

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- TORTS AGAINST PROPERTY: (TORTS AFFECTING MOVABLE AND IMMOVABLE OBJECT

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The tort which affects the property are of two types:-

a) TORTS AFFECTING IMMOVABLE PROPERTY:-

In order to show that a tort of immovable property has been caused one needs to fulfill the following conditions:-

- 1) Either by disturbance of the right to hold or possess it.
- 2) Whether such disturbance is present or in expectation.
- 3) By actual physical damage to the property or by interference with it.
- 4) By impairing of the enjoyment of it.

With the help of this conditions the categories are made:-

a) TRESPASS TO LAND :- 1) It has been defined as violation of duty not to interfere with the possession of land of another person results in the tort of trespass to land.

2) Trespass could be Committed :-

a) Either by a person himself entering the land of another person.

b) Doing the same through some material object. Eg:- Throwing of stones on another persons land, Driving nails into the wall.

3) Trespass is a wrong against possession rather than ownership. Therefore, a person in actual possession can bring an action even though, against the true owner, his possession was wrongful.

4) A person can succeed on the strength of his own title rather than on the weakness of the title of the other party. Thus, in *Graham vs Peat* the plaintiff was holding a land under a lease which was void but he was nevertheless entitled to bring an action for trespass against the defendant who had entered that land without lawful justification, because “ any possession is a legal possession against the wrongdoer”.

b) INJURY TO REVERSIONARY RIGHTS:-

1) A Reversioner is a person who has a lawful interest in land but not its present possession.

2) A Reversioner may, however, sue if by the trespass, injury of some permanent nature, which will affect his reversionary interest, is likely to result.

3) Their interests are injured by either the strangers or by tenants.

c) WASTE:-

1) It has been defined as the destruction of houses, gardens or unlawful damage caused to immovable property by the person who was just given lawful possession of that property it is known as waste.

2) To commit waste the person must fulfil the following essentials:-

a) ACT AND OMISSION:- In order to make a person liable for waste, he must have done some act which he was not expected to do, or he must have omitted to do something which he was supposed to do.

b) IT MUST BE DONE BY THE TENANT OR ANYONE IN POSSESSION:- In order to make a person liable for the waste, it must be done by the tenant or anyone in possession.

c) IT MUST CAUSE PREJUDICE TO THE OWNER:- In order to make person liable for waste the person must cause prejudice to the owner.

d) DISPOSSESSION:-

1) An owner can be said to be dispossessed of his property when the defendant acquires settled possession of the land with the intention of acquiring exclusive control over the immovable property of the owner.

2) The person can recover the possession by filing the suit against the defendant under section 6 of the specific relief act, 1963 which tell that for recovering the possession which was dispossessed because of the acts of the defendant within a period of six months.

e) NUISANCE:-

1) Nuisance means an unlawful interference with the personal use or enjoyment of land or some right over or in connection with it.eg:- noise, vibrations etc.

2) Nuisance should be distinguished from trespass as a) If interference is direct the wrong is trespass. b) If interference is consequential, it amounts to a nuisance.

b)TORTS AFFECTING MOVABLE PROPERTY:-

Generally, there are four categories affecting movable property as:-

a) TRESPASS TO GOODS:-

1) It consists of direct physical interference with the goods which are in the plaintiff possession, without any lawful justification.

2) a) DIRECT INTERFERENCE:- Direct interference without lawful justification is a trespass. The wrong may be committed intentionally, negligently or even by an honest mistake.

b) WITHOUT LAWFUL JUSTIFICATION:- When the interference is without any lawful justification, an action for trespass lies.

b) TRESPASS-AB-INTIO:-

1) When a person enters certain premises under the authority of some law and after having entered there, abuses that authority by committing some wrongful act, he will be considered to be a trespasser ab into to that property.

c) DETINUE:-

1) When the defendant is wrongfully detaining the goods belonging to the plaintiff and refuses to deliver the same on lawful demands, the plaintiff can recover the same by bringing an action for Detinue.

d) CONVERSION:-

1) Conversion (also known as Trover) consists in willfully and without any justification dealing with the goods in such a manner that another person, who is entitled to immediate use and possession of the same, is deprived of that.