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**DEPT: LAW**

**ASSIGNMENT: Trespass to Chattel**

In regards with the subject matter, “The tort of trespass to Chattel”, The Definition of “Chattels” shall be examined first, In accordance to the **USlegal Dictionary** Chattels are moveable items of property which are neither land nor permanently attached to land or a building, either directly or vicariously through attachment to real property. It should be noted that Chattel is personal property, which is distinguished from real property. Examples of chattel include furniture, clothes hanging in the closet, cattle on a farm and everything else that's moveable and commendable of ownership.

**Trespass to chattels** is a tort whereby the encroaching party has knowingly interfered with the lawful ownership of a chattel by another person. Trespass to Chattel is actionable per se; there is ample evidence of overt and unlawful application of force, no need to prove injury. **Erivo v Obi (1993)** In this case Appellant sued inter alia for damage to the windscreen and the loss he incurred in hiring another car. Court of Appeal held that the defendant respondent was not liable as it was not done intentionally or negligently but was an was an unavoidable mischance. Other incidents of chattel trespass include: throwing away the property of another person, such as in frustration, scratching or making marks on the chattel's body, or writing with a finger in the dust on a motor vehicle's body, destruction, or any act of harm or damage

The tort of trespass to chattel hence secures, the chattels, property, and all individual resources of an person who has title, possession, or right to quick ownership from interruption, damage, devastation, reduction, transformation, detinue, or any obstructions at all, by any other individual.

An individual who needs to sue in trespass to chattel can sue beneath trespass to goods, conversion and negligence that's included within the commission of the trespass or conversion. These activities are substantiated by the arrangements of the Torts (Interference With Goods) Act 1977. The act establishes a new action called “Wrongful interference with goods” otherwise known as “Wrongful impedances with goods”. It should be noted that mistake of ownership is not a defense to a trespass to chattels.

In Nigeria, the tort of trespass to chattel is made up of three sorts of torts. These are

1. Trespass to chattels per se , without a conversion or a detinue of the chattel in address
2. Conversion
3. Detinue

Elements of Trespass to Chattels

1. Intentionally; or

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

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. Masters, Bailees, Lenders, Assigned, Trustees, Finders, Custodians, Caretakers, Adverse owners, since mere ownership gives the right to sue to maintain possession, Executors, Estate Managers, etc., are the individuals who may sue for trespass to chattel, if they have possession at the material time of the intervention. **National Coal Board v Evans & Co. (1951)**

The Defenses for Trespass to Chattel: The defenses a defendant can plead in an action for trespass to chattel 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.

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 etc.

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

1. Payment of damages

2. Replacement of the chattel

3. Payment of the market price of the chattel

4. Repair of the damage.

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”.

Conversion is any agreement which denies an individual the title, ownership, or use of the chattel. It is the declaration of a right that is inconsistent with the right of the person who has title, ownership, or right to use the chattel. It is dealing with a chattel that belongs to another person in a manner that is inconsistent with the rights of the person. In other words, any intentional conversion is interference with another person's chattel that illegally deprives the entity of ownership, possession or use of it. Conversion is known as stealing or theft in criminal law.

North Central Wagon & Finance Co. Ltd v Graham (1950), In contravention of the terms of the hire purchase contract, the defendant sold the vehicle. In the circumstances of the case, the court ruled that the plaintiff loan company was entitled to cancel the lease purchase arrangement and to sue the selling lease owner for recovery of the vehicle in the event of wrongful conversion.

Element of Conversion:  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.

INNOCENT RECEIPT

Innocent delivery or innocent receipt is 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. **Owena Bank Nig. Ltd v Nigerian Sweets & Confectionery Co. Ltd (1993) 4 NWLR pt. 290, p. 698 CA**

LOST PROPERTY RULE

Common law describes lost property as personal property that was abandoned by its true owner accidentally. A wallet that falls out of someone's pocket, for instance, is lost. Under common law, unless and until the original owner comes forward, a person who has found missing personal property will hold it. This rule applied to individuals who in public areas discovered lost property, as well as to individuals who discovered lost property on their property. **Parker v British Airways (1982) 1 AllER 834 CA**

**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

The unlawful arrest of another person's chattel and the immediate custody of which the person is entitled is the tort of detinue. An action in detinue is a claim for the specific return, or reimbursement of its existing market value and any resulting damages, of a chattel wrongfully held. 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. In the United Kingdom The Torts (Interference with Goods) Act 1977 abolished the tort of detinue as a separate tort and replaced it with the tort of conversion in the United Kingdom, where it is now known as detinue or detention conversion. It still remains as a separate offence in Nigeria.

ELEMENTS OF DETINUE

1. 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.
2. Refuse a 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.
3. Unreasonable Refusal: Where the chattel is in the defendant’s possession, the refusal to return the chattel must be unreasonable.
4. 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.

PERSONS CAN SUE FOR DETINUE:

1. The plaintiff must have a title that is the property of the chattel or the right to immediate ownership.

2. The defendant who is in actual possession of the chattel must have neglected to deliver the chattel to the plaintiff or declined to deliver it to the plaintiff after the plaintiff made a proper request, without a valid reason, for the return of the chattel. There must also have been a request for the return of the chattel by the complainant and a refusal or a failure to return them. This rendering of a demand on the defendant by the complainant is a condition precedent that must be established by the complainant to succeed in his application for detinue.

In **Kosile v Folarin (1989) 3 NWLR pt. 107, p. 1 SC,** Upon delay by the claimant to fully pay up, the defendant car dealer confiscated and imprisoned the motor vehicle he had sold to the complainant on credit terms. The plaintiff buyer sued for damages alleged by detinue. Among other items, the Supreme Court ruled that the defendant's capture and detention of the vehicle was false. The plaintiff was entitled, before the date of the judgment, to the return of the vehicle or its value and the loss of use of the vehicle at a rate of N20 per day.

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.

A defendant had an option to either recover the genuine chattel or pay the market value before the Common Law Procedure Act 1854 was passed. However, after the passage of the Act, a court has the power to grant specific restitution or to give the complainant the market value of the chattel or to award damages on its own if the products can be easily substituted.

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