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ASSIGNMENT

The tort of tresspass to chartel is made of tresspass to chartel conversion and detinue discuss and support with case law.

Answer.

(1).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.

Trespass to chattels is a tort whereby the infringing party has intentionally (or, in Australia, negligently) interfered with another person's lawful possession of a chattel (movable personal property). 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). As opposed to the greater wrong of conversion, trespass to chattels is argued to be actionable per se.

The tort of trespass

Trespass is indeed the wrongful interference by one person, with the property or goods belonging to another party. In order for trespass to be considered wrongful, it must be done voluntarily, is unauthorised, and the trespass must be direct.

Perhaps the most fundamental aspect of trespass, is that there must be a direct link between the actions of the person committing trespass, and the interference with the other person’s property or goods.

The elements of the tort of tresspass to chattel are:Lack of consent

A vendor can attempt to dispute a trespass claim on the grounds that the user consented to the terms of the contract. Even if consent was given for certain access, a user may still have a valid trespass to chattels complaint if the vendor has exceeded the contractual terms, if the contract is found to misrepresent the actual functioning of the product, or if the consent has been withdrawn. A vendor can be held liable for "any use exceeding the consent" given.

Actual harm

The precise criteria for ascertaining actual harm varies among states. In California, for instance, an electronic message can be deemed a trespass where the message interferes with the target computer's operation, as long as a plaintiff can demonstrate either actual hardware damage or actual impaired functioning. But the general concept of requiring impaired computer functioning has been adopted consistently and in showing impaired computer functioning, courts have usually emphasized system unavailability.

Intent

In clarifying the meaning of intent in the context of a trespass to chattels claim of Torts states that "intention is present when an act is done for the purpose of using or otherwise intermeddling with a chattel or with knowledge that such an intermeddling will, to a substantial certainty, result from the act," and that, furthermore, "[i]t is not necessary that the actor should know or have reason to know that such intermeddling is a violation of the possessory rights of another."

The tort of conversion

Trespass as a tort can be committed against property and goods. However, in contrast, the tort of conversion can only be applied to goods. Conversion involves a voluntary act, causing interference against another person’s goods. Furthermore, conversion can also be committed even when a person has no intention to commit the tort.

Conversion – unlike trespass – does not require a direct link to be established for a person to commit the tort, as an indirect link is considered sufficient for a finding of a breach under certain circumstances.

The final element of conversion is if the person who is committing the tort purport to deal with the goods that belong to another party for their benefit which may involve the selling, giving away, or lending of goods in which the tortfeasor has no legal title over.

The tort of detinue

Detinue is also a tort that can only be committed against a good, rather than property.

When someone commits a tort of detinue, they are considered to be wrongfully withholding goods from a person that has an immediate right of possession.

The other element of detinue is that the person committing the wrongful act is also denying the innocent party rightful possession of their property, and with full knowledge of the person’s rights to their goods. The final element of detinue is if the tortfeasor fails to deliver the goods as required by law.

Historically, detinue came in two forms: "detinue sur bailment" and "detinue sur trover".

In detinue sur bailment, the defendant is in a bailment relationship with the claimant and either refuses to return the chattel or else has negligently or intentionally lost or destroyed it. The onus is on the bailee to prove that the loss of the chattel was not his or her fault.

In detinue sur trover, the defendant can be any individual in possession of the chattel who refuses to return it to the claimant. A defendant could be a finder or a thief or any innocent third party, and the claimant need only have a better right to possession.

Concept of innocent delivery or receipt;

Lost of property is defined as personal property that was unintentionally left by its true owner. For example, a wallet that falls out of someone's pocket is lost.

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.

Who can sue for trespass of chattel?A person who wants to sue in trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion. These actions are substantiated by the provisions of the Torts (Interference With Goods) Act 1977.

Remedies:The 1977 Act introduces common remedies for all forms of ‘wrongful interferences with goods’. Section 3 provides that in proceedings for conversion, or any other chattel tort, against a person in possession or control of goods, the following relief may be given, as far as is appropriate:

An order for delivery and for payment of any consequential damages (s3(2)(a));

An order for delivery of the goods, but giving the defendant the alternative of paying damages by reference to the value of the goods, together in either alternative with payment of any consequential damages (s3(2)(b)); or

Damages(s3(2)(c)).

If it is shown to the court’s satisfaction that an order for delivery and payment of any consequential damages has not been complied with, the court may revoke the order (or the relevant part of it) and make an order for payment of damages by reference to the value of the goods (s3(4)(a) and (b)).

Where an order is made for delivery but giving the defendant the alternative of paying damages (ie, under s3(2)(b)), the defendant may satisfy the order by returning the goods at any time before execution of judgment, but without prejudice to liability to pay any consequential damages: s3(5).

Where goods are not detained (as where they are lost or destroyed) the normal form of judgment is for damages.

What is the difference between trespass to conversion and detinue.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:

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

The tortfeasor's intent to deprive the owner on possession

The tortfeasor's good faith

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

The harm done to the chattel

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.

Reference: Wikipedia, law teacher Ese malemi law of tort textbook