**15.08 False Imprisonment – Privilege to Detain by Property**

**Owner**

The law allows the defendant to detain the plaintiff for purposes of protecting the defendant's property and conducting an investigation. In order for the defendant to be entitled to this privilege, you must decide it is more likely true than not true that the following things happened:

1. (insert evidence of fact which, if more likely true than not true, would give the defendant reasonable cause as a matter of law to believe that the plaintiff was committing or attempting to commit concealment of merchandise; e.g., the defendant knew the plaintiff had hidden on the plaintiff's person, unpurchased property of the defendant); and

2. the detention occurred in or in the immediate vicinity of a commercial establishment for the purpose of investigation or questioning as to the ownership of merchandise; and

3. the detention of the plaintiff was done in a reasonable manner; and

4. the detention of the plaintiff was only for a reasonable time, which is the length of the time necessary for the plaintiff to make a statement or refuse to make a statement and for [the defendant] [the defendant's employees] to examine the defendant's own records relating to the ownership of the merchandise.

If you decide that each of these things happened, you must return your verdict for the defendant. Otherwise, the defendant was not privileged to detain the plaintiff.

Use Note

This instruction should follow Instruction 15.02C and applies when a property owner asserts a privilege to reasonably detain a person to protect the defendant's property.

When the issue of "reasonable grounds to believe" is raised on complex facts, the preferred procedure is to use special interrogatories. See Malvo v. J.C. Penny Co., Inc., 512 P.2d 575 (Alaska 1973).

The scope of the applicability of the privilege to detain is not established. See Comment below.

# Comment

The Alaska Supreme court has recognized a common law privilege for property owners to temporarily and reasonably detain persons in order to protect their property. Malvo v. J.C. Penney Co., Inc., 512 P.2d 575 (Alaska 1973). The Alaska Legislature has enacted a privilege for shopkeepers to detain suspected shoplifters. AS 11.46.230 (1983). The court has held that the predecessor statute was consistent with the common law privilege. 512 P.2d at 586 n.16. The statute, as revised, serves as the basis for this instruction. There is no law in Alaska as to what extent the privilege extends beyond the shopkeeper situation since the Malvo case involved a shopkeeper.

The statute requires four elements: (1) reasonable cause to believe the detained person was concealing merchandise; (2) detention "on or in the immediate vicinity of the premises of the mercantile establishment"; (3) detention in a reasonable manner and (4) detention for a reasonable time.

The statute provides that reasonable cause "includes" knowledge that a person has concealed property of the shopkeeper. The use of the word "includes" strongly suggests that other facts would also support a finding of reasonable grounds. The court in Malvo, 512 P.2d at 585, suggests the issue of reasonable grounds in one of law with the jury responsible for resolving factual disputes. The court notes there is "strong authority that the best method of instructing the jury in this situation is to submit special interrogatories asking them to determine if the facts constituting reasonable cause exist. . ." 512 P.2d at 585.

The statute uses the word "means" in defining reasonable time for the detention. This suggests an exclusive standard which is incorporated into the instruction.

For adoption of a special privilege to detain for shopkeepers, see Restatement (Second) of Torts § 120A (1965). See generally Note, The Merchant, the Shoplifter, and the Law, 55 Minn. L. Rev. 825 (1971).