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The American Law Institute's Restatement of the Law of Torts with Annotations to the Kentucky Decisions

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**THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF
THE LAW OF TORTS WITH ANNOTATIONS TO
THE KENTUCKY DECISIONS***

BY ANDREW J. RUSSELL**

Chapter IV.

**CONDUCT VIOLATING THE RIGHT TO FREEDOM FROM
CONFINEMENT [FALSE IMPRISONMENT].**

Section 49. Causing a confinement of another for any appreciable time within limits fixed by the one causing the confinement, unless privileged, subjects the one causing the confinement to a liability to the other if

- (a) the other knows of his confinement; and
- (b) it is not consented to by the other, and
- (c) it is caused
 - (i) by an act intended so to confine the other or a third party, or
 - (ii) by a breach of a duty to protect or release the other, from confinement, however threatened or imposed.

Annotation

The plaintiff must allege in the petition that the confinement was done maliciously and without probable cause. *Diery v. So. Co. & C. Ry. Co.* (1903), 24 Ky. L. Rep. 1825, 72 S. W. 355.

Section 50. (1) To create liability under Section 49 the confinement must be complete, if there is any reasonable means of escape there is no confinement.

(2) The intentional interference with or obstruction of another's movement in a particular direction is not a confinement.

* Note.—This is the second installment prepared by the author and published in the Kentucky Law Journal. Others will follow in subsequent editions of this Journal.

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(a) A unlawfully encloses a part of the highway B enters the enclosure and A prevents him from passing out of it on the other side but puts no obstacle in the way of his leaving by the way in which he entered. This is not an actionable confinement of B, though B has the right to unobstructed passage along the highway

Annotation

The plaintiff was transferred from a poor house to the institution of the defendant where she stayed for a number of years. She escaped and sued for false imprisonment. The court held that the question was properly left to the jury and the jury found that she could have left at any time she desired, therefore, no false imprisonment *Smith v. Sisters of Good Shepherd of Louisville* (1914), 27 Ky. L. Rep. 1170, 87 S. W. 1076.

(3) A means of escape is not reasonable if its use involves danger of bodily harm to the other or a third person or of substantial harm to property of the other or a third person, or involves an indecorum so gross, that a reasonable man would submit to confinement rather than commit it.

(b) A locks B, an athletic young man, in a room with an open window at the height of four feet from the floor and from the ground outside. A has not confined B.

(c) A locks B, who is suffering from a disease which makes any considerable exertion dangerous to him, in such a room as supposed in the previous illustration (b) A has confined B.

(d) A closes every exit from a place where B is except one, which B can only use by doing some act which would threaten C with substantial bodily injury A has confined B.

(e) A closes every exit except one, the use of which would involve material injury to B's clothing. A has confined B.

(f) A is naked in a Turkish bath. B locks the door into the dressing room but leaves open the door to the general waiting room where persons of both sexes are congregated. B has confined A.

Annotation

No Kentucky decisions.

(4) A means of escape is reasonable although it involves

an invasion of a third person's right to the exclusive possession of his real property, if the invasion neither causes harm to its physical condition nor interferes with its use.

(g) A closes every exit from a place in which B is except one which leads over C's vacant lot. A has not confined B.

Annotation

No Kentucky decisions.

(5) The limits within which the other is confined may be wide.

(h) A by an invalid process restrains B within prison limits which are coterminous with the boundaries of a considerable town. A has confined B.

(i) A serves upon B an invalid writ purporting to restrain B from leaving a particular State of the United States. B submits, believing the writ to be valid. A has confined B.

(j) A wrongfully prevents B from entering the United States. A has not confined B, although B, in a sense, may be said to be confined within the residue of the habitable world.

Annotation

No Kentucky decisions.

Comment

One who by force or threats of force or by asserting a legal authority compels another to accompany him from place to place has as effectively confined the other as if he had locked him in a room.

(k) A kidnaps B and carries him in a motor car across three States. A has confined B in each State.

(l) A compels B by the assertion of an invalid legal authority to accompany him. A has confined B.

Annotation

Accord. The defendant under assertion of legal authority compelled the plaintiff to accompany him from Kentucky into Ohio where he was accused of committing a felony. *Botts v. Williams* (1857), 56 Ky. 687.

