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**TRESSPASS TO CHATTEL – COVERSION AND DETINUE**

This work targets to make intelligible the torts of ***“Trespass to Chattel, Conversion and Detinue”*** by tackling what they are, their elements, damages, remedies and many more. First, we will explain what is referred to as ***“Trespass to Chattel”***.

**TRESPASS TO CHATTEL**

Before one can understand what the tort *“Trespass to Chattel”* is one must know what can be described as a *“chattel”.* A chattel can be defined as an item of property other than real estate i.e. land. It is any moveable property.

***What does it mean to trespass a chattel? . . .***

The tort *“Trespass to Chattel”* can be referred to as an unlawful and direct injury done to a chattel which is owned or belongs to another person other than the trespasser in question. This tort is *actionable per se* - one does not need to prove damages, unlawful and direct force is sufficient. We must note that this direct application as aforementioned does not need to be physical. For instance’s the driving away of someone’s pet is trespass to chattel.

**EXAMPLES OF TRESPASS TO CHATTEL**

1. Using someone’s property without permission
2. Throwing something at a chattel
3. Taking a chattel away
4. Harm to a chattel
5. Killing another person’s animal
6. Mere moving of goods to another place etc.

**ELEMENTS OF THE TORT**

1. There must not be a direct damage
2. It lacks consent
3. There must be direct application of force even if it is not physical
4. The act must be intended or intentional
5. Mistaken identity of the person’s chattel is insufficient

**HOW TO PROVE THE TORT**

To sue for trespass to chattel one must prove that the trespass was;

1. Negligent
2. Intentional

These are important to prove trespass to chattel as it is not a strict tort. A defendant can still prove otherwise with an appropriate defence.

**WHO CAN SUE FOR TRESSPASS TO CHATTEL – CONVERSION AND DETINUE?**

The plaintiff must have the right to immediate possession of the chattel. If the plaintiff does not have immediate possession of the chattel he cannot sue i.e. the torts will not be actionable.

Possession is very crucial for them to be actionable. One needs to prove possession proof of ownership is not sufficient. This is evident in the case of *Armory V Delamirie* where a boy a jewel and asked the goldsmith to value it. He refused to return it to the boy. The boy brought an action against him. It was held that the even though the boy was not the true owner of the jewel he had possession of it giving him the right to sue for trespass to goods. The goldsmith could not raise *jus tertii* i.e. good title.

Possession must be physical in nature. However right to possession differs in some cases. Here some instances;

1. In a master servant relationship, a master is the owner of the goods held on behalf of him by his servant. This gives the servant a right to possession of the property at that given time.
2. An executioner holds deceased goods until a probate letter of administration is granted. This gives the executioner right to possession at that period of time.
3. A trustee would be held in having the right to possession in a situation where he brings an action against the defendant to protect the goods.
4. Owners
5. Lenders
6. Bailees
7. Custodians
8. Assignees etc.

**CASES ON TRESPASS TO CHATTEL**

1. *Kirk V Gregory*; Here, the movement of a deceased person’s rings from one room to another was held as trespass.
2. *G.W.K V Dunlop Rubber Co*; Here, the replacement of a car tire with another tyre was regarded as trespass.
3. *Haydon V Smith*; Here, the cutting and carrying away of the plaintiff’s trees was held to be trespass.

**DEFENCES TO TRESPASS TO CHATTEL**

1. Subsisting lien
2. Inevitable accident
3. Honest conversion
4. Jus tertii i.e. better right or tile of a third party
5. Subsisting bailment

**REMEDIES OF TRESPASS TO CHATTEL**

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

**TYPES OF TRESPASS TO CHATTEL**

In the United Kingdom, according to the *Section 1 of the* *Interference with Goods Act 1977*,which created a chapter called *“Wrongful interference with goods”*,one can sue for trespass to chattel under;

1. Conversion of goods called ‘trover’
2. Trespass to goods
3. Negligence in so far as it results to damage to goods
4. Subject to S.2 of the Act any other tort as far as it results in damage to goods or to an interest in goods.

Detinue is abolished in the United Kingdom and merged with conversion. However in Nigeria, they are still two separate torts thus, types of trespass to chattel in Nigeria include;

1. Trespass to chattel *per se* without conversion or detinue
2. Conversion
3. Detinue

**CONVERSION**

This can be referred to the intentional and wrongful interference with the goods entitled to the possession of another person which denies that him his right or is inconsistent with his right.

