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QUESTION

The tort of trespass to chattel is made of : TREPASS TO CHATTELS, CONVERSION AND DETINUE. Discuss the above and support with case law. Consider the ff:

-definition and explanation of each tort

-elements of each tort(trespass to chattel,conversion,detinue)

-explain the concepts of innocent delivery or receipt, loss property rule

-give examples of persons qualified to sue for trespass to chattel

-discuss the REMEDIES and DEFENCE to trespass to chattel, conversion and detinue.

ANSWER

Although there is no universal-recognised definition of tort, Tort can basically be described as a breach of duty owed by one party to another fixed by law and is redressible by an action for liquidated damages. Tort Law is an aspect of law where civil wrongs are addressed. Tortous liability is determined in the form of a fault-based compensation system; one who commits a tort is a tortfeasor. In Law as an academic discipline, there exists types of torts which are basically classified into Trespass to Person, Trespass to Land and Trespass to Chattels. In this work, the writer shall be focusing on the third- Trespass to Chattels.

Trespass to Chattel is subclassified further into : 1)Trespass to chattel 2)Conversion 3)Detinue.

1. TRESPASS TO CHATTEL.

In an attempt to expound on what Trespass to chattels entails, the word Chattel must first be defined. Chattels generally refer to any personal property, movable or unmovable. Chattels do not include real property. Trespass to chattels is an intentional interference with another person's lawful possession of a personal property. Trespass to chattels does not apply to real property or any interest in land.

In order to prove trespass to chattels, the law requires one(the claimant) to prove its elements. The following are **elements of trespass to chattels**.

1. Intent to trespass: It is almost an undebatable fact that “a man intends the natural consequences of his actions”. Therefore, merely intending to do the act is enough to show this element of trespass. One doesn’t necessarily need to show intent to harm a specific person.
2. Lack of owner's consent: There must be an unauthorized, unlawful interference, which means the person interfered with or dispossessed the chattel without the owner's permission.
3. Interference of chattels: A person commits a trespass to chattel by, dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or, damaging the chattel. Interference does include dispossession of a chattel, but it must be something short of conversion.

In summary, a person will be held liable for a trespass to chattels if; i} the person dispossesses the other of the chattel; ii} the chattel is impaired as to its condition, quality, or value; iii} the possessor is deprived of the use of the chattel for a substantial time; iv} Bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.

REMEDIES OF TRESPASS TO CHATTELS.

In a trespass to chattels claim, one can only recover actual damages (as opposed to nominal damages). Actual damages are measured by the diminished value of the chattel that resulted from the defendant's actions. The following are remedies that are available to the aggrieved party in the event of a trespass (to chattel).

i) 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- ab initio.

ii)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.

iii)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).

iv)Exemplary Damages

Exemplary damages, also referred to as punitive damages ( that is, 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.

DEFENSES TO TRESPASS TO CHATTELS.

Mistake of ownership is not a valid defense to a trespass to chattels. In other words, it doesn't matter if the person didn't know the property belonged to you. Possessing or damaging the property itself is enough to show interference. The following are defences to trespass to chattels.

1. 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.

This defence is of two types; Public necessity [when one intentionally interferes with another person’s chattel to protect the public] and private necessity [when the purpose of using another person’s chattel is to protect one’s own interests]

1. 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.
2. 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. 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.
3. 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.
4. 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.
5. 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.
6. Privilege invasion to reclaim property or 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.
7. CONVERSION

To reclaim the value of one’s personal property that was damaged or altered by someone else’s unauthorized use, one can file a lawsuit for conversion. Conversion is an intentional tort and is the civil law equivalent of a criminal theft charge. Conversion can occur when someone, acting without one’s consent, does any of the following with such person’s property:

-takes and fails to return the property,

-sells the property,

-substantially changes the property,

-severely damages or misuses your property.

For a successful conversion claim, one has the burden of proving that; he or she has a legal right to the property; that the defendant intentionally interfered with his or her possession; that the defendant’s actions are the legal cause of his or her loss of property.