Section 51. A confinement intentionally imposed creates

liability however short its duration and although it violates no right of the other except his right to freedom from conscious confinement.

(a) A arrests B under an invalid legal process and releases him immediately. A is liable to B.

Annotation

The defendant, a town marshal, detained the plaintiff for a few minutes threatening him with arrest. In holding the defendant liable for false imprisonment Lewis J. said: "Any deprivation of liberty of the plaintiff by the defendant without the plaintiff's consent and against his will whether it was by actual force, threats, or otherwise, constitutes an arrest." *Miller v. Ashcraft* (1895), 98 Ky. 314, 17 Ky. L. Rep. 894, 32 S. W. 1085.

Section 52. If an act is done with the intention stated in Section 61 (1) and causes a confinement to another, it is immaterial whether the act directly or indirectly causes the confinement.

Annotation

Section 36 of the Kentucky Criminal Code provides that: "A peace officer may make an arrest.

"1. In obedience to a warrant of arrest delivered to him.

"2. Without a warrant, when a public offense is committed in his presence, or when he has reasonable ground for believing that the person arrested has committed a felony.

"3. That such peace officer with a warrant of arrest, when in actual pursuit of an offender, may cross a county line for the purpose of making the arrest in the adjoining county."

The sheriff is not liable in false imprisonment for the wrongful arrest by his deputy acting in the scope of his authority. The deputy is acting in the scope of his authority only when he complies with Section 36 of the Criminal Code. *Jones v. Van Bever* (1915), 164 Ky. 80, 174 S. W. 795, L. R. A. 1915 E. 172.

Same type cases grow out of a situation where a private concern employs a peace officer as a watchman.

If the watchman is acting out of the scope of his authority in his capacity as either a watchman or peace officer he only is liable. *Jones v. Van Bever*, supra; *Cope v. Askins* (1925), 208 Ky. 86, 270 S. W. 454.

If the watchman is acting as a duly authorized officer of the state, executing a warrant duly sworn out, his private employer is not liable. *McKinney Steel Co. v. Belcher* (1924), 205 Ky. 453, 266 S. W. 42.

If the alleged officer fails to notify, of course, he cannot act as

an agent of the state, but his private employer is liable in false imprisonment for a wrongful arrest. The duty is on his private employer to know that the actor is duly qualified. *O. N. O. & T. P. Ry. Co. v. Cundiff* (1915), 166 Ky. 594, 179 S. W. 615, Ann. Cas. 1916 C. 513.

The employer is liable where the watchman is acting only in the furtherance of the employer's interest. *L. & N. Ry. Co. v. Owens* (1915), 164 Ky. 557, 175 S. W. 1039. *L. & N. Ry. Co. v. Offutt* (1924), 204 Ky. 51, 263 S. W. 665.

One making misrepresentations causing another's arrest is liable for false imprisonment of the person so arrested. *Huggins v. Toler* (1866), 64 Ky. (1 Bush) 192.

A car had been stolen from the defendant. The plaintiff was arrested in another town having sold a car that met the description of the one stolen. The officer notified the defendant and he told them to hold the car. The defendant sent a representative and car was released the next day. The plaintiff sues the defendant for false imprisonment. The court held that he was not liable because there was not sufficient ratification of the arrest. He did not tell the officers to hold the plaintiff but to hold the car. *Triangle Motor Co. v. Smith* (1926), 216 Ky. 479, 287 S. W. 914.

One who swears to an affidavit causing the arrest of another, even though he acts maliciously is not guilty of false imprisonment. The remedy of one so injured is in malicious prosecution. *Roberts v. Thomas* (1909), 135 Ky. 63, 121 S. W. 961, 21 Ann. Cas. 456; *Harper v. Howton* (1922), 194 Ky. 840, 241 S. W. 329.

Comment

The sense in which the words "causes", "directly", and "indirectly" are used in the Restatement is stated in Section 6, Comment.

Section 53. Confinement may be by

- (a) physical barriers,
- (b) physical force,
- (c) the threat of physical force,
- (d) the assertion of an apparent legal authority

Annotation

No Kentucky decisions.

Section 54. (1) The confinement may be by actual or apparent physical barriers.

