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**Economic tort**

The tort law has established a group of tort that tends to cater for individuals that have suffered a form of economic torts. This tort is called economic torts. Economic tort is a tort caused by an individual unto another person which leads to a party suffering from financial loss. Therefore, where a person commits a tort that leads to financial loss of another person, such tort will be regarded as an economic tort. Passing of in this regard is a form of economic tort as it entails an individual causing an action that causes the economic loss of another party.

**Passing off**

When an individual manufactures goods and the person claims that it is the business of another person it will be regarded as passing off. Passing of can simply be defined as the action done by a person whereby he represents his business or goods as the business of another person which is done in order for the rival business customers to patronize them.

**The purpose of the law of passing off**

The purpose of the tort of passing of is to protect the good-name, quality, reputation, patronage and the customers of the business. In this regard the tort aims at stopping the actions of the rival businesses from tarnishing the good-name of a business and to also to curb the act of attracting the customers of a business to patronize them under the false pretense it is their business.

**Forms of passing off**

1. **Trading with a name that resembles that of the plaintiff**

This is a form of passing off whereby the owner of a business uses the same name brand name as another business owner in most cases for a similar business. Due to this the people of the society may begin to assume that the businesses are related in nature with one another or one is probably an affiliate of the other. This will hereby cause the customers to start patronizing the business of the person who imitates the name hereby causing loss of customers to the other party. In the case of Hendriks v Montague, the defandants copied the trading name of the plaintiffs. The plaintiff applied for an injunction. The question for determination was whether the people were going to be misled by the actions of the defendant. James LJ, held that they will be certainly be misled. Therefore the injunction was allowed. The principle of this case is that where a person uses another persons trading name and such action is likely to mislead people, the person who copies the trade name will be stopped from using such trade name.

1. **Marketing a product as that of the plaintiff**

It is a tort of passing of to manufacture products that are similar to that of the plaintiff and then give it the same name as that of the plaintiff. Surely, this action done will make the masses who patronize the product of the plaintiff to think that the plaintiff that is the product of the plaintiff and they will begin to patronize the product hereby causing loss and lack of patronage to the person who actually manufactured the authentic good. In some instances the goods may be substandard and this will make other people begin to think that the plaintiff has began to make substandard goods.

1. **Marketing Goods with a name resembling that of the plaintiff**

Where a person manufactures goods and such goods resembles that of the plaintiff’s goods in such a way that the customers start to become confused as to which goods belongs to the plaintiff, it becomes a tort of passing of. Therefore, a person should not manufacture a good and give it the same name as that of a plaintiff’s business as it will tend to cause great confusion with the customers that want to buy it and it will cause patronage of the plaintiff’s business to be reduced. In the case of Hines v Winnick, the plaintiff used to broadcast his radio programme with the name dr crock and his crack pots, another person used this name as well. The plaintiff asked for an injunction. The question for determination was whether the defendant could not use the name because the plaintiff was already known by the name. Vaisey J, granted the injunction and held that the musician was already known by the particular name and it was already part of his stock-in-trade. The principle is that where goods are already known by a name, another good cannot have that name or else, it will result into a tort,

1. **Imitating the appearance of the plaintiff’s product**

It a tort of passing of for the defendants business to imitate the business of the plaintiff in the appearance and the samess. Where it seems to be the same, it will be regarded as a tort of passing off. In the case of De Facto Works Ltd v Odumotun Trading Co Ltd, the plaintiff sold bread wrapped in a yellow and brown paper with a name De Facto the defendant also wrapped theirs in a yellow and brown paper as well called Odus. Subsequently, the plaintiff sued for an injunction. The question for determination whether the goods were similar to the extent that one can term it a tort of passing of. The court held that it was an act of passing of. The principle of this case is that where a person imitates the appearance of another product, it will be regarded as passing off.

1. **Marketing products with the plaintiff’s trademark or its imitation**

The plaintiff can sue for passing off where a defendant uses the plaintiffs trade mark for his product. Such forms of trade marks include: - design, picture, mark, name or other merchandise. For if MR A owns a Nike business and MR B has a shoe business and he uses the same logo that MR A has for his Nike product. MR A can sue MR B for malicious prosecution.

1. **Selling inferior or expired goods of the plaintiff as current stock**

A defendant can commit passing off by selling goods goods of the defendant in which the defendant himself has stopped selling due to the fact that such good is inferior or because such goods have expired.

