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QUESTION: THE TORT OF TRESPASS TO CHARTTEL IN IS MADE OF: TRESSPASS TO CHARTTELS CONVERSION AND DETINUE. DISCUSS THE ABOVE AND SUPPORT WITH CASE LAW. STUDENTS MAY CONSIDER THE FOLLOWING; DEFINE ND EXPLAIN EACH TORT STATE AND THE ELEMENTS OF TRESSPASS TO CHARTTEL, CONVERSION AND DETINUE. EXPLAIN THE CONCEPTS OF INNOCENT DELIVERY OR RECEIPTS, LOST PROPERTY RULE AND GIVE EXAMPLES OF CONVERSION. GIVE EXAMPLES OF PERSONS QUALIFIED TO SUE FOR TRESSPASS TO CHARTTEL. DISCUSS THE REMEDIES AND DEFENCE TO TRESSPASS TO CHARTEL, CONVERSION AND DETINUE. DIFFERENCES BETWEEN CONVERSION AND DETINUE.

The tort of trespass to chattel protects all the chattels ,goods or personal properties of a person who has title or possession by prohibiting interference without legal justification.

There are three types of chattels in Nigeria:

1} trespass to chattels without a conversion or detinue

2: conversion

3: detinue

I am going to discuss the last two.

CONVERSION:

Conversion is any interference, possession or disposition of the property of another person as if it was one’s own without legal justification. In other words it is dealing with another person’s property as if it were your own. It includes wrongful taking, detention or wrongful disposition of the property of another person.

NORTH CENTRAL WAGON AND FINACE CO LTD V GRAHAM: 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.

ADAMS V JARVIS: An auctioneer was held entitled to be indemnified by a client who had instructed him to sell goods to which it later discovered the client had no title.

Examples of conversion:

Taking- DAVIES V LAGOS CITY COUNCIL

Using- PENFOLDS WINE LTD V ELLIOT

Alteration

Consumption

Destruction by damaging or obliterating

By detention- ARMORY V DELAMIRIE

Wrongful delivery

Purchase

Wrongful disposition

DETINUE:

The tort of detinue is the wrongful detention of the chattel of another person, the immediate possession of which the person entitled. Detinue is a claim for specific return, delivery or surrender of a chattel to the plaintiff who is entitled to it.

KONSILE V FOLARIN: 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 f buyer sued for.

Ii) ELEMENTS TO TRESPASS TO CHATTEL

To be succeeding a plaintiff must establish that the act of trespass was:

1) Intentional

2) Negligent

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.

iii) CONCEPT OF INNOCENT DELIVERY

Neither GENERALLY, INNOCENT DELIVER OR INNOCENT 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 a warehouseman, receive goods in good faith from a person he believes to have lawful possession of them and he delivers them on the persons instruction to a third party in good faith there would be no conversion. UNIPETROL V PRIMA TANKERS LTD.

iv) LOST PROPERTY RULE

The rules of law applicable to finding to a lost property were authoritiacally settled by the English court of appeal in the case of PARKER V BRITISH AIREWAYS.

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.

Any servant or agent who finds a lost property in the course of his employment does so on behalf of his employer who by law acquires the right of a finder.

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.

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, and a pre-historic boat discovered six feet below the surface was held as belonging to the land owner in the case of ewes v Briggs gas co.

v) Examples of conversion:

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vii) Anyone who has possession or caretaker ship of a chattel may sue any other person who meddles with the chattel. Therefore the people who may sue for trespass to chattel, provided they have possession at the material time of the interference include:

1) Owners

2) Bailers

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 and so forth

NATIONAL COAL BOARD V EVANS & CO

VII) THE DEFFENCES TO TRESSPASS TO CHATTEL

In an action for trespass to chattel the defence of the 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\

3) Subsisting lien

4) Limitation of time as a result of the expiration of time specified for legal action

5) Subsisting bailment

6) Honest conversion or acting honestly and so forth

REMEDIES FOR TRESSPASS TO CHATTEL

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

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

A frequent demonstration of these remedies is in motor accident cases. Where one vehicle runs into another, damages may be paid, or parts of the vehicle that are affected may be replaced or repaired.

Vii) THE DIFFERENCE BETWEEN DETINUE AND CHATTEL

1. 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 chattel.
2. Detinue is the proper remedy where the plaintiff wants a return of the specific goods in question and not merely 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.

REFERENCE: ESE MALEMI LAW OF TORT TEXTBOOK.