(2) There is a confinement by physical barriers if (a) the barriers are actually efficient to restrain the other, or (b), though actually inefficient to do so, the other believes them to

be efficient and the one setting the barriers intends him so to believe.

(a) A locks the door of a room in which B is sitting. A knows, but believes that B does not know, that there is an unlocked but concealed door through which B could, if he knew of it, escape. B does not know of the unlocked door. A has confined B.

(3) An act which prevents another from availing himself of a reasonable means of escape from the area of confinement is a sufficient physical barrier.

(b) A takes away the crutches from B, a cripple, who is unable to walk without them. A has confined B.

(c) A removes the ladder which is the only available means by which B can get out of a well. A has confined B.

Annotation

No Kentucky decisions.

Section 55. (1) The confinement may be by compulsion of physical force or by submission thereto.

(a) A lays hold upon B and detains him notwithstanding B's efforts to escape. A has confined B.

(2) It is not necessary that the physical force should be such as to overcome the resistance of an ordinary man, it is sufficient that physical force is exerted upon the person of another and that such other is restrained thereby or, without resistance, submits thereto.

(b) A, a small and weak man, takes hold of B's coat for the purpose of detaining him against his will. B is a much larger man and could, with a little exertion, free himself at once. B submits. A has confined B.

Annotation

No Kentucky decisions.

Section 56. (1) The confinement may be by submission to threats of physical force.

(2) The threat may be by any act, including the mere speaking of words, done for the purpose of putting and putting the other in apprehension of the immediate application of physical force to his person or to the person of a member of his immediate family, if he does not remain within the area within which it is the actor's intention to confine him.

Comment

The term "member of the immediate family", as used in this Section, includes a spouse, parent or child, grandparent or grandchild, brother or sister, by blood or adoption, whether members of the same household or not.

(a) A is seated in a room. B stands at the door some feet away and says to A. "If you attempt to leave this room I will knock you down" B makes no threatening gesture. A, in submission to the threat, remains in the room. B has confined A.

(b) A and his child are seated in a room. B, with a revolver in his hand, is standing in close vicinity to A's child. B threatens to shoot A's child if A leaves the room. A, in submission to the threat, remains in the room. B has confined A.

(3) The submission must be to a threat to apply the physical force immediately upon the other's going or attempting to go beyond the area within which the threat is intended to confine him.

(c) A threatens B that if he leaves the room he, A, will shoot him the next time he meets him on the street. B, in submission to the threat, remains in the room. A has not confined B.

(4) The other must submit to the threat by remaining within the limits fixed by the actor's will in order to avoid or avert the force threatened to the other or a member of his immediate family

(d) A threatens B that he will shoot him if he tries to leave the room. B knows that A has no weapon. B stays in the room. B has not submitted to A's threats.

(5) It is not necessary that the force threatened be such

that a reasonable man would submit to confinement rather than undergo it; it is sufficient that one threatens physical force with the intention of confining another and that the other submits thereto.

Annotation

No Kentucky decisions to any of Section 56.

Section 57. (1) Confinement may be by taking a person into custody under an asserted legal authority.

Annotation

As to what constitutes legal authority, or under what conditions a peace officer or private citizen may make an arrest see the chapter on "Arrest," Sections 139 to 164.

(a) A has in his possession an invalid warrant of arrest. He serves it upon B, who, believing it to be valid, submits thereto. A has confined B.

(b) A, a private citizen, obtains a policeman's uniform and badge. While wearing both, he says to B "I arrest you." The circumstances are such that a policeman, but not a private citizen, would be privileged to arrest him. B, believing A to be a policeman, submits. A has confined B.

Annotation

The plaintiff was arrested by defendant under a "copias pro fine." The defendant pleaded in this action for false imprisonment that the precept "directed" him to make the arrest. The court held that the plea was bad. He should have pleaded that it commanded him to act as he did. *Smith v. McGuire* (1824), 15 Ky. (5 Litt.) 302.

The arrest must be by want of lawful authority to constitute false imprisonment. *Roberts v. Thomas* (1909), 135 Ky. 63, 121 S. W. 961, 21 Ann. Cas. 456.

(2) The custody is complete if the person against whom and in whose presence the authority is asserted believes it to be valid or is in doubt as to its validity and submits thereto.