Since conversion is an intentional tort, one must show that the defendant purposefully took the property in a manner that interfered with such a person’s interest in the property. It’s not necessary to prove that the defendant intended to harm the property.

ELEMENTS OF CONVERSION

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. Damage to the property.

REMEDIES OF CONVERSION

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:

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

ii)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.

iii)Specific Restitution : The remedy of specific restitution may be awarded where damages are inadequate.

DEFENSES TO CONVERSION

1)Abandonment of property by plaintiff : Abandonment is the voluntary relinquishment of ownership so that the property ceases to be the property of any person and becomes the subject of appropriation by the first taker.

2)Authority of law.

3)Consent or approval of plaintiff.

4)Statutes of limitation : The period in which a lawsuit must be filed is known as a statute of limitations. Generally, intentional tort claims must be filed within three to six years of occurrence. If one files his or her conversion claim after the statute of limitations has run, such claim will be denied.

5)Interest of defendant (e.g. defendant has rights to the property.)

6)Lack of value of property.

7)Nonexistence or lack of identity of property.

8)Privilege.(In certain circumstances and under certain statutes, a defendant has the privilege to claim possession…storage facilities after proceeding along statutory lines, can seize stored property and are privileged to do so, for example.)

9)Unlawful and illegal acts.

10)Waiver, ratification, and estoppel.

1. DETINUE

The tort of detinue occurs when a person wrongfully detains a person’s property and unreasonably refuses to return that property to the rightful owner. Detinue is similar to the tort of Conversion, except for a specific element: it is a condition of the action of detinue that the plaintiff has made demand for the return of goods, and the demand has been refused. The plaintiff must also have a right to immediate possession of the chattels. Detinue 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.

ELEMENTS OF DETINUE.

1)The making of a demand :The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.

2)Refuse a Demand : The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.

3)Unreasonable Refusal : Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable.

4)Consequential Damage : As a result of the defendant’s conduct, that the plaintiff has suffered loss is an element of detinue. This is usually calculated as the value of the chattel.

REMEDIES OF DETINUE.

i)Delivery/return 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. This is the common law version of specific restitution – it recognises that the goods are the plaintiff’s by right, and their entitlement to receive them back. It is not necessary to prove that damages are inadequate to receive delivery of goods.

ii) Compensatory Damages : Compensatory Damages may be awarded if there has been a loss.

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

iv)Abatement (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.

DEFENSES TO DETINUE

i)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.9

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

iii)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.

iv)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- thus an acting defence in the event of detinue.

v)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.

vi)Unreasonableness : That it wasn’t reasonable to return the chattel is a defnce to detinue. There may be a reasonable excuse why the chattel had not been returned in time.

LOST PROPERTY RULE.

Lost property is typically defined as personal property that an owner unintentionally and involuntarily parts with. Real property may not be lost or mislaid. Common law defines lost property as personal property that was unintentionally left by its true owner. At common law, a person who found lost personal property could keep it until and unless the original owner comes forward. This rule applied to people who discovered lost property in public areas, as well as to people who discovered lost property on their property. Property is generally deemed to have been lost if it is found in a place where the true owner likely did not intend to set it down, and where it is not likely to be found by the true owner. At common law, the finder of a lost item could claim the right to possess the item against any person except the true owner or any previous possessors. The underlying policy goals to these distinctions are to (hopefully) see that the property is returned to its true original owner, or "title owner." Most jurisdictions have now enacted statutes requiring that the finder of lost property turn it in to the proper authorities; if the true owner does not arrive to claim the property within a certain period of time. Typically, these statutes require lost personal property to be turned over to a government official, and that if the property is not claimed within a set period of time, it goes to the finder, and the original owner's rights to the property are terminated. In summary, and basically; the “lost property rule” holds that the first finder of lost property has a superior claim of right over any other person except the previous owner.

REFERENCES

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