

OCTOBER 2017 TORTS MODEL ANSWER
QUESTION NO. 4

1. What tort cause(s) of action can Polly reasonably raise against Dan? Discuss.

Trespass to Land

Trespass to land is the intentional entry upon the land in possession of another.

Dan went for a hike in the mountains. While walking a sudden storm arose. The thick snow accompanied by the winds created a blizzard, and Dan knew if he did not find shelter he would die from hypothermia. Remembering his friend Jill owned a cabin nearby he struggled to find her cabin. He saw a red-roofed cabin and found the key under the mat, where Jill told him the key would be place. However, unbeknownst to Dan it was not Jill's cabin, but another's i.e. Polly. Dan entered the cabin. Dan will argue that the cabin he believed belonged to Jill, and thus he had no intent to enter Polly's land. However, based upon his conduct of using the key and entering the cabin shows he acted a substantial certainty to intentionally entry upon the land, even through he believed the land was owned by another. The land was owned by Polly, thus the land in possession of another. Polly will further argue that she did not give consent nor did Dan have a privilege to come upon Polly's land.

Therefore, a trespass to land will be found.

Trespass to Chattel

Trespass to chattel is the intentional interference with the chattel of another.

Dan removed some wooden built-in bookshelves and started built a fire in order to stay warm. Therefore he had the intent to interfere with Polly's chattel. However, Dan will argue that the wooden built-in bookshelves belonged to Polly and not Jill, thus he lacks the intent to interfere with her wooden built-in bookshelves. However, under the transferred intent doctrine intent is transferred from the intended victim to the actual therefore, Dan's intent to destroy Jill's wooden built-in bookshelves in order to build a fire to keep warm actuality harmed Polly's wooden built-in bookshelves. The intent will transfer from the intended victim to the actual victim establishing the intent. In addition, Dan's destruction of the wooden built-in bookshelves and burning them in the fire shows his conduct was an intentional interference with Polly's personal property of another.

Therefore, Dan will be liable for trespass to chattel.

Conversion

Conversion is the intentional exercise of wrongful dominion and control over the chattel of another.

Dan took the wooden built-in bookshelves and used them to build a fire in order to stay warm. The act of burning the wooden built-in bookshelves shows he acted with a substantial certainty to destroy the wooden built-in bookshelves. Thus, Dan's actions were intentional. By burning the wooden built-in bookshelves, Dan exercised wrongful dominion and control over Polly's wooden built-in bookshelves, another.

Therefore, Dan has committed conversion of Polly's bookshelves.

Conversion

Defined Supra.

Dan threw in some of Polly's books that were on the shelves to keep the fire going. The act of burning the books shows he acted with intent to destroy the books. Thus, Dan's actions were intentional. By burning the books, Dan exercised wrongful dominion and control over Polly's books, i.e. of another.

Therefore, Dan has committed conversion of Polly's books.

2. What defense(s) if any, can Dan reasonably assert? Discuss.

Consent

Consent is the willingness of the act.

Dan's friend Jill owed a cabin in the mountains where he was hiking. Jill had told Dan that he could use her cabin should a need arise. Once the blizzard started, Dan knew that he needed to find shelter in order to survive. Dan struggled to find Jill's cabin, and found a cabin he thought was hers, which in fact was owned by Polly. Although Dan did have the willingness of Jill to use her cabin, he went into Polly's cabin who did not give him permission.

Therefore, consent is no defense to the above torts Dan committed.

Mistake

Mistake is a false belief of a fact. However, mistake is never a defense to an intentional tort.

Dan's friend Jill owed a cabin in the mountains and had told Dan that he could use her cabin should a need arise. Once the blizzard started, Dan knew that he needed to find shelter in order to survive. Dan did find cabin that he thought was owned by Jill. However, the cabin was owned by Polly. Dan entered the cabin under a false belief that the cabin was owned by Jill. Although Dan entered by mistake, mistake is not a defense to any intentional torts he committed, as discussed above.

Therefore, mistake is not a valid defense.

Private Necessity

Necessity is where a person is privileged to enter or interfere with the chattels of another if it is reasonable and necessary to protect any person.

While hiking in the mountains a blizzard started and Dan knew that he needed to find shelter in order to survive. Dan struggled to find his friend's cabin, and found a cabin he thought was hers, but was owned by Polly. Dan entered the cabin in order to shelter himself from the blizzard. If he did not obtain shelter he knew he would get hypothermia and die. Dan used the bookshelves and books in order to start a fire in order to stay warm during the storm. Thus, Dan did enter Polly's cabin and did interfere with the bookshelves and books, the chattels of another. However, Dan needed to burn the bookshelves and books in order to remain warm and not get hypothermia and to survive the storm.

Therefore, necessity is a defense to the trespass to land, trespass to chattels and the conversion. Although necessity is a valid defense Dan will remain liable for the damages.

3. What types of damages, if any, might Polly recover from Dan? Discuss

General Damages to the land

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation pain and suffering and/or property damage.

Dan entered Polly's land in order to gain access to the cabin. Since there are no damages to the land, no general damages will be awarded.

Nominal Damages

Nominal damages are the declaration of Plaintiff's rights.

Since Polly's land was not damaged the court may award a nominal amount in order to compensate Sally.

General Damages Bookshelves

Defined supra.

Dan removed Polly's wooden built in bookshelves and used them to start a fire. She will recover for these damages which are reasonable and naturally from Dan's tortious conduct. Polly will be entitled to the fair market value of the bookshelves.

Therefore, Carl will be entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and they must be specifically pleaded and proved. Further, special damages must be foreseeable, reasonable in amount and not too remote. Special damages may include economic losses and lost business profit resulting from the injury.

Based on the facts there are no special damages that occurred in order to Polly to recover.

Therefore, Polly is not entitled to special damages.

Punitive Damages

Punitive damages may be awarded where there was intent to injure or harm plaintiff.

Since Dan committed a trespass to chattels against Polly, his actions were willful and done with the intent to cause injury. However, since Dan was under a mistake belief that he was suing Jill's property, no willfulness will be found and the court most likely will not award punitive damages.

Thus, Polly will not be able to recover punitive damages.

General Damages Books

Defined supra.

Dan removed Polly's books and used them to keep the fire going. Polly will recover for the damages which are reasonable and naturally from Dan's tortious conduct. Polly will be entitled to the fair market value of the books.

Therefore, Polly will be entitled to general damages.

Special Damages

Defined supra.

Based on the facts there are no special damages that occurred in order to Polly to recover.

Therefore, Polly is not entitled to special damages.

Punitive Damages

Defined supra.

As discussed since Dan was under a mistake belief that he was suing Jill's property, no willfulness will be found and the court most likely will not award punitive damages.

Thus, Polly will not be able to recover punitive damages.