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COURSE: LAW OF TORTS

ASSIGNMENT: The tort of trespass to Chattel in is made of: Trespass to Chattels Conversion and Detinue Discuss the above and support with case law. Students may consider the following: define and explain each tort State the elements of Trespass to Charttel, conversion and detinue, Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion, Give examples of persons qualified to sue for Trespass to Charttel, Discuss the remedies and defence to Trespass to Charttel, conversion and detinue, Differences between conversion and Detinue, Suppo References Kodilinye and Alison The Nigerian Law of Torts Spectrum Law publishing, 1999)195 Vivienne Harewood Principles of Tort Law (Cavendish Publishing) 293 Ese Malemi Law of Torts (Princeton Publishing Co. 2008)159 T

This question bothers on the topic trespass to chattels which will include conversion and detinue, elements of trespass to chattels, defenses and remedies.

Trespass to chattel is an intentional interference with another person's lawful possession of a personal property. A "chattel" refers to any personal property, moving or unmoving. Trespass to chattels does not apply to real property or any interest in land.

The tort of trespass to chattel is designed to protect possession, that is the right of immediate possession of a chattel, as distinct from ownership.

Trespass to chattel maybe committed in different ways: throwing another person’s property away, mere moving of goods from one place to another, driving another person’s car without permission, throwing something at the chattel, mere using without permission, destruction or any act of harm or damage.

**ELEMENTS OF TRESPASS TO CHATTEL** To succeed a plaintiff must prove that the act of trespass was:

* Intentional: Merely intending to do the act is enough to show this element of trespass. You don't necessarily need to show intent to harm a specific person.
* Negligent.

In NATIONAL COAL BOARD v EVANS AND CO An electrical cable was placed under the land of the county council by the National Coal Board (NCB) or its predecessors, without the council’s knowledge, as far as could be established. The council contracted JE Evans & Co (Evans) to excavate a trench on the land. Evans had no knowledge or indication there was a cable. When excavating the land, the cable was struck and damaged. NCB brought a cause of action for trespass. No liability in trespass could be found since the act was involuntary and accidental. The act of Evans was neither negligent nor willful and was “utterly without fault”. The liability for negligence and injury lay with the NCB or their predecessors for failing to notify the council when they placed the cable under their land without knowledge or consent from the council.

Anyone who has possession of a chattel may sue any other person who meddles with their chattel. For instance, a doctor who has given a nurse possession of some medical equipment. Persons who may sue include: owners, bailees, lenders, custodians, caretakers, finders, assignees, lenders, trustees.

**DEFENCES FOR TRESPASS TO CHATTEL**

1. Jus tertii: the defendant can plead and establish that he is acting on behalf of a disclosed person with a better title than that of the plaintiff.
2. Subsisting lien: It is the legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation.
3. Inevitable accident: The inevitable accident which is also known as unavoidable accident says that a person cannot be held liable for an accident which was not foreseeable despite all care and caution taken from his side.
4. Subsisting bailment: This is where the owner transfers physical possession of personal property
5. Limitation of time: this happens when the case is statured barred.

**REMEDIES FOR TRESPASS TO CHATTEL**

1. A claim for replacement of the chattel
2. Repair of the damaged goods
3. Payment of damages
4. Payment of the market price of the chattel

**The tort of conversion**

Trespass as a tort can be committed against property and goods. However, in contrast, the tort of conversion can only be applied to goods. Conversion involves a voluntary act, causing interference against another person’s goods. Furthermore, conversion can also be committed even when a person has no intention to commit the tort.

Conversion – unlike trespass – does not require a direct link to be established for a person to commit the tort, as an indirect link is considered sufficient for a finding of a breach under certain circumstances.

The final element of conversion is if the person who is committing the tort, purports to deal with the goods that belong to another party for their benefit which may involve the selling, giving away, or lending of goods in which the tortfeasor has no legal title over.

**NORTH CENTRAL WAGON AND FINANCE CO. LTD v GRAHAM**

The defendant hire purchase 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 purchase in the tort of conversion for recovery of the car.

**INNOCENT RECEIPT OR DLIVERY IS NOT CONVERSION**

Where an innocent holder receives goods in good faith from a person he believes to have lawful possession of them and, he delivers them, on the person’s instruction to a third party in good faith, there would be no conversion.

**UNIPETROL v PRIMA TANKERS LT**D The defendant oil tankers 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 both conversion and loss of cargo. The court held that the respondents were liable in conversion.

