Stated differently, to be "false," the restraint must be illegal, i.e., must have occurred without probable cause or other lawful authority to support it. See *Id.*; see also *Walsh v Taylor*, 263 Mich App 618, 627 (2004) and *Peterson Novelties*, 259 Mich App at 18.

Probable cause involves a determination of both the historical facts and whether the rule of law as applied to the facts is violated. . . . To constitute probable cause, there must be such reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious man in the belief that the person arrested is guilty of the offense charged. Probable cause is a commonsense concept dealing with practical considerations of everyday life that must be viewed from the perspective of reasonable and prudent persons, not legal

technicians. [Walsh, 263 Mich App at 628 (quotation marks, punctuation, and citations omitted).]

If the "arrest" is legal, then there can be no false imprisonment. *Peterson Novelties, Inc*, 259 Mich App at 18.

3) There is no dispute that the security officer took an act intending to confine Smith, as that was the clear purpose in taking him to the back room. It is equally clear that the officer's act directly resulted in that confinement, as he left Smith in the back room. Finally, there is also no doubt that Smith was aware of his confinement, as he was told to remain in the room and the officer told Smith that he was locking the door when he left. But as to the "false" requirement, defendant will argue that there was probable cause to detain Smith in light of the security officer watching Smith put the fuses into his pocket and leave the store without paying for them. In light of what the security officer saw, he reasonably believed Smith was attempting to steal the fuses. Consequently, the initial detainment, including the hour time period for the investigation, was done with probable cause, was not "false," and thus Smith would likely not succeed in his case. At least to that point.

However, Smith very well could succeed on his claim once the officer's supervisors ordered Smith released. The officer disobeyed the order and kept Smith in the back room for another two hours, double the time Smith was in the room pending the investigation. Nothing suggests that the officer had probable cause to continue detaining Smith, and typically once an individual is no longer a suspect, there is no longer probable cause to detain. Additionally, the officer's purpose was to punish Smith, showing a lack of probable cause. Because the remaining elements from *Moore* continue to be met, Smith could prevail on his two hour detention.

4) Pursuant to MCL 600.2917, Smith could seek compensatory damages, to the extent any exist. He could also seek damages for his mental health, as well as punitive damages, as long as Smith proves that the detention was an unreasonable length of time. Being detained for twice the amount of time Smith spent while the proper investigation could take place is an unreasonable length of time. Under these facts, Smith would likely succeed with respect to the additional two hours he sat locked in the back room.