(c) A, a traffic policeman, is standing by his bicycle at the side of the highway. He calls to B, who is passing in his automobile: "You are under arrest. Follow me." B knows that A could not catch up with him if he drives on. B turns and follows A. A has taken B into custody.

Annotation

No Kentucky decisions.

(3) If the person against whom an invalid authority is asserted does not submit, a mere touching does not constitute a confinement. In such case there must be actual restraint by physical barriers or physical force or submission to threats thereof.

(d) A attempts to arrest B under an invalid warrant which he exhibits to B. He touches B on the shoulder, saying "I arrest you." B knows that the warrant is invalid but runs away to avoid the possibility that A might attempt to enforce the warrant by physical restraint. A has not confined B.

Annotation

No Kentucky decisions.

(4) The submission necessary to convert the assertion of authority into a custody taken thereunder may be shown by words or conduct.

(e) A serves upon B a warrant purporting to give him authority to arrest B for nonpayment of taxes. B refuses to pay the taxes unless he is arrested. A says "I arrest you." B pays the taxes. B has submitted to the arrest and A has taken B into custody

Annotation

Defendant caused a policeman to arrest plaintiff and hold him until plaintiff paid defendant money which plaintiff owed defendant. Held to be false imprisonment. *Foor v. Combs* (1894), 15 Ky. L. Rep. 845.

(5) It is immaterial whether a mistake which leads the other to submit to the asserted authority is a mistake of law or of fact.

(f) A exhibits to B a warrant invalid on its face, purporting to authorize A to arrest B. B inspects the warrant and believes it to be valid and submits to arrest. A is liable to B.

(g) A is injured by a railroad tram. B, the conductor of the train, tells A that he has the authority to detain A until A

makes a statement as to his conduct which has contributed to his injury by the train. A, through ignorance of the law, believes that B has the authority which he asserts and gives the statement which B desires in order to obtain his release from detention. B is liable to A.

(h) A is guilty of conduct which gives to any police officer authority to arrest him. B impersonates an officer and takes A into custody for the crime. A, believing that B is a police officer and as such has authority to take him into custody, submits. B is liable to A.

Annotation

No Kentucky decisions.

(6) Compliance with a demand which one makes upon another under threat that unless the other complies therewith one will take him into custody under a warrant or other asserted authority, is not submission thereto.

(i) A exhibits an invalid warrant to B and threatens to arrest him unless B will pay him a sum of money. B, to avoid arrest, pays the money. B has not submitted to A's custody and is not confined.

(j) A telephones B that he has a warrant for B's arrest which he will serve unless B appears before Magistrate C on the following morning. B, to avoid arrest under the warrant, appears before Magistrate C. B has not submitted to the warrant and is not confined.

Annotation

On a conflict of evidence it is for the jury to determine whether the plaintiff voluntarily accompanied the defendant or did so by compulsion. *Crocker v. Haley* (1906), 29 Ky. L. Rep. 174, 92 S. W. 574. But the Court of Appeals will set aside such a finding when it is flagrantly against the evidence. *Kroger Grocery & Bakery Co. v. Plaggenburg* (1923), 199 Ky. 551, 251 S. W. 650.

Plaintiff an infant under an agreement to train horses was urged to go to Louisville and then to New York. After returning he sues for false imprisonment. The court held that there was no evidence of compulsion, even though the agreement was an attempt to apprentice an infant, and invalid because it did not follow the statutory requirements. *Brooks v. Madden* (1923), 198 Ky. 167, 243 S. W. 503.

The plaintiff after quitting work was ordered back to work by the defendant's superintendent because the plaintiff owed the superintendent money. Even though a man secured by the superintendent watched the plaintiff that night while he was working it was held not to be false imprisonment because the court held that he returned to work by his own free will. *Keel v. Steel Coal Co., et al.* (1925), 207 Ky. 431, 269 S. W. 531.

(7) The authority must be asserted in the other's presence.

(k) A telephones to B that he has a warrant for B's arrest and that he arrests B thereunder. B answers: "All right, what must I do?" A replies "You are to appear before Magistrate C at ten o'clock tomorrow." B appears before Magistrate C at the appointed time. A has not taken B into custody and has not "arrested" B if he has a valid warrant, and is not liable for confining B if he has no warrant or has an invalid warrant.

