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TRESPASS TO CHATTEL

*What is a chattel?*

A chattel is any property other than land and immovable property. Any moveable property is a chattel. Any object, goods, or personal property other than land and immovable property is referred to by the word 'chattel.' There are countless examples of chattels or products. A chattel is any movable thing that can be leased, owned, or managed other than a human being, land, and immovable property. Chattel examples include cars, furniture, poultry, boats, ships, marine crafts, and everything else that is moveable and worthy of possession. It is still not necessary to exhaust the list of chattels.

*What is Trespass to Chattels?*

This is a direct and wrongful damage done to another person's chattel in custody. It is the intentional or negligent interference with the possession of the chattel of another person. It is actionable per se; there is ample evidence of overt and unlawful application of force, no need to prove injury. The actual application of force, however, does not need to be physical. Trespass to chattel, for instance, is the driving away of livestock. Each moveable property is a chattel.

The purpose of trespass to chattel is by prohibiting any interference without legal justification, the tort of trespass to chattels covers all the chattels, property, or personal properties of a person who has title or ownership. The tort of chattel trespass preserves a chattel's rights of ownership or possession from any wrongful interference. The tort of trespass to chattel thus protects, without reasonable reason, the chattels, property, and all personal assets of an individual who has title, ownership, or right to immediate possession from intrusion, injury, destruction, diminution, conversion, detinue, or any interference whatsoever, by any other person.

In **Erivo v Obi (1993)**, the defendant respondent closed the door of the plaintiff appellant's car and the side windscreen got broken. The appellant sued inter alia for damage to the windscreen and the loss he incurred in hiring another car to attend to his business. The defendant respondent alternatively pleaded inevitable accident. On appeal, the Court of Appeal held that the defendant respondent was not liable. He did not use excessive force but only normal force in closing the door of the car. He did not break the windscreen intentionally or negligently. It was an inevitable accident which the exercise of reasonable care and the normal force used by the respondent could not avert. In this case, the Court of Appeal restated the position of the law that, trespass to chattel is actionable per se, that is, without proof of actual damage. Any unauthorized touching or moving of a chattel is actionable at the suit of the possessor of a chattel, even though no harm has been done to the chattel. Therefore, for trespass to chattel to be actionable, it must have been done by the wrongdoer:

1. Intentionally; or

2. Negligently. **Gaylor & Pope v Davies & Sons (1924)**

*The two stated above are the main two elements of trespass to chattel*. As a general rule, proving intention or negligence is very important as trespass to chattel is not a strict liability tort. However, accident, intentional or negligent trespass do not automatically give rise to liability per se, as an appropriate defense, may be pleaded to avoid liability.

*A person may sue for trespass to chattel* where anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. This is so for the object of the tort of trespass is to protect possession, or the right to immediate possession. In other words, anyone who has possession or right to immediate possession can sue. Accordingly, some persons who do not have legal right are deemed by law to have possession, so that they will be able to protect chattels left under their care. For instance, an employee to whom an employer has given custody of goods, a repairer, caretaker, personal representatives of a deceased and so forth. 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. Bailees

3. Lenders

4. Assignees

5. Trustees

6. Finders

7. Custodians

8. Caretakers

9. Adverse possessors, because mere possession gives a right to sue to retain

possession

10. Executors

11. Administrators of estates; etc.

In **National Coal Board v Evans & Co. (1951)**, the defendant contractors were employed by a county council to work on land owned by the defendant council. A trench had to be dug, which the defendants employed a sub-contractor to do. An electric cable passed under the land, but neither the council, nor Evan & Co. who were head contractors, nor the sub-contractors knew this, and the cable was not marked on any available map. During excavation, a mechanical digger damaged the cable and water seeped into it causing an explosion, and thereby cutting off electricity supply to the plaintiff’s coal mine. The plaintiff sued claiming damages for trespass to the electricity cable. The court held that in the absence of establishing negligence on the part of the defendant contractors, there was no fault and there was no trespass by the defendants. The damage was an inevitable accident.

*The Defenses for Trespass to Chattel*

In an action for trespass to chattel, the defenses 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 party. **C.O.P. v Oguntayo (1993)**

3. Subsisting lien.

4. Subsisting bailment

5. Limitation of time, as a result of the expiration of time specified for legal action.

6. Honest conversion, 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.

An example is in motor accident incidents. When one car crashes into another, it is possible to pay costs, or to fix or repair parts of the vehicle that are damaged.

