

Remedies Beyond Damages

Torts II

Eric E. Johnson

ericejohnson.com



Konomark - Most rights sharable.

Roadmap:

- Restitutionary Remedies
- Injunctions

Restitutionary Remedies

Restitutionary Remedies

- An alternative to compensatory damages where defendant has gained some benefit, which, if retained, would amount to “unjust enrichment”
- Objective: transfer defendant’s ill-gotten gain to plaintiff
- Legal or equitable (“at law” or “in equity”)

Restitutory Remedies

Kinds

- Quasi-contract
- Replevin
- Ejectment
- Constructive trust
- Equitable lien

Restitutory Remedies

Quasi-contract

- Legal
- Defendant must pay reasonable value of benefit unjustly retained
- Benefit can come via contract situations (breach, duress, mistake) and via tort when tort confers a benefit to defendant

Restitutionary Remedies

Quasi-contract in tort

- D sets up camera and punches P in face, then uses footage in popular movie

→ get portion of film revenues attributable to punching scene

Restitutionary Remedies

Quasi-contract in tort

- D drives over your property to deliver a mobile home, avoiding expense of using helicopter

→ get the amount of money D saved from not renting a helicopter

Restitutory Remedies

Replevin

- Legal
- a/k/a “claim and delivery”
- Pre-trial seizure of chattel wrongfully taken from plaintiff

Restitutory Remedies

Replevin

NEW JERSEY RULES OF COURT – REPLEVIN

4:61-1. Writ of Replevin (a) Issuance of Writ on Notice. A writ of replevin shall issue only upon court order on motion of a party claiming the right to possession of chattels. Except as otherwise provided by paragraph (b) of this rule, the motion shall be heard on no less than three days' notice to the party in possession of the chattels, who shall file and serve any opposing affidavits or cross-motions at least one day prior to the hearing. The motion shall be granted only upon the court's finding, based on the moving papers, any opposing affidavits which may have been filed, and any testimony taken pursuant to R. 1:6-6, that there is a probability that final judgment will be rendered in favor of the movant. In lieu of ordering the issuance of the writ the court may order the party in possession of the chattels to give security for satisfaction of any judgment which may be rendered in the action, or order such other relief upon such terms as may be just in the circumstances. **(b) Issuance of Writ Ex Parte.** An order for issuance of the writ of replevin without notice to the party in possession of the chattels may be entered by the court only after it finds from specific facts shown by affidavit or verified complaint that the party applying for the writ is probably entitled to possession and that, before notice can be served and a hearing had thereon, that party will probably suffer immediate and irreparable damage in that the party in possession of the chattels appears about to abscond or about to destroy, secrete or otherwise dispose of the chattels. In lieu of ordering the writ, the court may enter an order to show cause why the writ should not issue, including therein such temporary restraints as may be necessary and appropriate for preserving the chattels and fixing therein a short return date for hearing thereon in accordance with paragraph (a) of this rule.

Restitutionary Remedies

Replevin

- D steals your lawn mower from your lawn barn. You see him with a few days later. You recognize it from the flame job on the side.

→ file an action for a writ of replevin, and get the lawn mower back fast

Restitutionary Remedies

Ejectment

- Legal
- Get someone thrown off real property
- Useful against deadbeat tenants, squatters, in-laws
- In California, “unlawful detainer” actions under statute

Restitutory Remedies

Isn't that like an injunction?

- Replevin and ejectment are like injunctions. But they're not.
- Why not?
- It's historical. Courts of law could issue these writs.

Restitutory Remedies

Equitable restitutory remedies

- Constructive trust
- Equitable lien

Restitutory Remedies

Constructive trust

- Equitable (“in equity”)
- Creates a “trust” over unjustly retained property
 - *Construes the existence of a trust*
- Result: D holds the property in trust for P
- Objective to compel D to convey title back to P

Restitutory Remedies

Constructive trust - REQUIREMENTS

- D acquired title to specific property
- D’s retention would result in unjust enrichment
- (sometimes) no adequate remedy at law
 - E.g., D has no money to pay damages

Restitutory Remedies

Constructive trust - BENEFITS

- P can use tracing
- P can recover the property or the proceeds from it
- P gets enhanced value, if any
 - P gets upside
- Puts P in a good position in BK

Restitutory Remedies

Constructive trust - DEFENSES

- Laches
- Unclean hands
- Transfer of title to bona fide purchaser (BFP)
 - BFP is good-faith purchaser who pays value and has no notice.
 - Title is cut off.

Restitutionary Remedies

Equitable lien

- Equitable (“in equity”)
- The court’s equity power creates a lien over property held by D in favor of P
- Result: P becomes a secured creditor
 - The debt to plaintiff is secured by the property, like a house secures a mortgage.

Restitutionary Remedies

Equitable lien - REQUIREMENTS

- D misappropriated money or property
- The money or property can be traced to D’s property
- D’s retention would result in unjust enrichment
- (sometimes) no adequate remedy at law
 - E.g., D has no money to pay damages

Restitutory Remedies

Equitable lien - BENEFITS

- P can use tracing
- P can recover the property if the debt is not paid
- Puts P in a good position in BK

Restitutory Remedies

Equitable lien

- COMPARED TO CONSTRUCTIVE TRUST
- Can't recover enhanced value of property
- But can get a deficiency judgment

Restitutionary Remedies

Equitable lien - DEFENSES

- Laches
- Unclean hands
- Transfer of title to bona fide purchaser (BFP)
 - BFP is good-faith purchaser who pays value and has no notice.
 - Title is cut off.

Injunctions

Injunctions

An injunction is:

An order to do or not do something.

Injunctions

Examples:

- Don't show a movie.
- Don't come within 50 feet of someone.
- Tear down a building.
- Don't tear down a building.

Injunctions

Kinds (by effect):

- **Mandatory**
 - Do something.
- **Prohibitory**
 - Don't do something.

Injunctions

Temporary restraining order

- Can be obtained ex parte
- Usually only lasts 10 days, at most
 - (Until noticed hearing for preliminary injunction)
- When you need a court order FAST

Injunctions

Preliminary injunction

- Must be noticed
- Never ex parte
- Can be proceeded by hurry-up discovery
- Lasts until conclusion of trial
 - (Possibly years)
 - Can effectively decide some cases

Injunctions

Permanent injunction

- Issued with judgment
- Lasts forever, or until it expires on its own terms.

Injunctions

Kinds (by duration):

- Temporary restraining order (“TRO”)
- Preliminary injunction
- Permanent injunction

Injunctions

Requirements:

- No adequate remedy at law
 - E.g., “irreparable harm”
- Feasible to enforce
 - Courts won’t issue pointless injunctions
- Balance of hardships in P’s favor
 - Balancing “the equities” is the quintessential function of a court sitting in equity