1. **Imitating the plaintiff’s advertisement**

Any form of advertisement which resembles that of the plaintiff that of the plaintiff which will cause the buyers to think that it is that of the plaintiff to patronize it is a tort of passing of.

**Elements of passing off**

The plaintiff has to prove that the act was intended to deceive the public. Once the plaintiff can prove this then an action for passing off will succeed. Once he sues the defendant and he succeeds, the plaintiff can bring a claim for nominal damages or and succeed in his claim.

**Discuss the relevance of passing off as a form of economic torts in the 21st century Nigeria**

Passing off as an economic tort is an extremely important tort in Nigeria. In Nigeria today, a lot of businesses and enterprises do not progress or hit their mile stones solely because of the fact that other fellow Nigerians commit the tort of passing off. Passing off usually affects the business in more ways that can ever be imagined and is an impediment to many businesses in several ways than one.

Passing off committed in Nigeria usually affects the businesses of Nigerians in three ways. To start with, it affects the patronage of the businesses affected. Due to the tort of passing off which is committed by businesses, the patronage of the businesses that passing off has been committed against is usually reduced. Many customers of the business usually leave the businesses to patronize the other business that imitate them.

Also, it causes loss to the business of the person whose business has lost patronage. Many businesses in Nigeria in the 21st century usually incur loss to their business as people tend to purchase goods and services from the people who tend to imitate the original business. This is usually due to the fact that the Nigerians that purchase from the business that imitates are usually of the opinion that the goods still belong to the authentic organization but are cheaper therefore they will buy it. This is not usually the case and as a result, the original business owner runs at a loss.

Furthermore, we do have a lot of cases in Nigeria where business imitates other authentic businesses an example of this is the fake Nike slippers that we see around or the fake Kellogg’s series that we often see around. A lot of people in the society patronize this and this lowers the goodwill and the estimation of such goods in the eyes of the people that patronize the goods. Therefore, once this occurs, the business estimation in the eyes of Nigerians will begin to reduce, therefore the goodwill will be damaged.

Due to these 3 factors above, the tort of passing off is extremely important. I will now give my reasons.

To start with, the tort protects the goodwill and reputation of Nigerian small scale enterprises that are just entering the market and large scale enterprises from being damaged. Due to the tort of passing off, the small scale businesses are going to be able to enter the market without any hindrance to their business. Therefore, when these small scale businesses sell their goods in the market, there will be no form of impediment that will stop the business from growing and developing goodwill. Similarly, for large scale businesses they are equally protected with the tort of passing off, therefore, the years of developing such businesses will not be in vain and they will be able to enjoy their reputation and goodwill of the businesses without it getting damaged. The tort of passing off prevents Nigerian people from tarnishing the reputation and goodwill of their fellow Nigerian people in this sense, they will no longer produce substandard goods or use the goods that previously belonged to a business and claim that they are goods that belong to such business as they will be prevented from doing so.

It prevents them from causing harm to people’s businesses in several ways than one. It prevents the Nigerians who own businesses from loosing customers to other due to the other businesses that imitate their business. In this sense, when a person commits an offence of passing off that causes the original business to loose his customers. The tort of passing of has therefore been established to prevent this.

Also, the tort of passing off helps in protecting the businesses of people from financial loss. In this regard, since the tort has prevented people from committing the tort of passing off. The financial loss that is usually attributed to the tort of passing off is also protected. In this regard, small scale businesses that are just coming up do not suffer from financial loss which is usually caused by people who imitate businesses that usually cause a lot of small scale businesses to pack up. Similarly, big scale businesses do not suffer a major hit financially which big businesses to suffer due to the tort of passing off.

The tort of passing of therefore provides remedies for fellow Nigerians who suffer from the offence of passing off in order for their businesses not to be affected. It is very relevant for Nigerians to seek for remedies for their businesses when another business imitates them so as not to suffer from damages that such businesses usually cause. Therefore, when another business imitates a business and this action causes damage or is likely to cause damage, it is very important to seek for remedies. Such remedies include: damages, injunction and intervention by the relevant regulatory agencies. In this regard, the tort of passing off is extremely relevant in the Nigerian society in order to protect the business from harmful businesses which may engulf an authentic business if care is not taken.