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Backgrounder

LRC 127—Report on Wrongful Interference with Goods

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Wrongful interference with property embraces three general categories: (1) damage to the property; (2) interference with the owner's property rights; and (3) interference with the owner's possession of the property. Some familiar examples recur through the cases dealing with wrongful interference with property; for instance, property is sold and then recovered when the buyer does not pay, someone unknowingly sells or buys stolen property, a secured creditor takes property that is not subject to the security, an unpaid employee takes company assets, a friend or business partner refuses to return borrowed property. In all these cases the law has to assess loss while untangling rights of ownership and possession.

Several actions are available to provide remedies for wrongs relating to personal property. These actions have obscure names such as "detinue," "conversion," and "trespass to chattels," reflecting their historical origins. Detinue provides a remedy where a person wrongfully refuses a request to return property. Trespass to chattels covers the situation where a person wrongfully takes or damages property. Conversion provides a remedy where property is destroyed or wrongfully converted to the use of another. There are also other less common miscellaneous actions available. Why does the law need so many different interlocking actions to provide remedies when someone interferes with property belonging to another? In an attempt to answer this question, the report takes a two-pronged approach. First, it considers in some detail the features of the common law actions and for each one examines who is entitled to sue, who should be sued, when an action can be brought and what is the appropriate remedy. Second, the report explores the history of these actions by comparing legal procedure today with the rules that existed before the great reforms of the nineteenth century. What emerges is a highly technical set of legal principles which are out of step with modern society and which have been shaped almost entirely on historical factors rather than any cogent policy grounds. A comparison of the actions reveals marked levels of inconsistency. Different actions provide different kinds of remedies, different rules for assessing damages, and different principles for determining liability.

The report concludes that the law governing wrongful interference with goods is archaic, inconsistent, complex, and badly in need of reform. In considering options for reform, the

report looks at the *Torts (Interference With Goods Act) 1977*, which has been enacted in England, and also proposals published by the Ontario Law Reform Commission. Both the English statute and the recommendations of the Ontario Law Reform Commission attempt to retain some of the elements of the common law. This approach is rejected in favour of the complete replacement of the common law with a new statutory cause of action for wrongful interference with property. The underlying general principles of the new legislation are that remedies should be available through a single cause of action, the action should be available to anyone with an interest in the property, damages should compensate for a claimant's actual loss and a full range of remedies should be available to the court. A draft statute is included within the report.

Further Developments

This report's recommendations have not been implemented.