Just like Trespass to goods, immediate possession is an important factor. It is crucial for it to be actionable. The principle on possession is that if the right to possession exists actual possession is unnecessary. This is evident in the case of *North Central Wagon and Finance co ltd V Graham*. Here, the defendant bought a car from the plaintiff on hire purchase and defaulted in payment. The term of the contract was if he defaults the plaintiff will be entitled to reclaim the property. The defendant auctioned the car without the plaintiff’s consent. On an action for conversion, it was held that the plaintiff could sue for conversion even though he was not in actual possession of the car at the moment. He had right to possession. The defendant was liable.

**ELEMENTS OF CONVERSION**

1. It lacks consent
2. It restricts the individual of his right to possession
3. Actual possession is unnecessary i.e. the right to possession is sufficient.
4. Damage is done to the plaintiff which is more severe than trespass. (This is according to the circumstances of the case).

**EXAMPLES OF CONVERSION**

1. Wrongfully taking goods
2. Wrongfully detaining goods
3. Wrongfully destroying goods
4. Wrongfully disposing goods
5. Wrongfully delivering goods

***Wrongfully taking goods :***

This must be done with the intention to permanently or temporarily dominate the goods of another. In the case of *Fouldes V Willoughlby* where the owner of two horses boarded a ferry with them. The ferry man told the horse owner to remove his horses. The owner refused and the ferry man personally removed his horses and led them ashore. It was held on appeal that the ferry man was not guilty of conversion because he did not intend to assert dominion of the horses.

***Wrongfully detaining goods :***

This must be done with the intention to keep the goods from the entitled the possession of the goods. It can only consist as conversion if the accused refuses to release the goods when he is asked of it. In the case of *Howard E Perry and co Ltd V British Railway*, the defendants refrained from returning plaintiff’s steel depots do to a strike by steelworkers. The court held that the defendants were liable for conversion.

***Wrongfully destroying goods :***

Destruction of goods will amount conversion if;

1. One intentionally destroys the chattel of another
2. If the chattel ceases to exist of changes its identity

***Wrongfully disposing goods :***

This refers to a situation whereby the defendant confers the title of a good to a third party inconsistent with the right of the person entitled to the goods

***Wrongfully delivering goods :***

This refers to a situation whereby the defendant delivers a good to a third party who does not have right over that good and is inconsistent with the right of the person entitled to it.

**CASE ON CONVERSION**

1. *Chukwuka V C.F.A.O Motors ltd*; The plaintiff took his car to the defendant for repairs. He failed to collect it and nine months later the defendants sold it to a third party. It was held as conversion.

**INNOCENT RECIEPT OR DELIVERY IS NOT CONVERSION**

Innocent receipt or delivery of chattels are not regarded as conversions. They are not torts or criminal offences. However the receiver or deliverer must not wilfully damage or destroy the goods.

**LOST PROPERTY RULE**

At common law the finder of a lost property can claim right to that property against any person except its true owner. This rule is summarised in the case of *Parker V British Airways* where, the plaintiff found a bralette on the floor in the airport and requested the defendants employee that if the braclette is unclaimed it be returned to him. The employees did not find its owner and sold it to a third party. The court held that the bralette belonged to the plaintiff. The case further summarises that;

1. A finder of a chattel has not right over the chattel unless it is abandoned or lost and can keep it against all persons asides the owner.
2. A servant or agent who finds a chattel during his employment has rights of a finder on behalf of his employer.
3. An occupier of a land or building has superior rights to that of a finder over goods in or attached to the land as seen in *South Staffordshire Water Co. V Sharman*
4. An occupier does not have superior rights over a finder unless before the finding, the occupier expresses the intention to control the premises and the goods in it.

**DEFENCES OF CONVERSION**

1. Abandonment; Conversion is not actionable if the good was abandoned by the owner
2. Authority of Law; Conversion is not actionable if it is backed by law. For instance, if the goods of a defendant are sold by the plaintiff to get judgement debt by an order of court. It is not regarded as conversion.
3. Consent; Conversion is not actionable if consent was given to the defendant
4. Statute of limitations; Conversion is not actionable if it is not filled for within 2-5 years i.e. it will be statute barred
5. Unidentifiable property; Conversion will not be actionable if it cannot be properly identified.
6. Jus tertii
7. Subsisting bailment
8. Subsisting lien
9. Temporary retention; One can hold goods for the sole purpose of confirming the title.

