**15.02A Nature of Confinement**

The first word I will define for you is "confined." The plaintiff is confined if the plaintiff is kept from leaving any identifiable area. [The area need not have been a jail or a room, but is cannot have been so large that the plaintiff was not really confined in an area but rather was excluded from some other area.]

The plaintiff is not confined in an area if the plaintiff knows of a reasonably way to leave the area.

# Use Note

This instruction should follow Instruction 15.01.

# Comment

Restatement (Second) of Torts § 36 Comment (b) (1965) draws the distinction between confinement and exclusion and suggests it is a matter “for the judgment of the court or jury.” The bracketed sentence could be used to submit the issue to the jury when the issue is raised. There is no Alaska case law that speaks to the issue.

The last sentence of this instruction expands on the concept of confinement which in most cases is self-evident. There are, however, cases where the confinement is complete only as to the plaintiff viewed subjectively, i.e., an open window accessible to a normal person but not to the arthritic plaintiff, or whether confinement is not the result of physical barriers, i.e., the defendant leaves a door open but takes the plaintiff’s clothes. See Restatement (Second) of Torts § 36 (1965).