NAME: ELVIS LEWIS-ALLAGOA

MATRIC NO: 18/LAW01/141

COURSE: LAW OF TORT

DATE: 22/01/2021

A chattel is any property other than land and immovable property. A chattel is any moveable property. Examples of chattel goods are innumerable, and are as many as can be named. The tort of trespass to chattels protects all the chattel, goods of a person who has title, or possession by prohibiting all interference without legal justification.

Trespass to chattel is any direct and unlawful interference with a chattel in the possession of another person. It is the intentional or negligent interference with the possession of the chattel of another person. It protects the following interests in personal property.

1. Right of retaining one’s chattel
2. Protection of the physical condition of the chattel
3. Protection of the chattel against

Examples of trespass to chattel are;

1. Throwing another person’s property away, such as in annoyance
2. Mere moving of the goods from one place to another
3. Destruction, or any act of damage
4. Driving another person’s car without permission
5. Throwing something at the chattel.

The purpose of the tort of trespass to chattel

The tort of trespass to chattel protects all the chattel, goods, or personal properties of a person who has title, or possession by prohibiting all interference without legal justification. Thus, the tort of trespass to chattel protects the chattel, goods and personal properties of a person who has title, possession or right to immediate possession against meddling, damage, destruction, conversion, detinue, or any interference whatsoever, by any other person without lawful justification

Elements of trespass to chattel: what a person must prove to succeed

To succeed, a plaintiff must establish that the act of trespass was:

1. Intentional
2. Negligent.

This is witnessed in the case of **National Coal Board v Evans & Co. (1951) and Gaylor & Pope v Davies & Sons (1924)**

Persons who may sue for trespass to Chattel

A person who wants to sue for trespass to chattel can sue under trespass to goods, conversion and negligence that is involved in the commission of the trespass or conversion, These actions are substantiated by the provisions of the **Torts (Interference with goods) Act 1977**.

Anyone who has possession or caretakership of a chattel may sue anyother who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or the the right to immediate possession. In other words, anyone who has possession or right to immediate possession can sue. Therefore the persons who may sue for trespass to chattel, provided they have possession at the material time of the interference include:

1. Owners
2. Bailers
3. Lenders
4. Assignees
5. Trustees, etc.

The Defences for Trespass to Chattel

In an action for trespass to chattel, the defences a defendant may plead include:

1. Inevitable accident
2. Jus tertii, that is, the title, or better right of a third party, provided that he has the authority of such third. This is witnessed in the case of **C.O.P. v Oguntayo (1993) 6 NWLR**
3. Subsisting lien
4. Subsisting bailment
5. Limitation of time, as a result of the expiration of time specified for legal action
6. Honest conversation, or acting honestly, etc.

The Remedies for Trespass to Chattel

The remedies available to a person whose chattel has been meddled with, short of conversion or detinue are:

1. Payment of damages
2. Replacement of the chattel
3. Payment of the market price of the chattel
4. Repair of the damage.

A frequent demonstration of these remedies in motor accident cases. Where one vehicle runs into another, damages may be paid, or the parts of the vehicle that are affected may be replaced or repaired.

Trespass to chattel in Nigeria

In Nigeria, the tort of trespass to chattel is made up of three torts,

Trespass to chattel per se, conversion, detinue.

Trespass to Chattel is actionable per se

The three forms of trespass to chattel are each actionable per se upon commission or occurrence without the plaintiff having to prove damage. Explaining the law that trespass to chattel is actionable per se without proof of damage. Adefarasin J, as he then was held, in Davies v Lagos City Council (1973) that:

“The plaintiff is entitled to succeed in trespass, there may be a trespass without the infliction of any material damage bt a mere taking or transportation. In my view, the seizure of the plaintiff’s vehicle without just cause, is a wrongful act, on account of which all the defendants taking part in it are jointly and severally liable,

Although trespass to chattel is actionable per se, however it is not a strict liability tort, Furthermore, where a specific damage has been done to a chattel, a plaintiff is entitled to prove it and recover damage for it as the case may be.

Conversion

According to Sir John Salmond, A conversion is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.

Conversion is any interference, possession or disposition of the property of another person, as if it is one’s own without legal justification, In other words, Conversion is dealing with another person’s property as if it was one’s own. Examples of Conversion are;

1. Taking; Where a defendant takes a plaintiffs chattel out of the plaintiff’s possession without lawful justification with the intent of exercising dominion over the goods permanently or even temporarily, there is conversion.
2. By wrongful disposition: such as by sale, transfer of title or other wrongful disposition; In **Chukwuka v C.F .A.O. Motors Ltd (1967) FNLR**

The plaintiff sent his car to the defendant motor company for repairs. Thereafter, he failed to claim the car. Nine months later the defendants sold the car to a third party who re-registered it in his own name. The plaintiff sued for conversion. The High court held that the defendant was liable to the plaintiff for conversion of the car.

