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LAW OF TORTS

LPB 301

 TORT OF TRESPASS TO CHATTEL, CONVERSION AND DETINUE

 These three torts protects a possessor (the owner of a chattel) from wrongful interference with. This area of torts is complex, and each of them must be considered separately.

Trespass to chattel; this tort may be defined as a direct and wrongful interference with a chattel in the possession of the plaintiff, and such interference being either intentional or negligent. This tort can also be defined as a tort whereby the infringing party has intentionally or negligently interfered with another person's lawful possession of a chattel (movable personal property). CompuServe Inc. v. Cyber Promotions, Inc. The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel (whether by taking it, destroying it, or barring the owner's access to it). Trespass to chattels is argued to be actionable per se. This tort seeks to protect the interests of the plaintiff in retaining possession of the chattel, his interest in the physical condition of the chattel and his interest in protecting the chattel against intermeddling. The elements of trespass to chattel are: 1) the lack of the plaintiff's consent to the trespass, 2) interference or intermeddling with possessory interest, and 3) the intentionality of the defendant's actions. Actual damage is not necessarily a required element of a trespass to chattels claim. America Online, Inc. v. IMS, Intel Corp. v. Hamidi (2003)

Conversion; this may be defined as an intentional dealing with or exercise of control over a chattel which seriously interferes with the plaintiffs possession or right to possession of such chattel, it is similar to trespass in that it primarily protects possession rather than ownership of goods. It can also be defined as an intentional tort consisting of "taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession", In England & Wales, it is a tort of strict liability. North Central Wagon and Finance Co Ltd vs Graham. It differs from trespass due to the fact that in conversion the interference must be intentional, but in trespass it may be intentional or negligent, also unlike in trespass, conversion is not necessary for the plaintiff to have actual possession of the goods at the time of interference, also it is not conversion merely to move a chattel from one place to another without any intent of to take possession of it or dispute owners title but such an act will amount to trespass. Stevenson v. Economy Bank of Ambridge, 413 Pa. 442 (Pa. 1964). The elements of conversion are: 1) the plaintiff’s ownership or right to possession of the property, 2) the defendant’s conversion by wrongful act inconsistent with the property rights of the plaintiff; and 3) damages.

Detinue; This is an action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the chattel than the defendant and second that the defendant refused to return the chattel once demanded by the claimant. Manitoba Agricultural Credit Corp. V. Heaman. Detinue allows for a remedy of damages for the value of the chattel, but unlike most other interference torts, it also allows for the recovery of the specific chattel being withheld. The elements of detinue are: 1) Make a Demand, 2) Refuse a Demand, 3) Unreasonable Refusal and 4) Consequential Damage. McGregor v. McGregor 1899.

Concept of innocent delivery or receipt, lost property rule; This occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title. This must be accompanied by an intention to exercise temporary or permanent dominion over the goods. In the case of Fouldes vs Willoughby the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgement was entered in his favour at the trial court. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses. This must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence it would not be regarded as conversion if the finder of goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it.In the case of Howard E Perry and Co Ltd vs British Railway Board. (1980) 1 WLR 1375, the defendant, who were carriers, held the plaintiff’s steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part.

For conversion to be committed there has to be some positive denial of possession towards the person entitled to possession. A person who accepts the possession of personal property from one not authorized to transfer it may be regarded as a converter.[104] The Restatement (Second) of Torts is in accord with this concept, stating that one who receives possession of a chattel from another with the intent to acquire for himself or a third person a proprietary interest in the chattel which the other has not the power to transfer is subject to liability for conversion to a third person then entitled to the immediate possession of the chattel. The exercise of ownership over property may take a number of forms. All that is required is that the defendant exercise control over the chattel in a manner inconsistent with the plaintiff's right of possession. The gist of a conversion is not the acquisition of the property by the wrongdoer, but the wrongful deprivation of another's property which the owner is entitled to possess.

Examples of conversion include; 1) conversion by taking, 2) conversion by wrongful transfer of title or possession, 3) conversion by detention, 4) conversion by destruction, consumption or alteration, 5) conversion by using, 6) conversion by receiving and 7) conversion of negotiable and other elements.

Examples of persons that can sue for trespass to chattel; The only person that can sue for trespass to chattel is the person in actual possession of the chattel at the time of the interference.

Remedies and Defence to Trespass to Chattel

If you have been accused of trespass to chattel, there are certain defences that may be available to you, including but not limited to:

Necessity; The defendant may be able to establish a defence to trespass if the inference occurred in circumstances where the interference was necessary, but consent could not reasonably be obtained. The defendant must show that there was an apparent imminent danger to person or property and that the defendant honestly believed on reasonable grounds that the act was necessary for the preservation of the person or property.

Consent; A defendant may be able to establish a defence to trespass if the interference occurred with the plaintiff’s consent. Consent can either be express or implied by conduct; however, it must be genuine and voluntary. The onus is on the defendant to establish that they interfered with the chattel with the plaintiff’s consent.

Jus Tertii; Jus Tertii means ‘the right of a third party’. A cause of action in trespass may fail if the defendant can show that a third party has better rights to the chattel than the plaintiff.[10] The onus is on the defendant to establish that a better right to possession is held by a third party in order for the defence to succeed.

Inevitable Accident; Inevitable accident is a defence that apply in circumstances where the defendant can show that their conduct was involuntary, and accordingly, the defendant is without fault. The onus on establishing this defence is on the defendant, who must show that their conduct was neither intentional nor negligent, and the interference with the chattel was a result of an inevitable accident.

