

JUNE 2020 TORTS MODEL ANSWER
QUESTION NO. 4

1. What tort claims can Neighbor reasonably raise against Woody and Chuck; and what defense(s) if any, can each or both of them reasonably make? Discuss.

Vicarious Liability

An employer is vicariously liable for any tortious acts committed by his employees within the scope of the employment. It does not apply to torts committed by the employees outside of the scope of employment (frolic and detour).

Woody hired Chuck to install a septic tank system. Chuck cut down Neighbor's maple tree and installed the septic system underneath Neighbor's land. Thus, an employer-employee relationship exists. Since Chuck cut down the maple tree that Woody demanded him to do, and installed the septic tank per Woody's direction, Chuck was in the course and scope of his employment when the derailment occurred.

However, Woody will argue that Chuck was an independent contract and had no control on how the septic tank would be installed. Therefore, not liable for his conduct.

Generally, one who employs an independent contractor will not be vicariously responsible for the torts committed by that contractor. In addition, one is not liable for the intentional acts of an employee, nor an independent contractor.

Today, the law has been modified so that vicarious liability will be imposed under certain circumstances. Woody did hire Chuck and demanded that he cut down the maple tree in order to make room to install his septic tank system. In addition, Chuck noticed that the septic tank would end up under Neighbor's land. Woody scolded Chuck and demanded he cut down the tree and install the septic system.

Therefore, since Chuck committed the torts as a result of Woody's demand, Woody is vicariously liable for Chuck's actions (i.e. trespass to land and the conversion committed by Chuck).

Trespass to Land (cutting of tree)

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

Chuck saw the broken fence posts and suspected that they marked Woody's property line. He told Woody that a part of the septic system, if installed, would end up underneath the adjacent lot. Woody scolded Chuck and then demanded that Chuck cut down the maple tree on Neighbor's lot to make room for the septic system. Since Chuck went onto Neighbor's property to cut the tree, he intentionally entry upon the land. The land was owned by Neighbor, thus the land in possession of another.

Therefore, a trespass to land will be found.

Necessity to abate a nuisance

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.

Woody lived in a cabin that had an outhouse which created an offensive odor. Woody decided to install an underground septic system so that he could have an indoor bathroom and discovered the septic system he planned on installing would not fit on his land. The system would extend underneath his neighbor's vacant lot. Since Woody knew Neighbor was overseas, he decided to install the septic system during his absence. Woody had Chuck install the septic tank. Thus, Woody did enter Neighbor's land and did interfere with the use of the land, the land of another. However, Woody will argue that he needed to install the septic tank system on Neighbor's land because it would not fit on his land and that a portion of the system had to extend underneath Neighbor's vacant lot in order to eliminate the offensive odor.

Although the odor is offensive and needs to be eliminated, Woody could have placed the septic tank in another area on his land rather than trespassing onto Neighbor's. Therefore, necessity is not a valid defense.

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

Conversion

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

Chuck cut down the maple tree on Neighbor's lot to make room for the septic system. Thus, Chuck's actions were intentional. By cutting down the maple tree because Woody demanded him to shows he exercised wrongful dominion and control over Neighbor's maple, of another.

Therefore, Chuck has committed conversion of Neighbor's maple tree and Woody will be liable under the doctrine of vicarious liability addressed supra.

Conversion

Defined Supra.

Woody later burned the wood from the tree as firewood because he liked the ambiance the burning wood created which shows he acted with intent to destroy the wood. Thus, Woody's actions were intentional. By burning the maple wood, Woody exercised wrongful dominion and control over Neighbor's wood, i.e. of another.

Therefore, Woody has committed conversion of Neighbor's wood.

Therefore, a trespass to land will be found.

Neighbor v Chuck

Trespass to Land (cutting of tree)

Defined Supra.

Chuck needed the work and dug up the ground, and installed the septic system. Hence his conduct was intentional. He installed the septic tank on Neighbor's land, thus an intentional entry upon the land. The land was owned by Neighbor, thus the land in possession of another.

Conversion

Defined supra.

As discussed supra Chuck cut down the maple tree on Neighbor's lot to make room for the septic system. Thus, Chuck's actions were intentional and his act of cutting down the maple tree shows he exercised wrongful dominion and control over Neighbor's maple, of another.

Therefore, Chuck has committed conversion of Neighbor's maple tree.

2. If Neighbor prevails against Woody and Chuck, what damages may Neighbor receive and how should such damages be apportioned. 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.

Woody caused Chuck to enter Neighbor's land in order to install the septic system. Since there are no damages to the land, but the land is being used Neighbor will receive reasonable rental value of the land from Woody and the cost to remove the septic system and place the land back into the original condition.

The maple tree was cut down. Neighbor will receive the fair market value of the tree at the time of the conversion from either Woody or Chuck.

General Damages - Wood

Defined supra.

Woody later burned the wood from the tree as firewood because he liked the ambiance the burning wood created. Neighbor will recover for these damages which is reasonable and naturally from Woody's tortious conduct. Neighbor will be entitled to the fair market value of the wood.

Therefore, Neighbor 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 for Neighbor to recover.

Therefore, Neighbor is not entitled to special damages.

Punitive Damages

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

Since Woody and Chuck committed a trespass to land against Neighbor, their actions were willful and done with the intent to cause harm. In addition, the act of cutting down the maple tree was willful and done intentionally to make room to install the septic system,

Thus, Neighbor will be able to recover punitive damages.

Punitive Damages - Wood

Defined supra.

As discussed, since Woody burned the wood from the tree as firewood because he liked the ambiance burning wood created, he acted with willfulness and the court will likely award punitive damages.

Thus, Neighbor will be able to recover punitive damages for Woody burning of the wood.