Innocent Receipt or Delivery is not conversion

Generally, innocent delivery, or innocent receipts are not torts, nor criminal offences. Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods. Such as, a carrier, or a warehouseman, receives goods in good faith from a person he believes to have lawful possession of them and he delivers them, on the person’s instructions to a third party in good faith, there would be no conversion. Similarly, innocent receipts of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods

constitute a nuisance. This is witnessed in the case of **Unipetrol v Prima Tankers Ltd and Owena Bank Nig Ltd v Nigerian Sweets and Confectionery Co Ltd.**

The Rules Regarding Finding Lost Property

The rules of law applicable to finding lost property were authoritatively settled by the English Court of Appeal in the case of **Parker v British Airways.** However, the rules are not often easy to apply. The rules applicable to finding lost property may be summarized as follows:

1. A finder of a chattel acquires no rights over it, unless it has been abandoned, or lost and he makes it into his care and control. He acquires a right to keep it against all persons, except the true owner, or a person who can assert a prior right to keep the chattel, which was subsisting at the time when the finder took the chattel into his care and control.
2. Any servant, or agent who finds a lost property in the course his employment, does so on behalf of his employer, who by law acquires the right of a finder.
3. An occupier of land, or a building has superior rights to those of a finder, over property of goods in, or attached to the land, or building. Based on this rule, rings found in the mud of a pool in the case of South Staffordshire Water Co v Sharman, and a pre-historic boat discovered six feet below the surface were held as belonging to the land owner in the case of **Elwes v Briggs Gas Co**,
4. An occupier of premises does not have superior rights to those of a finder in respect of goods found on the premises, except before the finding, the occupier has manifested an intention to exercise control over the premises, and things on it

These rules are witnessed in the case of **Parker v British Airways and Bridges v Hawkesworth**

Defences for Conversion

In an action for conversion of a chattel, the defendant may plead:

1. Jus tertii, that is, the title or better right of a third party
2. Subsisting bailment
3. Subsisting lien
4. Temporary retention; to enable steps to be taken to check the title of the claimant. A defendant mat temporarily, refuse to give up goods, while steps are taken to verify the title of the plaintiff who is claiming title before the chattel is handed over to the plaintiff if he is found to be the owner, or has right to immediate possession.
5. Limitation of time.

Remedies for conversion

In a claim for the conversion of a chattel several remedies are available to a plaintiff. The court in its judgment may order any, or a combination of any of the following reliefs;

1. Order for delivery, return or specific restitution of the goods
2. Alternative order for payment of the current market value of the chattel
3. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved
4. General Damages: Furthermore, where for instance, a plaintiff whose working equipment or tools are converted by another person, a plaintiff may sue for the loss of profit, or existing contract or wages for the period of the conversion of the work tools or equipment.

Conversion in tort, the central thought of this is wrongful appropriation of goods of another as one’s own, or wrongful depriving the other of the use and possession of the good permanently for a substantial time by destroying them or changing their quality.

Detinue

The tort of Detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for the specific return, delivery, or surrender of a chattel to the plaintiff who is entitled to it. Detinue is the wrongful detention or retention of a chattel whereby the person entitled to it is denied the possession or use of it. As a general rule, to successfully sue in detinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel.

Defence of Detinue

In an action for detinue, a defendant may plead that;

1. He has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself
3. Innocent delivery
4. The defendant may plead jus terti, that is, a third party person has a better title, provided the defendant is the agent, or has the authority of the third party, or is claiming under the third party.
5. Subsisting bailment

Remedies for Detinue

When a person’s chattel is denied by another person who is denied possession or use of such chattel, has several remedies open to him which include;

1. Claim for return of the Chattel: This is a claim for the return of the specific cghattel, especially, if the chattel has not changed its character, content, and it has not been damaged nor destroyed during its detention
2. Replacement of the chattel: Where possible or appropriate, a defendant may be ordered to replace the chattel by supplying an identical or similar chattel, This is possible for instance in the case of manufacturers of products, who can easily replace the goods by supplying the identical or similar product.
3. Damages; When a defendant has been found liable in detinue, he cannot deprive the plaintiff of his right to damages for detention of the chattel, simply because he has not been using it, nor earning anything. Also, if the wrongdoer has been making use of the goods for his own purpose, then he must pay a reasonable fare for chattel to the plaintiff. The reasonable fare usually includes the wear and tear of the goods. Therefore, as the courts have often affirmed the remedies available for tort of detinue are an order of the specific return of the chattel, or in default, an order for payment o the value and also damages that were suffered due to loss of use by the defendant up to the date of judgment or re-delivery of the chattel to the plaintiff.

Differences between Conversion and Detinue

Detinue covers the same ground as the tort of conversion by detention. However, some differences are to be noted which include the following:

1. The refusal to surrender or return a chattel on demand is the essence of detinue, or detention. There must have been a demand for return of the chattel.
2. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question, and not merely an assessed market value. However, where specific return of the chattel or a replacement will not be possible, an award of the current market value of the chattel is usually made to the plaintiff.

Before the Common Law Procedure Act 1854, was enacted a defendant had a choice to either restore the actual chattel or pay the market value. However, since the enactment of the Act, a court has discretion to order specific restitution, or award the market value of the chattel to the plaintiff or it may award damages alone, if the goods can be easily be replaced.

Reference(s)

Ese Malemi Law of Torts (Princeton Publishing Co. 2008)

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