TORTS A Exam Notes – Helen Driscoll

TRESPASS TO PERSON

Time Limits
Three years to bring action on the case (s11 Limitations of Actions Act 1974 Qld)

Jurisdiction
In Queensland, Queensland statutes and common law apply

Onus
Non-highway – plaintiff to prove on balance of probabilities (Mchale v Watson)
Highway – plaintiff to prove throughout (Lord v Nominal)

Battery
Physical contact with the plaintiff’s person with out consent. S245 Criminal Code applies in Queensland.

Direct or indirect application of force
• Physical contact with the plaintiff (Carter v Walker)
• Need not be direct eg/spitting (R v Cotesworth)
• Anger or hostility not required, but must exceed acceptable everyday contact (Rixon v Star City)
• Must be active not passive (Innes v Wylie)

With out consent
• Consent to application of force means no action
• Consent may be express or implied eg/ sport participation unless outside rules of game (McNamara v Duncan)
• Conduct part of everyday life not battery Collins v Willock
• Must be given freely and without fraud (R v Williams)

Defendant at fault
• Intentional or negligent, need not intend to cause harm or injury (Cole v Turner)
• Knowledge of contact not essential by either party (Murray v McMurchy)

Assault
The imminent threat of physical injury through gesture or statement to the plaintiff.

Threat of imminent harm
• Words alone can amount to assault (Slaveski v Victoria)
• Can be some delay but not a threat to harm in distance future (R v Gabriel)
Apprehension/Reasonable belief in the defendant’s ability to carry out threat
  • Plaintiff must be aware of threat \textit{(R v Phillips)}
  • Plaintiff need not be afraid \textit{(Brady v Satchel)}
  • Must have actual \textit{(Stephens v Meyer)} or apparent \textit{(Brady v Schatzel)} present ability to carry out threat!
  • Conditional threat can be assault \textit{(Police v Greaves)}

Fault
  • Defendant must have intended to create apprehension of harm in plaintiff’s mind

\textbf{False Imprisonment}
Voluntary act of defendant subjects the plaintiff to total deprivation of freedom without lawful justification.

\textbf{Direct interference with the plaintiff’s liberty}
\textit{(Myer Stores v Soo)}

\textbf{Total restraint in all directions} \textit{(Bird v Jones)}
  • No reasonable means of escape \textit{(Burton v Davies)}
  • Need not be physical \textit{(Symes v Mahon)}
  • Lawful authority cannot give rise to action \textit{(Myer Stores v Soo)} as long as within scope of duty

Defendant at fault

\textbf{Remedies}
  • Nominal damages is no damage is suffered \textit{(Stephens v Myers)}
  • Compensatory if there is damage.
  • Aggravated damages if there is humiliation or loss of reputation \textit{(Myer Stores v Soo)}
  • Exemplary if court wishes to punish the wrongdoer \textit{(Henry v Thompson)}
  • Self help, using reasonable force to solve situation \textit{(Fontin v Katapodis)}

\textbf{Defences}
  • Consent \textit{(McNamara v Duncan)}, interference must be within scope of consent \textit{(Baker v R)}, must be voluntary (not under fraud or duress \textit{R v Williams}), and plaintiff must have legal capacity. Consent can be revoked \textit{(Plenty v Dillion)}. Consent can be express or implied \textit{(Halliday v Nevill)}
  • Provocation complete defence to actions in battery and assault due to the \textit{Criminal Code} definition. Refer to below for more detail
• Necessity - An intentional tortious act may be justified if necessary for the preservation of life, human safety or protection of property, regardless of whether the desired outcome is achieved or not (Proudman v Allen), threat must be imminent and about to happen (Cope v Sharpe), must be reasonable in all circumstances (Murray v McMurchy).
• Mistake is not a defence in trespass
• Self-defence and defence of another. Refer to below.
• Inevitable accident, lack of fault. (Stanley v Powell).

