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LPB 301 ASSIGNMENT

 The tort of trespass to cartel can be defined as a tort whereby one party intentionally interferes or intentionally intermeddles with another person's lawful possession of a chattel. The interference can be any physical contact with the chattel or by dispossession of the chattel by taking it, destroying it, or barring the owner's access to it. Trespass to chattels is actionable only if actual damage can be shown. **Trespass to chattels** is a tort whereby the infringing party has intentionally (or, in Australia, negligently) interfered with another person's lawful possession of a chattel (movable personal property). The interference can be any physical contact with the chattel in a quantifiable way, or any dispossession of the chattel (whether by taking it, destroying it, or barring the owner's access to it). As opposed to the greater wrong of conversion, trespass to chattels is argued to be actionable *per se*. The origin of the concept comes from the original writ of trespass *de bonis asportatis*. As in most other forms of trespass, remedy can only be obtained once it is proven that there was direct interference regardless of damage being done, and the infringing party has failed to disprove either negligence or intent. See the case of ERIVO V OBI. The defendant closed the door of the plaintiff and the side windscreen got broken. The plaintiff sued inter alia (among other things) for damage of the windscreen as well as other expenses incurred in getting another car to run his business. The court of appeal held that the defendant was not liable on the grounds that he didn’t use excess force but only normal force to close the door of the car. He didn’t break it intentionally neither did he do it negligently. It was an inevitable accident which the exercise of reasonable care could not avert. Trespass to chattel consists of trespass to chattel conversion and trespass to chattel destinue.

 **TRESPASS TO CHATTEL CONVERSION**

 **Conversion** is an intentional tort consisting of "taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession". In England & Wales, it is a tort of strict liability. Its equivalents in criminal law include larceny or theft and criminal conversion. In those jurisdictions that recognise it, criminal conversion is a lesser crime than theft/larceny. Many questions concerning joint ownership in enterprises such as a partnership belong in equity, and do not rise to the level of a conversion. Traditionally, a conversion occurs when some chattel is lost, then found by another who appropriates it to his own use without legal authority to do so. It has also applied in cases where chattels were bailed for safekeeping, then misused or misappropriated by the Bailee or a third party.

 Conversion, as a purely civil wrong, is distinguishable from both theft and unjust enrichment. Theft is obviously an act inconsistent with another's rights, and theft will also be conversion. But not all conversions are thefts because conversion requires no element of dishonesty. Conversion is also different from unjust enrichment. If one claims an unjust enrichment, the person who has another's property may always raise a change of position defense, to say they have unwittingly used up the assets they were transferred. EXAMPLES OF CONVERSION INCLUDE: taking, using, alteration, consumption, damaging, wrongful delivery, detention, wrongful sale and so on. For conversion, there always must be an element of voluntarily dealing with another's property, inconsistently with their rights. In the case of ***North Central Wagon and Finance Co Ltd Vs Graham,***the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right in the goods were already vested in the plaintiff, there was no need for actual possession.

 **Conversion of goods would arise in the following situation**:
**1. Wrongfully Taking the Goods:** This must be accompanied by an intention to exercise temporary or permanent dominion over the goods. In the case of **Fouldes vs Willoughby**the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgement was entered in his favour at the trial court. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses.

**2. Wrongfully detaining the goods:** This must be accompanied by an intention to keep the goods from the person entitled to possession of the goods. Hence it would not be regarded as conversion if the finder of goods merely refrains from returning such to the owner. It would only be conversion in a situation in which when asked for the goods by the owner, he refuses to release it. In the case of **Howard E Perry and Co Ltd Vs British Railway Board. (1980) 1 WLR 1375**, the defendant, who were carriers, held the plaintiff’s steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part.
For conversion to be committed there has to be some positive denial of possession towards the person entitled to possession.

**3. By wrongfully destroying the goods:** Destruction of goods would amount to conversion in the following situations:
a) One person willfully destroys the chattel of another.
b) If the chattel either ceases to exist or changes its identity.

**4. Wrongfully disposing the goods:** This occurs in a situation in which the defendant attempts to confer title to a third party in a manner inconsistent with the right of the person entitled to possession.

**5. By wrongfully delivering the goods:** This occurs in a situation in which the defendant denies the true owner of the title to the goods by delivering them to another party that has no title.

 ELEMENTS OF CONVERSION: The elements of conversion are:

1. Intent to convert the tangible or intangible property of another to one's own possession and use.
2. The property in question is subsequently converted: In another formulation, it has been stated that one claiming conversion must show a tortious conversion of the chattel, a right to property in it, and a right to immediate possession which is absolute, unconditional, and not dependent upon the performance of some act.
3. Negligent.