**REMEDIES OF CONVERSION**

1. Recovery of special damages
2. General damages
3. Payment of consequential damages
4. Order for return and delivery of chattel
5. Order of payment of market value

**DETINUE**

This can be described as a situation whereby a person wrongfully detains another person’s property and refrains from returning the property to the person who is entitled to the possession of such goods. It is similar to conversion however it is condition for detinue that the plaintiff requests for his goods which are denied by the defendant. For instance, if Iman borrows her book to Bola and requests for it back and Bola outrightly refuses, Bola will be liable for detinue.

Just like conversion and every other trespass to chattel the plaintiff must have right to possession of the chattel.

**ELEMENTS OF DETINUE**

1. The plaintiff must make a demand to the defendant
2. The defendant must refuse the demand
3. The refusal must be unreasonable
4. The refusal must have a consequential damage

***The plaintiff must make a demand to the defendant :***

The plaintiff must demand a chattel he is entitled to at that particular time. The demand is imperative i.e. crucial.

***The defendant must refuse the demand :***

The defendant must refuse demand from the plaintiff whether expressively or by failing to respond. In some cases, a defendant who does not have possession or has lost that possession can commit detinue by denying the plaintiff of their right to possession of that chattel.

***The refusal must be unreasonable :***

The refusal by the defendant to return the chattel to the plaintiff must be unreasonable.

***The refusal must have a consequential damage :***

The plaintiff must suffer a resultant loss from the defendant’s refusal.

It is important to note that once all this is established detinue can be actionable.

**INSTANCES DETINUE CAN BE RAISED**

This tort is established by a refusal by the defendant to release a chattel demanded by the plaintiff who has a right of possession over that chattel. A conditional demand that becomes unconditional can also prove as detinue. Detinue can be raised when;

1. When the defendant has possession of the chattel.
2. Where the defendant was in possession of the chattel under bailment i.e. it is under the possession of the defendant temporarily for a purpose and he takes it

**CASES ON DETINUE**

1. *West Africa Examinations Council V Koroye*; Here the plaintiff took an examination conducted by the defendants. The defendants refused to release the plaintiff’s certificate. They were held liable for detinue.
2. *Steryr Nig. Ltd V Gadzama*; Here the plaintiff sued the defendants because the defendant’s employees detained official cars and household items which were used by the plaintiff’s top management staff. The defendants were held liable for detinue.

**DEFENCES FOR DETINUE**

1. Consent; Detinue is not actionable when there is consent either express or implied.
2. Jus Tertii; Detinue is not actionable if the defendant can prove the third party has better right to possession than the plaintiff.
3. No right to possession; If one can prove the plaintiff has no right to possession of the chattel then detune is not actionable.
4. The demand is invalid; If the demand is vague or confusing then detinue is not actionable as the refusal is not unreasonable.
5. There was no refusal; If the refusal is not specific or the to return the chattel has not elapsed then detinue is not actionable.
6. It was not reasonable to return the chattel; If one can prove that returning the chattel would not be fair, just and equitable then detinue will not be actionable.
7. Innocent delivery
8. Temporary retention to check for good title etc.

**REMEDIES FOR DETINUE**

1. Damages
2. Claim for replacement of the chattel
3. Claim to return the specific chattel
4. Recapture or self help to recover goods
5. Claim for market value of the chattel
6. Replevin i.e. the returning of goods on security pending the determination of the ownership

**DIFFERENCE BETWEEN TRESPASS, CONVERSION AND DETINUE**

Trespass may include mere touching, or moving of a person’s chattel. There is no stealing in trespass while conversion in criminal law is regarded as stealing or theft. Conversion occurs when one deals with another person’s chattel in a repugnant manner which is inconsistent with the rights of the person entitled to posses the chattel. Repugnant manner may include wrongfully disposing, detaining, destroying, taking and delivering one’s goods.

Detinue on the other hand occurs when wrongfully detains a chattel after it has been demanded by a person entitled to the possession of that chattel. There is a demand for the chattel and a refusal either express or implied.

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