Chapter 8

Mischief and Grief: Virtual Torts or Real Problems?

INTRODUCTION

Perhaps more than any other branch of the law, tort has been the battleground of social theory (Prosser, 1977). According to Black’s Law Dictionary (1990), a tort is “a private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages (K Mart Corp v Ponsock, 732 P.2d 469 (Nev. App.). A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction (Coleman v California Yearly Meeting of Friends Church, 81 P.2d 469 (Ca. App.). There must always be a violation of some duty owing to plaintiff (claimant), and generally such duty must arise by operation of law and not be mere agreement of the parties.”

Individuals wish to be secure in their person against harm and interference, not only as to their physical integrity, but as to their freedom to move about and their peace of mind. This is important whether they are at home in Bournemouth or at home in a virtual world like Second Life. When an individual is at home in Second Life, they are represented by their avatar. This avatar is the characterisation of them which is valuable and persistent. Avatars embody real people who want food and clothing, homes, goods, money, entertainment, and to be secure and free from disturbance in the right to have these things in their virtual environments. They want to work and deal with others whilst protected against the interference with their private lives, their relationships, and their honour and reputation. In any society, it is inevitable that these interests shall come into conflict.

The gaming community calls people who promote conflict “griefers”. Griefers are people who like nothing better than to kill team-mates or obstruct the game’s objectives. Griefers scam, cheat and abuse, often victimising the weakest and newest players. In games that attempt to encourage complex and enduring interactions among thousands of players, “griefing” has evolved from being an isolated nuisance to a social disease.

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A. ARE VIRTUAL WORLDS GAMES OR SOCIETIES?

Games are hard to define. Game scholar, Johan Huizinga (1971), identifies them using the notion of irrelevance. Nothing can be a game if it involves moral consequence. Whatever is happening, if it really matters in an ethical or moral sense, cannot be a game. Rather, he believes that games are places where we only act as if something matters. Indeed, play-acting seriousness can be one of the most important functions in a given game. According to Huizinga (1971), if some consequence really does matter in the end, the game is over. In fact, the only act of moral consequence that can happen within a game is the act of ending the game, denying its as-if character, spoiling the fantasy, and thereby breaking the collective illusion that the game matters. The collective illusion happens in a specific place, an arena specifically intended to host the game. Games, he says, happen in designated spaces (Id.). This is also known as the magic circle of game play.

With virtual worlds, society seems to have begun an exploration of the dimension of significance that may be attributed to a game. Massively multiplayer online role-playing games (MMORPGs) are complex and persistent worlds which are particularly vulnerable to negative behaviour, not only because they offer more rules to break than the average first-person shooter, but also because there is more at stake for players. For every player who is content to view the virtual world as a game, there is another who gleefully buys and sells the game’s wands, armour, and gold pieces for U.S. currency on eBay. For every player who does not care if the virtual world is hacked and accounts are robbed, there is another who views the breach as a computer crime of the highest order. For every player who sleeps soundly after being banished from a guild, there is another who thinks about committing suicide (Castronova, 2005).

This broad spectrum of significance and the ensuing emotional reaction that people manifest in virtual worlds provide an incentive for the state to regulate and prosecute virtual torts and crimes. Raph Koster (2000) has drawn up a Declaration of the Rights of Avatar. “Foremost among these rights is the right to be treated as people and not as disembodied, meaningless, soulless puppets. Inherent in this right are therefore the natural and inalienable rights of man. These rights are liberty, property, security, and resistance to oppression.” But has something got lost in translation? Perhaps, the status of these places as arenas and the activity taking place within them is a game.

As more companies and groups develop presence in online spaces like Second Life, they are learning that even virtual property is vulnerable to attack and vandalism. Anshe Chung Studios has developed more virtual property than any other Metaverse development company. As such, she is well-liked by many and a wonderful target for others. In December, Anshe was being interviewed by CNET reporter Daniel Terdiman when a group of griefers staged an assault on the proceedings by raining down a torrent of pixelated male genitals (Hutcheon, 2006). Another example of an attack was on John Edwards’ virtual campaign headquarters which was plastered with Marxist and Leninist posters and offensive images. Those are just a few recent high-profile attacks by so-called griefers, online game players who set out to disrupt or discomfort others through theft, cheating, harassment, or vandalism (Hoffman, 2007).

B. WHAT IS A TORT?

This chapter will focus on torts. A tort is a legal wrong committed upon the person or property independent of contract. It may be either:

1. a direct invasion of some legal right of the individual
2. the infraction of some public duty by which special damage accrues to the individual