TRESPASS TO LAND

Time Limitations
Six years to bring action – nominal damages, no damage to property (Limitations of Actions Act (s10))
Continuing trespass – the time limitation is renewed each day the trespass continues (Konskier v Goodman)

Intentional direct interference of the land in possession of another without lawful justification or consent

Title to Sue
• Exclusive possession of the land, not based on ownership (Newington v Windeyer)
• May be a tenant.
• A licensee does not have title to sue (Malone v Lakskey)
• Trespass by relation – plaintiff may bring action for interferences between time of right of possession arose and actual taking of possession

An interference with the land
• Must be with land – buildings, subsoil (Burton v Spragg) and airspace (Bernstein v Skyviews). Transient interference with airspace (Davies v Bennison).
• Actionable interferences include: - entry onto land
  - remaining on land after consent has been withdrawn (Colwell v Rosenhill)
  - Causing an object, animal or person to come into contact with the land (Pickering v Rudd)
  - Leaving objects on the land (Konskier v Goodman)
• Interference must be unauthorised (TCN Channel Nine v Anning)
• Authorised by law eg/ council permission, police etc (Halliday v Nevill
• Motive and Mistake irrelevant
• Trespass ab inito – defendant enters lawfully, commits act outside of authority, therefore was unauthorised from initial entry – for police only!
• Implied License for members of public to enter for legitimate purposes – eg/ unlocked gate, open driveway (TCN Channel Nine v Anning), (Halliday v Nevill)
• When goes outside the scope of consent (Barker v The Queen), if remain after achieving purpose, also become unauthorised
• Reasonable time must be allowed to leave (Wilson v NSW)
• Implied license to members of public can be negated eg/ Signs and locked gate (Halliday v Nevill), or express (Plenty v Dillion)

Defendant at Fault
• Must be done with the voluntary mind (Public Transport Commission of NSW v Perry)

Remedies
• Self-help (see above)
• Nominal for no damage (Windridge Farm v Grassi)
• Compensatory for damage to land, the damages are the amount by which the land decreased in value, not the cost of reinstatement (Jones v Shire of Perth)
• Can be cost of reinstatement, as long as it is not disproportionate (Parramatta City Council)
• Exemplary as a deterrent (XL Petroleum (NSW) v Caltex Oil (Australia))
• Aggravated (TCN Channel Nine v Anning)
• Defences include Consent (see above or below), Necessity (see above or below) and Self-defence and Defence of Another (see above or below).

TRESPASS TO PERSONAL PROPERTY
• Not mutually exclusive

Time Limitations
• Six years to bring action (Limitations of Actions Act) s10 (1) (a)

Jurisdiction: Queensland

Onus of Proof: Highway/non-highway

Trespass to Chattels
A direct interference with personal property in the possession of the plaintiff without lawful authority.
• Can be taking, moving, handling or use of goods
Title to Sue

Plaintiff must have actual or constructive possession at time of interference (Penfolds Wines v Elliot)

Bailment: a legal agreement of delivering one's goods (the bailor) to another (the bailee) for a period of time for a particular purpose, to be returned once the conditions of the bailment are fulfilled. (Hobbs v Petersham Transport)

- Bailment at will – immediate right to possession as bailor can demand goods back at anytime
- Bailment for a term – immediate right to possession arises if bailee breaches terms of the bailment or purpose of the bailment met – thus converts to bailment at will (Penfolds Wines v Elliot)
- Bailment exception: At the time of interference the plaintiff (bailor) had immediate right to possession under the bailment, and a third party interfered with the goods. The exception does not apply if the bailee voluntarily delivered goods to a third party of the bailee interfered with the goods. (Penfolds Wines v Elliot).

Finders: have possessive rights over goods but have obligation to make reasonable attempt to find owner and take reasonable care of goods (Parker v British Airways Board).

Direct Interference

- Defendants' acts make immediate contact (not merely consequential) with the plaintiff's goods (Hutchins v Maughan)
- Bodily contact not essential

Fault

Intentional or negligent (National Coal Board v JE Evans & Co Cardiff)
Motive irrelevant

Remedies

- Nominal damages to acknowledge interference with chattel (Slaveski v Victoria)
- Compensatory where there has been actual damage, usually the cost of repair or the decrease in value (Pargiter v Alexander)
- Forseeable consequential loss – in the case of a profit earning chattel, lost profits may be claimed (Hillesden Securities v Ryjack)

Conversion

A 'repugnant dealing' inconsistent to the plaintiff's right to chattel without lawful authorisation (Penfolds Wines v Elliot).

- Must exercise dominion or assert a right over the chattel
- Mere possession or retention of goods without consent does not amount to conversion, as a clear refusal to return the goods after demand has been made must be evident (Oakley v Lyster).