

CAUSES OF ACTION IN THE COMMON LAW SYSTEM

Pregledni znanstveni članak

*Dijana Gorgieva**

Abstract

Causes of action in common law are the most commonly used in civil trials. According to the common law, the causes of action are a combination of facts presented by the plaintiff in the direct form for initiating civil proceedings (single claim in England and complaint in the United States).

The cause of action are a bridge that connects civil wrong with the legal remedy required and obtained by the court. Claims for a lawsuit may be filed for civil wrong doing of the defendant. The wrong doing of the defendant may consist of a tort or a breach of contract. Breaking the contract is the only cause of action. Unlike the breach of contract, tort law (civil misconduct) does not have a single cause of action. Tort is divided into three different types of claims in the lawsuits that differ from each other in the defendant's defense actions: intentional tort, negligence tort and strict liability tort. Causes of action in a lawsuit under equity law are: unjust enrichment and claims in reasonable value for the work done (quantum mervit).

Key words: tort law, contract law, common law, causes of action, reasons.

** Phd at the Ss. Cyril and Methodius University in Skopje, e-mail: dgorgieva64@yahoo.com, Assistant Professor at the MIT University in Skopje*

1. INTRODUCTION

The common law doctrine through case law will recognize and create different causes of action. In modern common law system, causes of action are a key element of single claim and complaint as a documents initiating civil proceedings in England and the United States. Causes of action are a bridge that connects civil wrong with the legal remedy required and obtained by the court.

In the common law case law, there will be different specific causes of action in civil lawsuits. They are usually divided into: 1) causes of action in common law and 2) causes of action in equity law.

2. CAUSES OF ACTION IN COMMON LAW

Causes of action in common law are the most commonly used in civil trials. According to the common law, the causes of action are a combination of facts presented by the plaintiff in the direct form for initiating civil proceedings (single claim in England and complaint in the United States).

Causes of action in common law may be filed for civil wrong doing of the defendant. The wrong doing of the defendant may consist of a tort or breach of contract (Schneier, 1993, 3).*

Hence, in common law, a distinction is made between causes of action in tort law and causes of action for breach of contract (Wiley, 2014).*

In the same trial, the plaintiff usually presents a case for a lawsuit based on a civil misdemeanor or a case for a lawsuit based on a breach of contract. However, in certain cases, in the same trial, the plaintiff may at the same time file a lawsuit for a lawsuit based on a civil misdemeanor and a lawsuit for breach of contract.* On the occasion of the lawsuits filed in this

* Tort is a cause for action in the absence of a contractual relationship. If there is an agreed relationship, the obligation arises from the contract, and with tort from the society.

* In addition to these causes of action, more recently, so-called "causes of action in statutory law" have been filed. These are the causes of the lawsuit, the basis of which should be sought in the legislative law of the specific states within the United States and the decisions of the city councils implemented by the president. A condition for using these causes of action in civil proceedings is their private legal basis. The most common basis for statutory causes of action is a violation of anti-discrimination employment rights.

* This is especially noticeable when selling spoiled products. For example, if the seller sells a spoiled blender to the buyer, the buyer may sue him for breach of contract (contractual

way, the defendant can be convicted for both, on the basis of only one or on no grounds. On the basis of the lawsuits filed, the plaintiff seeks and receives a special legal remedy from the court.

2.1. Causes of action in tort law

Tort law is a part (subject, matter) of common law that explains the civil offenses that occur as a consequence of non-fulfillment or improper fulfillment of civil responsibilities that do not have a contractual nature. In essence, tort is a "private injustice" (Lundmark, 1998) that results from the violation of an individual's civil rights, with the offender's intent being irrelevant and the wrongful act resulting in the infringement of another person, property, dignity or reputation.

Tort law varies from country to country because it is a pre-determined unencrypted right, so lawsuit lawsuits based on tort law at the macro level can only be explained by generalization.

Due to its precedent-setting nature, each state of the common law system separately creates tort law on the basis of binding court precedents, although the common legal principles on which tort law relies are felt everywhere in the common law process.

Unlike breach of contract, tort (breach of contract) is not the only cause of action. Tort is divided into three different types of claims in the lawsuits that differ from each other in the defendant's defense actions.