**LOST PROPERTY RULE**

**PARKER v BRITISH AIRWAYS**  The plaintiff was waiting in the defendant airways lounge at Heathrow Airport, London 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 defendant 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.

**DEFENCES FOR COVERSION**

1. Jus tertii: it is the right of a third party to the chattel or goods in dispute. A defendant cannot plead that a plaintiff is not entitled to possession as against him because a third party is the true owner of the chattel.
2. Subsisting bailment: This is where the owner transfers physical possession of personal property.
3. Subsisting lien: It is the legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation.
4. Limitation of time: this happens when the case is statured barred.
5. 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 of possession.

**REMEDIES FOR CONVERSION**

1. Order for payment of any consequential damages
2. Oder for delivery or specific restitution of goods
3. Alternative order for payment of the current market value of chattel
4. Recovery of special and general damages.

In conversion, negligence or intention is not relevant.

**The tort of detinue**

Similar to conversion, detinue is also a tort that can only be committed against a good, rather than property.

When someone commits a tort of detinue, they are considered to be wrongfully withholding goods from a person that has an immediate right of possession.

The other element of detinue is that the person committing the wrongful act is also denying the innocent party rightful possession of their property, and with full knowledge of the person’s rights to their goods. The final element of detinue is if the tortfeasor fails to deliver the goods as required by law.

**DEFENCES FOR DETINUE**

The defendant has to plead the following:

1. That he has mere possession of the goods
2. That the plaintiff has insufficient title as compared to himself
3. That the defendant may plead jus tertii
4. Innocent delivery
5. Subsisting bailment
6. Subsisting lien
7. Temporary retention
8. Inevitable accident
9. Reasonable defence of a person or property
10. Enforcement of a court order or other legal process.

**REMEDIES FOR DETINUE**

1. Claim for return of chattel: this is a claim for chattel if the chattel has not changed its character, content and it has not been damaged nor destroyed during its detention.
2. Replacement of chattel: this is possible where manufacturers of products who can easily replace the goods by supplying an identical or similar product.
3. Claim for market value of chattel: the measure for value in detinue is usually the market value of the goods as proved at the time of judgement. Where there is default of restitution a plaintiff may claim for payment of the value of the chattel.
4. 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 demand for their return.
5. Replevin or release on bond: this is a return of goods on security, pending the determination of the ownership of the chattel.
6. Damages: the courts have often affirmed the remedies available for the tort of detinue are an order for specific return of chattel or in default an order of payment of the value and also damages that were suffered due to loss of use by the defendant up to date of judgement or re delivery of the chattel to the plaintiff. Also general damages maybe awarded as assessed by the court.

In tort of trespass to chattel there must be some act of interference, meddling, harm or injury or destruction of goods, against the desire of the owner or possessor. In conversion and detinue there must be taking away. In FOULDES V WILLOUGHBY The defendant was the manager of a ferry boat. The plaintiff who was a passenger entered the boat with his horses. The defendant and the plaintiff had a dispute and in order to induce the plaintiff to leave the boat, the defendant disembarked the horse of the plaintiff from the ferry. The plaintiff who was not ruffled remained on the boat and crossed over to the other side of the river. The plaintiff then sued the defendant for trespass to the horses. The court held that the defendant was liable for trespass to the horses, by moving them ashore, however there is no conversion as the plaintiff still had title.

The torts of trespass to chattels, conversion, and detinue, are often confused whereas the lines between each can, and often do, cross depending on the circumstances. The tort of trespass to chattels is found within the family of interference torts which include, among others, the torts of conversion and detinue. The Key Difference Between Trespass to Chattels and Conversion or Detinue Involves the Continued Possession by the Rightful Owner or Person with Rightful Possession Rather Than a Loss of Possession of the Chattel.

In the case of ERIVO v OBI The defendant respondent closed the door of the appellant’s car and the windscreen got broken as inevitable accident was a defence. 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. For trespass to chattel to be actionable, it must have been done by the wrongdoer intentionally or negligently.

**DIFFERENCES BETWEEN CONVERSION AND DETINUE**

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.
3. Conversion is when one deals with a chattel in a manner repugnant to the immediate right of possession of the true owner. Detinue is the wrongful detention of goods, when one refuses to deliver up goods to a person having the immediate right to possession.

**REFERENCES**

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Ese Malemi Law of Torts.