CONVERSION

*What is conversion?*

According to **Sir John Salmond**, in his book the Law of Tort, 21st ed. (1996) p. 97-98:

"A conversion is an act... of willful 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”.

It is any intervention, ownership or disposition of another person's property, as if, without legal justification, it is one's own. Conversion is, in other words, dealing with the property of another entity as though it is one's own. Conversion is any deal that denies the title, ownership, or use of the chattel to an individual. It is the declaration of a right which is inconsistent with the right to use the chattel of the person who has title, ownership or right. It is dealing with a chattel that belongs in a way that is inconsistent with the individual's rights to another person. In other words, any deliberate conversion is interference with the chattel of another person which unlawfully deprives the individual of title, possession or use of it. In criminal law, conversion is known as stealing or theft.

In **North Central Wagon & Finance Co. Ltd v Graham (1950)**, the defendant hire purchaser sold the car in contravention of the terms of the hire purchase agreement. In the circumstances the court held that the plaintiff finance company was entitled to terminate the hire purchase agreement and sue the selling hire purchaser in the tort of conversion, for recovery of the car.

**Lewis v Averay [1972]**, The complainant, Mr. Lewis, was a postgraduate that wanted to sell his car. He met with somebody interested in buying the car, who was actually a rogue that was impersonating a famous actor, Richard Greene. They agreed on the price of £450 for the car and the rogue wanted to pay by cheque. Mr. Lewis asked for identification before he agreed to accepting the cheque, with the rogue presenting a pass for Pinewood Studios and his name and photograph. Once the rogue had the car, he sold it onto the defendant, Mr. Averay, for £200. The cheque he had given to Mr. Lewis bounced, but the rogue had disappeared and could not be found. It was held that the mistake to the real identity of the rogue did not prevent a valid contract being created between him and Mr. Lewis. There was a face to face interaction, where the law presumes contract. However, this was fraud and impersonation by the rogue, which would render a contract voidable and it could be set aside. Yet, this must be done before a third party acquires the rights. In this case, the contract was not set aside before Mr. Averay, in good faith, purchased the car.

*The elements of conversion* are: 1. the plaintiff’s ownership or right to possession of the property; 2. the defendant’s conversion by wrongful act inconsistent with the property rights of the plaintiff; and 3. damages.

*Examples of conversion*

Conversion of a chattel, belonging to another person may be committed in many different ways. Examples of conversion include:

1. Taking: Where a defendant takes a plaintiff’s 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. Contrast this proposition with the decisions in the cases of **Fouldes v Willoughby** and **Davies v Lagos City Council**. On the other hand, a defendant may not be liable; if he merely moves the goods without denying the plaintiff of title.
2. Using: Using a plaintiff’s chattels as if it is one's own, such as, by wearing the plaintiff’s jewelry, as in the case of **Petre v Heneage (1701)**, or using the plaintiff’s bottle to store wine as was the case in **Penfolds Wine Ltd v Elliot** is a conversion of such chattel.

3. Alteration: By changing its form howsoever.

4. Consumption: By eating or using it up.

5. Destruction: By damaging or obliterating it. Mere damage of a chattel is not sufficient to make one liable for conversion. As a general rule of law, mere damage or destruction of a chattel without more, is a trespass to chattel in tort and also a malicious damage in criminal law. **Simmons v Lillystone (1853)**

6. Receiving: Involuntary receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance. Receiving a chattel from a third party who is not the owner is a conversion. This is wrongful, for it is an act of assisting the other person in the conversion of the chattel, or the receiving of stolen goods.

7. By Detention: **Armory v Delamirie (1722)**. A chimney sweep's boy found a jewel and gave it to a jeweler for valuation. The jeweler knowing the circumstances, took the jewel, detained and refused to return it to the boy. They boy then sued the jeweler for conversion and for an order for return of the jewelry to him. The court held: that the jeweler was liable for conversion. A finder of a property has a good title, and he has a right or interest, to keep it against all persons, except the rightful owner of the property or his agent.

**Moorgate Mercantile Co v Finch (1962)**. However, a temporary reasonable refusal by the finder or custodian of a property to hand it over to a claimant, in order to verify the authenticity of the title of the claimant. is not actionable, except where the refusal is averse to the owner's better title.