Depending on the actions of defense of the defendant, a distinction is made between: 1) intentional tort, 2) negligence tort and 3) strict liability tort (Statsky, 2001, 95).

2.1.1. Intentional tort

Intentional tort is a category of misdemeanor that occurs when the defendant intentionally infringes on the plaintiff's overly protected interests. Given the fact that this misdemeanor is the result of an intentional act of the defendant, it can be pointed out as a special cause for action in the lawsuit.

cause for action), but also for negligence in selling the blender (misdemeanor – tort cause for action).

A typical example of an intentional offense exists when the defendant Y deliberately hits the plaintiff X.

Considering the fact that in this misdemeanor the action of the defendant is intentionally the damage that as a legal remedy can be requested by the plaintiff based on this cause of the lawsuit in the civil procedure is the widest set.

Under the umbrella of intentional tort, various specific subcases are included as a cause for action: assault, battery, conversion, false imprisonment, trespass to land, trespass to chattels and Intentional infliction of emotional distress (Emanuel, L, Emanuel, S., 2009, 3).

2.1.2. Negligence tort

The tort due to negligence is a category of tort that is the most common basis for misdemeanor civil trials. A tort for negligence means an act of the defendant that leads to an unreasonable invasion of the plaintiff's overly protected interests (Owen, 2007, 1675).

If the misdemeanor violation is compared with the intentional misdemeanor, it can be concluded that although it, like the negligent misdemeanor, is based on an action that constitutes a civil right of the defendant, it still differs significantly from him due to the defendant's absence of intention to do so the offense.*

It is because of this that negligence tort is a special cause of action. That this is the case can be deduced from the following example of a negligent offense: The defendant Y, moving quickly on the road, pushes plaintiff X into the incoming traffic.

Under the umbrella of the misdemeanor, due to negligence, various specific subcases are included as a cause of action: slip and fall accidents, car accidents, truck accidents, motorcycle accidents, pedestrian accidents, bicycle accidents and medical malpractice.

* *The causes of a lawsuit that need to be proven in a misdemeanor case are: negligence, breach of duty, misconduct and damages. They are proved in this misdemeanor, as well as in the others, with the standard for proving preponderance of evidence (at least 51% of the evidence is in favor of the plaintiff).*

2.1.3. Strict liability tort

Strict liability tort is a special category of misdemeanor when the law assigns responsibility to the defendant even though he is not directly liable (Schneier, 1993, 5).

A typical example of a legally prescribed offense is a situation where the seller of the product is considered responsible even though he did not make a factory error on the product that caused the plaintiff's damage.

The background to this lawsuit is that the seller had to detect the defect in the product before launching it. Hence, in this case for a lawsuit, the strict obligation for the defendant arises from the law and the law determines the costs for the consequences.

Under the umbrella of the legally prescribed offense as an excuse for the lawsuit, the following different specific subcases enter exemplary: defective products, animal attacks (dog bite lawsuits), abnormally dangerous activities.

2.2. Causes of action in contract law

Breaking the contract is a special legal cause of action for a lawsuit in common law (Anson, 1880, 2-3). Unlike civil misconduct (tort law), breach of contract is the only cause of action. Ratio for the existence of this cause of action is the common law doctrine according to which agreements are made to be realized (Housten, 2012, part 1). Given the fact that if the agreements are violated, the goal set in this way is not achieved, the party that did not fulfill the contract was injured, so it must compensate the damage to the damaged contracting party.

Consequently, the breach of contract is a special cause of action in a lawsuit and a type of civil law caused by obstruction or non-occurrence of a contracting party to a valid contract.

The breach of contract itself occurs when the party to the contract does not fulfill the obligation prescribed by the contract. A condition for using this cause of action is that the parties to the contract have promised to oppose each other at the time of concluding the contract (Vendi, 2010, 2).

According to the common law doctrine, this contradiction is a condition for the occurrence and validity of the agreement. This is because a

contract is not a contract if it does not cause costs, so according to the common law doctrine, a breach of unilateral agreements is not a cause of action because they do not enjoy legal protection before the courts of common law.*

The legal background for this narrower understanding of the notion of agreement in the common law system (vis-a-vis in the civil law system) is the doctrine of Consideration, on the basis of which the common law will be built, whose beginnings should be sought in the medieval writ assumpsit which protected certain segments of a given obligation (René, D. Spinosi, 2010, 351-352).

