

*Carmen(C) and Dion(D) v KRZ-FM Morning Crew (KRZ)*: The onus of proof is on C & D. They would need to prove that the direct act of Albie and Barrie (who KRZ-FM Morning Crew would be vicariously liable for) resulted in their total deprivation of freedom. C & D would argue that by ordering the security guards to close the door to the box and to secure the lock, that there was a total deprivation of freedom and no reasonable method of escape. It is affirmed in *Ruddock & Ors v Taylor*, that KRZ is responsible for the false imprisonment, and not the security guards who were ordered to close the box (*Ruddock & Ors v Taylor* (2003) 58 NSWLR 262). KRZ would argue as a defense that C & D consented to being locked in the box, and indeed voluntarily it. They would also argue that C & D had the opportunity to leave every four hours. However, despite originally voluntarily entering the box, it soon became clear that the two were not willing to remain in the box, when C screamed and began knocking on the walls, demanding to be let out. It is at this point that C & D should have been released from the box and at this point that they became falsely imprisoned. In answering the question of consent, the cases of *Go v R* and *R v Awang* may both be referred to. It is recognized in these cases that “consent is vitiated by fraud or lack of capacity or lack of knowledge” (*Go v R* (1990) 73 NTR 1). It is evident that they were not aware that they were expected to spend a prolonged period of time in there, as after half an hour D asked where they were going to spend the three days. It is clear that had C & D known they were not going to be able to leave the box for four hours, they would have not entered it, due to C’s claustrophobia. It was four hours before C & D were allowed out of the box. Given that C began demanding to be let out after about half an hour, C & D were falsely imprisoned for three and a half hours. While false imprisonment is actionable per se, the suffering and humiliation of both C & D are relevant when discussing damages. Aggravated damages would be awarded, particularly to C, for the distress caused by the false imprisonment. It is likely that exemplary damages would also be awarded, given the extreme nature and cruelty of the false imprisonment and the way in which C & D’s experience was subject to large amounts of publicity. The court would want to illustrate to the public that publicity stunts such as this one, that play upon the humiliation of others are not acceptable.

*Albie (A) v D*: The onus of proof is on A. He would need to prove that D intended to produce an apprehension of imminent contact. D said, “you’re lucky mate, if my wife wasn’t so upset I would make you answer for this here and now. Watch your back mate!” A would argue that this threat would have created an apprehension of imminent harmful contact in any reasonable person. However, A does not have a case as Dion, in his statement made it clear that as his wife was upset, he was not going to hurt A. In *Tuberville v Savage*, the assault claim was dismissed – despite the fact the plaintiff reached for his sword, and said “If it were not assize-time, I would not take such language from you.” (*Tuberville v Savage* (1669) 1 Mod 3 684). There is no immediate threat, thus Dion would not be found guilty of assault.

*C v KRZ*: The onus of proof is on Carmen. Here, KRZ is vicariously liable for the actions of the security guards, Effie (E) and Franco (F). C would need to prove that the actions of KRZ were intentional, and that they produced an apprehension of harm in the imminent future that was reasonable. E & F, the security guards who were the ones to originally lock C & D in the box, walked towards the couple as they went to leave. It is clear from her actions following this that C was extremely apprehensive of them harming her in the imminent future – she began to panic and screamed out

‘don’t touch me’, before rapidly retreating into the crowd. Here, it is clear that she had a ‘peculiar sensitivity’ (*Bunyan v Jordan* (1937) 57 CLR 1), which resulted in the apprehension of harm. Further more, it could be argued that E & F were aware of this ‘peculiar sensitivity’ having just viewed her ordeal and distress (*Bunyan v Jordan*). These two factors call for a subjective measurement of reasonable apprehension of battery, and I am of the opinion that in C’s case, it would be found that there was a reasonable apprehension of imminent harm. In terms of intention, it is evident that E & F had no intention of causing apprehension, as they approached the couple intending to apologise. While the pair may perhaps have been reckless, there is much contention over whether recklessness is sufficient to amount to assault. The legal principle in *MacPherson v Brown* may be applied here, where the case was overturned due to finding that recklessness is insufficient (*Macpherson v Brown* (1975) 12 SASR 184). Therefore, the charge of assault would probably be dismissed.

*Gregory (G) v C*: The onus of proof is on G. He needs to show that the trespassory contact followed directly from C’s voluntary physical act, and that she either intended the consequences or was indifferent to them. First, there is a direct physical act, as she elbowed G in the eye. While there is the view that everyone in a public place has consented to a reasonable degree of physical contact (*Rixon v Star City Pty Ltd* (2001) 53 NSWLR 98), this is clearly beyond socially acceptable contact. Furthermore, C had reckless disregard for the consequences of her own actions, and it is reasonably foreseeable that by backing into the crowd with haste and without care, that she would injure someone. C would try and argue that she was acting in self defence, due to what we have established as her reasonable apprehension of imminent harm (see discussion of *C v KRZ*). However, it would be argued that such actions were not ‘reasonable and necessary’ in the circumstances (*Fontin v Katapodis* (1962) 108 CLR 177). C would be found guilty of assault, and given that there was no mention of long-term eye injuries to G, only aggravated damages would probably have been awarded.

*Ion (I) v C*: The onus of proof is on I. He needs to show that the trespassory contact followed directly from C’s voluntary physical act, and that the consequences were either intended or reckless. It can be argued that C’s voluntary physical act of elbowing G in the eye set of a chain of events that ultimately resulted in Ion being severely burned. It is evident that the two other persons involved in the sequence of events – G and Halle (H)– perpetuated the events through non-intentional movements, thus rendering them both not liable. G, after being elbowed in the eye, dropped his coffee in shock when he raised his hands to his eyes. This is an involuntary reflex and may be considered a willed muscular movement, which excludes him from any liability. H, seeing the coffee falling towards her baby, knocked it out of the way which in turn caused it to land on Ion. Here, it can be argued that she acted out of compulsive necessity; that her reaction to protect her daughter was done without consciousness and more importantly without intention to fling the coffee on to I. Thus, C’s direct physical act sets in motion an unbroken series of events, the last of which was I being burned. Here, reference may be made to *Scott v Shepherd*, where the defendant was found guilty of battery, as he flung a Squib into a marketplace, which through the compulsive necessity of several third persons, ended up exploding in the face of the plaintiff (*Scott v Shepherd* (1773) 96 ER 525). C would have attempted to use a similar defence of self-defence as mentioned in *G v C*, however would still be found guilty of battery. Damages would be aggravated and compensatory.