8. By Wrongful Delivery: Wrongfully delivery of a person's chattel to another person who does not have title or right to possession without legal justification is a conversion.

9. Purchase: At common law, conversion is committed by a person who bought and took delivery of goods from a seller who has no title to the chattel nor right to sell them. Such as when a thief, steals and sells a chattel. A buyer in such a situation takes possession at his own risk, in accordance with the rule of law that acts of ownership are exercised at the owner’s peril.

10. By Wrongful Disposition: Such as by sale, transfer of title or other wrongful disposition. In **Chukwuka v C.F.A.O. Motors Ltd (1967)**, 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 reregistered 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. **The Arpad (1934)** and **Hollins v Fowler (1875)**.

*The innocent delivery or receipt rule*

Generally, innocent delivery or receipt are not torts, nor criminal offences. Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods, such as, a carrier, or 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 receipt of goods is not conversion. However, the receiver must not willfully damage or destroy the goods unless the goods constitute a nuisance.

In the case of **Unipetrol v Prima Tankers Ltd (1986)**. The defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff appellant Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal held: that the respondents were liable in conversion. The word "loss" is wide enough to include a claim for conversion against a carrier. It is elementary law that in a claim for conversion, the claimant is entitled to the return of the article seized, missing, or in the possession of the other party, or reimbursement for its value.

In **Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd (1993)**, The 1st respondent was granted an import license by the Federal Ministry of Trade to import granulated sugar. However, the 2nd respondent opened a letter of credit and imported the sugar. The 1st respondent sued for damages for the wrongful conversion of the import license. On appeal by the bank, the Court of Appeal held: That the defendants were liable for conversion of the import license papers. Thus, an action for conversion will lie in conversion for any corporeal personal property, including papers and title deeds.

Conversion is an impairment to the possessory rights of the plaintiff in the chattel converted. Whether or not an act amounts to a conversion depends on the facts of each case, and the courts have a degree of discretion to determine whether such acts constitute a sufficient deprivation of the rights of possession or property to constitute a conversion. Negligence or motive is not necessary in conversion, and if dealing with another person's chattel is in such a situation that the owner is deprived of its use and possession, the crime is committed.

*The finding lost property rule*

The rules of law applicable to finding a lost property were authoritatively settled by the English Court of Appeal in the case of **Parker v British Airways (1982)**. 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 takes 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 rights of a finder.

3. An occupier of land or a building has superior rights to those of a finder, over property or 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 (1896)** and a pre-historic boat discovered six feed below the surface were held as belonging to the land owner in the case of **Elwes v Briggs Gas (1886)**.

4. However, an occupier of premises does not have superior rights to those of a finder in respect of goods found on or in the premises, except before the finding, the occupier has manifested an intention to exercise control over the premises, and things on it.

In **Parker v British Airways**, the plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London, England when he found a bracelet on the floor. He handed it to the employees of the defendant, together with his name and address, and a request that it should be returned to him if it was unclaimed. It was not claimed by anybody and the defendants failed to return it to the finder and sold it. The English Court of Appeal held: that the proceeds of sale belonged to the plaintiff who found it.

**Bridges v Hawkesworth (1851)**, the plaintiff finder of a packet of bank notes lying on the floor, in the public part of a shop was held entitled to the money instead of the shop owner, upon the failure of the rightful owner to come forward to claim the money.

As a general rule of law, anybody who has a finder's right over a lost property, has an obligation in law to take reasonable steps to trace the true owner of the lost property, before he may lawfully exercise the rights of an owner over the property he found.

*A person may sue for conversion*

1. Owners: An owner in possession, or who has right to immediate possession may sue another person for conversion.

2. Bailees: A bailee of a chattel may sue another person for conversion of a chattel or goods bailed with him. However, a bailor at will has title to immediate possession of a chattel he has deposited with a bailee and can maintain action against a bailee for conversion.

3. Holders of lien and pledge

4. Finders

5. Buyers

6. Assignees

7. Licensees

8. Trustees

*Defenses for Conversion of a Chattel*

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 may 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; or

2. Alternative order for payment of the current market value of the chattel.

3. An order for payment of any consequential damages. However, allowance may be made for any improvement in the goods, such as, where a person honestly in good faith buys and improves a stolen car and is sued by the true owner; the damages may be reduced to reflect the improvements.

