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Assignment

The tort of trespass to Charttel in is made of: Trespass to Charttels Conversion and Detinue Discuss the above and support with case law. Students may consider the following: define and explain each tort State the elements of Trespass to Charttel, conversion and detinue Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion Give examples of persons qualified to sue for Trespass to Charttel Discuss the remedies and defence to Trespass to Charttel, conversion and detinue Differences between conversion and Detinue Suppo References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

What Are Trespass to Chattels and Conversion?

Trespass to chattels and conversion are both intentional torts that refer to a wrongful, intentional interference with the possession of someone's personal property. Trespass to chattels and conversion deal only with personal property. They do not apply to the interference of real property or any interest in land.

Both trespass to chattels and conversion are general intent torts. As opposed to specific intent torts, general intent torts do not consider whether the tortfeasor knew his or her conduct would result in the specific harm. As a result, mistake of ownership is not a valid defense to trespass to chattels and conversion.

Difference Between Trespass to Chattels and Conversion

It's often easy to confuse trespass to chattels with conversion because they both deal with interfering personal property. Here's a look at the differences between the two torts:

The Degree of Interference

The main difference between trespass to chattels and conversion is the degree of interference. Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent. The degree of interference for conversion must be so serious that the tortfeasor, or person accused of committing the tort, may be required to pay the full value of the property.

According to the Restatement (Second) of Torts, the court may consider the following factors to determine the seriousness of the interference in a conversion case:

1. The extent and duration of the tortfeasor's exercise of dominion or control

2. The tortfeasor's intent to deprive the owner on possession

3. The tortfeasor's good faith

4. The extent and duration of the resulting interference with the other's right of control

5. The harm done to the chattel

6. The inconvenience and expense caused

On the other hand, a trespass to chattels is an act that falls short of conversion. The tortfeasor is responsible only to the extent of the damage done (not the full value of the property) from dispossessing another of the chattel, using or intermeddling with a chattel in the possession of another, or damaging the chattel.

Elements of Trespass to Chattels and Conversion

Proving trespass to chattels and conversion involve the following elements: (1) the plaintiff owns or has the right to possess the personal property at issue; (2) the tortfeasor intentionally interfered with the plaintiff's property; (3) the tortfeasor deprived the plaintiff of possession or use of the property at issue; and (4) the interference caused damages to the plaintiff.

Remedies: Trespass to Chattels vs. Conversion

As mentioned above, an ordinary conversion case will require the tortfeasor to pay the full market value of the property to its owner. If the owner is not fully deprived of the property, and it can be returned to the owner, the tortfeasor would be liable for the actual damage, which is the usual remedy for trespass to chattels. As opposed to paying the full value of the property, the tortfeasor will pay the diminished value of the chattel

Reference

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What Differs Between Conversion, Detinue, and Trespass to Chattels?

Generally, Conversion, Detinue, and Trespass to Chattels Involve Interference With Property. Conversion Involves Wrongful Removal of Property From the Rightful Person. Detinue Involves Failure to Return Property to the Rightful Person. Trespass to Chattels Involves Interference Such As Vandalism Without Interfering In Possession.

Conversion, which is also often mistakenly called trespass to chattels, involves the wrongful interference with a mobile object of another. Such object might be money (see: Wymor Construction Inc. v. Gray, [2012] O.J. 4181), goods, equipment, supplies, or other materially tangible things and possibly, as below, intangible things such as electronic data as information. While conversion may be described using terms familiar to criminal law such as theft or robbery or burglary, and while conversion may occur by theft, robbery, or burglary, the tort of conversion may occur by other methods. Additionally, while 'wrongfulness' is an element of conversion, it is inaccurate to presume that the wrongfulness must include criminal or illicit intentions. While conversion does require an element of intention, such 'intention' may merely be an action that was an innocent intention; and accordingly, conversion falls within the family of torts known as the strict liability torts whereas even if the conversion, being the wrongful interference, was without nefarious or illicit intentions and purely with innocent intentions, liability may still result. The tort of conversion was well articulated within the case of BMW Canada Inc. (Alphera Financial Services Canada) v. Mirzai, 2018 ONSC 180 which stated:

Further information as to what constitutes the tort of conversion, including jurisprudence regarding the nature of 'intention' element may be found in AVS Transport Inc. v. van Ravenswaay et al., 2016 ONSC 3568 which says:

As suggested in AVS Transport Inc., the issue as to whether conversion is an intentional tort or strict liability tort appears to remain somewhat debated; however, it does appear from the majority of the cited jurisprudence that most scholars view conversion as a strict liability tort.