The contract law of common law is a right that concerns the management of the creation and execution of contracts. This right offers the opportunity for the parties to the contract to regulate certain issues differently, which is unknown for the misdemeanor civil law.

The contract law of common law refers to liquid contracts, not non-liquid contracts understood as contracts concluded by the parties before or during court proceedings. Hence, only the liquidation agreements that have been violated can be a cause of action in a civil procedure.

Violation of the contract occurs when the party to the contract without legal justification does not fulfill or refuses to fulfill the obligation determined by the contract or, when he performs it incorrectly or is unable to perform it.

The party to the contract violates the agreement when, without legal grounds, it violates the essential contractual obligation by non-fulfillment. In this context, if the lawsuit is not substantial and useful, there will be no basis for a lawsuit for breach of contract due to non-compliance.*

The party refuses to perform the contractual construction on purpose.

** This position of the common law system's jurisprudence is incomprehensible and foreign to the civil law system because in the civil law system the protection of contracts from injury is completely under the umbrella of objective law. In this context, the fact that unilateral agreements (for example: a gift agreement) do not enjoy legal protection in the common law system (are inalienable) is something without a counterpart in the civil law system. This is because according to the common law case law, only a breach of bilateral and cargo agreements is a cause for action.*

** For example, if the plumber, despite the agreement with the tenant, agreed to install black pipes, he installed blue ones. In this case, the tenant has no cause for action because there is no real damage provided that the blue pipes are equally functional as the black pipes. However, if in the agreement the laying of black pipes was set as a condition (a test for an essentially important condition) then a breach of contract would be a cause for action.*

He usually does this in such a way that by his behavior he clearly and absolutely demonstrates that he has no intention of fulfilling the act or when he does so by his actions or inaction.

The party to the agreement wrongly makes the payment when it promises to make a concrete payment with the agreement, and in reality it does something completely different.

The Contracting Party itself is unable to perform the agreed contract when performing an action due to which in the future it will not be able to perform the agreed contract in favor of the other contracting party.*

3. CAUSES OF ACTION IN EQUITY LAW

Despite the frequency of common law causes of action, equity lawsuits should not be devalued. Causes of action in lawsuit under equity law are: 1) unjust enrichment and 2) claims in reasonable value for the work done (quantum mervit).

Unjust enrichment is used as a cause of action in a situation where one person is enriched at the expense of another in circumstances that the law considers to be unjust. This is why if the plaintiff proves this cause of action, he or she may request a "change of position" with the defendant.

A very similar case for a lawsuit to a lawsuit for a lawsuit due to unfounded enrichment is the case for a lawsuit for realization of claims in reasonable value of the work done.

In this situation, despite the fact that the contract is invalid because the plaintiff did not know it and duly and timely fulfilled his obligations, he is allowed to claim from the defendant compensation for the work earned in a reasonable value.

4. CONCLUDING REMARKS

Causes of action in the lawsuit are the most important element of a single claim and complaint as initiators of the start of civil lawsuits in England and the United States. The causes of action are a bridge that

* For example, when the seller sold a unique item and handed it over to a third party, although under a previously concluded agreement he was obliged to hand it over to the other party.

connects civil wrong with the legal remedy required and obtained by the court. The lawsuits in the common law system will arise spontaneously through the case law of the courts of common law and equity law. Claims for a lawsuit may be filed for civil wrong doing of the defendant. The wrong doing of the defendant may consist of a tort or a breach of contract. Breaking the contract is the only cause of action. Unlike the breach of contract, tort law (civil misconduct) does not have a single cause of action. Tort is divided into three different types of claims in the lawsuits that differ from each other in the defendant's defense actions. Depending on the actions for defense of the defendant, a distinction is made between: 1) intentional tort, 2) negligence tort and 3) strict liability tort. Causes of action in a lawsuit under equity law are: 1) unjust enrichment and 2) claims in reasonable value for the work done (quantum mervit).

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