

After a car buyer failed to make timely payments on her auto loan and failed to respond to notices of default properly sent to her home address, the loan company hired a collection agency to repossess the car.

An employee of the agency went to the buyer's home and knocked on the front door. When the buyer answered, the employee explained that he was there to repossess the car and asked for the car keys. The buyer handed the employee the keys but then asked the employee to allow her to retrieve her laptop computer from the car. The employee declined the request, explaining to the buyer that any possessions in the car could be reclaimed from the company after the car was repossessed. After pleading unsuccessfully with the employee, the buyer shoved the employee away from the door with such force that the employee fell and suffered a broken wrist. The buyer then ran to the car, which was unlocked, and retrieved the laptop.

The employee has sued the buyer for battery. The buyer has moved for summary judgment, arguing that she was privileged to act as she did.

Should the trial court grant the buyer's motion?

- A. No, because a fact-finder could reasonably conclude that the buyer used excessive force in attempting to defend her property. (82%)
- B. No, because after the buyer handed the keys to the employee, the car was no longer her property. (10%)
- C. Yes, because a possessor can use nonlethal force to protect his or her property. (5%)
- D. Yes, because the buyer complied with the law by returning the car keys and acted reasonably in asking to retrieve the laptop. (1%)

Incorrect

Correct answer A

82% Answered correctly

01 min, 22 secs Time Spent

2023 Version

Explanation:

A court should grant a defendant's motion for summary judgment if there is no genuine issue of material fact and a reasonable fact finder (eg, jury) could not find in the plaintiff's favor. In defending against a **battery** claim, a defendant can argue that he/she was **privileged to use reasonable force to defend** his/her **property** from tortious harm—eg, **trespass to chattels**. However, if the property could have been defended less forcefully, then the **defendant is liable for** the harm caused using **excessive force**.

Here, the employee intended to interfere with the buyer's possession of her computer by taking it with the car (trespass to chattels), so the buyer shoved the employee and broke his wrist. Although the buyer was privileged to use *reasonable* force to maintain possession of the computer (ie, defend her property), a fact finder could reasonably conclude that she used *excessive* force—especially since the employee had not used any force against her. Therefore, the court should deny the buyer's motion for summary judgment.*

*The court's denial of the buyer's summary-judgment motion does not mean that the buyer will ultimately lose in the action. It simply means that the action will continue so that the fact finder can determine liability.

(Choice B) The buyer's claim of privilege to use force is based on her property interest in the laptop—not the car.

(Choice C) A possessor of property can use nonlethal force to defend his/her property—but such force must also be reasonable.

(Choice D) The buyer may have complied with the law by returning the car keys to the employee and acted reasonably by asking him if she could retrieve the laptop. But this does not entitle the buyer to summary judgment since a reasonable fact finder could find that her use of force was excessive and therefore not privileged.

Educational objective:

A defendant is only privileged to use the amount of force reasonably necessary to defend his/her property. If the defendant uses excessive force, then the defendant is liable for the harm caused to the plaintiff.

References

Restatement (Second) of Torts § 81 (Am. Law Inst. 1965) (setting forth the amount of force allowed in defense of property).

Restatement (Second) of Torts § 82 (Am. Law Inst. 1965) (explaining that excessive force cannot be used to defend property).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Degree of force permitted to defend property