 **INNOCENT RECEIPT OR DELIVERY IS NOT CONVERSION**

Generally, innocent delivery or innocent receipts are not tort, nor criminal offences. Thus, innocent delivery is not conversion. Therefore, where an innocent holder of goods, such as, a carrier, or warehouseman, receives goods from a person, he is believed to be in lawful possession of the goods and he delivers them on the person’s instruction to the third party in good faith there will be no conversion. However, the receiver must not willfully damage or destroy the goods constitute a nuisance. UNIPETROL V PRIMA TANKETRS LTD. In this case, the defendants 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. The court of appeal held the respondents were liable of conversion. The word loss is wide enough to include a claim of conversion against the carrier. See also the case of OWENA BANK NIG LTD V NIGERIAN SWEETS & CONFECTIONARIES CO LTD.

 **WHO MAY SUE FOR CONVERSION**

The category of people who have legal right to sue in a tort of conversion include:

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. Licenses
8. Trustees

 **Defenses to Conversion**

1. **Abandonment:** An action for conversion would not succeed in a situation in which the property in question was abandoned by the claimant. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.
2. **Authority of Law**: Conversion that is done under the authority of law would be justified. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement debt, would be valid.
3. **Consent:** If the owner of the goods consented to the action of the defendant in converting the goods, the conversion would be held to be valid.
4. **Statute of limitations:** If the suit for conversion is not filed after a specified period (ranging from 2-5) years, it would be held to be statute barred. Thus, the suit would not be heard by the court.
5. **Unidentifiable property:** If the property cannot be properly identified, it could also serve as a defense to conversion.
6. **Jus tertii:**  that is, the title or better right of a third party.
7. **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.

 **REMEDIES FOR CONVERSION**

In a claim for the conversion of a chattel several remedies are available to the plaintiff. The court may grant the following reliefs:

1. Order for delivery, return or specific restitution of the goods.
2. Alternative order of payment of the current market value of the chattel.
3. An order of 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 a stolen car and is sued by the real owner, the damages may be reduced to reflect the improvements.
4. Recovery of special and general damages.
5. General damages.

  **TRESPASS TO CHATTEL DESTINUE**

The tort of destinue is the wrongful action to recover for the wrongful taking of personal property. It is initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the chattel than the defendant and second that the defendant refused to return the chattel once demanded by the claimant. Detinue allows for a remedy of damages for the value of the chattel, but unlike most other interference torts, detinue also allows for the recovery of the specific chattel being withheld. As a general rule, to successfully sue in destinue, a plaintiff must have possession before the detention, or have right to immediate possession of the chattel. An action in destinue is a claim for the specific return of a chattel wrongfully retained, or for payment of its current market value and any consequential damages.

EXAMPLES OF DESTINUE INCLUDE:

1. Peter lends Paul his chairs for one day and Paul fails to return the chairs after one day as agreed or after the expiration of a reasonable period of time.

 **WHO MAY SUE FOR DESTINUE**

A plaintiff can only maintain action for the tort of destinue after satisfying two conditions which are:

1. The plaintiff must have title that the 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 proper demand for the return of the chattel, without lawful excuse. Thus, there must be a demand from the plaintiff requesting for the return of the chattel and a refusal of the defendant to deliver the goods. See the case of WEST AFRICA EXAMINATION COUNCIL V KOROYE.

 In the case of KOSILE V FOLARIN. In this case, 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 destinue claiming charges. The supreme court held: inter alia that the seizure 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 day of judgement at the rate of N20 per day. In the case above, the court emphasized the requirement that in an action for destinue, 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 destinue.

 **THE DEFENCE FOR DESTINUE**

In an action for destinue, 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. The defendant may plead jus tertii.
4. Innocent delivery
5. Subsisting bailment
6. Temporary retention of the chattel to enable steps to be taken to check the title of the plaintiff
7. Inevitable accident
8. Reasonable defence of a person or property, such as when one beats or injures a dog that was attacking him or another person.

 **REMEDIES OF DESTINUE**

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 is 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. Claim for the market value of chattel: this is a claim for the current market value of the chattel as may be assessed. The measure of damage in destinue is usually the market value of the goods as proved at the time of judgement. The onus is on the plaintiff to prove the market value.
4. Recapture or self-help: a person who is entitled to possession of goods of which he has been wrongfully deprived may resort to self-help and retake the goods from the custody of the person detaining it, using only reasonable force after he has made a demand for their return. However, he may not trespass through the land of an innocent party to retake the goods.
5. Replevin or release on bond: this is the return of the goods on security, pending the determination of the ownership of the chattel. When the third party’s goods have been wrongfully taken in the course of levying execution or distress of the movable property of another person or judgement 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 redelivery to an owner of goods which were wrongfully seized, the action for such redelivery and for any specific and general damages suffered by him as a result of the detention.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

Detinue covers the same ground as tort of conversion by detention. However, some differences include:

1. The refusal to surrender or return a chattel on demand is the essence of destinue, 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 to pay the market value.