Annotation

No Kentucky decisions.

(8) Submission by another to a process which one asserts to be in one's possession is a confinement, although there is no such process or one does not have it in one's possession, or if it is in one's possession, it is not exhibited to the other.

(1) A meets B and says. "I have a warrant for your arrest." B, believing A to have such a warrant, submits and goes with him. A has confined B whether (a) he has such a warrant in his possession but does not exhibit it to B, or (b) such a warrant has been issued but is not in A's possession, or (c) no such warrant has been issued.

Annotation

No Kentucky decisions.

Section 58. The intentional confinement of another, if privileged, creates no liability

Comment

As to the circumstances under which the intentional imposition of conscious confinement upon another is privileged, see

Sections 86 and 99. The circumstances which create the privilege must be alleged and proved by one who relies upon it to displace a liability to which he would otherwise be subject.

Annotation

No Kentucky decisions.

Section 59. There is no liability for intentionally confining another unless the person physically restrained knows of the confinement.

(a) A, a schoolmaster, refuses to permit B to go home for the holidays, though B's father asks that he shall be permitted to come home. B is ignorant of the restraint put upon his liberty. A is not liable to B.

(b) A calls an employee, B, into his office to explain his connection with speculations which have been going on in A's business and stations a guard at the door with instructions not to let B leave the room unless A sounds a buzzer. B does not know of these instructions. B's explanations are satisfactory. The buzzer is not sounded and B is allowed to pass unhindered. A is not liable to B.

(c) A locks the only door of a room in which B, a child of two is playing. B knows that the key has been turned but does not realize that he is restrained thereby. A has not confined B.

(d) A is spending the night at B's house. On waking, A discovers that the door to the room in which he is sleeping is locked. B has locked the door with the intention of confining A. A believes that the door was locked by B's little son in fun. B has confined A.

Annotation

Accord. "False imprisonment is the unlawful restraint of a person contrary to his will either with or without process of law. *Reynolds v. Price* (1900), 22 Ky. L. Rep. 5, 56 S. W. 502.

Section 60. Causing a confinement of another does not subject one causing it to a liability if the other has consented thereto.

Comment

As to what constitutes Consent, see Sections 66-77

Section 61. (1) To create the liability stated in Section 49 an act which causes a confinement of another but which invades no legally protected interest of the other except his interest in freedom from confinement, must be done with the the intention of bringing about a confinement.

(2) An act which, while causing a confinement of another is not done with the intention stated in Subsection (1) and invades no interest of the other except his interest in freedom from confinement, does not create liability although a reasonable man, under the circumstances which the actor knows or should know, would recognize the probability that the act would cause a confinement.

(a) A, carelessly forgetting that he has told his assistant, B, to work overtime, locks the door of his office at the usual closing time. B telephones the janitor, who promptly releases him. A is not liable to B.

Annotation

No Kentucky decisions.

Section 62. An act is done with the intention of bringing about a confinement of another if it is done for the purpose of bringing about such a confinement of the other or with knowledge that such a confinement will result from the act.

Annotation

No Kentucky decisions.

Section 63. An act which is intended to affect a third party in the manner stated in Section 62 but which imposes a conscious confinement upon another creates liability to the other as fully as though it were intended so to affect him.

(a) A locks the door of his office for the purpose of confining B, his clerk. A knows that C, a client whom he has no desire to confine, is in the office. Since A locks the door for the purpose of confining B, he intends to confine B. A, though having no desire to confine C, knows that his act will confine C and therefore intends to confine C.

(b) A, knowing that his shop is full of customers, locks its only door in order to prevent a mob from breaking it and looting it. This is a confinement of his customers. A, though having no desire to confine his customers, knows that his act will confine them and, therefore, intends to confine them.

(c) A and B are in a room. C has no reason to know and does not know of B's presence in the room. C locks the door for the purpose of confining A. C is not privileged to confine either A or B. C does not intend to confine B but since B is confined by C's act intended to confine A, C is liable to B.

Annotation

No Kentucky decisions.

Section 64. If an act which causes the confinement of another is done with the intention stated in Section 62 it creates liability although it is not inspired by personal hostility or desire to offend.