Mistake; Mistake is generally not a defence to intentional torts. However, mistake may be a defence to a cause of action in trespass if the defendant can prove that he or she acted with a mistaken belief, and the mistake was reasonable. The standard for what is considered ‘reasonable’ is generally fairly difficult to meet.

Incapacity; There may be a defence to trespass if the defendant is a minor who can establish their inability to understand the true nature of the act committed. This would seem to indicate that a defence based on incapacity would only cover young children up to about four years of age.

Retaking Goods; A defendant may be able to establish a defence to trespass if the defendant can prove that reasonable force was used to retake goods to which the defendant has a better right to possession than the plaintiff, or where the goods were wrongfully taken from the defendant by the plaintiff.

If one wishes to bring a claim for trespass to chattel or land, there are various remedies that may be available, including:

Compensatory Damages; Compensatory damages applies if damage to the chattel has been sustained or not capable of being returned. The aim for this type of damages is to put an injured person in the same situation as they would have been in had the trespass not been committed.

Nominal Damages; Trespass is a tort of strict liability, which means that nominal damages (i.e. damages awarded to a person who has suffered a legal wrong) apply even where no actual damage has been sustained by the plaintiff.

Injunctions; An injunction is a Court order preventing a party from doing something, or alternatively, forcing a party to do a specific thing. In order for the Court to grant an injunction, the Court must be satisfied that the damages suffered by the plaintiff are significant (such as where the trespass is ongoing).

Exemplary Damages; Exemplary damages, also referred to as punitive damages (i.e. damages awarded in order to punish the defendant and deterring others from engaging in similar conduct) may be awarded in certain circumstances involving trespass to chattels. Exemplary damages (although not traditionally so) are available for any tort.

 Remedies and Defences to Conversion

An action in conversion may be defended on any of the following basis:

Necessity; There can be no trespass if the inference occurs in circumstances where consent could not be obtained, but where the interference was necessary. This defence will require consideration of the relevant facts of the case to determine whether the interference was in fact necessary, and the difficulty or impossibility in obtaining consent.

Abatement (also known as Self-Help); A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with enjoyment of one’s land. A person may lawfully retake goods that have been wrongfully taken out of that person’s possession.

Consent; There can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied.

Abandonment: An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.

 Authority of Law: Conversion that is done under the authority of law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement debt, would be valid.

Damages for tortious causes of action such as conversion are generally compensatory (i.e. they aim to put the plaintiff in the position which they would have been in, but for the conduct of the defendant). Remedies for conversion can include:

Damages; The primary remedy for conversion is damages. The Courts will usually measure the full value of the chattel with the consequential losses.

Abatement (also known as Self-Help); A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession if such an order is made.

Specific Restitution; The remedy of specific restitution may be awarded where damages are inadequate.

Special damages; When the conversion occurs, the injured party should receive full compensation for actual losses. Special damages may be recovered in an action for conversion for any injury proximately resulting from the conversion. The Restatement (Second) of Torts indicates these damages can consist of, the additional value of a chattel due to additions or improvements made by the converter not in good faith, the amount of any further pecuniary loss of which the deprivation has been a legal cause, interest from the time at which the value was fixed, compensation for the loss of use not otherwise compensated.

Remedies and Defences to Detinue

There are several potential defences available for detinue. These include, but are not limited to:

Consent; It is a defence to show that there can be no trespass if the interference occurs with the plaintiff’s consent. Consent can either be express or implied.

Jus Tertii; It is a defence to show that a third party has a better right to possession than the plaintiff.

No right to possession; The legal ownership of a chattel can be complicated. Registration of a vehicle is not proof of ownership, for example. If someone has purchased a chattel, ownership may be passed to another through it being given as a gift. There may be contractual obligations (in particular for commercial equipment) or other facts that demonstrate that the person demanding the return was not the rightful owner.

The demand was invalid; If a demand has been made, it may be vague, confusing or otherwise invalid. If the demand isn’t valid, then a refusal may not have been unreasonable.

There was no refusal; If the refusal to return something is not specific, and a sufficient amount of time has not passed to imply that there is a refusal, then the element of refusing the demand to return the chattel may not be met.

It wasn’t reasonable to return the chattel; There may be a reasonable excuse why the chattel had not been returned in time.

Remedies for detinue are:

Delivery Up of Goods; An order for delivery up of goods is available in an action for detinue. It is basically a Court order demanding the return of the goods or chattel to the plaintiff.

Compensatory Damages; Compensatory Damages may be awarded if there has been a loss.

Restitution; The remedy of specific restitution (i.e. remedy calculated based on the gains of the defendant) where damages are inadequate.

Abatement (also known as Self-Help); A person may be entitled to enter the land of another or take other self-help measures, upon giving of due notice, to abate a nuisance which substantially interferes with the enjoyment of one’s land. A person may lawfully retake goods which have been wrongfully taken out of the person’s possession.

Difference between Conversion and Detinue

Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner. Subjective intention to convert is unnecessary while, Detinue is the wrongful detention of goods, when one refuses to deliver up goods to a person having the immediate right to possession. Often, there is a demand for return, and a refusal, but that is not essential. Where the defence shows the defendant would have refused to comply, then a formal demand would have been futile.

Detinue seeks recovery of a piece of property that has been wrongfully held or retained (distinguished from replevin which seeks recovery of property that has been wrongfully taken). Under detinue, the defendant received the property legally and the plaintiff never had to have the property in the first place while, Conversion occurs when one purposely interferes with another's personal property. The plaintiff must show that he owns or has the right to have the item at the time it's interfered with, that the defendant's interference with it was intentional, that the interference deprived the plaintiff of possession or use of the item, and that the interference caused damages to the plaintiff. Also, conversion can happen if you receive an item from somebody who was not authorized to give it away from you.

References include;

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