4. Recovery of special and general damages. Special damage is recoverable by a plaintiff for any specific loss proved.

5. 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 equipments.

DETINUE

*What is detinue?*

The tort of detinue is the unlawful detention of another person's chattel, the immediate possession of which entitled the person. Detinue is a claim for the particular return of a chattel to the claimant who is entitled to it, delivery, or surrender. Detinue is the unlawful imprisonment or holding of a chattel whereby the possession or use of it is denied to the person entitled to 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.

An action in detinue is a demand for the specific return, or reimbursement of its existing market value and any resulting damages, of a chattel wrongfully maintained. Anyone who takes, arrests, or keeps a chattel completely incorrect, and refuses, or fails to return it to the claimant without a valid reason after a reasonable request for it, can be sued in custody to recover it or its value.

*Elements of detinue include:*

* Make a Demand

The plaintiff must make a demand for the chattel to be returned and be entitled to the chattel at the time of the demand. The demand is imperative.4

* Refuse the Demand

The defendant must refuse that demand (whether expressly refusing or failing to respond at all). On some occasions, a defendant who does not have possession of the chattel and has lost that possession may still commit detinue by denying the plaintiff their right to possession.5

* Unreasonable Refusal

Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable

* Consequential damage

As a result of the defendant’s conduct, the plaintiff has suffered loss. This will usually be calculated as the value of the chattel.

Once the above elements have been established, an action for detinue can be made out.

*A person may sue in detinue* where: 1. The plaintiff must have title that is ownership or right to immediate possession of the chattel.

2. The defendant who is in actual possession of the chattel must have failed, and or refused to deliver the chattel to the plaintiff after the plaintiff has made a proper demand for the return of the chattel, without lawful excuse. Thus, there must have been a demand by the plaintiff for the return of the chattel and a refusal or a failure to return them. This making of a demand by the plaintiff on the defendant is a condition precedent which the plaintiff must establish to succeed in his claim for detinue.

In **Kosile v Folarin (1989)**, The defendant motor dealer seized and detained the motor vehicle he had sold to the plaintiff on credit terms, upon delay by the plaintiff to fully pay up. The plaintiff buyer sued for detinue claiming damages. The Supreme Court held: inter alia that the seizure and detention of the vehicle by the defendant was wrong. The plaintiff was entitled to the return of the vehicle or its value and for loss of the use of the vehicle until the date of judgment at the rate of N20 per day. The Supreme Court emphasised the requirement that in an action for detinue, there must have been a demand by the plaintiff on the defendant to return the chattel, and if the defendant persists in keeping the chattel, he is liable for detinue.

**Steyr Nig. Ltd v Gadzama (1995)**, At the end of their services, the plaintiff appellant company sued the defendant respondents who were former employees of the appellant for detaining official cars and household items which were in their use as top management staff of the company. The Court of Appeal held: that the respondents were to pay reasonable prices for the items in lieu of returning the chattels.

*Defenses for Detinue*

1. He has mere possession of the goods

2. That the plaintiff has insufficient title as compared to himself

3. The defendant may plead jus tertii, 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.

4. Innocent delivery

5. Subsisting bailment

6. Subsisting lien on the chattel.

7. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff

8. Inevitable accident,

9. Reasonable defense of a person or property, such as when one beats or injures a dog that was attacking him or another person.

10. Enforcement of a court order or other legal process, such as levying of execution of property under a writ of fifa, or the police taking away goods they believe to have been stolen for the purpose of use as exhibit in evidence before court, etc.

*Remedies of detinue*

1. Claim for Return of the Chattel: This is a claim for the return of the specific chattel, 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 replacement 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 an identical or similar product.

3. Replevin or Release on Bond: This is a return of the goods on security, pending the determination of the ownership of the chattel. When a third party's goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgment debtor, such third party claiming ownership may recover them by means of an interpleader summons determining their ownership. The registrar will then issue a warrant for the restoration of the goods, to such third party or claimant on bond. Therefore, Replevin is the re-delivery to an owner of goods which were wrongfully seized, the action for such re-delivery, and for any specific and general damages suffered by him as the result of the detention.

*Difference 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 replaced easily.

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