Annotation

"A pure, naked, unlawful retention unaffected by any question of motive or purpose constitutes false imprisonment. Two things are necessary: (1) detention of the person, (2) the unlawfulness of the detention. Actual force is not necessary. The unlawfulness of the detention is the gravamen of the offense, hence it may be committed without malice on the part of the person causing the detention. Consequently the question of malice is immaterial except as it may affect the question of damages." *Reynolds v. Price* (1900), 22 Ky. L. Rep. 5, 56 S. W. 502.

The defendant was summoned by one whom he thought to be a deputy to help arrest the plaintiff. In fact the one so representing was not an officer at all. He had not qualified. The court held the defendant liable in an action for false imprisonment holding that every citizen is bound to assist a known public officer, but the burden is on the one summoned to know that the one summoning him is a public officer. *O. N. O. & T. P. Ry. Co. v. Cundiff* (1915), 166 Ky. 594, 179 S. W. 615, Ann. Cas. 1916C 513.

The defendant, a police judge, acting on authority of a telegram from an officer in Alabama, had plaintiff placed in jail. In an action for false imprisonment the lower court instructed the jury in substance that plaintiff could not recover unless he could show that defendant "acted without honest conviction of duty and with corrupt and improper motives." The Court of Appeals held this instruction to be erroneous and that his motive was immaterial, that since the defendant had no jurisdiction to act he was liable. *Glazar v. Hubbard*

(1897), 102 Ky. 68, 19 Ky. L. Rep. 1025, 42 S. W. 1114, 80 Am. S. R. 340, 39 L. R. A. 210.

(2) There is no general duty to protect or release another from confinement.

Annotation

Section 45 of the Kentucky Criminal Code of practice provides that: "The officer making the arrest in obedience to a warrant shall proceed with the defendant as directed by the warrant."

Section 46 of the Kentucky Criminal Code of Practice provides that: "If an arrest be made without a warrant, whether by a peace officer or a private person, the defendant shall forthwith be carried before the most convenient magistrate in the county in which the arrest is made, and the ground on which the arrest was made shall be stated to the magistrate; and if the offense for which the arrest was made be charged to have been committed in a different county from that in which the arrest was made, and the magistrate believe, from the statement made to him on oath, that there are sufficient grounds for an examination, he shall, by his written order, commit the defendant to a peace officer to be conveyed by him before the magistrate of the county of which the offense is charged to have been committed; or, if the offense be a misdemeanor, the defendant may give bail before the magistrate for his appearance before the judge of the county court of the county in which the offense was committed, on the day to be named in the bail bond, or for his appearance before the court having jurisdiction to try the offense, on the day to be fixed by the magistrate."

These provisions must be complied with.

The defendant arrested the plaintiff on receiving a telegram from Ohio charging her with receiving stolen goods. After proving her innocence plaintiff sues defendant for false imprisonment. The court sustained an instruction to the jury to find for the plaintiff "if you believe that the defendant wrongfully and without having any reasonable ground to believe plaintiff had committed a felony in Kentucky arrested plaintiff " *Klotz v. Cook* (1919), 184 Ky. 735, 212 S. W. 917.

The defendant was held liable for having the plaintiff arrested as a suspect and not taking him before a magistrate. *Sou. R. R. in Ky. v. Shirley* (1906), 121 Ky. 863, 28 Ky. L. Rep. 860, 90 S. W. 597.

The defendant, a private citizen, arrested plaintiff whom he thought to be a fugitive from justice in Ohio for whose arrest a reward was offered. He delivered the prisoner directly into the hands of the Ohio officials. It was held that he was liable because he should have taken the prisoner before a Kentucky court. *Botts v. Williams* (1857), 56 Ky. 637.

A detective is guilty of false imprisonment for taking one arrested

to prison without first taking him before a court. *L. & N. Ry. Co. v. Offutt* (1924), 204 Ky. 51, 263 S. W. 665.

A magistrate may restrain one legally brought before him for a reasonable time while preparing for bond, etc. *Meyers v. Dunn* (1907), 126 Ky. 548, 31 Ky. L. R. 926, 104 S. W. 352, 13 L. R. A. (N. S.) 881, *Pepper v. Mayes* (1884), 81 Ky. 673, 5 Ky. L. Rep. 708.

(To be continued)

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