Damages

Generally, when determining the damages applicable to a claim in conversion such will be based upon the actual value of the object converted at the time that the object was converted in a similar manner to that for the calculation of actual damages arising from other torts. Per the BMW Canada Inc. case cited above:

Whether the object which is the subject to the tort of converion must be tangible or may include something intangible, such as data or information or even certain rights, is often debated within legal circles. Clear case law confirming whether conversion applies to intangible things remains elusive; however, the precedent case of Boma Manufacturing Ltd. appears to provide some guidance whereas within the Supreme Court confirmed that the tort of conversion may apply to the wrongful negotiation of a banking cheque, whereas a banking cheque is merely a piece of paper that represents a financial instrument in accordance to the Bills of Exchange Act, R.S.C. 1985, c. B-4, and whereas the damages suffered for conversion of a banking cheque may be for the face value of the instrument rather than merely the physical value of the paper itself. Accordingly, per Boma, the intangible aspects of a tangible thing may be the prominent basis for establishing damages. specifically, the Supreme Court said:

Boma v. CIBC,[1996] 3 S.C.R. 727 at paragraph 37

Despite the Supreme Court addressing intangible concerns involving rights to money per the negotiability of a cheque as within the Boma case, the question as to whether intangibles, such as intellectual properties, are protected per the tort of conversion seems to remain debated. As said in UBS Wireless Services, Inc. v. Inukshuk Wireless Partnership, 2008 CanLII 19796:

UBS Wireless v. Inukshuk Wireless,2008 CanLII 19796 at paragraph 35

It seems confusing that rights to intangibles, such as the right to monies due as scribed upon a tangible cheque per Boma are protected by the tort of conversion and yet other intangibles, for example client data contained within a computer hard drive or even designs or information upon paper, would be without protection by the tort of conversion. As an age old tort, existing from times of tangibles, it may now be time for the higher courts to confirm that all forms of intellectual properties are indeed protected by the tort of conversion.

Right of Plaintiff to Sue in Trespass

Unlike the position under the torts of conversion and detinue where a person who has an immediate right to possession or ownership of the goods could sue even though he is not in actual possession of the goods, in trespass, the situation is the opposite. The plaintiff in an action for trespass to goods must show that he was in actual possession of the goods at the time of the alleged meddling or interference by the defendant (Brazier & Murphy, 1999: p. 69). Ownership of the chattel is irrelevant in considering the question of liability in trespass. What matters is possession, whether actual or constructive. Thus, a cyclist who parks his cycle outside a shop remains in constructive possession of it, and could sue any thief who rides away on it. However, since the thief acquires actual possession, although wrongfully, he could also maintain an action in trespass against any third party who interferes with the cycle, except the owner himself or a person acting under the authority of the owner.

One implication of the above principle is that, even an owner of chattel may be liable in trespass if he interferes with it at a time when it is in the lawful possession of another person such as a bailee. For instance, the owner of a car who leaves it at a garage for servicing or repairs may be liable in trespass, if he retakes the car before the bailment has come to an end by settlement of the bills So also, an owner of chattel cannot maintain an action in trespass if he is not in actual possession of it at the time of the interference, unless the goods were unlawfully taken from him.

There are only few exceptions to the rule that only a person in actual or constructive possession can sue in trespass, for instance, a trustee not yet in possession may sue in trespass against any third party notwithstanding that the chattel is in the hands of the beneficiary. Also, an executor or administrator of an estate may sue in trespass against anyone who interferes with the chattel of the deceased before probate or letters of administration are granted.

(Kodilinye, 1982: p. 193).

In conclusion;

The torts of conversion, detinue, and trespass to chattels, all involve elements of wrongful intentional interference with chattels. Furthermore, the wrongful intention may, be wrongful and intended in the nefarious or illicit sense; however, the wrongfulness and the intention may arise without a nefarious or illicit state of mind yet occur nonetheless; and accordingly, these torts are, generally, of the strict liability type without an availability of a defence based on lack of intention to cause illicit harm. The interference is deemed intentional and wrongful merely by some form of positive act that results in the interference. For example, should a farmer accidentally yet intentionally remove animals from the rightful owner, such as animals grazing on neighbouring farmland, due to confusion in identity of the animals, such an act would be intentional and wrongful despite the the lack of nefarious intentions; however, should the animals stroll without influence onto land of the farmer from a neighbouring farmer such an act would be without intention. Of course, failure to return the animals upon a request to do so may then trigger an right of action in detinue; however, the wrongful intention at that point would be the interference by failure to return the animals rather than any wrongful act in how the animals initially came into possession.

Reference

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