

Deprivation of Liberty s 355

The prosecution must prove that:

1. The defendant:
 - (a) confined¹ or detained² another in any place against the other person's will; or
 - (b) otherwise deprived³ another of the other person's personal liberty.⁴
2. The defendant did so unlawfully. That is, not authorised, justified or excused by law.

Detain means keep in confinement or under restraint. Restraint can be exercised by threats. The defendant does not have to use force or physical restraints. If the defendant compels the person by threats to remain in a place against that person's will, that is sufficient. Depriving of liberty simply means taking away the free choice of a person to move about as he or she wants.

¹ In *R v Awang* [2004] 2 Qd R 672, Williams JA stated that the terms “confines”, “detains”, “deprives” and “liberty” should be given their ordinary and natural meaning. He stated that the most apposite meaning of “liberty” was “The condition of being able to act in any desired way without restraint; power to do as one likes”. “Deprive” includes the denial of enjoyment of something and “detain” has a variety of meanings including “keep in confinement”, “hold back, delay, stop”. McMurdo P noted that a person may be deprived of their liberty not only against their will but also where the deprivation was achieved by fraud, done without knowledge or where the victim lacks capacity.

² See footnote 1 above.

³ See footnote 1 above.

⁴ See footnote 1 above.