

TORT | Negligence

Damages: Chattels

Revision Note | Degree

5 MAY 2013

Introduction

- claimant (C) may be awarded damages for chattels (personal items) which are damaged or destroyed as result of defendant's wrongdoing

Destruction of property

- if C permanently deprived of chattel: entitled to full market value of the property at time tort committed (sum required to buy replacement at date of destruction)

LIESBOSCH DREDGER V SS EDISON [1933] AC 449

FACTS:

- plaintiff's (P) dredger negligently sunk by D
- P needed dredger to carry out existing contract but could not afford to buy replacement so hired a substitute

ISSUE:

- how should damages be calculated?

HELD:

- value of replacement dredger determined by market value at time of the loss
- recoverable damages:
 - (1) market price of replacement
 - (2) costs of adaptation, transport, insurance necessary to fulfil contract
 - (3) compensation for disturbance & loss to carrying out contract during delay between loss & substitution

UCTKOS V MAZZETTA [1956] 1 LLOYD'S REP 209

FACTS:

- P's boat was destroyed by D's negligence
- unusual boat & cost of constructing boat very expensive but boat comparatively similar design, construction & performance were available at lower price

ISSUE:

- how should damages be calculated?

HELD:

- cost of replacement chattel was in excess of value of property destroyed & P only entitled to recover value of reasonable substitute

Damage to property

- if C's property damaged: entitled to damages which will make good the damage
- sum calculated by measuring amount property's value has been reduced (usually cost of repairs)

THE KINGSWAY [1918] P344

- Court of Appeal: cost of repairs could be recovered, even if repairs had not been carried out at date of trial

THE YORK [1929] P178

- cost of repairs could be recovered, even if repairs are never carried out

- if cost of repairs exceeds market value of chattel: only entitled to market value to enable purchase replacement

DARBISHIRE V WARRAN [1963] 1 WLR 1067

- Pennycuik MJ: '*Where the cost of repairs would exceed the market value of the article, and in the absence of special circumstances, the reasonable method must be to purchase a comparable article. By 'market value' in this connection is meant the price at which the article before damage, or a comparable article, could be purchased...*'

O'GRADY V WESTMINSTER SCAFFOLDING LTD [1962] 2 LLOYD'S REP 238

- confirmed decision in **Darbshire v Warran [1963]**

- if damaged chattel is unique & no comparable replacement: P entitled recover cost of repair at cost considerably exceeding its value

Loss of use of property

- C should receive compensation for period unable to use property (after damage or destruction & before repair or replacement)

THE MEDIANA [1900] AC 113

FACTS:

- P's ship damaged by D's negligence
- P had spare ship for emergencies & therefore damaged ship was replaced with spare during necessary repairs

ISSUE:

- could a sum be awarded for loss of use of the damaged ship?

HELD:

- P entitled to claim for loss of use despite available replacement & claim for loss of use not dependent on property being profit making
- in principle P may claim for: hire of substitute if needed & if property is profit making, the loss of profit
- Lord Halsbury: '*.. where by the wrongful act of one man something belonging to another is either itself so injured as not to be capable of being used or is taken away so that it cannot be used at all, that of itself is a ground for damages...*'

Land or buildings

- same principles apply to land & buildings damaged or destroyed by D's negligence
- land & buildings are more likely unique & therefore sums awarded often exceed value

Mitigation of loss

- C has duty to mitigate loss

DARBISHIRE V WARRAN [1963] 1 WLR 1067

- Harman LJ: '*.. It has come to be settled that in general the measure of damage is the cost of repairing the damaged article; but there is an exception if it can be proved that the cost of repairs greatly exceeds the value in the market of the damaged article. This arises out of*

the plaintiff's duty to minimise his damages. Were it otherwise it would be more profitable to destroy the plaintiff's article than to damage it...'

- C's ability to mitigate losses can depend on ability to afford repair or replacement (reducing period of loss of use)
- if C unable to mitigate losses due to impecuniosity, he may recover in full

LAGDEN V O'CONNOR [2004] 1 ALL ER 277

FACTS:

- C's car was damaged by D's negligent driving
- C's car required extensive work & he was only able to obtain temporary hire car on an expensive credit arrangement

ISSUE:

- could C recover in full?

HELD:

- D liable for cost of credit because C had credit agreement as result of damage caused by D's negligence

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